

2009 DRAFTING REQUEST

Bill

Received: **01/30/2009**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Dombrowski**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Real Estate - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Dombrowski, BAB -

Topic:

Foreclosure reconveyances and consultants

Instructions:

See attached--identical to 09-0244; Sullivan's office released to DOA per PJK

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 01/30/2009	bkraft 01/30/2009		_____			Crime
/1			phenry 01/30/2009	_____	cduerst 01/30/2009		Crime
/2	rnelson2 02/09/2009	bkraft 02/09/2009	mduchek 02/09/2009	_____	lparisi 02/09/2009		Crime
/3	agary	bkraft	rschluet	_____	mbarman		

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	02/10/2009	02/10/2009	02/10/2009	_____	02/10/2009		

FE Sent For:

<END>

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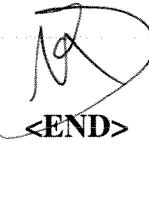
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/?	pkahler	1/bjk 1/30	1/30 pk	1/30 pk/MD			

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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

LRB-0244 is 2007 SB 298

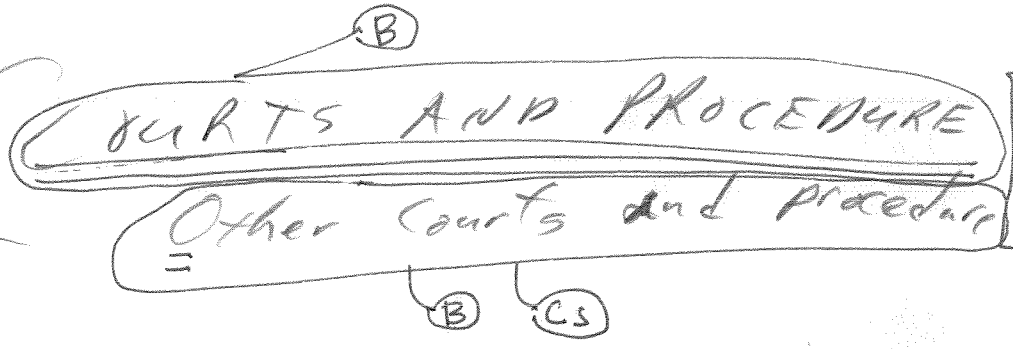
with ²⁰⁰⁷ ISA 1 (LRBa 0929/2)

incorporated into it

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2009 BILL

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AN ACT *to renumber* 799.40 (4); *to amend* 165.25 (4) (ar); and *to create* 227.01 (13) (rm), 799.40 (4) (b), 846.40 and 846.45 of the statutes; **relating to:** regulating foreclosure reconveyances and foreclosure consultants, staying certain eviction actions, providing an exemption from rule-making procedures, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, if the owner of real property that is subject to a mortgage defaults in making payments, the mortgagee, which is usually a financial institution, may commence a foreclosure action. If the mortgagee prevails and obtains a foreclosure judgment, the property owner (mortgagor) may redeem the property before a sheriff's sale by paying the amount of the judgment to the clerk of court. If the mortgagor does not redeem the property, it will be sold at a sheriff's sale after six months to one year, depending on the type of property and whether the mortgagor will owe a deficiency, which is the amount by which the judgment exceeds the amount obtained at the sale.

This bill addresses foreclosure reconveyances. A foreclosure reconveyance is defined as a transaction under which the mortgagor transfers title to residential real property in foreclosure to a third party, called a foreclosure purchaser in the bill. The foreclosure purchaser redeems the property and subsequently conveys, or promises to subsequently convey, to the mortgagor (foreclosed homeowner) an interest in the property that allows the foreclosed homeowner to remain in possession of the

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property, such as an interest in a land contract, a purchase agreement, an option to purchase, or a lease.

Under the bill, if a foreclosure purchaser enters into a foreclosure reconveyance, it must be by a written contract. The bill specifies the information that the contract must contain and requires that duplicate copies of a completed notice of cancellation be attached to the contract. The foreclosed homeowner may cancel the foreclosure reconveyance contract by delivering personally or by certified mail a signed and dated notice of cancellation to the foreclosure purchaser within five business days after the foreclosed homeowner signs the contract. The bill prohibits any waiver of any of the foreclosure reconveyance provisions, except for the five-day right to cancel the contract if the property is to be sold at sheriff's sale within those five days and the foreclosed homeowner waives his or her right to cancel in a handwritten statement.

The bill contains various prohibitions and requirements that apply generally to foreclosure purchasers, including:

1. Prohibiting a foreclosure purchaser from entering into a foreclosure reconveyance unless, among other things, the foreclosure purchaser verifies that the foreclosed homeowner has the ability to pay for the subsequent conveyance of the interest back to the foreclosed homeowner.

2. Requiring a foreclosure purchaser either to ensure that title to the dwelling has been reconveyed to the foreclosed homeowner or to pay to the foreclosed homeowner consideration of at least 82 percent of the fair market value of the property within 150 days of either the eviction from the property of, or the voluntary relinquishment of possession of the property by, the foreclosed homeowner. If the foreclosure purchaser pays the foreclosed homeowner, the foreclosure purchaser must provide a detailed accounting of the basis for the payment amount on a form prescribed by the attorney general, in consultation with the secretary of agriculture, trade and consumer protection.

3. Prohibiting a foreclosure purchaser from entering into repurchase or lease terms, as part of the subsequent conveyance, that are unfair or commercially unreasonable and from engaging in any other unfair conduct.

4. Prohibiting a foreclosure purchaser from acting as an advisor or consultant or in any other manner representing that the foreclosure purchaser is acting on behalf of the foreclosed homeowner.

5. Prohibiting a foreclosure purchaser from making any other statements or engaging in any other conduct that is false, deceptive, or misleading.

6. Prohibiting a foreclosure purchaser from taking certain actions, such as accepting from the foreclosed homeowner any instrument of conveyance of any interest in the residence in foreclosure or transferring any interest in the residence to a third party, before the time for the foreclosed homeowner to cancel the transaction has fully elapsed.

7. Requiring compliance with certain provisions of the federal Truth in Lending Act if a foreclosure purchaser extends credit to, or arranges for credit to be extended to, a foreclosed homeowner.

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The bill specifies penalties that apply if a foreclosure purchaser violates any of the provisions, authorizes a court to order punitive damages for a violation, and specifies that a violation shall be considered a fraud and that a foreclosed homeowner may bring an action for damages. The bill also provides that a court must grant a stay in an eviction action if the property was the subject of a foreclosure reconveyance and the defendant was the owner of the property, has continuously occupied the property since it was conveyed to a third party, and has either commenced an action concerning the foreclosure reconveyance or asserts fraud or other deceptive practices in connection with the foreclosure reconveyance. The stay continues for 90 days if the defendant does not commence an action concerning the foreclosure reconveyance within 90 days or until there is a final decision in the action if an action concerning the foreclosure reconveyance already has been commenced or is commenced within 90 days.

The bill also addresses foreclosure consultants. A foreclosure consultant is defined as a person who offers to a foreclosed homeowner to perform for compensation any of various services that will assist the foreclosed homeowner with the loan default or foreclosure, such as stopping the foreclosure sale, assisting the foreclosed homeowner to obtain a loan, or saving the property from foreclosure. The bill, however, specifies numerous exceptions to the definition of "foreclosure consultant" for persons who provide those services, such as an attorney, real estate broker, or certified public accountant rendering such services in the course of his or her practice; a mortgage banker or broker; and a foreclosure purchaser.

The bill provides that any agreement (contract) between a foreclosure consultant and a foreclosed homeowner for the rendition of services must be in writing, and that a foreclosed homeowner who enters into a contract for services with a foreclosure consultant has the right to cancel the contract without penalty within three days by delivering, personally or by certified mail, a notice of cancellation to the foreclosure consultant. The bill specifies the information that the contract must contain and requires that duplicate copies of a notice of cancellation be attached to the contract.

The bill sets out actions by a foreclosure consultant that are violations and for which the bill provides penalties and remedies. Violations include demanding or receiving compensation before every service under the contract has been performed, acquiring an interest, including a security interest, in the real property in foreclosure, inducing a foreclosed homeowner to enter into a contract that does not comply with the requirements set out in the bill, and charging interest of more than 8 percent on any loan made to the foreclosed homeowner. The bill provides that the Department of Agriculture, Trade and Consumer Protection (DATCP) may investigate violations of the requirements under the bill and may commence an action to restrain a violation or to recover a forfeiture for a violation. The Department of Justice is required to furnish legal services to DATCP. The bill also provides that any person suffering pecuniary loss because of a violation of the requirements under the bill may commence an action against the violator. The bill sets out forfeiture and fine amounts for violations. The bill also prohibits any waiver of any of a foreclosed homeowner's rights under the bill and provides that any

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provision in a contract requiring arbitration of any dispute arising under the provisions is voidable at the option of the foreclosed homeowner.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 165.25 (4) (ar) of the statutes is amended to read:

2 165.25 (4) (ar) The department of justice shall furnish all legal services
3 required by the department of agriculture, trade and consumer protection relating
4 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
5 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,
6 100.50, and 100.51, and 100.55, and 846.45 and chs. 126, 136, 344, 704, 707, and 779,
7 together with any other services as are necessarily connected to the legal services.

8 SECTION 2. 227.01 (13) (rm) of the statutes is created to read:

9 227.01 (13) (rm) Is a form prescribed by the attorney general for an accounting
10 under s. 846.40 (8) (b) 2.

11 SECTION 3. 799.40 (4) of the statutes is renumbered 799.40 (4) (a).

12 SECTION 4. 799.40 (4) (b) of the statutes is created to read:

13 799.40 (4) (b) The court shall stay the proceedings in a civil action of eviction
14 against a foreclosed homeowner, as defined in s. 846.40 (1) (b), under the
15 circumstances and as provided in s. 846.40 (9).

16 SECTION 5. 846.40 of the statutes is created to read:

17 **846.40 Regulation of foreclosure reconveyances. (1) DEFINITIONS.** In this
18 section:

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1 (a) "Closing" means an in-person meeting to complete final documents incident
2 to the sale of real property or the creation of a mortgage on real property that is
3 conducted by a closing agent who is not employed by, an affiliate of, or employed by
4 an affiliate of, any foreclosure purchaser involved in the closing, and who does not
5 have a business or personal relationship with any foreclosure purchaser involved in
6 the closing other than the provision of real estate settlement services.

7 (b) "Foreclosed homeowner" means an owner of a residence in foreclosure.

8 (c) "Foreclosure purchaser" means a person that has acted as the acquirer in
9 a foreclosure reconveyance. "Foreclosure purchaser" also includes a person that has
10 acted in joint venture or joint enterprise with one or more acquirers in a foreclosure
11 reconveyance. "Foreclosure purchaser" does not include any of the following:

12 1. A natural person who shows that he or she is not in the business of
13 foreclosure purchasing and who has a prior personal relationship with the foreclosed
14 homeowner.

15 2. A federal or state chartered bank, savings bank, savings and loan
16 association, or credit union.

17 (d) "Foreclosure reconveyance" means a transaction involving all of the
18 following:

19 1. The transfer of title to real property by a foreclosed homeowner during a
20 foreclosure proceeding, either by a transfer of interest from the foreclosed
21 homeowner or by the creation of a mortgage or other lien or encumbrance during the
22 foreclosure process.

23 2. The subsequent conveyance, or promise of a subsequent conveyance, of an
24 interest back to the foreclosed homeowner by the acquirer or a person acting in
25 participation with the acquirer that allows the foreclosed homeowner to possess

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1 either the residence in foreclosure or other real property, which interest includes an
2 interest in a land contract, purchase agreement, option to purchase, or lease.

3 (e) "Primary housing expenses" means the sum of payments for regular
4 principal, interest, rent, utilities, fire and casualty insurance, real estate taxes, and
5 association dues.

6 (f) "Resale" means a bona fide market sale of the property subject to the
7 foreclosure reconveyance by the foreclosure purchaser to an unaffiliated 3rd party.

8 (g) "Resale price" means the gross sale price of the property on resale.

9 (h) "Residence in foreclosure" means residential real property located in this
10 state that consists of one to 4 family dwelling units and with respect to which real
11 property there is a delinquency or default on any loan payment or debt secured by
12 or attached to the residential real property, including land contract payments. The
13 owner of the residential real property may, but is not required to, occupy the
14 residential real property as the owner's principal place of residence.

15 **(2) CONTRACT REQUIREMENT; FORM AND LANGUAGE.** A foreclosure purchaser that
16 enters into any foreclosure reconveyance shall do so by a written contract. Every
17 contract must be written in letters of not less than 12-point boldface type, both in
18 English and in the same language principally used by the foreclosure purchaser and
19 foreclosed homeowner to negotiate the sale of the residence in foreclosure if other
20 than English, and must be fully completed, signed, and dated by the foreclosed
21 homeowner and foreclosure purchaser before the execution of any instrument of
22 conveyance of the residence in foreclosure.

23 **(3) CONTRACT TERMS.** (a) Every contract required by sub. (2) must contain the
24 entire agreement of the parties and must include all of the following terms:

BILL

1 1. The name, business address, and telephone number of the foreclosure
2 purchaser.

3 2. The address of the residence in foreclosure.

4 3. The total consideration to be given by the foreclosure purchaser in connection
5 with or incident to the sale.

6 4. A complete description of the terms of payment or other consideration,
7 including any services of any nature that the foreclosure purchaser represents he or
8 she will perform for the foreclosed homeowner before or after the sale.

9 5. The time at which possession is to be transferred to the foreclosure
10 purchaser.

11 6. A complete description of the terms of any related agreement designed to
12 allow the foreclosed homeowner to remain in possession of the home, such as a rental
13 agreement, repurchase agreement, land contract, or lease with option to purchase.

14 7. The time for determining the fair market value of the property, as provided
15 under sub. (8) (b) 2. b.

16 8. A notice of cancellation as provided in sub. (5) (b).

17 9. Immediately above the statement required by sub. (5) (a), in not less than
18 14-point boldface type if the contract is printed or in capital letters if the contract
19 is typed, and completed with the name of the foreclosure purchaser, the following
20 notice:

21 NOTICE REQUIRED BY WISCONSIN LAW

22 Until your right to cancel this contract has ended, (Name of foreclosure
23 purchaser) or anyone working for (Name of foreclosure purchaser) CANNOT ask
24 you to sign or have you sign any deed or any other document.

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1 (b) The contract required by this subsection survives delivery of any
2 instrument of conveyance of the residence in foreclosure and has no effect on persons
3 other than the parties to the contract.

4 **(4) CONTRACT CANCELLATION.** (a) In addition to any other right of rescission, the
5 foreclosed homeowner has the right to cancel any contract with a foreclosure
6 purchaser until midnight of the 5th business day following the day on which the
7 foreclosed homeowner signs a contract that complies with subs. (2) to (6) or until 8:00
8 a.m. on the last day of the period during which the foreclosed homeowner has a right
9 of redemption, whichever occurs first.

10 (b) Cancellation occurs when the foreclosed homeowner delivers to the
11 foreclosure purchaser, personally or by certified mail, a signed and dated written
12 notice of cancellation. The contract and notice of cancellation form under sub. (5) (b)
13 must contain a street or physical address to which notice of cancellation may be
14 mailed by certified mail or personally delivered. A post office box may be designated
15 for delivery by certified mail only if it is accompanied by a street or physical address
16 at which the notice may be personally delivered. If the notice of cancellation is
17 personally delivered, the foreclosure purchaser must provide a receipt to the
18 foreclosed homeowner. If cancellation is mailed by certified mail, delivery is effective
19 when the notice of cancellation is deposited in the U.S. mail. If cancellation is
20 personally delivered, delivery is effective when the notice of cancellation is handed
21 to the foreclosure purchaser.

22 (c) A notice of cancellation given by the foreclosed homeowner need not take the
23 particular form provided under sub. (5) (b).

24 (d) Within 10 days following receipt of a notice of cancellation given in
25 accordance with this subsection, the foreclosure purchaser shall return without

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1 condition any original contract and any other documents signed by the foreclosed
2 homeowner.

3 (5) NOTICE OF CANCELLATION. (a) 1. The contract must contain conspicuously
4 and in immediate proximity to the space reserved for the foreclosed homeowner's
5 signature, in not less than 14-point boldface type if the contract is printed or in
6 capital letters if the contract is typed, the following statement: "You may cancel this
7 contract for the sale of your house without any penalty or obligation at any time
8 before (date and time of day). See the attached notice of cancellation form for an
9 explanation of this right."

10 2. The foreclosure purchaser shall accurately enter the date and time of day on
11 which the cancellation right ends.

12 (b) The contract must be accompanied by a completed form in duplicate,
13 captioned "NOTICE OF CANCELLATION" in 12-point boldface type if the contract is
14 printed or in capital letters if the contract is typed, followed by a space in which the
15 foreclosure purchaser shall enter the date on which the foreclosed homeowner
16 executes the contract. This form must be attached to the contract, must be easily
17 detachable, and must contain, in not less than 10-point type if the contract is printed
18 or in capital letters if the contract is typed, the following statement:

19 NOTICE OF CANCELLATION

20 (Enter date contract signed)

21 1. You may cancel this contract for the sale of your house, without any penalty
22 or obligation, at any time before (date and time of day).

23 2. To cancel this transaction, you may mail by certified mail or personally
24 deliver a signed and dated copy of this notice of cancellation to (name of purchaser)
25 at (street or physical address of purchaser's place of business) NOT LATER THAN

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1 (date and time of day). If you personally deliver this notice of cancellation, ...
2 (name of purchaser) must give you a receipt.

3 3. I hereby cancel this transaction.

4 (Date)

5 (Seller's signature)

6 (c) The foreclosure purchaser shall provide the foreclosed homeowner with a
7 copy of the contract and the attached notice of cancellation form at the time the
8 contract is executed by all parties.

9 (d) The 5-day period under sub. (4) (a) during which the foreclosed homeowner
10 may cancel the contract does not begin to run until all parties to the contract have
11 executed the contract and the foreclosure purchaser has complied with this
12 subsection.

13 **(6) WAIVER.** Any waiver of the provisions of this section is void and
14 unenforceable as contrary to public policy, except that a foreclosed homeowner may
15 waive the 5-day right to cancel under sub. (4) (a) if the property is subject to a
16 foreclosure sale within the 5 business days and the foreclosed homeowner agrees to
17 waive his or her right to cancel in a handwritten statement signed by all parties
18 holding title to the foreclosed property.

19 **(7) LIABILITY.** Any provision in a contract entered into on or after the effective
20 date of this subsection [LRB inserts date], that attempts or purports to require
21 arbitration of any dispute arising under this section is void at the option of the
22 foreclosed homeowner.

23 **(8) GENERAL PROHIBITIONS AND REQUIREMENTS.** (a) A foreclosure purchaser may
24 not enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed
25 homeowner unless all of the following are satisfied:

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1 1. The foreclosure purchaser verifies and can demonstrate that the foreclosed
2 homeowner has a reasonable ability to pay for the subsequent conveyance of an
3 interest back to the foreclosed homeowner. In the case of a lease with an option to
4 purchase, payment ability also includes the reasonable ability to make the lease
5 payments and purchase the property within the term of the option to purchase.
6 There is a rebuttable presumption that a foreclosed homeowner is reasonably able
7 to pay for the subsequent conveyance if the foreclosed homeowner's payments for
8 primary housing expenses and regular principal and interest payments on other
9 personal debt, on a monthly basis, do not exceed 60 percent of the foreclosed
10 homeowner's monthly gross income. There is a rebuttable presumption that the
11 foreclosure purchaser has not verified reasonable payment ability if the foreclosure
12 purchaser has not obtained documents other than a statement by the foreclosed
13 homeowner of assets, liabilities, and income.

14 2. The foreclosure purchaser and the foreclosed homeowner complete a closing
15 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed
16 or mortgage from a foreclosed homeowner.

17 3. The foreclosure purchaser obtains the written consent of the foreclosed
18 homeowner to a grant by the foreclosure purchaser of any interest in the property
19 during such times as the foreclosed homeowner maintains any interest in the
20 property.

21 (b) A foreclosure purchaser shall do either of the following:

22 1. Ensure that title to the subject dwelling has been reconveyed to the
23 foreclosed homeowner.

24 2. Make a payment to the foreclosed homeowner such that the foreclosed
25 homeowner has received consideration in an amount of at least 82 percent of the fair

BILL**SECTION 5**

1 market value of the property within 150 days after either the eviction of, or voluntary
2 relinquishment of possession of the dwelling by, the foreclosed homeowner. The
3 foreclosure purchaser shall make a detailed accounting of the basis for the payment
4 amount, or a detailed accounting of the reasons for failure to make a payment,
5 including providing written documentation of expenses, within this 150-day period.
6 The accounting shall be on a form prescribed by the attorney general, in consultation
7 with the secretary of agriculture, trade and consumer protection. For purposes of
8 this subdivision, all of the following apply:

9 a. There is a rebuttable presumption that an appraisal by a person licensed or
10 certified by an agency of the federal government or this state to appraise real estate
11 constitutes the fair market value of the property.

12 b. The time for determining the fair market value amount shall be specified in
13 the foreclosure reconveyance contract as either at the time of the execution of the
14 foreclosure reconveyance contract or at resale. If the contract states that the fair
15 market value shall be determined at the time of resale, the fair market value shall
16 be the resale price if it is sold within 120 days after the eviction of, or voluntary
17 relinquishment of the property by, the foreclosed homeowner. If the contract states
18 that the fair market value shall be determined at the time of resale, and the resale
19 is not completed within 120 days after the eviction of, or voluntary relinquishment
20 of the property by, the foreclosed homeowner, the fair market value shall be
21 determined by an appraisal conducted during this 120-day period and payment, if
22 required, shall be made to the foreclosed homeowner, but the fair market value shall
23 be recalculated as the resale price on resale and an additional payment amount, if
24 appropriate based on the resale price, shall be made to the foreclosed homeowner
25 within 15 days after resale, and a detailed accounting of the basis for the payment

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1 amount, or a detailed accounting of the reasons for failure to make additional
2 payment, shall be made within 15 days after resale, including providing written
3 documentation of expenses. The accounting shall be on a form prescribed by the
4 attorney general, in consultation with the secretary of agriculture, trade and
5 consumer protection.

6 c. "Consideration" means any payment or thing of value provided to the
7 foreclosed homeowner, including unpaid rent or land contract payments owed by the
8 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the
9 property, reasonable costs paid to 3rd parties necessary to complete the foreclosure
10 reconveyance transaction, payment of money to satisfy a debt or legal obligation of
11 the foreclosed homeowner, the reasonable cost of repairs for damage to the dwelling
12 caused by the foreclosed homeowner, or a penalty imposed by a court for the filing
13 of a frivolous claim in an eviction action under sub. (9). "Consideration" does not
14 include amounts imputed as a down payment or fee to the foreclosure purchaser, or
15 a person acting in participation with the foreclosure purchaser, incident to a land
16 contract, lease, or option to purchase entered into as part of the foreclosure
17 reconveyance, except for reasonable costs paid to 3rd parties necessary to complete
18 the foreclosure reconveyance.

19 (c) A foreclosure purchaser may not enter into repurchase or lease terms as part
20 of the subsequent conveyance that are unfair or commercially unreasonable, or
21 engage in any other unfair conduct.

22 (d) A foreclosure purchaser may not represent, directly or indirectly, any of the
23 following:

BILL**SECTION 5**

1 1. That the foreclosure purchaser is acting as an advisor or consultant, or in any
2 other manner represent that the foreclosure purchaser is acting on behalf of the
3 foreclosed homeowner.

4 2. That the foreclosure purchaser has certification or licensure that the
5 foreclosure purchaser does not have, or that the foreclosure purchaser is not a
6 member of a licensed profession if that is untrue.

7 3. That the foreclosure purchaser is assisting the foreclosed homeowner to save
8 the house, or a substantially similar phrase.

9 4. That the foreclosure purchaser is assisting the foreclosed homeowner in
10 preventing a completed foreclosure if the result of the transaction is that the
11 foreclosed homeowner will not complete a redemption of the property.

12 (e) A foreclosure purchaser may not make any other statements, directly or by
13 implication, or engage in any other conduct that is false, deceptive, or misleading,
14 or that has the likelihood to cause confusion or misunderstanding, including
15 statements regarding the value of the residence in foreclosure, the amount of
16 proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract
17 term, or the foreclosed homeowner's rights or obligations incident to or arising out
18 of the foreclosure reconveyance.

19 (f) Until the time during which the foreclosed homeowner may cancel the
20 transaction has fully elapsed, a foreclosure purchaser may not do any of the
21 following:

22 1. Accept from the foreclosed homeowner an execution of, or induce the
23 foreclosed homeowner to execute, any instrument of conveyance of any interest in the
24 residence in foreclosure.

BILL

1 2. Record or file with the register of deeds any document, including any
2 instrument of conveyance, signed by the foreclosed homeowner.

3 3. Transfer or encumber or purport to transfer or encumber any interest in the
4 residence in foreclosure to any 3rd party, provided no grant of any interest or
5 encumbrance is defeated or affected as against a bona fide purchaser or
6 encumbrance for value and without notice of a violation of this subdivision.
7 Knowledge on the part of any such person or entity that the property was residential
8 real property in foreclosure does not constitute notice of a violation of this
9 subdivision. This subdivision does not abrogate any duty of inquiry that exists as to
10 rights or interests of persons in possession of the residence in foreclosure.

11 4. Pay the foreclosed homeowner any consideration.

12 (g) If a foreclosure purchaser extends credit to, or arranges for credit to be
13 extended to, the foreclosed homeowner, the foreclosure purchaser or other person
14 with whom the foreclosure purchaser has arranged for the extension of credit shall
15 comply with all requirements specified in Regulation Z under the federal Truth in
16 Lending Act, 12 CFR 226, that apply to a creditor, as defined in 12 CFR 226.2 (a) (17)
17 (i), in a residential mortgage transaction, as defined in 12 CFR 226.2 (24), regardless
18 of whether the foreclosure purchaser or other person extending credit actually meets
19 the definition of a creditor under 12 CFR 226.2 (a) (17) (i).

20 **(9) STAY OF PROCEEDINGS IN EVICTION ACTIONS.** (a) A court hearing an eviction
21 action against a foreclosed homeowner shall stay the proceedings, without the
22 imposition of a bond, if a defendant makes a prima facie showing of all of the
23 following:

24 1. That any of the following applies to the defendant:

BILL**SECTION 5**

1 a. The defendant has commenced an action concerning a foreclosure
2 reconveyance with respect to the property that is the subject of the eviction action.

3 b. The defendant asserts, in connection with a foreclosure reconveyance, any
4 violation of this section or a claim or affirmative defense of fraud, false pretense, false
5 promise, misrepresentation, misleading statement, or deceptive practice.

6 2. That the defendant owned the foreclosed residence.

7 3. That the defendant conveyed title to the foreclosed residence to a 3rd party
8 upon a promise that the defendant would be allowed to occupy the foreclosed
9 residence or other real property in which the foreclosure purchaser or a person acting
10 in participation with the foreclosure purchaser has an interest and that the
11 foreclosed residence or other real property would be the subject of a foreclosure
12 reconveyance.

13 4. That since the conveyance to the 3rd party, the defendant has continuously
14 occupied the foreclosed residence or other real property in which the foreclosure
15 purchaser or a person acting in participation with the foreclosure purchaser has an
16 interest.

17 (b) For purposes of par. (a), notarized affidavits are acceptable means of proof
18 for meeting the defendant's burden of proof. A defendant may request, and upon a
19 showing of good cause the court may grant, up to an additional 2 weeks to produce
20 evidence to make the prima facie showing required under par. (a).

21 (c) The stay under this subsection shall remain in effect for 90 days if the
22 defendant has not yet commenced and does not commence, within 90 days from the
23 issuance of the stay, an action in connection with a foreclosure reconveyance
24 transaction. If the defendant has commenced, or commences within 90 days from the
25 issuance of the stay, an action in connection with a foreclosure reconveyance

BILL

1 transaction, the stay shall remain in effect until the court hearing the action related
2 to the foreclosure reconveyance renders a final decision in the matter.

3 **(10) ENFORCEMENT.** (a) A violation of this section shall be considered a fraud.

4 (b) A foreclosed homeowner against whom a violation of this section is
5 committed may bring an action for damages.

6 (c) A court may order punitive damages under s. 895.043 for a violation of this
7 section.

8 (d) 1. A foreclosure purchaser who violates this section by engaging in any
9 practice that would operate as a fraud or deceit upon a foreclosed homeowner may
10 be fined not more than \$50,000 or imprisoned for not more than one year in the
11 county jail or both.

12 2. In the absence of additional misconduct, a failure of the parties to complete
13 a foreclosure reconveyance transaction shall not subject a foreclosure purchaser to
14 the criminal penalties under subd. 1.

15 **SECTION 6.** 846.45 of the statutes is created to read:

16 **846.45 Regulation of foreclosure consultants. (1) DEFINITIONS.** In this
17 section, unless the context requires otherwise:

18 (a) "Contract" means an agreement, or any term in an agreement, between a
19 foreclosure consultant and a foreclosed homeowner for the rendition of any service.

20 (b) "Foreclosed homeowner" has the meaning given in s. 846.40 (1) (b).

21 (c) 1. Except as provided in subd. 2., "foreclosure consultant" means a person
22 who, directly or indirectly, makes a solicitation, representation, or offer to a
23 foreclosed homeowner to perform for compensation, or who for compensation
24 performs, any service that the person in any manner represents will in any manner
25 do any of the following:

BILL

1 a. Stop or postpone the foreclosure sale.

2 b. Obtain any forbearance from a beneficiary or mortgagee.

3 c. Obtain a waiver of an acceleration clause contained in a promissory note or
4 contract secured by a mortgage on the residence in foreclosure or contained in the
5 mortgage.

6 d. Assist the foreclosed homeowner to obtain a loan or advance of funds.

7 e. Avoid or ameliorate the impairment of the foreclosed homeowner's credit
8 resulting from the recording of a lis pendens or the conduct of a foreclosure sale.

9 f. Save the residence in foreclosure from foreclosure.

10 2. "Foreclosure consultant" does not include any of the following:

11 a. A person licensed to practice law in this state when the person renders
12 service in the course of his or her practice as an attorney at law.

13 b. A person licensed as a real estate broker or salesperson under ch. 452 when
14 the person engages in acts for which licensure under that chapter is required, unless
15 the person is engaged in offering services designed to, or purportedly designed to,
16 enable the foreclosed homeowner to retain possession of the residence in foreclosure.

17 c. A person certified or licensed to practice as a certified public accountant
18 under ch. 442 when the person is acting in any capacity for which the person is
19 certified or licensed under that chapter.

20 d. A person, or the person's authorized agent, acting under the express
21 authority or written approval of the department of housing and urban development
22 or other department or agency of the United States or this state to provide services.

23 e. A person who holds or is owed an obligation secured by a lien on any residence
24 in foreclosure when the person performs services in connection with this obligation

BILL

1 or lien if the obligation or lien did not arise as the result of or as part of a proposed
2 foreclosure reconveyance.

3 f. A person or entity doing business under any law of this state, or of the United
4 States, relating to a financial institution, as defined in s. 214.01 (1) (jn), to a lender
5 licensed under s. 138.09, to an insurance company, or to a mortgagee that is a United
6 States department of housing and urban development approved mortgagee; a
7 subsidiary or affiliate of any of these persons or entities; or an agent or employee of
8 any of these persons or entities while engaged in the business of these persons or
9 entities.

10 g. A person registered under s. 224.72 as a mortgage banker, loan originator,
11 or mortgage broker, when acting under the authority of that registration.

12 h. A judgment creditor of the foreclosed homeowner, to the extent that the
13 judgment creditor's claim accrued prior to the recording of the lis pendens in the
14 foreclosure action.

15 i. A foreclosure purchaser.

16 j. An adjustment service company licensed under s. 218.02, but only when
17 engaged in business unrelated to real estate.

18 (d) "Foreclosure purchaser" has the meaning given in s. 846.40 (1) (c).

19 (e) "Foreclosure reconveyance" has the meaning given in s. 846.40 (1) (d).

20 (f) "Person" means any individual, partnership, corporation, limited liability
21 company, association, or other group, however organized.

22 (g) "Residence in foreclosure" has the meaning given in s. 846.40 (1) (h).

23 (h) "Service" includes any of the following:

24 1. Debt, budget, or financial counseling of any type.

BILL**SECTION 6**

1 2. Receiving money for the purpose of distributing it to creditors in payment
2 or partial payment of any obligation secured by a lien on a residence in foreclosure.

3 3. Contacting creditors on behalf of a foreclosed homeowner.

4 4. Arranging or attempting to arrange for a delay or postponement of the time
5 of sale of the residence in foreclosure.

6 5. Advising the filing of any document, or assisting in any manner in the
7 preparation of any document for filing, with a bankruptcy court.

8 6. Giving any advice, explanation, or instruction to a foreclosed homeowner
9 that in any manner relates to curing a default in or reinstating an obligation secured
10 by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the
11 postponement or avoidance of a sale of a residence in foreclosure, under a power of
12 sale contained in any mortgage.

13 **(2) CANCELLATION OF FORECLOSURE CONSULTANT CONTRACT.** (a) In addition to any
14 other right under law to rescind a contract, a foreclosed homeowner has the right to
15 cancel a contract until midnight of the 3rd business day after the day on which the
16 foreclosed homeowner signs a contract that complies with sub. (3).

17 (b) 1. Cancellation occurs when the foreclosed homeowner delivers, personally
18 or by certified mail, written notice of cancellation to the foreclosure consultant at the
19 foreclosure consultant's address specified in the contract.

20 2. If notice of cancellation is given by certified mail, cancellation is effective
21 when the notice is deposited in the U.S. mail, properly addressed with postage
22 prepaid. If notice of cancellation is personally delivered, the foreclosure consultant
23 must give the foreclosed homeowner a receipt. Cancellation, if personally delivered,
24 is effective when the foreclosed homeowner hands the notice to the foreclosure
25 consultant.

BILL

1 (c) Notice of cancellation given by the foreclosed homeowner need not take the
2 particular form provided with the contract under sub. (3) (e). However expressed,
3 notice is effective if it indicates the intention of the foreclosed homeowner not to be
4 bound by the contract.

5 (3) CONTRACT. (a) Every contract must be in writing and must fully disclose
6 the exact nature of the foreclosure consultant's services and the total amount and
7 terms of compensation.

8 (b) The following notice, printed in not less than 14-point boldface type and
9 completed with the name of the foreclosure consultant, must be printed immediately
10 above the statement required by par. (c):

11 NOTICE REQUIRED BY WISCONSIN LAW

12 (name of foreclosure consultant) or anyone working for him or her CANNOT
13 do any of the following:

14 1. Take any money from you or ask you for money until (name of foreclosure
15 consultant) has completely finished doing everything he or she said he or she would
16 do.

17 2. Ask you to sign or have you sign any lien, mortgage, or deed.

18 (c) The contract must be written both in English and in the same language as
19 principally used by the foreclosure consultant to describe his or her services or to
20 negotiate the contract if other than English, must be dated and signed by the
21 foreclosed homeowner, and must contain in immediate proximity to the space
22 reserved for the foreclosed homeowner's signature, in not less than 10-point boldface
23 type, the following statement: "You, the owner, may cancel this transaction at any
24 time prior to midnight of the 3rd business day after the date of this transaction. See
25 the attached notice of cancellation form for an explanation of this right."

BILL

1 (d) The notice of cancellation form under par. (e) must contain, and the contract
2 must contain on the first page, in a type size that is no smaller than that generally
3 used in the body of the document, both of the following:

4 1. The name and street or physical address of the foreclosure consultant to
5 which the notice of cancellation is to be mailed by certified mail or personally
6 delivered. A post office box does not constitute a physical address. A post office box
7 may be designated for delivery by certified mail only if it is accompanied by a street
8 or physical address at which the notice may be personally delivered.

9 2. The date the foreclosed homeowner signed the contract.

10 (e) The contract must be accompanied by a completed form in duplicate,
11 captioned "NOTICE OF CANCELLATION." This form must be attached to the contract,
12 must be easily detachable, and must contain, in not less than 10-point type and
13 written in the same language or languages as used in the contract, the following
14 statement:

15 NOTICE OF CANCELLATION

16 (Enter date of transaction)

17 1. You may cancel this transaction, without any penalty or obligation, within
18 3 business days from the above date.

19 2. To cancel this transaction, you may either mail by certified mail or personally
20 deliver a signed and dated copy of this notice of cancellation, or any other written
21 notice of cancellation, to (name of foreclosure consultant) at (street or physical
22 address of foreclosure consultant's place of business) NOT LATER THAN
23 MIDNIGHT OF (date). If you personally deliver a notice of cancellation, (name
24 of foreclosure consultant) must give you a receipt.

25 3. I hereby cancel this transaction.

BILL

1 (Date)

2 (Owner's signature)

3 (f) The foreclosure consultant shall provide the foreclosed homeowner with a
4 copy of the contract and the attached notice of cancellation immediately upon
5 execution of the contract.

6 (g) The 3 business days during which the foreclosed homeowner may cancel the
7 contract shall not begin to run until the foreclosure consultant has complied with this
8 subsection.

9 **(4) VIOLATIONS.** It is a violation of this section for a foreclosure consultant to
10 do any of the following:

11 (a) Claim, demand, charge, collect, or receive any compensation until after the
12 foreclosure consultant has fully performed each and every service the foreclosure
13 consultant contracted to perform or represented that he or she would perform.

14 (b) Claim, demand, charge, collect, or receive any fee, interest, or any other
15 compensation for any reason that exceeds 8 percent per year of the amount of any
16 loan that the foreclosure consultant may make to the foreclosed homeowner. Any
17 loan may not, as provided in par. (c), be secured by the residence in foreclosure or any
18 other real or personal property.

19 (c) Take a wage assignment, a lien of any type on real or personal property, or
20 any other security to secure the payment of compensation. Any security taken to
21 secure the payment of compensation is void and unenforceable.

22 (d) Receive any consideration from any 3rd party in connection with services
23 rendered to a foreclosed homeowner unless the consideration is first fully disclosed
24 to the foreclosed homeowner.

BILL**SECTION 6**

1 (e) Acquire any interest, directly or indirectly or by means of a subsidiary or
2 affiliate, in a residence in foreclosure from a foreclosed homeowner with whom the
3 foreclosure consultant has contracted.

4 (f) Except as otherwise provided by law, take any power of attorney from a
5 foreclosed homeowner for any purpose.

6 (g) Induce or attempt to induce any foreclosed homeowner to enter into a
7 contract that does not comply in all respects with subs. (2) and (3).

8 (h) Fail to give a receipt to a foreclosed homeowner if the foreclosed homeowner
9 personally delivers timely written notice of cancellation of a contract under sub. (2)

10 (b).

11 **(5) WAIVER NOT ALLOWED.** Any waiver by a foreclosed homeowner of this section
12 or of a foreclosed homeowner's rights under this section is void and unenforceable as
13 contrary to public policy. Any attempt by a foreclosure consultant to induce a
14 foreclosed homeowner to waive the foreclosed homeowner's rights is a violation of
15 this section.

16 **(6) PENALTIES AND REMEDIES.** (a) The department of agricultural, trade and
17 consumer protection may investigate violations of this section under ss. 93.14 and
18 93.15.

19 (b) Any person suffering a pecuniary loss because of a violation of this section
20 may commence an action against the violator. If the court determines that the person
21 suffered a pecuniary loss because of the violation, the court shall award the person
22 twice the amount of the pecuniary loss or \$200, whichever is greater, for each
23 violation, together with costs and, notwithstanding s. 814.04 (1), reasonable attorney
24 fees.

BILL

1 (c) The department of agricultural, trade and consumer protection may
2 commence an action to restrain a violation of this section. In addition to providing
3 any equitable relief, the court may award any person who suffered a pecuniary loss
4 because of the violation twice the amount of the pecuniary loss or \$200, whichever
5 is greater, for each violation.

6 (d) The department of agricultural, trade and consumer protection or the
7 district attorney may commence an action to recover a forfeiture of not less than \$100
8 nor more than \$10,000 for a violation of this section.

9 (e) Whoever violates this section may be fined not less than \$25 nor more than
10 \$10,000 or imprisoned for not more than one year in the county jail, or both.

11 (7) CONTRACT PROVISION FOR ARBITRATION VOIDABLE. Any provision in a contract
12 entered into on or after the effective date of this subsection [LRB inserts date],
13 that attempts or purports to require arbitration of any dispute arising under this
14 section is voidable at the option of the foreclosed homeowner.

15 (8) STATUTORY CONFLICTS RELATED TO ADJUSTMENT SERVICE COMPANIES. To the
16 extent that any provision of this section is inconsistent with s. 218.02 with respect
17 to a foreclosure consultant that is licensed under s. 218.02 and engages in
18 adjustment service company business related to real estate, the provisions of this
19 section shall supersede any conflicting provision of s. 218.02.

20 **SECTION 7. Initial applicability.**

21 (1) FORECLOSURE RECONVEYANCES. The treatment of sections 227.01 (13) (rm)
22 and 846.40 of the statutes, the renumbering of section 799.40 (4) of the statutes, and
23 the creation of section 799.40 (4) (b) of the statutes first apply to foreclosure
24 reconveyances that are entered into on the effective date of this subsection.

Handwritten notes and annotations: (7) ~~insert date~~ effective Dates, SECTION 9350, SECTION 7, Initial Applicability, (B), (C), (S), (E), (B)



DOA:.....Dombrowski, BAB - Foreclosure reconveyances and consultants
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA-

do not gen.

see pages 24 & 25

1 **AN ACT** ...; **relating to:** regulating foreclosure reconveyances and foreclosure
2 consultants, staying certain eviction actions, providing an exemption from
3 rule-making procedures, and providing a penalty.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

Under current law, if the owner of real property that is subject to a mortgage defaults in making payments, the mortgagee, which is usually a financial institution, may commence a foreclosure action. If the mortgagee prevails and obtains a foreclosure judgment, the property owner (mortgagor) may redeem the property before a sheriff's sale by paying the amount of the judgment to the clerk of court. If the mortgagor does not redeem the property, it will be sold at a sheriff's sale after six months to one year, depending on the type of property and whether the mortgagor will owe a deficiency, which is the amount by which the judgment exceeds the amount obtained at the sale.

This bill addresses foreclosure reconveyances. A foreclosure reconveyance is defined as a transaction under which the mortgagor transfers title to residential real property in foreclosure to a third party, called a foreclosure purchaser in the bill. The foreclosure purchaser redeems the property and subsequently conveys, or promises to subsequently convey, to the mortgagor (foreclosed homeowner) an interest in the

property that allows the foreclosed homeowner to remain in possession of the property, such as an interest in a land contract, a purchase agreement, an option to purchase, or a lease.

Under the bill, if a foreclosure purchaser enters into a foreclosure reconveyance, it must be by a written contract. The bill specifies the information that the contract must contain and requires that duplicate copies of a completed notice of cancellation be attached to the contract. The foreclosed homeowner may cancel the foreclosure reconveyance contract by delivering personally or by certified mail a signed and dated notice of cancellation to the foreclosure purchaser within five business days after the foreclosed homeowner signs the contract. The bill prohibits any waiver of any of the foreclosure reconveyance provisions, except for the five-day right to cancel the contract if the property is to be sold at sheriff's sale within those five days and the foreclosed homeowner waives his or her right to cancel in a handwritten statement.

The bill contains various prohibitions and requirements that apply generally to foreclosure purchasers, including:

1. Prohibiting a foreclosure purchaser from entering into a foreclosure reconveyance unless, among other things, the foreclosure purchaser verifies that the foreclosed homeowner has the ability to pay for the subsequent conveyance of the interest back to the foreclosed homeowner.

2. Requiring a foreclosure purchaser either to ensure that title to the dwelling has been reconveyed to the foreclosed homeowner or to pay to the foreclosed homeowner consideration of at least 82 percent of the fair market value of the property within 150 days of either the eviction from the property of, or the voluntary relinquishment of possession of the property by, the foreclosed homeowner. If the foreclosure purchaser pays the foreclosed homeowner, the foreclosure purchaser must provide a detailed accounting of the basis for the payment amount on a form prescribed by the attorney general, in consultation with the secretary of agriculture, trade and consumer protection.

3. Prohibiting a foreclosure purchaser from entering into repurchase or lease terms, as part of the subsequent conveyance, that are unfair or commercially unreasonable and from engaging in any other unfair conduct.

4. Prohibiting a foreclosure purchaser from acting as an advisor or consultant or in any other manner representing that the foreclosure purchaser is acting on behalf of the foreclosed homeowner.

5. Prohibiting a foreclosure purchaser from making any other statements or engaging in any other conduct that is false, deceptive, or misleading.

6. Prohibiting a foreclosure purchaser from taking certain actions, such as accepting from the foreclosed homeowner any instrument of conveyance of any interest in the residence in foreclosure or transferring any interest in the residence to a third party, before the time for the foreclosed homeowner to cancel the transaction has fully elapsed.

7. Requiring compliance with certain provisions of the federal Truth in Lending Act if a foreclosure purchaser extends credit to, or arranges for credit to be extended to, a foreclosed homeowner.

The bill specifies penalties that apply if a foreclosure purchaser violates any of the provisions, authorizes a court to order punitive damages for a violation, and specifies that a violation shall be considered a fraud and that a foreclosed homeowner may bring an action for damages. The bill also provides that a court must grant a stay in an eviction action if the property was the subject of a foreclosure reconveyance and the defendant was the owner of the property, has continuously occupied the property since it was conveyed to a third party, and has either commenced an action concerning the foreclosure reconveyance or asserts fraud or other deceptive practices in connection with the foreclosure reconveyance. The stay continues for 90 days if the defendant does not commence an action concerning the foreclosure reconveyance within 90 days or until there is a final decision in the action if an action concerning the foreclosure reconveyance already has been commenced or is commenced within 90 days.

The bill also addresses foreclosure consultants. A foreclosure consultant is defined as a person who offers to a foreclosed homeowner to perform for compensation any of various services that will assist the foreclosed homeowner with the loan default or foreclosure, such as stopping the foreclosure sale, assisting the foreclosed homeowner to obtain a loan, or saving the property from foreclosure. The bill, however, specifies numerous exceptions to the definition of "foreclosure consultant" for persons who provide those services, such as an attorney, real estate broker, or certified public accountant rendering such services in the course of his or her practice; a mortgage banker or broker; and a foreclosure purchaser.

The bill provides that any agreement (contract) between a foreclosure consultant and a foreclosed homeowner for the rendition of services must be in writing, and that a foreclosed homeowner who enters into a contract for services with a foreclosure consultant has the right to cancel the contract without penalty within three days by delivering, personally or by certified mail, a notice of cancellation to the foreclosure consultant. The bill specifies the information that the contract must contain and requires that duplicate copies of a notice of cancellation be attached to the contract.

The bill sets out actions by a foreclosure consultant that are violations and for which the bill provides penalties and remedies. Violations include demanding or receiving compensation before every service under the contract has been performed, acquiring an interest, including a security interest, in the real property in foreclosure, inducing a foreclosed homeowner to enter into a contract that does not comply with the requirements set out in the bill, and charging interest of more than 8 percent on any loan made to the foreclosed homeowner. The bill provides that the Department of Agriculture, Trade and Consumer Protection (DATCP) may investigate violations of the requirements under the bill and may commence an action to restrain a violation or to recover a forfeiture for a violation. The Department of Justice is required to furnish legal services to DATCP. The bill also provides that any person suffering pecuniary loss because of a violation of the requirements under the bill may commence an action against the violator. The bill sets out forfeiture and fine amounts for violations. The bill also prohibits any waiver of any of a foreclosed homeowner's rights under the bill and provides that any

provision in a contract requiring arbitration of any dispute arising under the provisions is voidable at the option of the foreclosed homeowner.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 165.25 (4) (ar) of the statutes is amended to read:

2 165.25 (4) (ar) The department of justice shall furnish all legal services
3 required by the department of agriculture, trade and consumer protection relating
4 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
5 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,
6 100.50, and 100.51, and 100.55, and 846.45 and chs. 126, 136, 344, 704, 707, and 779,
7 together with any other services as are necessarily connected to the legal services.

8 **SECTION 2.** 227.01 (13) (rm) of the statutes is created to read:

9 227.01 (13) (rm) Is a form prescribed by the attorney general for an accounting
10 under s. 846.40 (8) (b) 2.

11 **SECTION 3.** 799.40 (4) of the statutes is renumbered 799.40 (4) (a).

12 **SECTION 4.** 799.40 (4) (b) of the statutes is created to read:

13 799.40 (4) (b) The court shall stay the proceedings in a civil action of eviction
14 against a foreclosed homeowner, as defined in s. 846.40 (1) (b), under the
15 circumstances and as provided in s. 846.40 (9).

16 **SECTION 5.** 846.40 of the statutes is created to read:

17 **846.40 Regulation of foreclosure reconveyances. (1) DEFINITIONS.** In this
18 section:

1 (a) "Closing" means an in-person meeting to complete final documents incident
2 to the sale of real property or the creation of a mortgage on real property that is
3 conducted by a closing agent who is not employed by, an affiliate of, or employed by
4 an affiliate of, any foreclosure purchaser involved in the closing, and who does not
5 have a business or personal relationship with any foreclosure purchaser involved in
6 the closing other than the provision of real estate settlement services.

7 (b) "Foreclosed homeowner" means an owner of a residence in foreclosure.

8 (c) "Foreclosure purchaser" means a person that has acted as the acquirer in
9 a foreclosure reconveyance. "Foreclosure purchaser" also includes a person that has
10 acted in joint venture or joint enterprise with one or more acquirers in a foreclosure
11 reconveyance. "Foreclosure purchaser" does not include any of the following:

12 1. A natural person who shows that he or she is not in the business of
13 foreclosure purchasing and who has a prior personal relationship with the foreclosed
14 homeowner.

15 2. A federal or state chartered bank, savings bank, savings and loan
16 association, or credit union.

17 (d) "Foreclosure reconveyance" means a transaction involving all of the
18 following:

19 1. The transfer of title to real property by a foreclosed homeowner during a
20 foreclosure proceeding, either by a transfer of interest from the foreclosed
21 homeowner or by the creation of a mortgage or other lien or encumbrance during the
22 foreclosure process.

23 2. The subsequent conveyance, or promise of a subsequent conveyance, of an
24 interest back to the foreclosed homeowner by the acquirer or a person acting in
25 participation with the acquirer that allows the foreclosed homeowner to possess

1 either the residence in foreclosure or other real property, which interest includes an
2 interest in a land contract, purchase agreement, option to purchase, or lease.

3 (e) "Primary housing expenses" means the sum of payments for regular
4 principal, interest, rent, utilities, fire and casualty insurance, real estate taxes, and
5 association dues.

6 (f) "Resale" means a bona fide market sale of the property subject to the
7 foreclosure reconveyance by the foreclosure purchaser to an unaffiliated 3rd party.

8 (g) "Resale price" means the gross sale price of the property on resale.

9 (h) "Residence in foreclosure" means residential real property located in this
10 state that consists of one to 4 family dwelling units and with respect to which real
11 property there is a delinquency or default on any loan payment or debt secured by
12 or attached to the residential real property, including land contract payments. The
13 owner of the residential real property may, but is not required to, occupy the
14 residential real property as the owner's principal place of residence.

15 (2) CONTRACT REQUIREMENT, FORM AND LANGUAGE. A foreclosure purchaser that
16 enters into any foreclosure reconveyance shall do so by a written contract. Every
17 contract must be written in letters of not less than 12-point boldface type, both in
18 English and in the same language principally used by the foreclosure purchaser and
19 foreclosed homeowner to negotiate the sale of the residence in foreclosure if other
20 than English, and must be fully completed, signed, and dated by the foreclosed
21 homeowner and foreclosure purchaser before the execution of any instrument of
22 conveyance of the residence in foreclosure.

23 (3) CONTRACT TERMS. (a) Every contract required by sub. (2) must contain the
24 entire agreement of the parties and must include all of the following terms:

1 1. The name, business address, and telephone number of the foreclosure
2 purchaser.

3 2. The address of the residence in foreclosure.

4 3. The total consideration to be given by the foreclosure purchaser in connection
5 with or incident to the sale.

6 4. A complete description of the terms of payment or other consideration,
7 including any services of any nature that the foreclosure purchaser represents he or
8 she will perform for the foreclosed homeowner before or after the sale.

9 5. The time at which possession is to be transferred to the foreclosure
10 purchaser.

11 6. A complete description of the terms of any related agreement designed to
12 allow the foreclosed homeowner to remain in possession of the home, such as a rental
13 agreement, repurchase agreement, land contract, or lease with option to purchase.

14 7. The time for determining the fair market value of the property, as provided
15 under sub. (8) (b) 2. b.

16 8. A notice of cancellation as provided in sub. (5) (b).

17 9. Immediately above the statement required by sub. (5) (a), in not less than
18 14-point boldface type if the contract is printed or in capital letters if the contract
19 is typed, and completed with the name of the foreclosure purchaser, the following
20 notice:

21 NOTICE REQUIRED BY WISCONSIN LAW

22 Until your right to cancel this contract has ended, (Name of foreclosure
23 purchaser) or anyone working for (Name of foreclosure purchaser) CANNOT ask
24 you to sign or have you sign any deed or any other document.

1 (b) The contract required by this subsection survives delivery of any
2 instrument of conveyance of the residence in foreclosure and has no effect on persons
3 other than the parties to the contract.

4 (4) CONTRACT CANCELLATION. (a) In addition to any other right of rescission, the
5 foreclosed homeowner has the right to cancel any contract with a foreclosure
6 purchaser until midnight of the 5th business day following the day on which the
7 foreclosed homeowner signs a contract that complies with subs. (2) to (6) or until 8:00
8 a.m. on the last day of the period during which the foreclosed homeowner has a right
9 of redemption, whichever occurs first.

10 (b) Cancellation occurs when the foreclosed homeowner delivers to the
11 foreclosure purchaser, personally or by certified mail, a signed and dated written
12 notice of cancellation. The contract and notice of cancellation form under sub. (5) (b)
13 must contain a street or physical address to which notice of cancellation may be
14 mailed by certified mail or personally delivered. A post office box may be designated
15 for delivery by certified mail only if it is accompanied by a street or physical address
16 at which the notice may be personally delivered. If the notice of cancellation is
17 personally delivered, the foreclosure purchaser must provide a receipt to the
18 foreclosed homeowner. If cancellation is mailed by certified mail, delivery is effective
19 when the notice of cancellation is deposited in the U.S. mail. If cancellation is
20 personally delivered, delivery is effective when the notice of cancellation is handed
21 to the foreclosure purchaser.

22 (c) A notice of cancellation given by the foreclosed homeowner need not take the
23 particular form provided under sub. (5) (b).

24 (d) Within 10 days following receipt of a notice of cancellation given in
25 accordance with this subsection, the foreclosure purchaser shall return without

1 condition any original contract and any other documents signed by the foreclosed
2 homeowner.

3 (5) NOTICE OF CANCELLATION. (a) 1. The contract must contain conspicuously
4 and in immediate proximity to the space reserved for the foreclosed homeowner's
5 signature, in not less than 14-point boldface type if the contract is printed or in
6 capital letters if the contract is typed, the following statement: "You may cancel this
7 contract for the sale of your house without any penalty or obligation at any time
8 before (date and time of day). See the attached notice of cancellation form for an
9 explanation of this right."

10 2. The foreclosure purchaser shall accurately enter the date and time of day on
11 which the cancellation right ends.

12 (b) The contract must be accompanied by a completed form in duplicate,
13 captioned "NOTICE OF CANCELLATION" in 12-point boldface type if the contract is
14 printed or in capital letters if the contract is typed, followed by a space in which the
15 foreclosure purchaser shall enter the date on which the foreclosed homeowner
16 executes the contract. This form must be attached to the contract, must be easily
17 detachable, and must contain, in not less than 10-point type if the contract is printed
18 or in capital letters if the contract is typed, the following statement:

19 NOTICE OF CANCELLATION

20 (Enter date contract signed)

21 1. You may cancel this contract for the sale of your house, without any penalty
22 or obligation, at any time before (date and time of day).

23 2. To cancel this transaction, you may mail by certified mail or personally
24 deliver a signed and dated copy of this notice of cancellation to (name of purchaser)
25 at (street or physical address of purchaser's place of business) NOT LATER THAN

1 (date and time of day). If you personally deliver this notice of cancellation, ...
2 (name of purchaser) must give you a receipt.

3 3. I hereby cancel this transaction.

4 (Date)

5 (Seller's signature)

6 (c) The foreclosure purchaser shall provide the foreclosed homeowner with a
7 copy of the contract and the attached notice of cancellation form at the time the
8 contract is executed by all parties.

9 (d) The 5-day period under sub. (4) (a) during which the foreclosed homeowner
10 may cancel the contract does not begin to run until all parties to the contract have
11 executed the contract and the foreclosure purchaser has complied with this
12 subsection.

13 (6) WAIVER. Any waiver of the provisions of this section is void and
14 unenforceable as contrary to public policy, except that a foreclosed homeowner may
15 waive the 5-day right to cancel under sub. (4) (a) if the property is subject to a
16 foreclosure sale within the 5 business days and the foreclosed homeowner agrees to
17 waive his or her right to cancel in a handwritten statement signed by all parties
18 holding title to the foreclosed property.

19 (7) LIABILITY. Any provision in a contract entered into on or after the effective
20 date of this subsection [LRB inserts date], that attempts or purports to require
21 arbitration of any dispute arising under this section is void at the option of the
22 foreclosed homeowner.

23 (8) GENERAL PROHIBITIONS AND REQUIREMENTS. (a) A foreclosure purchaser may
24 not enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed
25 homeowner unless all of the following are satisfied:

1 1. The foreclosure purchaser verifies and can demonstrate that the foreclosed
2 homeowner has a reasonable ability to pay for the subsequent conveyance of an
3 interest back to the foreclosed homeowner. In the case of a lease with an option to
4 purchase, payment ability also includes the reasonable ability to make the lease
5 payments and purchase the property within the term of the option to purchase.
6 There is a rebuttable presumption that a foreclosed homeowner is reasonably able
7 to pay for the subsequent conveyance if the foreclosed homeowner's payments for
8 primary housing expenses and regular principal and interest payments on other
9 personal debt, on a monthly basis, do not exceed 60 percent of the foreclosed
10 homeowner's monthly gross income. There is a rebuttable presumption that the
11 foreclosure purchaser has not verified reasonable payment ability if the foreclosure
12 purchaser has not obtained documents other than a statement by the foreclosed
13 homeowner of assets, liabilities, and income.

14 2. The foreclosure purchaser and the foreclosed homeowner complete a closing
15 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed
16 or mortgage from a foreclosed homeowner.

17 3. The foreclosure purchaser obtains the written consent of the foreclosed
18 homeowner to a grant by the foreclosure purchaser of any interest in the property
19 during such times as the foreclosed homeowner maintains any interest in the
20 property.

21 (b) A foreclosure purchaser shall do either of the following:

22 1. Ensure that title to the subject dwelling has been reconveyed to the
23 foreclosed homeowner.

24 2. Make a payment to the foreclosed homeowner such that the foreclosed
25 homeowner has received consideration in an amount of at least 82 percent of the fair

1 market value of the property within 150 days after either the eviction of, or voluntary
2 relinquishment of possession of the dwelling by, the foreclosed homeowner. The
3 foreclosure purchaser shall make a detailed accounting of the basis for the payment
4 amount, or a detailed accounting of the reasons for failure to make a payment,
5 including providing written documentation of expenses, within this 150-day period.
6 The accounting shall be on a form prescribed by the attorney general, in consultation
7 with the secretary of agriculture, trade and consumer protection. For purposes of
8 this subdivision, all of the following apply:

9 a. There is a rebuttable presumption that an appraisal by a person licensed or
10 certified by an agency of the federal government or this state to appraise real estate
11 constitutes the fair market value of the property.

12 b. The time for determining the fair market value amount shall be specified in
13 the foreclosure reconveyance contract as either at the time of the execution of the
14 foreclosure reconveyance contract or at resale. If the contract states that the fair
15 market value shall be determined at the time of resale, the fair market value shall
16 be the resale price if it is sold within 120 days after the eviction of, or voluntary
17 relinquishment of the property by, the foreclosed homeowner. If the contract states
18 that the fair market value shall be determined at the time of resale, and the resale
19 is not completed within 120 days after the eviction of, or voluntary relinquishment
20 of the property by, the foreclosed homeowner, the fair market value shall be
21 determined by an appraisal conducted during this 120-day period and payment, if
22 required, shall be made to the foreclosed homeowner, but the fair market value shall
23 be recalculated as the resale price on resale and an additional payment amount, if
24 appropriate based on the resale price, shall be made to the foreclosed homeowner
25 within 15 days after resale, and a detailed accounting of the basis for the payment

1 amount, or a detailed accounting of the reasons for failure to make additional
2 payment, shall be made within 15 days after resale, including providing written
3 documentation of expenses. The accounting shall be on a form prescribed by the
4 attorney general, in consultation with the secretary of agriculture, trade and
5 consumer protection.

6 c. "Consideration" means any payment or thing of value provided to the
7 foreclosed homeowner, including unpaid rent or land contract payments owed by the
8 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the
9 property, reasonable costs paid to 3rd parties necessary to complete the foreclosure
10 reconveyance transaction, payment of money to satisfy a debt or legal obligation of
11 the foreclosed homeowner, the reasonable cost of repairs for damage to the dwelling
12 caused by the foreclosed homeowner, or a penalty imposed by a court for the filing
13 of a frivolous claim in an eviction action under sub. (9). "Consideration" does not
14 include amounts imputed as a down payment or fee to the foreclosure purchaser, or
15 a person acting in participation with the foreclosure purchaser, incident to a land
16 contract, lease, or option to purchase entered into as part of the foreclosure
17 reconveyance, except for reasonable costs paid to 3rd parties necessary to complete
18 the foreclosure reconveyance.

19 (c) A foreclosure purchaser may not enter into repurchase or lease terms as part
20 of the subsequent conveyance that are unfair or commercially unreasonable, or
21 engage in any other unfair conduct.

22 (d) A foreclosure purchaser may not represent, directly or indirectly, any of the
23 following:

1 1. That the foreclosure purchaser is acting as an advisor or consultant, or in any
2 other manner represent that the foreclosure purchaser is acting on behalf of the
3 foreclosed homeowner.

4 2. That the foreclosure purchaser has certification or licensure that the
5 foreclosure purchaser does not have, or that the foreclosure purchaser is not a
6 member of a licensed profession if that is untrue.

7 3. That the foreclosure purchaser is assisting the foreclosed homeowner to save
8 the house, or a substantially similar phrase.

9 4. That the foreclosure purchaser is assisting the foreclosed homeowner in
10 preventing a completed foreclosure if the result of the transaction is that the
11 foreclosed homeowner will not complete a redemption of the property.

12 (e) A foreclosure purchaser may not make any other statements, directly or by
13 implication, or engage in any other conduct that is false, deceptive, or misleading,
14 or that has the likelihood to cause confusion or misunderstanding, including
15 statements regarding the value of the residence in foreclosure, the amount of
16 proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract
17 term, or the foreclosed homeowner's rights or obligations incident to or arising out
18 of the foreclosure reconveyance.

19 (f) Until the time during which the foreclosed homeowner may cancel the
20 transaction has fully elapsed, a foreclosure purchaser may not do any of the
21 following:

22 1. Accept from the foreclosed homeowner an execution of, or induce the
23 foreclosed homeowner to execute, any instrument of conveyance of any interest in the
24 residence in foreclosure.

1 2. Record or file with the register of deeds any document, including any
2 instrument of conveyance, signed by the foreclosed homeowner.

3 3. Transfer or encumber or purport to transfer or encumber any interest in the
4 residence in foreclosure to any 3rd party, provided no grant of any interest or
5 encumbrance is defeated or affected as against a bona fide purchaser or
6 encumbrance for value and without notice of a violation of this subdivision.
7 Knowledge on the part of any such person or entity that the property was residential
8 real property in foreclosure does not constitute notice of a violation of this
9 subdivision. This subdivision does not abrogate any duty of inquiry that exists as to
10 rights or interests of persons in possession of the residence in foreclosure.

11 4. Pay the foreclosed homeowner any consideration.

12 (g) If a foreclosure purchaser extends credit to, or arranges for credit to be
13 extended to, the foreclosed homeowner, the foreclosure purchaser or other person
14 with whom the foreclosure purchaser has arranged for the extension of credit shall
15 comply with all requirements specified in Regulation Z under the federal Truth in
16 Lending Act, 12 CFR 226, that apply to a creditor, as defined in 12 CFR 226.2 (a) (17)
17 (i), in a residential mortgage transaction, as defined in 12 CFR 226.2 (24), regardless
18 of whether the foreclosure purchaser or other person extending credit actually meets
19 the definition of a creditor under 12 CFR 226.2 (a) (17) (i).

20 **(9) STAY OF PROCEEDINGS IN EVICTION ACTIONS.** (a) A court hearing an eviction
21 action against a foreclosed homeowner shall stay the proceedings, without the
22 imposition of a bond, if a defendant makes a prima facie showing of all of the
23 following:

24 1. That any of the following applies to the defendant:

1 a. The defendant has commenced an action concerning a foreclosure
2 reconveyance with respect to the property that is the subject of the eviction action.

3 b. The defendant asserts, in connection with a foreclosure reconveyance, any
4 violation of this section or a claim or affirmative defense of fraud, false pretense, false
5 promise, misrepresentation, misleading statement, or deceptive practice.

6 2. That the defendant owned the foreclosed residence.

7 3. That the defendant conveyed title to the foreclosed residence to a 3rd party
8 upon a promise that the defendant would be allowed to occupy the foreclosed
9 residence or other real property in which the foreclosure purchaser or a person acting
10 in participation with the foreclosure purchaser has an interest and that the
11 foreclosed residence or other real property would be the subject of a foreclosure
12 reconveyance.

13 4. That since the conveyance to the 3rd party, the defendant has continuously
14 occupied the foreclosed residence or other real property in which the foreclosure
15 purchaser or a person acting in participation with the foreclosure purchaser has an
16 interest.

17 (b) For purposes of par. (a), notarized affidavits are acceptable means of proof
18 for meeting the defendant's burden of proof. A defendant may request, and upon a
19 showing of good cause the court may grant, up to an additional 2 weeks to produce
20 evidence to make the prima facie showing required under par. (a).

21 (c) The stay under this subsection shall remain in effect for 90 days if the
22 defendant has not yet commenced and does not commence, within 90 days from the
23 issuance of the stay, an action in connection with a foreclosure reconveyance
24 transaction. If the defendant has commenced, or commences within 90 days from the
25 issuance of the stay, an action in connection with a foreclosure reconveyance

1 transaction, the stay shall remain in effect until the court hearing the action related
2 to the foreclosure reconveyance renders a final decision in the matter.

3 (10) ENFORCEMENT. (a) A violation of this section shall be considered a fraud.

4 (b) A foreclosed homeowner against whom a violation of this section is
5 committed may bring an action for damages.

6 (c) A court may order punitive damages under s. 895.043 for a violation of this
7 section.

8 (d) 1. A foreclosure purchaser who violates this section by engaging in any
9 practice that would operate as a fraud or deceit upon a foreclosed homeowner may
10 be fined not more than \$50,000 or imprisoned for not more than one year in the
11 county jail or both.

12 2. In the absence of additional misconduct, a failure of the parties to complete
13 a foreclosure reconveyance transaction shall not subject a foreclosure purchaser to
14 the criminal penalties under subd. 1.

15 SECTION 6. 846.45 of the statutes is created to read:

16 **846.45 Regulation of foreclosure consultants.** (1) DEFINITIONS. In this
17 section, unless the context requires otherwise:

18 (a) "Contract" means an agreement, or any term in an agreement, between a
19 foreclosure consultant and a foreclosed homeowner for the rendition of any service.

20 (b) "Foreclosed homeowner" has the meaning given in s. 846.40 (1) (b).

21 (c) 1. Except as provided in subd. 2., "foreclosure consultant" means a person
22 who, directly or indirectly, makes a solicitation, representation, or offer to a
23 foreclosed homeowner to perform for compensation, or who for compensation
24 performs, any service that the person in any manner represents will in any manner
25 do any of the following:

- 1 a. Stop or postpone the foreclosure sale.
 - 2 b. Obtain any forbearance from a beneficiary or mortgagee.
 - 3 c. Obtain a waiver of an acceleration clause contained in a promissory note or
4 contract secured by a mortgage on the residence in foreclosure or contained in the
5 mortgage.
 - 6 d. Assist the foreclosed homeowner to obtain a loan or advance of funds.
 - 7 e. Avoid or ameliorate the impairment of the foreclosed homeowner's credit
8 resulting from the recording of a lis pendens or the conduct of a foreclosure sale.
 - 9 f. Save the residence in foreclosure from foreclosure.
- 10 2. "Foreclosure consultant" does not include any of the following:
- 11 a. A person licensed to practice law in this state when the person renders
12 service in the course of his or her practice as an attorney at law.
 - 13 b. A person licensed as a real estate broker or salesperson under ch. 452 when
14 the person engages in acts for which licensure under that chapter is required, unless
15 the person is engaged in offering services designed to, or purportedly designed to,
16 enable the foreclosed homeowner to retain possession of the residence in foreclosure.
 - 17 c. A person certified or licensed to practice as a certified public accountant
18 under ch. 442 when the person is acting in any capacity for which the person is
19 certified or licensed under that chapter.
 - 20 d. A person, or the person's authorized agent, acting under the express
21 authority or written approval of the department of housing and urban development
22 or other department or agency of the United States or this state to provide services.
 - 23 e. A person who holds or is owed an obligation secured by a lien on any residence
24 in foreclosure when the person performs services in connection with this obligation

1 or lien if the obligation or lien did not arise as the result of or as part of a proposed
2 foreclosure reconveyance.

3 f. A person or entity doing business under any law of this state, or of the United
4 States, relating to a financial institution, as defined in s. 214.01 (1) (jn), to a lender
5 licensed under s. 138.09, to an insurance company, or to a mortgagee that is a United
6 States department of housing and urban development approved mortgagee; a
7 subsidiary or affiliate of any of these persons or entities; or an agent or employee of
8 any of these persons or entities while engaged in the business of these persons or
9 entities.

10 g. A person registered under s. 224.72 as a mortgage banker, loan originator,
11 or mortgage broker, when acting under the authority of that registration.

12 h. A judgment creditor of the foreclosed homeowner, to the extent that the
13 judgment creditor's claim accrued prior to the recording of the lis pendens in the
14 foreclosure action.

15 i. A foreclosure purchaser.

16 j. An adjustment service company licensed under s. 218.02, but only when
17 engaged in business unrelated to real estate.

18 (d) "Foreclosure purchaser" has the meaning given in s. 846.40 (1) (c).

19 (e) "Foreclosure reconveyance" has the meaning given in s. 846.40 (1) (d).

20 (f) "Person" means any individual, partnership, corporation, limited liability
21 company, association, or other group, however organized.

22 (g) "Residence in foreclosure" has the meaning given in s. 846.40 (1) (h).

23 (h) "Service" includes any of the following:

24 1. Debt, budget, or financial counseling of any type.

1 2. Receiving money for the purpose of distributing it to creditors in payment
2 or partial payment of any obligation secured by a lien on a residence in foreclosure.

3 3. Contacting creditors on behalf of a foreclosed homeowner.

4 4. Arranging or attempting to arrange for a delay or postponement of the time
5 of sale of the residence in foreclosure.

6 5. Advising the filing of any document, or assisting in any manner in the
7 preparation of any document for filing, with a bankruptcy court.

8 6. Giving any advice, explanation, or instruction to a foreclosed homeowner
9 that in any manner relates to curing a default in or reinstating an obligation secured
10 by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the
11 postponement or avoidance of a sale of a residence in foreclosure, under a power of
12 sale contained in any mortgage.

13 **(2) CANCELLATION OF FORECLOSURE CONSULTANT CONTRACT.** (a) In addition to any
14 other right under law to rescind a contract, a foreclosed homeowner has the right to
15 cancel a contract until midnight of the 3rd business day after the day on which the
16 foreclosed homeowner signs a contract that complies with sub. (3).

17 (b) 1. Cancellation occurs when the foreclosed homeowner delivers, personally
18 or by certified mail, written notice of cancellation to the foreclosure consultant at the
19 foreclosure consultant's address specified in the contract.

20 2. If notice of cancellation is given by certified mail, cancellation is effective
21 when the notice is deposited in the U.S. mail, properly addressed with postage
22 prepaid. If notice of cancellation is personally delivered, the foreclosure consultant
23 must give the foreclosed homeowner a receipt. Cancellation, if personally delivered,
24 is effective when the foreclosed homeowner hands the notice to the foreclosure
25 consultant.

1 (c) Notice of cancellation given by the foreclosed homeowner need not take the
2 particular form provided with the contract under sub. (3) (e). However expressed,
3 notice is effective if it indicates the intention of the foreclosed homeowner not to be
4 bound by the contract.

5 **(3) CONTRACT.** (a) Every contract must be in writing and must fully disclose
6 the exact nature of the foreclosure consultant's services and the total amount and
7 terms of compensation.

8 (b) The following notice, printed in not less than 14-point boldface type and
9 completed with the name of the foreclosure consultant, must be printed immediately
10 above the statement required by par. (c):

11 **NOTICE REQUIRED BY WISCONSIN LAW**

12 (name of foreclosure consultant) or anyone working for him or her CANNOT
13 do any of the following:

14 1. Take any money from you or ask you for money until (name of foreclosure
15 consultant) has completely finished doing everything he or she said he or she would
16 do.

17 2. Ask you to sign or have you sign any lien, mortgage, or deed.

18 (c) The contract must be written both in English and in the same language as
19 principally used by the foreclosure consultant to describe his or her services or to
20 negotiate the contract if other than English, must be dated and signed by the
21 foreclosed homeowner, and must contain in immediate proximity to the space
22 reserved for the foreclosed homeowner's signature, in not less than 10-point boldface
23 type, the following statement: "You, the owner, may cancel this transaction at any
24 time prior to midnight of the 3rd business day after the date of this transaction. See
25 the attached notice of cancellation form for an explanation of this right."

1 (d) The notice of cancellation form under par. (e) must contain, and the contract
2 must contain on the first page, in a type size that is no smaller than that generally
3 used in the body of the document, both of the following:

4 1. The name and street or physical address of the foreclosure consultant to
5 which the notice of cancellation is to be mailed by certified mail or personally
6 delivered. A post office box does not constitute a physical address. A post office box
7 may be designated for delivery by certified mail only if it is accompanied by a street
8 or physical address at which the notice may be personally delivered.

9 2. The date the foreclosed homeowner signed the contract.

10 (e) The contract must be accompanied by a completed form in duplicate,
11 captioned "NOTICE OF CANCELLATION." This form must be attached to the contract,
12 must be easily detachable, and must contain, in not less than 10-point type and
13 written in the same language or languages as used in the contract, the following
14 statement:

15 NOTICE OF CANCELLATION

16 (Enter date of transaction)

17 1. You may cancel this transaction, without any penalty or obligation, within
18 3 business days from the above date.

19 2. To cancel this transaction, you may either mail by certified mail or personally
20 deliver a signed and dated copy of this notice of cancellation, or any other written
21 notice of cancellation, to (name of foreclosure consultant) at (street or physical
22 address of foreclosure consultant's place of business) NOT LATER THAN
23 MIDNIGHT OF (date). If you personally deliver a notice of cancellation, (name
24 of foreclosure consultant) must give you a receipt.

25 3. I hereby cancel this transaction.

1 (Date)

2 (Owner's signature)

3 (f) The foreclosure consultant shall provide the foreclosed homeowner with a
4 copy of the contract and the attached notice of cancellation immediately upon
5 execution of the contract.

6 (g) The 3 business days during which the foreclosed homeowner may cancel the
7 contract shall not begin to run until the foreclosure consultant has complied with this
8 subsection.

9 **(4) VIOLATIONS.** It is a violation of this section for a foreclosure consultant to
10 do any of the following:

11 (a) Claim, demand, charge, collect, or receive any compensation until after the
12 foreclosure consultant has fully performed each and every service the foreclosure
13 consultant contracted to perform or represented that he or she would perform.

14 (b) Claim, demand, charge, collect, or receive any fee, interest, or any other
15 compensation for any reason that exceeds 8 percent per year of the amount of any
16 loan that the foreclosure consultant may make to the foreclosed homeowner. Any
17 loan may not, as provided in par. (c), be secured by the residence in foreclosure or any
18 other real or personal property.

19 (c) Take a wage assignment, a lien of any type on real or personal property, or
20 any other security to secure the payment of compensation. Any security taken to
21 secure the payment of compensation is void and unenforceable.

22 (d) Receive any consideration from any 3rd party in connection with services
23 rendered to a foreclosed homeowner unless the consideration is first fully disclosed
24 to the foreclosed homeowner.

1 (e) Acquire any interest, directly or indirectly or by means of a subsidiary or
2 affiliate, in a residence in foreclosure from a foreclosed homeowner with whom the
3 foreclosure consultant has contracted.

4 (f) Except as otherwise provided by law, take any power of attorney from a
5 foreclosed homeowner for any purpose.

6 (g) Induce or attempt to induce any foreclosed homeowner to enter into a
7 contract that does not comply in all respects with subs. (2) and (3).

8 (h) Fail to give a receipt to a foreclosed homeowner if the foreclosed homeowner
9 personally delivers timely written notice of cancellation of a contract under sub. (2)
10 (b).

11 **(5) WAIVER NOT ALLOWED.** Any waiver by a foreclosed homeowner of this section
12 or of a foreclosed homeowner's rights under this section is void and unenforceable as
13 contrary to public policy. Any attempt by a foreclosure consultant to induce a
14 foreclosed homeowner to waive the foreclosed homeowner's rights is a violation of
15 this section.

16 **(6) PENALTIES AND REMEDIES.** (a) The department of ^{agriculture}~~agricultural~~, trade and
17 consumer protection may investigate violations of this section under ss. 93.14 and
18 93.15.

19 (b) Any person suffering a pecuniary loss because of a violation of this section
20 may commence an action against the violator. If the court determines that the person
21 suffered a pecuniary loss because of the violation, the court shall award the person
22 twice the amount of the pecuniary loss or \$200, whichever is greater, for each
23 violation, together with costs and, notwithstanding s. 814.04 (1), reasonable attorney
24 fees.

agriculture

1 (c) The department of agricultural, trade and consumer protection may
2 commence an action to restrain a violation of this section. In addition to providing
3 any equitable relief, the court may award any person who suffered a pecuniary loss
4 because of the violation twice the amount of the pecuniary loss or \$200, whichever
5 is greater, for each violation.

6 (d) The department of agricultural, trade and consumer protection or the
7 district attorney may commence an action to recover a forfeiture of not less than \$100
8 nor more than \$10,000 for a violation of this section.

9 (e) Whoever violates this section may be fined not less than \$25 nor more than
10 \$10,000 or imprisoned for not more than one year in the county jail, or both.

11 (7) CONTRACT PROVISION FOR ARBITRATION VOIDABLE. Any provision in a contract
12 entered into on or after the effective date of this subsection ... [LRB inserts date],
13 that attempts or purports to require arbitration of any dispute arising under this
14 section is voidable at the option of the foreclosed homeowner.

15 (8) STATUTORY CONFLICTS RELATED TO ADJUSTMENT SERVICE COMPANIES. To the
16 extent that any provision of this section is inconsistent with s. 218.02 with respect
17 to a foreclosure consultant that is licensed under s. 218.02 and engages in
18 adjustment service company business related to real estate, the provisions of this
19 section shall supersede any conflicting provision of s. 218.02.

20 **SECTION 9357. Initial applicability; Other.**

21 (1) FORECLOSURE RECONVEYANCES. The treatment of sections 227.01 (13) (rm)
22 and 846.40 of the statutes, the renumbering of section 799.40 (4) of the statutes, and
23 the creation of section 799.40 (4) (b) of the statutes first apply to foreclosure
24 reconveyances that are entered into on the effective date of this subsection.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1890/3dn

ARG:.....

Lbjk

Date

This redraft makes a technical correction relating to the reference to HUD on p. 19, lines 5 and 6 of the /2 version.

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