



## 2009 ASSEMBLY BILL 672

January 22, 2010 - Introduced by Representative SCHNEIDER. Referred to Committee on Housing.

1     **AN ACT** *to renumber and amend* 846.01 (1); *to amend* 846.01 (2) and 846.102;  
2             and *to create* 846.01 (1g) and 846.10 (5) of the statutes; **relating to:**  
3             foreclosure and sale of residential property.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a mortgagee brings an action for foreclosure of a mortgage on a residential property, the homeowner (mortgagor or borrower) is served with a summons and complaint and the normal civil procedural rules of pleadings, discovery of evidence, pretrial, and trial apply. If the court finds that the mortgagee has the right to the foreclosure, the court issues a judgment for foreclosure of the mortgage, which entitles the mortgagee to force a sale of the property after a redemption period has ended.

This bill requires the plaintiff and the court to provide a written notice to the residential property owner who is the defendant in an action for foreclosure. The bill requires the notice to inform the residential property owner that he or she continues to be the owner of the property, which includes the responsibility for the payment of real estate taxes, until the property is sold under the foreclosure, the sale is confirmed by the court, and the new owner records the deed with the register of deeds. Under the bill, the plaintiff is required to include the notice with the summons and complaint and the court is required to provide the notice at the time that the court issues the judgment of foreclosure.

The bill prohibits the delay of a sheriff's sale of residential property beyond the date originally scheduled for the sale unless the court authorizing the sale makes a

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finding on the record that there is good cause for the delay. If a delay is permitted, the bill requires the sheriff's sale to take place within 60 days after the original postponed sale date.

Currently, if the court finds that a mortgaged property has been abandoned after receiving evidence as to that fact, the court may enter judgment for foreclosure and order the sale of the property within two months after the entry of the judgment. This bill requires the court, before making a finding of abandonment, to receive evidence from the defendant, if available, and the plaintiff, as to whether the property is abandoned. The bill also requires the court, after finding that a property has been abandoned and entering a judgment for foreclosure, to order that the sale of the property take place between 45 days and 70 days after the judgment is entered.

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

1           **SECTION 1.** 846.01 (1) of the statutes is renumbered 846.01 (1m) and amended  
2 to read:

3           846.01 (1m) Except as provided in sub. (2), in actions for the foreclosure of  
4 mortgages upon real estate, if the plaintiff recover, the court shall render judgment  
5 of foreclosure and sale, as provided in this chapter, of the mortgaged premises or so  
6 much of the premises as may be sufficient to pay the amount adjudged to be due upon  
7 the mortgage and obligation secured by the mortgage, with costs. The plaintiff shall  
8 provide the defendant with a written notice together with the summons and  
9 complaint that is used to commence the action for foreclosure of a mortgage of  
10 residential property. The written notice shall inform the defendant that if the court  
11 issues a judgment of foreclosure, the defendant continues to be the owner of the  
12 residential property for all purposes, including the responsibility for the payment of  
13 real estate taxes, until the property is sold at a sheriff's sale or other sale, the sale  
14 is confirmed by the court, and the new owner records the deed with the register of  
15 deeds. If the plaintiff fails to include the written notice required under this  
16 subsection, the court shall dismiss the foreclosure action.

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1           **SECTION 2.** 846.01 (1g) of the statutes is created to read:

2           846.01 **(1g)** In this section, “residential property” means real estate that  
3 includes, or that the owner intends to develop so that it includes, a one-family to  
4 4-family dwelling, which may be a condominium unit, that the owner uses or intends  
5 to use as his or her principal place of residence.

6           **SECTION 3.** 846.01 (2) of the statutes is amended to read:

7           846.01 **(2)** A judgment of foreclosure and sale shall not be entered until 20 days  
8 after the lis pendens has been filed. If the court issues a judgment of foreclosure on  
9 residential property, the court shall provide written notice to the defendant that he  
10 or she continues to be the owner of the residential property for all purposes, including  
11 the responsibility for the payment of real estate taxes, until the property is sold at  
12 a sheriff’s sale or other sale, the sale is confirmed by the court, and the new owner  
13 records the deed with the register of deeds.

14           **SECTION 4.** 846.10 (5) of the statutes is created to read:

15           846.10 **(5)** No sheriff’s sale involving residential property, as defined in s.  
16 846.01 (1g), may be delayed beyond the date originally scheduled for the sale unless  
17 the court makes a finding on the record that there is good cause for the delay. If a  
18 sheriff’s sale is delayed for good cause, the sale shall be rescheduled to a date that  
19 is within 60 days after the original postponed date of the sale.

20           **SECTION 5.** 846.102 of the statutes is amended to read:

21           **846.102 Abandoned premises.** In an action for enforcement of a mortgage  
22 lien ~~if~~, the court ~~makes an affirmative~~ shall make a finding upon proper evidence  
23 being submitted ~~that~~ by the defendant, if available, and by the plaintiff, as to  
24 whether the mortgaged premises have been abandoned by the mortgagor and  
25 assigns, If the court makes an affirmative finding that the mortgaged premises have

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1 ~~been abandoned, the court shall enter judgment shall be entered~~ as provided in s.  
2 846.10 except that the sale of such the mortgaged premises shall be made ~~upon the~~  
3 ~~expiration of 2 months from~~ not earlier than 45 days after the date ~~when such the~~  
4 judgment is entered, but not later than 70 days after the judgment is entered. Notice  
5 of the time and place of sale shall be given under ss. 815.31 and 846.16 ~~and may be~~  
6 ~~given within such 2-month period~~. In this section "abandoned" means the  
7 relinquishment of possession or control of the premises whether or not the mortgagor  
8 or the mortgagor's assigns have relinquished equity and title.

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(END)