CHAPTER 846

REAL ESTATE FORECLOSURE

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846.01 Foreclosure judgment. (1) Except as provided in sub. (2), in actions for the foreclosure of mortgages upon real estate, if the plaintiff recover, the court shall render judgment of foreclosure and sale, as provided in this chapter, of the mortgaged premises or so much of the premises as may be sufficient to pay the amount adjudged to be due upon the mortgage and obligation secured by the mortgage, with costs.

(2) A judgment of foreclosure and sale shall not be entered until 20 days after the lis pendens has been filed.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.01; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.01; 1997 a. 254.

Cross−reference: See s. 840.10 as to requirement of filing of lis pendens.

The defense of laches, consisting of unreasonable delay by the mortgagee in commencing the action, its actual or constructive knowledge of the transfer and acquiescence therein, and prejudice to the mortgagor asserting the defense, is in itself a sufficient basis that it would be inequitable under the circumstances to decree foreclosure. Mutual Federal Savings & Loan Assoc. v. American Medical Services, 66 Wis. 2d 210, 223 N.W.2d 921 (1974).

The trial court could enter judgment against a codefendant who received an excess payment of sheriff sale proceeds from another defendant. The trial court's authority in a foreclosure action is equitable in nature and not limited to that expressly granted by statute. The court's discretion extends even after confirmation of sale, if necessary to provide that no injustice be done to any of the parties. Harvest State Bank v. ROI Investments, 228 Wis. 2d 733, 598 N.W.2d 571 (Ct. App. 1999), 98−2320.

In accordance with this section and the court's equitable powers, the circuit court order "forever barred and foreclosed of all right, title, interest, lien or equity of redemption in and to said mortgaged premises." A condominium association policy could not survive a foreclosure action to the extent it restricts a current owner's use of condominium facilities based on the failure of the prior owners to pay their debts. Such a policy ties the debts of the prior owners to the units, in violation of well−established foreclosure. Walworth State Bank v. Abbey Springs Condominium Association, Inc. 2016 WI 30, 368 Wis. 2d 72, 878 N.W.2d 170, 14−0940.

Mortgage foreclosure as fraudulent conveyance: Is judicial foreclosure an answer to the Durrett problem? 1984 WLR 195.

Advising Clients Facing Foreclosure. Cummisford. Wis. Law. Dec. 2007.

Beyond Robo−signing: Mortgage Foreclosure Defense Basics. Nora. Wis. Law. April 2011.

846.02 Foreclosure; defendant may have assignment of mortgage. (1) In a mortgage foreclosure action, any defendant may upon payment to the plaintiff or the plaintiff's attorney, of the amount then owing thereon for principal, together with interest and all costs up to such time, demand the assignment of such mortgage to the defendant. The plaintiff shall upon such demand and a tender of the amount owing for principal, interest and costs, assign the mortgage to such defendant and the plaintiff shall be barred from further prosecuting such action. If dispute shall arise over the amount due for costs, application to fix the costs accrued shall be made to the court in which such action is pending.

(2) If such demand and tender is made after judgment, the plaintiff or the plaintiff's assignee shall assign such judgment to such defendant.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.02; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.02; 1993 a. 486.

846.04 Deficiency, judgment for. (1) The plaintiff may, in the complaint, demand judgment for any deficiency that may remain due the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage. Judgment may be rendered for any deficiency remaining after applying the proceeds of sale to the amount due. The judgment for deficiency shall be ordered in the original judgment and separately rendered against the party liable on or after the confirmation of sale. The judgment for deficiency shall be entered in the judgment and lien docket and, except as provided in subs. (2) and (3), enforced as in other cases. A mortgage foreclosure deficiency judgment entered on or after October 14, 1997, on property under agricultural use, as defined in s. 91.01 (2), for at least 12 consecutive months during the preceding 36−month period shall be recorded as an agriculture judgment.

(2) Except as provided in sub. (3), if a mortgage foreclosure deficiency judgment is entered on property under agricultural use, as defined in s. 91.01 (2), for at least 12 consecutive months during the preceding 36−month period, an action on the deficiency judgment shall be commenced within 10 years after the date on which the mortgage foreclosure deficiency judgment is entered or be barred.

(3) If a mortgage foreclosure deficiency judgment was entered before January 1, 1990, on property devoted primarily to agricultural use, as defined in s. 91.01 (5), an action on the deficiency judgment shall be commenced within 2 years after October 14, 1997, or be barred. If the deficiency judgment remains unsatisfied in a mortgage foreclosure deficiency judgment action entered before October 14, 1997, the defendant in that action shall notify the clerk of circuit court of the existence of that deficiency judgment and of the date that an action on that deficiency judgment shall be commenced or be barred. Not later than 60 days prior to 2 years after October 14, 1997, if notified of an unsatisfied deficiency judgment by the defendant in that action, the clerk of each circuit court in which a mortgage foreclosure deficiency judgment on property devoted primarily to agricultural use, as defined in s. 91.01 (5), was entered before January 1, 1990, and remains unsatisfied, shall, upon payment by the defendant in that action of the costs of the publication and certified mail, do all of the following:

(a) Publish a notice as a class 1 notice under ch. 985, in the official newspaper of the county where the mortgage foreclosure deficiency judgment was entered, stating that the party holding the mortgage foreclosure deficiency judgment is required to commence an action on the deficiency judgment prior to 2 years after October 14, 1997, or be barred from any further action on that deficiency judgment.

(b) Notify by certified mail the primary plaintiff in the action for the mortgage foreclosure deficiency judgment that the plaintiff is required to commence an action on the deficiency judgment prior to 2 years after October 14, 1997, or be barred from any further action on that deficiency judgment.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.04; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.04; 1993 a. 486; 1995 a. 224; 1997 a. 27; 2009 a. 28.

"Personally liable for the debt secured by the mortgage" has the same meaning in ss. 846.103 (2) and 846.04. "Personally liable" is a term of art used to distinguish the borrower's liability, which is a personal obligation, from the mortgagor's liability, which is an obligation limited to the property used to secure the note debt. Bank Mutual v. S.J. Boyer Construction, Inc. 2010 WI 74, 326 Wis. 2d 521, 785 N.W.2d 462, 08−0912.

There is no reasonable way to read sub. (1) and s. 846.101 to mean that a money judgment obtained on a second mortgage and note should count as a deficiency judgment for purposes of a foreclosure action on a separate indebtedness secured by a first mortgage. Harbor Credit Union v. Samp, 2011 WI App 40, 332 Wis. 2d 214, 796 N.W.2d 813, 10−0974.

846.05 Foreclosure for nonpayment of installment. An action for the foreclosure of a mortgage upon which there shall be due any interest or any installment of the principal and there shall be other installments to become due shall be dismissed upon the defendant's bringing into court, before judgment, the principal and interest due, with the costs. If after judgment is entered in such case the defendant shall bring into court the principal and interest due, with the costs, proceedings on the judgment shall be stayed; but the court may enforce the judgment by a further order, upon a subsequent default in the payment of any installment of the principal, or of any interest thereafter to grow due.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.05; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.05.

846.06 Sale in parcels. If in the cases mentioned in s. 846.05 the defendant shall not, before judgment, bring into court the amount so due with costs the court before rendering judgment shall ascertain by reference or otherwise the situation of the mortgaged premises and whether they can be sold in parcels without injury to the interests of the parties; and if it shall appear that they can be so sold the judgment shall direct a sale in parcels, specifying them, or so much thereof as will be sufficient to pay the amount due for principal, interests and costs; and such judgment shall remain as security for any subsequent default.

History: 1973 c. 189 ss. 7, 20; Stats. 1973 s. 816.06; Sup. Ct. Order, 67 Wis. 2d 585, 768, 783 (1975); Stats. 1975 s. 846.06.

846.07 Order of sale for other defaults. If, in the case mentioned in s. 846.06, there shall be any default subsequent to judgment in the payment of any installment or of any interest due upon such mortgage the court may, upon petition of the plaintiff, direct a sale of enough of the mortgaged premises, to be made under the judgment, to satisfy the amount due, with the costs of such petition and the proceedings thereon; and like proceedings shall be had as often as a default shall happen.

History: 1973 c. 189 ss. 7, 20; Stats. 1973 s. 816.07; Sup. Ct. Order, 67 Wis. 2d 585, 768, 783 (1975); Stats. 1975 s. 846.07.

846.08 Judgment for sale of whole; adjustment of parties' rights. If, in any case mentioned in ss. 846.06 and 846.07 it shall appear that the mortgaged premises are so situated that they cannot be sold in parcels without injury to the interests of the parties or that the sale of the whole will be most beneficial to them the court may adjudge the sale of the whole in which case the proceeds of sale, after deducting the costs of the action and of sale, shall be applied to the payment of the sums due and to become due deducting from all sums not due, which do not bear interest, interest from the time of payment to the time when the same are payable or the court may direct the balance of the proceeds of sale, after paying the sum then due with such costs, to be placed at interest for the benefit of the plaintiff, to be paid to the plaintiff as such subsequent payments or installments shall become due, with the interest thereon. The surplus, after paying the amount due the plaintiff and costs, shall be paid to the party entitled thereto on the order of the court.

History: 1973 c. 189 ss. 7, 20; Stats. 1973 s. 816.08; Sup. Ct. Order, 67 Wis. 2d 585, 768, 783 (1975); Stats. 1975 s. 846.08; 1993 a. 486.

846.09 Amendments as to parties; process and pleading. In any action for the foreclosure of a mortgage, at any time after judgment and before a sale pursuant thereto, the plaintiff may be granted leave to amend the summons, complaint and all the proceedings in the action by making as defendant any person who is a proper or necessary party thereto. Such person so made a party shall be served with the summons in like manner as if originally a party, and may answer and defend, and all matters and proceedings as to the person shall be had and taken in like manner as if the person had been originally made a party thereto. After such person has been thus made a party and served, and the person's rights adjudicated upon, the original judgment may be so amended as to bar and foreclose the person thereby, or to make any provisions in regard to the person's rights and interests in like manner as it could have done had the person been made originally a party.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.09; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.09; 1993 a. 486.

846.10 Foreclosure. (1) If the plaintiff recovers the judgment shall describe the mortgaged premises and fix the amount of the mortgage debt then due and also the amount of each installment thereafter to become due, and the time when it will become due, and whether the mortgaged premises can be sold in parcels and whether any part thereof is a homestead, and shall adjudge that the mortgaged premises be sold for the payment of the amount then due and of all installments which shall become due before the sale, or so much thereof as may be sold separately without material injury to the parties interested, and be sufficient to pay such principal, interest and costs; and when demanded in the complaint, direct that judgment shall be rendered for any deficiency against the parties personally liable and, if the sale is to be by referee, the referee must be named therein.

(2) (a) Any party may become a purchaser. Except for a sale under s. 846.101 or 846.102 and except as provided in pars. (b) and (c), no sale involving a one−family to 4−family residence that is owner−occupied at the commencement of the foreclosure action, a farm, a church, or a tax−exempt nonprofit charitable organization may be held except as follows:

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

2. If the mortgage was executed on or after April 27, 2016:

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

b. Upon motion of the mortgagor before judgment is entered, if the court finds that the mortgagor is attempting in good faith to sell the mortgaged premises and has entered into a listing agreement with a real estate broker licensed under ch. 452 to sell the mortgaged premises, upon the expiration of 8 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 and may be given within the 8−month period, except that the first printing of the notice shall not be made less than 6 months after the date when the judgment is entered, and except that the sale of a farm shall not be made or advertised until the expiration of 8 months from the date when the judgment is entered.

(b) In all cases the parties may, by stipulation filed with the clerk, consent to an earlier sale.

(c) Sales under foreclosure of mortgages given by any railroad corporation may be made immediately after the rendition of the judgment.

(3) The proceeds of every sale shall be applied to the discharge of the debt adjudged to be due and the costs awarded; and if there shall be any surplus it shall be subject to the order of the court. If any surplus remains in the court for 3 months, without being applied for, the court shall direct the same to be put out at interest for the benefit of the party entitled thereto to be paid to the party upon the order of such court.

(4) The court may order in the judgment of foreclosure that all sums advanced by the plaintiff for insurance, necessary repairs and taxes not included in the judgment may be added to the judgment by order at any time after the entry thereof.

History: 1973 c. 189 ss. 7, 20; Stats. 1973 s. 816.10; Sup. Ct. Order, 67 Wis. 2d 585, 768, 783 (1975); Stats. 1975 s. 846.10; 1977 c. 304; 1993 a. 486; 2015 a. 376.

A judgment of foreclosure and sale is a final judgment appealable as a matter of right under s. 808.03 (1). An appeal from an order confirming the sale does not enable the appellant to challenge the judgment of foreclosure. Shuput v. Lauer, 109 Wis. 2d 164, 325 N.W.2d 321 (1982).

There is no statutory requirement that sale proceeds be applied first to the portion of the debt that is guaranteed. Crown Life Insurance Co. v. LaBonte, 111 Wis. 2d 26, 330 N.W.2d 201 (1983).

In a foreclosure action under s. 703.16 (8) based on a failure to pay condominium fees, sub. (1) could not be applied sensibly to require a statement of installments to become due because monthly assessments were in varying amounts. The 12−month redemption period under s. 846.10 (2) is applicable to such foreclosures. Geneva National Community Association, Inc. v. Friedman, 228 Wis. 2d 572, 598 N.W.2d 600 (Ct. App. 1999), 98−1010.

Although a judgment must state whether any part of the property is homestead, if the evidence establishes a property is nonhomestead, the judgment need not state that fact. Geneva National Community Association, Inc. v. Friedman, 228 Wis. 2d 572, 598 N.W.2d 600 (Ct. App. 1999), 98−1010.

No statute provides that a creditor may not foreclose on a mortgage because the creditor has, in a prior action, obtained a judgment of foreclosure on another mortgage securing the same debt and a deficiency judgment. Bank of Sun Prairie v. Marshall Development Co. 2001 WI App 64, 242 Wis. 2d 355, 626 N.W.2d 319, 00−1076.

The Federal Farmers Home Administration is not subject to state exemption laws in the foreclosure of its mortgages. U.S. v. Einum, 821 F. Supp. 1283 (1993).

846.101 Foreclosure without deficiency; 20−acre parcels. (1) If the mortgagor has agreed in writing at the time of the execution of the mortgage to the provisions of this section, and the foreclosure action involves a one−family to 4−family residence that is owner−occupied at the commencement of the foreclosure action, a farm, a church, or a tax−exempt nonprofit charitable organization, the plaintiff in a foreclosure action of a mortgage on real estate of 20 acres or less, which mortgage is recorded subsequent to January 22, 1960, may elect by express allegation in the complaint to waive judgment for any deficiency which may remain due to the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage, and to consent that the mortgagor, unless he or she abandons the property, may remain in possession of the mortgaged premises and be entitled to all rents, issues, and profits therefrom to the date of confirmation of the sale by the court.

(2) (a) When the plaintiff so elects, judgment shall be entered as provided in this chapter, except that no judgment for deficiency may be ordered nor separately rendered against any party who is personally liable for the debt secured by the mortgage.

(b) If the mortgage was executed before April 27, 2016, the sale of the mortgaged premises shall be made upon the expiration of 6 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 and may be given within the 6−month period, except that the first printing of the notice shall not be made less than 4 months after the date when the judgment is entered.

(c) If the mortgage was executed on or after April 27, 2016, the sale of the mortgaged premises shall be made as follows:

1. Except as provided in subd. 2., upon the expiration of 3 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 and may be given within the 3−month period, except that the first printing of the notice shall not be made less than one month after the date when the judgment is entered.

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

History: 1973 c. 189 ss. 7, 20; Stats. 1973 s. 816.101; Sup. Ct. Order, 67 Wis. 2d 585, 768, 783 (1975); Stats. 1975 s. 846.101; 1977 c. 304; 2009 a. 180; 2015 a. 376.

An election by a mortgagee to foreclose under s. 816.101, [now 846.101] on one or more mortgages securing a debt does not bar foreclosure upon the remaining mortgages but does bar pursuit of a personal deficiency. Glover v. Marine Bank of Beaver Dam, 117 Wis. 2d 684, 345 N.W.2d 449 (1984).

There is no reasonable way to read s. 846.04 (1) and this section to mean that a money judgment obtained on a second mortgage and note should count as a deficiency judgment for purposes of a foreclosure action on a separate indebtedness secured by a first mortgage. Harbor Credit Union v. Samp, 2011 WI App 40, 332 Wis. 2d 214, 796 N.W.2d 813, 10−0974.

In a foreclosure was under s. 846.101, the Veterans Administration was not estopped from pursuing a deficiency against a veteran under an agreement to indemnify the VA for the VA's loss on a loan guaranty. U.S. v. Davis, 961 F.2d 603 (1992).

846.102 Abandoned premises. (1) In an action for enforcement of a mortgage lien, and upon motion of the plaintiff or the city, town, village, or county where the mortgaged premises are located, if the court makes an affirmative finding upon proper evidence being submitted that the mortgaged premises have been abandoned by the mortgagor and the mortgagor's assigns, judgment shall be entered as provided in sub. (3). In this section, "abandoned" means the relinquishment of possession or control of the mortgaged premises whether or not the mortgagor or the mortgagor's assigns have relinquished equity and title.

(2) In addition to the parties to the action to enforce a mortgage lien, a representative of the city, town, village, or county where the mortgaged premises are located may provide testimony or evidence to the court under sub. (1) relating to whether the premises have been abandoned by the mortgagor. In determining whether the mortgaged premises have been abandoned, the court shall consider the totality of the circumstances, including the following:

(a) Boarded, closed, or damaged windows or doors to the premises.

(b) Missing, unhinged, or continuously unlocked doors to the premises.

(c) Terminated utility accounts for the premises.

(d) Accumulation of trash or debris on the premises.

(e) At least 2 reports to law enforcement officials of trespassing, vandalism, or other illegal acts being committed on the premises.

(f) Conditions that make the premises unsafe or unsanitary or that make the premises in imminent danger of becoming unsafe or unsanitary.

(3) (a) If the court finds that the mortgaged premises have been abandoned under sub. (1), judgment shall be entered as provided in s. 846.10, except that the plaintiff shall, no later than 12 months from the date when the judgment is entered, do one of the following:

1. Hold a sale of the mortgaged premises and have the sale confirmed under s. 846.165. Any sale of the mortgaged premises may be held at any time after the expiration of 5 weeks from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 and may be given at any time within the 12−month period.

2. Release or satisfy the mortgage lien and vacate the judgment of foreclosure. If the plaintiff presents evidence that the mortgage lien has been released or satisfied and requests that the judgment of foreclosure be vacated, the court shall vacate the judgment of foreclosure with prejudice.

(b) If, 12 months after the date when the judgment is entered, the plaintiff has not completed an action under par. (a) 1. or 2., any party to the action or the city, town, village, or county where the mortgaged premises are located may petition the court for an order compelling a sale of the mortgaged premises.

Foreclosures in Limbo: Zombie Properties. Payne & Decker. Wis. Law. Oct. 2015.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 768, 783 (1975); 1975 c. 41 s. 52; 1975 c. 199; Stats. 1975 s. 846.102; 1977 c. 304; 2011 a. 136; 2015 a. 376.

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

(2) If the mortgagor of real property other than a one−family to 4−family residence that is owner−occupied at the commencement of the foreclosure action, a farm, a church, or a tax−exempt nonprofit charitable organization has agreed in writing at the time of the execution of the mortgage to the provisions of this section, the plaintiff in a foreclosure action of a mortgage, which mortgage is recorded subsequent to May 12, 1978, may elect by express allegation in the complaint to waive judgment for any deficiency which may remain due to the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage, and to consent that the mortgagor, unless he or she abandons the property, may remain in possession of the mortgaged premises and be entitled to all rents, issues, and profits therefrom to the date of confirmation of the sale by the court. When the plaintiff so elects, judgment shall be entered as provided in this chapter, except that no judgment for deficiency may be ordered nor separately rendered against any party who is personally liable for the debt secured by the mortgage and the sale of the mortgaged premises shall be made upon the expiration of 3 months from the date when the judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 and may be given within the 3−month period, except that the first printing of the notice shall not be made less than one month after the date when the judgment is entered.

History: 1977 c. 304; 2015 a. 376.

The application of the reduced redemption period to a mortgage executed before enactment of ch. 304, laws of 1977, which created this section, would be an unconstitutional impairment of contract. Burke v. E. L. C. Investors, Inc. 110 Wis. 2d 406, 329 N.W.2d 259 (Ct. App. 1982).

"Personally liable for the debt secured by the mortgage" has the same meaning in ss. 846.103 (2) and 846.04. "Personally liable" is a term of art used to distinguish the borrower's liability, which is a personal obligation, from the mortgagor's liability, which is an obligation limited to the property used to secure the note debt. Bank Mutual v. S.J. Boyer Construction, Inc. 2010 WI 74, 326 Wis. 2d 521, 785 N.W.2d 462, 08−0912.

A mortgagee who forecloses under the shortened redemption period under sub. (2) does not forfeit the right to obtain a judgment against a guarantor of payment even though it must waive its right to collect any deficiency from the debtor. Guarantors of payment are not members of the class of persons against whom a mortgagee must waive judgment when invoking sub. (2) because guarantors are not "personally liable for the debt secured by the mortgage." This phrase is used to distinguish the liability of a borrower on a debt, which is a personal obligation, from the liability of a mortgagor, which is an obligation limited to the property the mortgagor has put up as security for the debt. The phrase does not contemplate guarantors whose liability arises not from the debt but from a separate contract. Bank Mutual v. S.J. Boyer Construction, Inc. 2010 WI 74, 326 Wis. 2d 521, 785 N.W.2d 462, 08−0912.

846.11 Homestead, how sold. If any defendant appear and answer that any portion of the mortgaged premises is an exempt homestead the court shall ascertain whether such be the fact, and if so whether the part of the mortgaged premises not included in the exempt homestead can be sold separately therefrom without injury to the interests of the parties, and in that case shall direct in the judgment that the exempt homestead shall not be sold until all the other mortgaged lands have been sold.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.11; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.11.

This statute gives the option to the mortgagor to insist that when a mortgage covers both homestead and nonhomestead property, the nonhomestead property be sold first. That issue is irrelevant if the entire mortgaged property is homestead. Anchor Savings & Loan Association v. Week, 62 Wis. 2d 169, 213 N.W.2d 737 (1974).

This section is inapplicable when separate mortgages cover homestead and nonhomestead property. Valley Bank v. Jennings, 198 Wis. 2d 857, 544 N.W.2d 243 (Ct. App. 1995), 94−3197.

The Federal Farmers Home Administration is not subject to state exemption laws in the foreclosure of its mortgages. U.S. v. Einum, 821 F. Supp. 1283 (1993).

846.12 Interest; waste. The amount adjudged due shall draw interest at the rate provided to be paid on the mortgage debt, but shall not exceed the minimum rate prevailing immediately prior to the default on which the foreclosure is based, until the date of sale or payment, and all the installments which shall become due after the date of such judgment shall draw interest at the same rate from the time the same become due. The judgment may enjoin the defendants and all persons claiming under them from committing waste or doing any act that may impair the value of the mortgaged premises.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.12; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.12.

846.13 Redemption from and satisfaction of judgment. The mortgagor, the mortgagor's heirs, personal representatives or assigns may redeem the mortgaged premises at any time before the sale by paying to the clerk of the court in which the judgment was rendered, or to the plaintiff, or any assignee thereof, the amount of such judgment, interest thereon and costs, and any costs subsequent to such judgment, and any taxes paid by the plaintiff subsequent to the judgment upon the mortgaged premises, with interest thereon from the date of payment, at the same rate. On payment to such clerk or on filing the receipt of the plaintiff or the plaintiff's assigns for such payment in the office of said clerk the clerk shall thereupon discharge such judgment, and a certificate of such discharge, duly recorded in the office of the register of deeds, shall discharge such mortgage of record to the extent of the sum so paid.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.13; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.13; 1993 a. 486.

Cross−reference: See s. 846.25, relative to discharge after foreclosure.

A bankruptcy court reduction of a mortgage lien does not affect the payment required for redemption. Hobl v. Lord, 162 Wis. 2d 226, 470 N.W.2d 265 (1991).

A circuit court has no authority to accept a plan of redemption that fails to provide for immediate, full payment. A mortgagor may only redeem the mortgaged property for the full amount of the foreclosure judgment, plus interest, costs, and taxes. M&I Marshall & Ilsley v. Kazim Investment, Inc. 2004 WI App 13, 269 Wis. 2d 479, 678 N.W.2d 479, 03−0404.

Sale under this section means confirmation of the sale. That under *M&I* a circuit court has no authority to accept a plan of redemption that fails to provide for immediate full payment does not contradict that fact. State Bank v. Sechen, 2005 WI App 253, 288 Wis. 2d 168, 707 N.W.2d 576, 05−0482.

Someone must notify the court when a redeeming payment is made, but this section does not require that it be the mortgagor. By the plain language of the first sentence, redemption occurs upon payment. The second sentence does not mention redemption, does not give any suggestion that the receipt must be filed within any particular time limit, and does not state that filing the receipt is a necessary prerequisite for redemption to occur or that redemption is void if a receipt is not filed. Osterberg v. Lincoln State Bank, 2006 WI App 237, 297 Wis. 2d 30, 725 N.W.2d 634, 06−0068.

This section does not apply to a junior lienholder. Section 846.15 specifically addresses junior lienholders. In practice, the "right to redeem" may be used loosely to include both a mortgagor's right to redeem under s. 846.13 and a junior lienholder's right under s 846.15 to pay the judgment and become subrogated to the plaintiff's rights in the judgment. However, when a mortgagor pays the plaintiff the amount of the judgment, the judgment is discharged and the mortgagor retains title. When a junior lienholder pays the plaintiff the amount of the judgment, the junior lienholder neither retains title, since it never had it, nor acquires title; rather, the junior lienholder acquires the rights the plaintiff has as a result of the judgment. JP Morgan Chase Bank, NA v. Green, 2008 WI App 78, 311 Wis. 2d 715, 753 N.W.2d 536, 07−1753.

A circuit court could reasonably exercise its discretion to adjourn a scheduled confirmation hearing to allow a mortgagor additional time to make a promised redemption payment. However, it would not be an misuse of discretion for a court to decline such a request and proceed to address the only issue relevant to a confirmation hearing — whether the sale at public auction should be confirmed. A mortgagor who has the ability and desire to redeem must make payment before the commencement of a properly scheduled confirmation hearing in order to avoid the risk of losing the opportunity to redeem as permitted under this section. Harbor Credit Union v. Samp, 2011 WI App 40, 332 Wis. 2d 214, 796 N.W.2d 813, 10−0974.

846.14 Redemption of part. In case the mortgagor, the mortgagor's heirs, representatives or assigns shall desire to pay a portion of such judgment, taxes, interest and costs, so as to relieve any distinct lot or parcel of the premises which can be sold separately under such judgment from the lien thereof and of such mort-

gage thereon, the court, on application of such person and on notice to the parties to the action, may, if the amount to be paid therefor is not agreed upon, ascertain and adjudge the proportion of such judgment, taxes, interest and costs to be paid for the purpose aforesaid; and when the amount so adjudged shall be paid as aforesaid it shall relieve such distinct lot or parcel from such judgment and the lien of such mortgage thereon and shall satisfy such judgment to the amount so paid. Any heir, devisee, grantee or assignee of the mortgagor, owning an undivided interest in the mortgaged premises, subject to the lien of the mortgage, may redeem such undivided interest from such judgment and the lien of the mortgage thereon by paying as aforesaid a sum that will bear the same proportion to the whole of such judgment, taxes, costs and interest as the interest proposed to be redeemed bears to the whole of the mortgaged premises.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.14; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.14; 1993 a. 486.

846.15 Plaintiff's rights acquired by junior lienor. Any person having a junior lien upon the mortgaged premises or any part thereof or interest therein, may, at any time before such sale, pay to the clerk of court, or the plaintiff or the plaintiff's assignee, the amount of such judgment, taxes, interest and costs, and costs subsequent to judgment, and shall thereupon be subrogated to all the rights of the plaintiff as to such judgment.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.15; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.15; 1993 a. 486.

846.16 Notice and report of sale. (1) The sheriff or referee who makes sale of mortgaged premises, under a judgment therefor, shall give notice of the time and place of sale in the manner provided by law for the sale of real estate upon execution or in such other manner as the court shall in the judgment direct; where the department of veterans affairs is also a party in the foreclosure action, the judgment shall direct that notice of sale be given by registered mail, return receipt requested, to the department at Madison, Wisconsin, at least 3 weeks prior to the date of sale, but such requirement does not affect any other provision as to giving notice of sale. Except as provided in sub. (3) and s. 846.167, the sheriff or referee shall, within 10 days thereafter, file with the clerk of the court a report of the sale, and shall also immediately after the sale first deduct any fee due under s. 77.22 (1); then deposit that fee, a return under s. 77.22 and the deed with the clerk of the court for transmittal to the register of deeds; then deduct the costs and expenses of the sale, unless the court orders otherwise, and then deposit with the clerk of the court the proceeds of the sale ordered by the court. The sheriff may accept from the purchaser at such sale as a deposit or down payment upon the same not less than $100, in which case such amount shall be so deposited with the clerk of the court as above provided, and the balance of the sale price shall be paid to the clerk by the purchaser at such sale upon the confirmation thereof. If the highest bid is less than $100, the whole amount thereof shall be so deposited.

(2) If the judgment creditor is the purchaser the judgment creditor may give his or her receipt to the sheriff or referee for any sum not exceeding the judgment creditor's judgment and such receipt shall be deemed a down payment, but in every case the purchaser shall pay the cost of sale; and if the sum due the creditor is less than the purchase price, the creditor shall pay the difference at the time of sale.

(3) If the mortgaged premises are located in a county having a population of 750,000 or more, no later than 10 days after the sale of the mortgaged premises, the sheriff or referee shall do all of the following:

(a) File a report of the sale with the clerk of court.

(b) Deliver to the clerk of court all of the following:

1. The deed to the mortgaged premises.

2. After deducting the costs and expenses of the sale, unless the court orders otherwise, the proceeds of the sale ordered by the court.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.16; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.16; 1989 a. 31; 1993 a. 486; 2015 a. 60.

846.162 Disposition of surplus. If there shall be any surplus paid into court by the sheriff or referee, any party to the action or any person not a party who had a lien on the mortgaged premises at the time of sale, may file with the clerk of court into which the surplus was paid, a notice stating that the party or person is entitled to such surplus money or some part thereof, together with the nature and extent of the party's or person's claim. The court shall determine the rights of all persons in such surplus fund by reference or by testimony taken in open court, but no such hearing shall be had in court or before a referee except upon 8 days' notice to all persons that have appeared in the action or filed notice of claim to such surplus money. If any such claimant shall not have appeared by attorney, notice of such hearing may be served by mail directed to the claimant at the place of the claimant's residence as stated in the claimant's notice of claim.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.162; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.162; 1993 a. 486.

This section is procedural. It creates no substantive rights. First Wisconsin Trust Co. v. Rosen, 143 Wis. 2d 468, 422 N.W.2d 128 (Ct. App. 1988).

A mortgage covenant to pay taxes expires when the mortgage lien is extinguished upon confirmation of the sheriff's sale. Taxes accruing after confirmation cannot be recovered from a surplus in sale proceeds. Harvest Savings Banking v. ROI Investments, 209 Wis. 2d 586, 563 N.W.2d 579 (Ct. App. 1997), 96−0998.

This section does not apply to a junior lienholder. Section 846.15 specifically addresses junior lienholders. In practice, the "right to redeem" may be used loosely to include both a mortgagor's right to redeem under s. 846.13 and a junior lienholder's right under s 846.15 to pay the judgment and become subrogated to the plaintiff's rights in the judgment. However, when a mortgagor pays the plaintiff the amount of the judgment, the judgment is discharged and the mortgagor retains title. When a junior lienholder pays the plaintiff the amount of the judgment, the junior lienholder neither retains title, since it never had it, nor acquires title; rather, the junior lienholder acquires the rights the plaintiff has as a result of the judgment. JP Morgan Chase Bank, NA v. Green, 2008 WI App 78, 311 Wis. 2d 715, 753 N.W.2d 536, 07−1753.

846.165 Application for confirmation of sale and for deficiency judgment. (1) No sale on a judgment of mortgage foreclosure shall be confirmed unless 5 days' notice has been given to all parties that have appeared in the action. Such notice shall be given either personally or by registered mail directed to the last−known post−office address, mailed at least 5 days prior to the date when the motion for confirmation is to be heard, if any post−office address is known; if not known, mailing may be dispensed with but an affidavit shall be filed with the court stating that the address is not known, and the notice shall state, in addition to other matter required by law, the amount of the judgment, the amount realized upon the sale, the amount for which personal judgment will be sought against the several parties naming them, and the time and place of hearing.

(2) In case the mortgaged premises sell for less than the amount due and to become due on the mortgage debt and costs of sale, there shall be no presumption that such premises sold for their fair value and no sale shall be confirmed and judgment for deficiency rendered, until the court is satisfied that the fair value of the premises sold has been credited on the mortgage debt, interest and costs.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.165; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.165.

Cross−reference: For tardy confirmation of sale, after 6 years, see s. 846.18.

The trial court should determine "fair value" under sub. (2) even though the bid does not shock the court's conscience. First Wisconsin National Bank of Oshkosh v. KSW Inv. 71 Wis. 2d 359, 238 N.W.2d 123 (1976).

The trial court did not abuse its discretion in setting aside a judicial sale when the buyer based its bid on incorrect figures in the judgment of foreclosure. Family Savings and Loan Asso. v. Barkwood Landscaping Co., Inc. 93 Wis. 2d 190, 286 N.W.2d 581 (1980).

An appeal from an order confirming sale does not enable the appellant to challenge a judgment of foreclosure. Shuput v. Lauer, 109 Wis. 2d 164, 325 N.W.2d 321 (1982).

There is no statutory requirement that sale proceeds be applied first to the portion of the debt that is guaranteed. Crown Life Ins. Co. v. LaBonte, 111 Wis. 2d 26, 330 N.W.2d 201 (1983).

"Fair value" under sub. (2) is determined by the property's sale value. The court may consider costs of selling, holding, or carrying the property only to the extent that they affect the sale value. First Financial Savings Assoc. v. Spranger, 156 Wis. 2d 440, 456 N.W.2d 897 (Ct. App. 1990).

The purchaser at a foreclosure sale has a right to notice of when the sale has been confirmed, when the mortgagor's redemption period ends, and when the 10−day payment period under s. 846.17 expires. GMAC Mortgage Corp. v. Gisvold, 215 Wis. 2d 459, 572 N.W.2d 466 (1998), 96−1663.

Because s. 703.10 (6) prohibits condominium bylaws from affecting the transfer of title to a condominium unit, a bylaw prohibiting the sale of any unit to an owner who would not reside in the unit could not be applied to prevent the confirmation of a foreclosure sale to the high bidder who admitted he would not occupy the premises. Also, the potential failure to occupy the unit had no recognized legal relationship to the confirmation of the sheriff's sale and the transfer of title. Bankers Trust Company of California, N.A. v. Bregant, 2003 WI App 86, 261 Wis. 2d 855, 661 N.W.2d 498, 02−2085.

Under sub. (2), when a creditor seeks a deficiency judgment, there is no presumption that the property sold for fair value. From that, it follows that when the mortgagee does not seek a deficiency judgment, there is a presumption. The statute does not eliminate the requirement that the court find fair value. A tax assessment, like an appraisal, can be viewed as a measure of fair value. Each case must be considered on its merits. Bank of New York v. Mills, 2004 WI App 60, 270 Wis. 2d 790, 678 N.W.2d 332, 03−1339.

This section does not preclude a purchaser from obtaining a confirmation hearing when the mortgagee's application for confirmation has been withdrawn. This affords the purchaser an opportunity to have the court decide whether it is entitled to transfer of the property under applicable law, and does not undermine the rights of the lienholders and mortgagor to object to certification as provided by law. JP Morgan Chase Bank, NA v. Green, 2008 WI App 78, 311 Wis. 2d 715, 753 N.W.2d 536, 07−1753.

The notice referred to throughout sub. (1) is the notice of the first sentence that must be given to all parties that have appeared in the action. There is no requirement that when no party is entitled to personal notice under sub. (1) there must be a general posting or publication of notice. There is no general hearing requirement or general motion−for−confirmation requirement that applies when no notice of hearing is required. Wells Fargo Bank, N.A. v. Biba, 2010 WI App 140, 329 Wis. 2d 787, 793 N.W.2d 95, 09−2273.

846.167 Confirmation of sale and transmittal of deed in populous counties. (1) In this section, "county" means a county having a population of 750,000 or more.

(2) If a sheriff or referee makes a sale of mortgaged premises located in a county under a judgment of foreclosure and sale, all of the following apply:

(a) If the purchaser is not the judgment creditor, before the court may confirm the sale, the purchaser shall provide the judgment creditor with any information required for the judgment creditor to complete the real estate transfer return under s. 77.22 and, if applicable, any information required for a certificate, waiver, or stipulation required under s. 101.122.

(b) No later than 10 days after the court confirms the sale, the purchaser shall pay to the court all of the following:

1. The amount of the transfer fee under s. 77.22, if any.

2. The amount of the fee under s. 59.43 (2) to record all of the following:

a. The deed to the mortgaged premises delivered under s. 846.16.

b. Any other document required for the register of deeds to record the deed, including any certificate, waiver, or stipulation required under s. 101.122.

(c) No later than 10 days after the court confirms the sale, the judgment creditor shall provide to the court the receipt for submitting a transfer return under s. 77.22 and any certificate, waiver, or stipulation required under s. 101.122.

(3) Upon the court confirming the sale of mortgaged premises located in a county and upon compliance by the purchaser with the terms of the sale and the payment of any balance of the sale price to be paid, unless otherwise ordered by the court, the clerk of the court shall transmit the deed to the mortgaged premises received under s. 846.16, the receipt for submitting a transfer return under s. 77.22, any certificate, waiver, or stipulation required under s. 101.122, the amount due under s. 59.43 (2) to record the deed and any other document required to record the deed, and the transfer fee, if any, to the register of deeds of the county.

History: 2015 a. 60.

846.17 Deed, execution and effect of. Upon any such sale being made the sheriff or referee making the same, on compliance with its terms, shall make and execute to the purchaser, the purchaser's assigns or personal representatives, a deed of the premises sold, setting forth each parcel of land sold to the purchaser and the sum paid therefor, which deed, upon confirmation of such sale, shall vest in the purchaser, the purchaser's assigns or personal representatives, all the right, title and interest of the mortgagor, the mortgagor's heirs, personal representatives and assigns in and to the premises sold and shall be a bar to all claim, right of equity of redemption therein, of and against the parties to such action, their heirs and personal representatives, and also against all persons claiming under them subsequent to the filing of the notice of the pendency of the action in which such judgment was rendered; and the purchaser, the purchaser's heirs or assigns shall be let into the possession of the premises so sold on production of such deed or a duly certified copy thereof, and the court may, if necessary, issue a writ of assistance to deliver such possession. Such deed or deeds so executed by the sheriff as above set forth shall be forthwith delivered by the sheriff to the clerk of the court to be held by the clerk until the confirmation of the sale, and upon the confirmation thereof the clerk of the court shall thereupon pay to the parties entitled thereto, or to their attorneys, the proceeds of the sale, and, except as provided in s. 846.167, shall deliver to the purchaser, the purchaser's assigns or personal representatives, at the sale such deed upon compliance by such purchaser with the terms of such sale, and the payment of any balance of the sale price to be paid. In the event of the failure of such purchaser to pay any part of the purchase price remaining to be paid within 10 days after the confirmation of such sale, the amount so deposited shall be forfeited and paid to the parties who would be entitled to the proceeds of such sale as ordered by the court, and a resale shall be had of said premises, and in such event such deed so executed to the defaulting purchaser shall be destroyed by said clerk, and shall be of no effect. In the event that such sale is not confirmed by the court, the clerk shall forthwith refund to the purchaser at such sale the amount so paid or deposited by the purchaser, and shall likewise destroy such sheriff's deed so executed, and the same shall be of no effect, and a resale of the premises shall be had upon due notice thereof.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.17; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.17; 1993 a. 486; 2015 a. 60.

That the balance of the purchase price be paid within 10 days of confirmation of sale or be forfeited is mandatory and is not waivable by the court as a matter of equity. The purchaser has a right to notice of when the sale has been confirmed, when the mortgagor's redemption period ends, and when the 10−day payment period expires. GMAC Mortgage Corp. v. Gisvold, 215 Wis. 2d 459, 572 N.W.2d 466 (1998), 96−1663.

This section does not clarify when the 10−day period for paying the remaining purchase price begins to run after a case is remitted following an appeal. When the appeals process interrupts a purchaser's ability to pay the remaining balance of the purchase price, the purchaser is entitled, upon remand, to notice from the circuit court as to when the 10−day period begins to run. First Banking Center v. Twelfth Street Investors LLC, 2011 WI App 103, 336 Wis. 2d 150, 805 N.W.2d 381, 10−0646.

846.18 Tardy confirmation of sale. In all cases where a mortgage foreclosure sale has been made but not confirmed and the purchaser or the purchaser's successor or assign has taken possession of the land by virtue of said sale, and occupied it for 6 years from and after said sale, the purchaser may apply for and the court may enter an order confirming said foreclosure sale with the same force and effect as if said confirmation was made as otherwise provided by law.

History: 1973 c. 189 s. 7; Stats. 1973 s. 816.18; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); Stats. 1975 s. 846.18; 1993 a. 486.

This section does not establish that a purchaser may apply for confirmation only after 6 years of occupancy. It provides a remedy for purchasers or their successors or assigns when, for whatever reason, the sale is not confirmed according to the procedures in s. 846.165, but their occupancy for a sufficient period entitles them to confirmation by this alternative route. JP Morgan Chase Bank, NA v. Green, 2008 WI App 78, 311 Wis. 2d 715, 753 N.W.2d 536, 07−1753.

846.25 Discharge after foreclosure. After a mortgage has been foreclosed by action and the judgment and costs have been

paid and satisfaction of the mortgage entered upon the court record, the clerk of circuit court, on request, shall sign a certificate attesting to those facts, which certificate is entitled to record.

History: Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); 1995 a. 224.

Cross−reference: For redemption from mortgage foreclosure, prior to sale, see s. 846.13.

846.30 Redemption period for land contracts. If a court finds that the purchaser under a land contract is obligated to make certain payments under that land contract, that the purchaser has failed to make the required payments and that the vendor is entitled to a judgment of strict foreclosure, the court shall set a redemption period of at least 7 working days from the date of the judgment hearing or, if there is no hearing, from the date of the entry of the judgment order. No judgment of strict foreclosure is final until the court enters an order after the expiration of the redemption period confirming that no redemption has occurred and making the judgment of strict foreclosure absolute.

History: 1995 a. 250.

Equitable title remains with a land contract vendee until a circuit court enters an order under this section confirming the land contract vendee's default following the expiration of the redemption period for strict foreclosure. Steiner v. Wisconsin American Mutual Insurance Company, 2005 WI 72, 281 Wis. 2d 395, 697 N.W.2d 452, 03−1959.

The minimum redemption period was enacted to prevent a court from not affording any right to redemption when the vendee, or someone else so entitled, wanted one. Neither this purpose nor the language of the statute supports requiring a period of redemption even if all parties with a right to redemption waive that right. The use of the word shall does not mean that the vendee or whoever has the right to redemption may not waive it. Republic Bank of Chicago v. Lichosyt, 2007 WI App 150, 303 Wis. 2d 474, 736 N.W.2d 153, 06−1578.

Case law does not accord the right to redemption in strict foreclosure actions to judgment lienholders. Republic Bank of Chicago v. Lichosyt, 2007 WI App 150, 303 Wis. 2d 474, 736 N.W.2d 153, 06−1578.

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

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

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

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

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

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

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

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

2. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property, which interest includes an interest in a land contract, purchase agreement, option to purchase, or lease.

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

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

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

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

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

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

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

2. The address of the residence in foreclosure.

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

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

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

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

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

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

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

NOTICE REQUIRED BY WISCONSIN LAW

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

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

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

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

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

(d) Within 10 days following receipt of a notice of cancellation given in accordance with this subsection, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

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

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

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

NOTICE OF CANCELLATION

(Enter date contract signed)

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

2. To cancel this transaction, you may mail by certified mail or personally deliver a signed and dated copy of this notice of cancellation to .... (name of purchaser) at .... (street or physical address of purchaser's place of business) NOT LATER THAN .... (date and time of day). If you personally deliver this notice of cancellation, ... (name of purchaser) must give you a receipt.

3. I hereby cancel this transaction.

(Date) ....

(Seller's signature) ....

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

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

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

(7) LIABILITY. Any provision in a contract entered into on or after March 6, 2009, that attempts or purports to require arbitration of any dispute arising under this section is void at the option of the foreclosed homeowner.

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

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

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

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

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

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

2. Make a payment to the foreclosed homeowner such that the foreclosed homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days after either the eviction of, or voluntary relinquishment of possession of the dwelling by, the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this 150−day period. The accounting shall be on a form prescribed by the attorney general, in consultation with the secretary of agriculture, trade and consumer protection. For purposes of this subdivision, all of the following apply:

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

b. The time for determining the fair market value amount shall be specified in the foreclosure reconveyance contract as either at the time of the execution of the foreclosure reconveyance contract or at resale. If the contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within 120 days after the eviction of, or voluntary relinquishment of the property by, the foreclosed homeowner. If the contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within 120 days after the eviction of, or voluntary relinquishment of the property by, the foreclosed homeowner, the fair market value shall be determined by an appraisal conducted during this 120−day period and payment, if required, shall be made to the foreclosed homeowner, but the fair market value shall be recalculated as the resale price on resale and an additional payment

amount, if appropriate based on the resale price, shall be made to the foreclosed homeowner within 15 days after resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make additional payment, shall be made within 15 days after resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the attorney general, in consultation with the secretary of agriculture, trade and consumer protection.

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

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

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

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

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

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

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

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

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

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

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

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

4. Pay the foreclosed homeowner any consideration.

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

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

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

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

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

2. That the defendant owned the foreclosed residence.

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

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

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

(c) The stay under this subsection shall remain in effect for 90 days if the defendant has not yet commenced and does not commence, within 90 days from the issuance of the stay, an action in connection with a foreclosure reconveyance transaction. If the defendant has commenced, or commences within 90 days from the issuance of the stay, an action in connection with a foreclosure reconveyance transaction, the stay shall remain in effect until the court hearing the action related to the foreclosure reconveyance renders a final decision in the matter.

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

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

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

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

2. In the absence of additional misconduct, a failure of the parties to complete a foreclosure reconveyance transaction shall not

subject a foreclosure purchaser to the criminal penalties under subd. 1.

History: 2009 a. 2.

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

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

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

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

a. Stop or postpone the foreclosure sale.

b. Obtain any forbearance from a beneficiary or mortgagee.

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

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

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

f. Save the residence in foreclosure from foreclosure.

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

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

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

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

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

e. A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance.

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

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

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

i. A foreclosure purchaser.

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

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

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

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

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

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

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

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

3. Contacting creditors on behalf of a foreclosed homeowner.

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

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

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

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

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

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

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

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

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

NOTICE REQUIRED BY WISCONSIN LAW

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

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

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

(c) The contract must be written both in English and in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract if other

than English, must be dated and signed by the foreclosed homeowner, and must contain in immediate proximity to the space reserved for the foreclosed homeowner's signature, in not less than 10−point boldface type, the following statement: "You, the owner, may cancel this transaction at any time prior to midnight of the 3rd business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

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

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

2. The date the foreclosed homeowner signed the contract.

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

NOTICE OF CANCELLATION

(Enter date of transaction)

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

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

3. I hereby cancel this transaction.

(Date) ....

(Owner's signature) ....

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) CONTRACT PROVISION FOR ARBITRATION VOIDABLE. Any provision in a contract entered into on or after March 6, 2009, that attempts or purports to require arbitration of any dispute arising under this section is voidable at the option of the foreclosed homeowner.

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

History: 2009 a. 2.