



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2009 Assembly Bill 729**

**Assembly Substitute  
Amendment 1 and Assembly  
Amendment 1 to Assembly  
Substitute Amendment 1**

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### **2009 Assembly Bill 729**

Generally, Assembly Bill 729 creates a loan modification process that allows a borrower in default on a first mortgage on a residential property to pursue a loan modification during a mortgage foreclosure action. Prior to initiation of a foreclosure action, the bill requires a first lien mortgage holder or its servicing agent (mortgagee) to satisfy certain notice provisions, including notice to a borrower-in-default that he or she may request a loan modification. Upon a borrower's timely request, a mortgagee shall determine the borrower's eligibility for loan modifications based on the borrower's income and the borrower's housing related debt. If eligible, the mortgagee shall respond to the borrower with a loan modification that utilizes one or more modifications to lower the borrower's housing related debt in proportion to the borrower's income. Modifications may include interest rate reductions, extensions of a loan amortization period, deferral of principal, or reduction or elimination of fees and penalties. If the mortgagee fails to comply with the requirements of the bill, a court shall dismiss the foreclosure action of a mortgage. The bill sunsets on December 31, 2012.

### **Assembly Substitute Amendment 1**

Assembly Substitute Amendment 1 specifies a loan modification process applicable to certain lenders and servicers based on participation in the federal Home Affordable Modification Program (HAMP) established by the U.S. Department of the Treasury. The substitute amendment revises the notice and modification process to require a pre-foreclosure notice and the filing of an affidavit by a mortgagee in a mortgage foreclosure action. The affidavit shall state whether the mortgage loan is owned, securitized, or guaranteed by a government sponsored enterprise and whether the mortgagee is a participant in the HAMP program. If the affidavit answers those questions in the affirmative, the substitute amendment requires the affidavit to describe the eligibility of the borrower's mortgage loan

for modification under HAMP. A court may not enter a judgment of foreclosure until the court has determined that facts in the affidavit are not in dispute, and shall stay the action of foreclosure if the HAMP evaluation process is incomplete. A foreclosure action shall be dismissed if the mortgage is modified under HAMP and the borrower is complying with the terms of the modifications.

The substitute amendment specifies that the Department of Financial Institutions (DFI) shall maintain a list of current HAMP participants on the DFI website. The provisions of the substitute amendment relating to notice and affidavits in foreclosure actions do not apply after December 31, 2012.

The substitute amendment also makes changes related to protections for tenants of properties subject to foreclosure, as enacted in 2009 Wisconsin Act 2. Generally, Act 2 specified certain notices must be provided to a tenant of a foreclosed property and provides the tenant with certain rights. The substitute amendment extends the timelines for provision of notices from five to 30 days after the filing and judgment of foreclosure actions. Assembly Substitute Amendment 1 also clarifies the mailing requirements associated with the notices and specifies that the purchaser at a foreclosure sale shall have the rights of a landlord with respect to an existing tenant of that property.

#### **Assembly Amendment 1 to Assembly Substitute Amendment 1**

With regard to the affidavit required under the substitute amendment, Assembly Amendment 1 to Assembly Substitute Amendment 1 specifies that if an affidavit states the mortgage loan is not eligible for modification under HAMP, the affidavit shall state the reason for that determination.

#### **Legislative History**

Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1 were offered by Representative Clark. On April 20, 2010, the Assembly Committee on Housing adopted Assembly Amendment 1 to Assembly Substitute Amendment 1 and Assembly Substitute Amendment 1, and recommended passage of 2009 Assembly Bill, as amended, on successive votes of Ayes, 4; Noes, 3.

SG:ksm