



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0247/1
KRP:emw&ahe

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 621**

January 17, 2018 - Offered by Senator OLSEN.

1 **AN ACT** *to repeal* 846.16 (2m) (intro.) (except 846.16 (2m) (title)); *to renumber*
2 846.165 (1); *to renumber and amend* 846.16 (1) (b), 846.16 (1) (c), 846.16 (3m)
3 (a) (intro.), 1. and 2., 846.16 (3m) (b) and 846.165 (2); *to amend* 846.10 (2) (a)
4 1., 846.10 (2) (a) 2. a., 846.10 (2) (a) 2. b., 846.101 (2) (b), 846.101 (2) (c) 1.,
5 846.101 (2) (c) 2., 846.102 (3) (a) 1., 846.103 (1), 846.103 (2), 846.16 (title),
6 846.16 (1) (title), 846.16 (1) (a), 846.16 (2m) (b) 2. a., 846.16 (4) (title), 846.16
7 (4) (a), 846.16 (4) (b) and 846.16 (4) (c); and *to create* 846.16 (1) (bm), 846.16
8 (1g) (title), 846.16 (1g) (a) (title), 846.16 (1g) (b), 846.16 (1r) (title), 846.16 (1r)
9 (b) (title), 846.16 (1r) (c), 846.16 (2m) (a) (title), 846.16 (2m) (am), 846.16 (2m)
10 (b) (title), 846.16 (2m) (b) 3. and 846.16 (2m) (c) (title) of the statutes; **relating**

1 **to:** authorizing counties to conduct foreclosure sales using an Internet-based
2 auction.

Analysis by the Legislative Reference Bureau

This substitute amendment modifies 2017 Assembly Bill 690 (the bill) to reflect changes in the law as a result of the enactment of 2017 Wisconsin Act 104.

The substitute amendment also requires all of the following:

1. If the sheriff or referee engages a third party to conduct Internet-based auctions in a county, the third party must be registered as an auctioneer by the Department of Safety and Professional Services.

2. Notice of sale of an Internet-based auction must describe any lien or other encumbrance on the mortgaged premises that has priority over the mortgage that is the subject of the foreclosure action (priority liens).

3. The person conducting an Internet-based auction must, on the Internet site where the Internet-based auction is conducted, provide any potential bidder with a conspicuous statement identifying the priority liens.

For further information, see the analysis for the bill.

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

3 **SECTION 1.** 846.10 (2) (a) 1. of the statutes, as affected by 2017 Wisconsin Act
4 104, is amended to read:

5 846.10 (2) (a) 1. If the mortgage was executed before April 27, 2016, upon the
6 expiration of 12 months from the date when the judgment is entered. Notice of the
7 time and place of sale shall be given under ~~ss. 815.31 and s.~~ 846.16 (1) and may be
8 given within the 12-month period, except that the first printing of the notice shall
9 not be made less than 10 months after the date when the judgment is entered, and
10 except that the sale of a farm shall not be made or advertised until the expiration of
11 one year from the date when the judgment is entered.

12 **SECTION 2.** 846.10 (2) (a) 2. a. of the statutes, as affected by 2017 Wisconsin Act
13 104, is amended to read:

1 846.10 (2) (a) 2. a. Except as provided in subd. 2. b., upon the expiration of 6
2 months from the date when the judgment is entered. Notice of the time and place
3 of sale shall be given under ~~ss. 815.31 and s.~~ 846.16 (1) and may be given within the
4 6-month period, except that the first printing of the notice shall not be made less
5 than 4 months after the date when the judgment is entered, and except that the sale
6 of a farm shall not be made or advertised until the expiration of 6 months from the
7 date when the judgment is entered.

8 **SECTION 3.** 846.10 (2) (a) 2. b. of the statutes, as affected by 2017 Wisconsin Act
9 104, is amended to read:

10 846.10 (2) (a) 2. b. Upon motion of the mortgagor before judgment is entered,
11 if the court finds that the mortgagor is attempting in good faith to sell the mortgaged
12 premises and has entered into a listing agreement with a real estate broker licensed
13 under ch. 452 to sell the mortgaged premises, upon the expiration of 8 months from
14 the date when the judgment is entered. Notice of the time and place of sale shall be
15 given under ~~ss. 815.31 and s.~~ 846.16 (1) and may be given within the 8-month period,
16 except that the first printing of the notice shall not be made less than 6 months after
17 the date when the judgment is entered, and except that the sale of a farm shall not
18 be made or advertised until the expiration of 8 months from the date when the
19 judgment is entered.

20 **SECTION 4.** 846.101 (2) (b) of the statutes, as affected by 2017 Wisconsin Act
21 104, is amended to read:

22 846.101 (2) (b) If the mortgage was executed before April 27, 2016, the sale of
23 the mortgaged premises shall be made upon the expiration of 6 months from the date
24 when the judgment is entered. Notice of the time and place of sale shall be given
25 under ~~ss. 815.31 and s.~~ 846.16 (1) and may be given within the 6-month period,

1 except that the first printing of the notice shall not be made less than 4 months after
2 the date when the judgment is entered.

3 **SECTION 5.** 846.101 (2) (c) 1. of the statutes, as affected by 2017 Wisconsin Act
4 104, is amended to read:

5 846.101 (2) (c) 1. Except as provided in subd. 2., upon the expiration of 3 months
6 from the date when the judgment is entered. Notice of the time and place of sale shall
7 be given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the 3-month
8 period, except that the first printing of the notice shall not be made less than one
9 month after the date when the judgment is entered.

10 **SECTION 6.** 846.101 (2) (c) 2. of the statutes, as affected by 2017 Wisconsin Act
11 104, is amended to read:

12 846.101 (2) (c) 2. Upon motion of the mortgagor before judgment is entered, if
13 the court finds that the mortgagor is attempting in good faith to sell the mortgaged
14 premises and has entered into a listing agreement with a real estate broker licensed
15 under ch. 452 to sell the mortgaged premises, upon the expiration of 5 months from
16 the date when the judgment is entered. Notice of the time and place of sale shall be
17 given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the 5-month period,
18 except that the first printing of the notice shall not be made less than 3 months after
19 the date when the judgment is entered.

20 **SECTION 7.** 846.102 (3) (a) 1. of the statutes, as affected by 2017 Wisconsin Act
21 104, is amended to read:

22 846.102 (3) (a) 1. Hold a sale of the mortgaged premises and have the sale
23 confirmed under s. ~~846.165~~ 846.16 (2m). Any sale of the mortgaged premises may
24 be held at any time after the expiration of 5 weeks from the date when the judgment

1 is entered. Notice of the time and place of sale shall be given under ~~ss. 815.31 and~~
2 s. 846.16 (1) and may be given at any time within the 12-month period.

3 **SECTION 8.** 846.103 (1) of the statutes, as affected by 2017 Wisconsin Act 104,
4 is amended to read:

5 846.103 (1) No foreclosure sale involving real property other than a one-family
6 to 4-family residence that is owner-occupied at the commencement of the
7 foreclosure action, a farm, a church, or a tax-exempt nonprofit charitable
8 organization may be held until the expiration of 6 months from the date when the
9 judgment is entered except a sale under sub. (2). Notice of the time and place of sale
10 shall be given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the 6-month
11 period, except that the first printing of the notice shall not be made less than 4
12 months after the date when the judgment is entered.

13 **SECTION 9.** 846.103 (2) of the statutes, as affected by 2017 Wisconsin Act 104,
14 is amended to read:

15 846.103 (2) If the mortgagor of real property other than a one-family to
16 4-family residence that is owner-occupied at the commencement of the foreclosure
17 action, a farm, a church, or a tax-exempt nonprofit charitable organization has
18 agreed in writing at the time of the execution of the mortgage to the provisions of this
19 section, the plaintiff in a foreclosure action of a mortgage, which mortgage is recorded
20 subsequent to May 12, 1978, may elect by express allegation in the complaint to
21 waive judgment for any deficiency that may remain due to the plaintiff after sale of
22 the mortgaged premises against every party who is personally liable for the debt
23 secured by the mortgage, and to consent that the mortgagor, unless he or she
24 abandons the property, may remain in possession of the mortgaged premises and be
25 entitled to all rents, issues, and profits therefrom to the date of confirmation of the

1 sale by the court. When the plaintiff so elects, judgment shall be entered as provided
2 in this chapter, except that no judgment for deficiency may be ordered nor separately
3 rendered against any party who is personally liable for the debt secured by the
4 mortgage and the sale of the mortgaged premises shall be made upon the expiration
5 of 3 months from the date when the judgment is entered. Notice of the time and place
6 of sale shall be given under ~~ss. 815.31 and s. 846.16 (1)~~ and may be given within the
7 3-month period, except that the first printing of the notice shall not be made less
8 than one month after the date when the judgment is entered.

9 **SECTION 10.** 846.16 (title) of the statutes, as affected by 2017 Wisconsin Act
10 104, is amended to read:

11 **846.16 (title) Notice of sale; sale; confirmation; transfer.**

12 **SECTION 11.** 846.16 (1) (title) of the statutes, as created by 2017 Wisconsin Act
13 104, is amended to read:

14 846.16 (1) (title) NOTICE OF SALE AND SALE.

15 **SECTION 12.** 846.16 (1) (a) of the statutes, as affected by 2017 Wisconsin Act
16 104, is amended to read:

17 846.16 (1) (a) *Notice of in-person sale.* ~~The Except as provided in par. (bm), the~~
18 sheriff or referee who makes sale of mortgaged premises, under a judgment therefor,
19 shall give notice of the time and place of sale ~~in the manner provided by law for the~~
20 ~~sale of real estate upon execution as provided under s. 815.31~~ or in such other manner
21 as the court shall in the judgment direct. The sheriff or referee shall include in the
22 notice of sale the street address, if any, of the real estate to be sold and the sum of
23 the judgment. If

24 ~~(cm) *Notice to department of veterans affairs.* In addition to providing notice~~
25 ~~of sale under par. (a) or (bm), if the department of veterans affairs is also a party in~~

1 the foreclosure action, the judgment shall direct that notice of sale be given by
2 registered mail, return receipt requested, to the department at Madison, Wisconsin,
3 at least 3 weeks prior to the date of sale, ~~but such requirement does not affect any~~
4 ~~other provision as to giving notice of sale.~~ Upon the,

5 (1r) (a) Execution of deed. After a sale of the mortgaged premises under sub.
6 (1g) and upon compliance with its the terms of the sale, the sheriff or referee shall
7 make and execute to the purchaser, the purchaser's assigns, or personal
8 representatives a deed of the mortgaged premises sold that includes sets forth each
9 parcel of land sold to the purchaser and the purchase price paid for each parcel.

10 **SECTION 13.** 846.16 (1) (b) of the statutes, as affected by 2017 Wisconsin Act
11 104, is renumbered 846.16 (1r) (b), and 846.16 (1r) (b) (intro.) and 2. a., as
12 renumbered, are amended to read:

13 846.16 **(1r)** (b) (intro.) No later than 10 days after ~~the a~~ sale of ~~the~~ mortgaged
14 premises under sub. (1g), the sheriff or referee shall do all of the following:

15 2. a. The deed to the mortgaged premises executed under par. (a).

16 **SECTION 14.** 846.16 (1) (bm) of the statutes is created to read:

17 846.16 **(1)** (bm) *Notice of Internet-based sale.* If a sale is conducted under sub.
18 (1g) (b), the sheriff or referee who makes sale of mortgaged premises shall give notice
19 of the time and place of sale as provided under par. (a), except as follows:

20 1. Section 815.31 (1) does not apply to the sale. The sheriff or referee shall
21 publicly advertise the time and place of holding the sale by posting, at least 3 weeks
22 prior to the date of the sale, a written notice describing the mortgaged premises to
23 be sold with reasonable certainty in one public place in the city, village, or town where
24 the mortgaged premises are located and, if the county where the mortgaged premises
25 are located maintains an Internet site, on that Internet site. If the city, village, or

1 town where the mortgaged premises are located maintains an Internet site, the city,
2 village, or town may post the notice on that Internet site.

3 2. The notice also shall include all of the following information:

4 a. A statement that the sale will be conducted using an Internet-based auction.

5 b. The address of the Internet site where the Internet-based auction will be
6 conducted.

7 c. The time period during which bids for the mortgaged premises may be
8 submitted.

9 d. Instructions on how the general public may observe the Internet-based
10 auction and on how a person may participate in the auction, including any
11 prerequisites to participation that may apply, or the address of an Internet site where
12 those instructions are posted.

13 e. A description of the terms of sale that apply to the Internet-based auction,
14 including a description of any lien or other encumbrance on the mortgaged premises
15 that has priority over the mortgage that is the subject of the foreclosure action.

16 **SECTION 15.** 846.16 (1) (c) of the statutes, as affected by 2017 Wisconsin Act 104,
17 is renumbered 846.16 (1g) (a), and 846.16 (1g) (a) 1. and 2., as renumbered, are
18 amended to read:

19 846.16 (1g) (a) 1. Except as provided under subd. 2. and this subdivision, the
20 sheriff or referee may not accept less than \$100 as a deposit or down payment from
21 the purchaser at a sale of mortgaged premises. The sheriff or referee shall deliver
22 the amount of the deposit or down payment to the clerk of court as provided in ~~par.~~
23 ~~(b) sub. (1r) (b) 2. b.~~, and the purchaser shall pay the balance of the sale purchase
24 price to the clerk of court upon the confirmation of the sale as provided in sub. (2m)
25 (b). If the highest bid is less than \$100, the purchaser shall give the bid amount as

1 a deposit or down payment, and the sheriff or referee shall deliver the entire amount
2 to the clerk of court.

3 2. If the judgment creditor is the purchaser at the a sale of the mortgaged
4 premises, the judgment creditor may give the judgment creditor's receipt to the
5 sheriff or referee for any sum not exceeding the sum due to the judgment creditor's
6 judgment creditor. The judgment creditor's receipt is considered a down payment.
7 If the judgment creditor is the purchaser and the sum due to the judgment creditor
8 is less than the purchase price, the judgment creditor shall pay the difference to the
9 sheriff or referee at the time of sale.

10 **SECTION 16.** 846.16 (1g) (title) of the statutes is created to read:

11 846.16 (1g) (title) SALE OF MORTGAGED PREMISES.

12 **SECTION 17.** 846.16 (1g) (a) (title) of the statutes is created to read:

13 846.16 (1g) (a) (title) *Payment of purchase price and costs of sale; deposit or*
14 *down payment.*

15 **SECTION 18.** 846.16 (1g) (b) of the statutes is created to read:

16 846.16 (1g) (b) *Internet-based sale.* 1. A county may enact an ordinance that
17 requires the sheriff or referee to conduct, or to engage an auctioneer registered under
18 ch. 480 to conduct, sales of mortgaged premises in the county using an
19 Internet-based auction. If county enacts such an ordinance, all sales of mortgaged
20 premises in the county shall be conducted using Internet-based auctions.

21 2. If a sale is conducted using an Internet-based auction, the person conducting
22 the sale may accept payment of any amounts under par. (a) by credit card, debit card,
23 or other electronic payment method and may charge a surcharge to the payer to
24 recover charges associated with accepting the electronic payment.

1 3. If a sale is conducted using an Internet-based auction, the person conducting
2 the sale shall, on the Internet site on which the Internet-based auction is conducted,
3 provide any potential bidder with a conspicuous statement identifying any lien or
4 other encumbrance described in the notice under sub. (1) (bm) 2. e.

5 **SECTION 19.** 846.16 (1r) (title) of the statutes is created to read:

6 846.16 (1r) (title) PROCEDURES AFTER SALE.

7 **SECTION 20.** 846.16 (1r) (b) (title) of the statutes is created to read:

8 846.16 (1r) (b) (title) *Deductions from proceeds; transmittals to clerk of court.*

9 **SECTION 21.** 846.16 (1r) (c) of the statutes is created to read:

10 846.16 (1r) (c) *Deed held until confirmation.* The clerk of court shall hold a deed
11 delivered to the clerk of court under par. (b) 2. a. until confirmation of the sale under
12 sub. (2m).

13 **SECTION 22.** 846.16 (2m) (intro.) (except 846.16 (2m) (title)) of the statutes, as
14 affected by 2017 Wisconsin Act 104, is repealed.

15 **SECTION 23.** 846.16 (2m) (a) (title) of the statutes is created to read:

16 846.16 (2m) (a) (title) *Preparation of real estate transfer return.*

17 **SECTION 24.** 846.16 (2m) (am) of the statutes is created to read:

18 846.16 (2m) (am) *Payment of sale proceeds upon confirmation.* Upon
19 confirmation of a sale of mortgaged premises, the clerk of court shall pay to the
20 parties entitled thereto, or to their attorneys, the proceeds of the sale.

21 **SECTION 25.** 846.16 (2m) (b) (title) of the statutes is created to read:

22 846.16 (2m) (b) (title) *Payments by purchaser.*

23 **SECTION 26.** 846.16 (2m) (b) 2. a. of the statutes, as affected by 2017 Wisconsin
24 Act 104, is amended to read:

1 846.16 **(2m)** (b) 2. a. The deed to the mortgaged premises delivered under sub.
2 ~~(1)~~ (1r) (b) 2. a.

3 **SECTION 27.** 846.16 (2m) (b) 3. of the statutes is created to read:

4 846.16 **(2m)** (b) 3. Any part of the purchase price remaining to be paid.

5 **SECTION 28.** 846.16 (2m) (c) (title) of the statutes is created to read:

6 846.16 **(2m)** (c) (title) *Delivery of real estate transfer return receipt.*

7 **SECTION 29.** 846.16 (3m) (a) (intro.), 1. and 2. of the statutes, as affected by 2017
8 Wisconsin Act 104, are renumbered 846.16 (3m) (intro.), (am) and (bm) and amended
9 to read:

10 846.16 **(3m)** TRANSMITTAL TO REGISTER OF DEEDS. (intro.) Upon the court
11 confirming ~~the a~~ sale of mortgaged premises and upon compliance by the purchaser
12 with the terms of the sale and the payment of any balance of the sale price to be paid,
13 unless otherwise ordered by the court, the clerk of court shall do one of the following
14 to transmit the deed to the mortgaged premises received under sub. ~~(1)~~ (1r) (b) 2. a.
15 to the register of deeds for recording:

16 (am) Deliver the deed to the mortgaged premises received under sub. ~~(1)~~ (1r)
17 (b) 2. a., the receipt for submitting a transfer return under s. 77.22, the amount due
18 under s. 59.43 (2) to record the deed and any other document required to record the
19 deed, and the transfer fee, if any, to the register of deeds.

20 (bm) Notify the register of deeds that the deed to the mortgaged premises
21 received under sub. ~~(1)~~ (1r) (b) 2. a., the receipt for submitting a transfer return under
22 s. 77.22, the amount due under s. 59.43 (2) to record the deed and any other document
23 required to record the deed, and the transfer fee, if any, are available in the clerk's
24 office. If a register of deeds is notified under this ~~subdivision~~ paragraph, the register

1 of deeds shall retrieve the documents and fees from the clerk of courts within a
2 reasonable period of time.

3 **SECTION 30.** 846.16 (3m) (b) of the statutes, as created by 2017 Wisconsin Act
4 104, is renumbered 846.16 (2m) (as) and amended to read:

5 846.16 **(2m)** (as) *Effect of deed upon confirmation.* ~~Upon~~ Unless the deed is
6 destroyed as provided in sub. (4) (a), upon confirmation of ~~the~~ a sale of mortgaged
7 premises, the deed executed under sub. ~~(1) (1r)~~ (a) shall vest in the purchaser, the
8 purchaser's assigns, or personal representatives all the right, title, and interest of
9 the mortgagor, the mortgagor's heirs, personal representatives, and assigns in and
10 to the premises sold and ~~shall be~~ is a bar to all claim, right of equity of redemption
11 therein, of and against the parties to ~~sueh~~ the action, their heirs, and personal
12 representatives, and ~~against~~ all persons claiming under them subsequent to the
13 filing of the notice of the pendency of the action in which such judgment was
14 rendered; and the purchaser, the purchaser's heirs, or assigns shall be let into the
15 possession of the premises so sold on production of ~~sueh~~ the deed or a duly certified
16 copy ~~thereof~~ of the deed, and the court may, if necessary, issue a writ of assistance
17 to deliver ~~sueh~~ that possession.

18 **SECTION 31.** 846.16 (4) (title) of the statutes, as created by 2017 Wisconsin Act
19 104, is amended to read:

20 846.16 **(4)** (title) NO CONFIRMATION OF SALE; EFFECT OF FAILURE TO COMPLY WITH
21 CONFIRMATION REQUIREMENTS; RESALE.

22 **SECTION 32.** 846.16 (4) (a) of the statutes, as created by 2017 Wisconsin Act 104,
23 is amended to read:

24 846.16 **(4)** (a) If any of the requirements under sub. (2m) (a) and (b) are not
25 satisfied and the purchaser is not the judgment creditor, the court shall order the

1 purchaser to forfeit the amount of the purchaser's deposit or down payment delivered
2 to the clerk of court under sub. (1r) (b) 2. b., and the clerk of court shall pay that
3 amount ~~shall be paid~~ to the parties ~~who~~ that would be entitled to the proceeds of the
4 sale as ordered by the court. The court shall also order that the mortgaged premises
5 be resold. The clerk of court shall destroy the deed executed to the defaulting
6 purchaser under sub. (1r) (a), and it shall be that deed is of no effect.

7 **SECTION 33.** 846.16 (4) (b) of the statutes, as created by 2017 Wisconsin Act 104,
8 is amended to read:

9 846.16 (4) (b) If any of the requirements under sub. (2m) (b) and (c) are not
10 satisfied and the purchaser is the judgment creditor, the court may order the
11 purchaser to forfeit the greater of the purchaser's deposit or \$500, and order the
12 purchaser to comply with sub. (2m) (b) and (c) so that the mortgaged property may
13 be sold to the purchaser.

14 **SECTION 34.** 846.16 (4) (c) of the statutes, as created by 2017 Wisconsin Act 104,
15 is amended to read:

16 846.16 (4) (c) If the court does not confirm ~~the a~~ sale of the mortgaged premises
17 for a reason other than a failure to satisfy a requirement under sub. (2m) (a), (b), or
18 (c), the clerk of court shall return the deposit or down payment delivered to the clerk
19 of court under sub. (1r) (b) 2. b. to the purchaser, and the court shall order the
20 mortgaged premises to be resold. The clerk of court shall destroy the deed received
21 under sub. ~~(1)~~ (1r) (b) 2. a., and it shall be that deed is of no effect.

22 **SECTION 35.** 846.165 (1) of the statutes is renumbered 846.165.

23 **SECTION 36.** 846.165 (2) of the statutes is renumbered 846.16 (2m) (ae) and
24 amended to read:

