



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2007 Assembly Bill 568</b>	<b>Assembly Amendment 1</b>
<i>Memo published:</i> January 28, 2008	<i>Contact:</i> Richard Sweet, Senior Staff Attorney (266-2982) William Ford, Senior Staff Attorney (266-0680)

*Assembly Bill 568* relates to regulation of foreclosure reconveyances and regulation of foreclosure consultants. The bill includes requirements for contracts entered into by foreclosure purchasers regarding foreclosure reconveyances. In addition, it regulates contracts entered into between a foreclosure consultant and a foreclosed homeowner.

*Assembly Amendment 1* makes the following changes to the bill:

- The amendment changes the definition of the term “residence in foreclosure” to specify that it means property located in Wisconsin.
- The amendment modifies the provision of the bill that requires that a written contract for foreclosure reconveyance must be in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence. The amendment modifies this by stating that the contract must be in both English and that language. The amendment makes similar changes with regard to a contract for foreclosure consultant services.
- The amendment modifies the provisions of the bill that relate to cancellation of contracts by eliminating the reference to e-mail cancellation. Under the amendment, the contracts may be cancelled by being delivered personally or by certified mail. If delivered personally, a receipt must be provided to the foreclosed homeowner.
- The amendment deletes a reference in the bill to the federal Home Ownership Equity Protection Act and its implementing regulations. The amendment adds a provision stating that 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 must comply with all requirements specified in federal Regulation Z under the federal Truth in Lending Act that apply to a

creditor in a residential mortgage transaction, regardless of whether the foreclosure purchaser or other person extending credit actually meets the definition of a creditor.

- The amendment specifies that an adjustment service company licensed under s. 218.02, Stats., is exempt from the definition of “foreclosure consultant,” but only when engaged in business unrelated to real estate. In addition, the amendment specifies that if any provision of the new statute regulating foreclosure consultants is inconsistent with the statute regulating adjustment service companies with respect to real estate business, the provisions of the new statute supersede any conflicting provision.
- The amendment deletes the provisions of the bill that relate to remedies and penalties with respect to violations of the new statute governing foreclosure consultants. Under the amendment, the Department of Agriculture, Trade and Consumer Protection (DATCP) may investigate violations of the foreclosure consultant statute. Any person suffering a pecuniary loss because of violation may commence an action against the violator. If a court determines that the person suffered such a loss, the court must award the person twice the amount of the loss, or \$200, whichever is greater, for each violation, together with costs and reasonable attorney fees. DATCP is also given the authority under the amendment to commence an action to restrain a violation. In such an action brought by DATCP, in addition to providing equitable relief, the court may award pecuniary damages as described above. DATCP and district attorneys are given the authority to commence an action to recover a forfeiture of not less than \$100, nor more than \$10,000 for a violation. Also, whoever violates the statute 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.
- The amendment modifies the provision of the bill stating that any provision in a foreclosure consultant contract entered into on or after the effective date of the bill that attempts or purports to require arbitration of any dispute arising under the foreclosure consultant law is “void” at the option of the foreclosed homeowner. The amendment changes “void” to “voidable.”

### **Legislative History**

The Assembly Committee on Financial Institutions recommended adoption of Assembly Amendment 1, and passage of the bill as amended, both on votes of Ayes, 9; Noes, 1.

RNS:ty:jal