



2009 SENATE BILL 701

April 20, 2010 – Introduced by Senator TAYLOR, cosponsored by Representatives CLARK, YOUNG, PASCH, SMITH, HEBL, JORGENSEN, TURNER, BERNARD SCHABER, GRIGSBY, SINICKI, ZEPNICK, HIXSON, BERCEAU, HRAYCHUCK and SOLETSKI. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to amend** 846.35 (1) (a) (intro.), 846.35 (1) (a) 1., 846.35 (1) (a) 2., 846.35
2 (1) (b) 2., 846.35 (2) (a) (intro.) and 846.35 (6); and **to create** 704.35 (1) (c),
3 846.015, 846.35 (1) (am) and 846.35 (2) (c) of the statutes; **relating to:** the
4 foreclosure and sale of residential property.

Analysis by the Legislative Reference Bureau

Under current law, if a mortgagee brings an action for foreclosure of a mortgage loan on a residential property, the mortgagor (homeowner) is served with a summons and complaint and the normal civil procedural rules of pleadings, discovery of evidence, pretrial, and trial apply. If the court finds that the mortgagee has the right to the foreclosure, the court issues a judgment for foreclosure of the mortgage, which entitles the mortgagee to force a sale of the property after a redemption period has ended. Under federal law, local financial institutions may participate in a federal mortgage modification program by agreeing to do so with the Federal National Mortgage Association (Fannie Mae). If a mortgage loan is owned, securitized, or guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac), the Government National Mortgage Association (Ginnie Mae), or Fannie Mae, and the mortgagee is a participant in the federal mortgage modification program, the borrower has the right to have the mortgagee determine if a mortgage modification is possible considering the borrower's situation.

Under this bill, before a mortgagee who is a participant in the federal mortgage modification program may commence a mortgage foreclosure action on owner-occupied residential property, the mortgagee must mail to the homeowner a

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written notice telling the homeowner that the mortgage loan is in default, that a foreclosure action may be commenced, the reason the mortgage loan is in default, and the action the homeowner must take to cure the default. The notice must include the name, address, and telephone number of the mortgagee or mortgage servicer who has the authority to enter into negotiations regarding modifications to the mortgage loan, and that the homeowner may request modifications to the mortgage loan. The notice must also provide the homeowner with the names and addresses of state-licensed or federally-approved organizations that offer credit counseling services to homeowners.

The bill requires a mortgagee, when commencing a foreclosure action involving owner-occupied residential property, to file an affidavit with the court stating whether the mortgage loan is owned, securitized, or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae and whether the mortgagee is a participant in the federal mortgage modification program. If the affidavit states that the mortgage loan is owned, securitized, or guaranteed by one of those federally-sponsored organizations and that the mortgagee is a participant in the federal mortgage modification program, the affidavit must also include a statement about the results of the modification program. The statement must show either that the mortgage modification process has been completed without resulting in a modification of the mortgage loan and that written notice of that result has been sent to the homeowner, or that the mortgage loan was not eligible for a modification under that program and the reason for that determination. Under the bill, a court may not enter a judgment for foreclosure involving owner-occupied residential property until the court has received a copy of the affidavit.

After the court receives the required affidavit, the bill requires the court to determine if the facts stated in the affidavit are correct. If the court determines that there is no dispute about the facts stated in the affidavit, the court may continue the foreclosure action. If the court determines that the mortgage loan is eligible for the federal mortgage modification program, but the process to determine if a modification is possible has not been completed, the bill requires the court to stay the foreclosure action under the program's requirements are completed. The bill requires the mortgagee to notify the court of the status of the process every 45 days or risk having the foreclosure action dismissed. If the mortgage loan is modified under the program, and the homeowner is complying with the terms of the modification, the bill requires the mortgagee to notify the court and the court to dismiss the foreclosure action.

Under current law, as created in 2009 Wisconsin Act 2, if a residential rental property is the subject of a foreclosure action, the mortgagee is required to provide notice to the tenants that a foreclosure action has been commenced no later than five days after the action is filed, and that a judgment of foreclosure has been entered no later than five days after the entry of the judgment. This bill changes those time limits to 30 days. The bill also adds a requirement that the notice include a statement of the rights and obligations of the tenant under those situations. Current law, as created in 2009 Wisconsin Act 2, requires these notices to be sent by certified mail and specifies that the notice is completed when mailed, while this bill adds that the

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notice must also be sent by first class mail and specifies that the notice is considered complete when both mailings are sent to the tenant or to the occupant of the rental unit if the tenant's name is unknown.

Under current law, as created in 2009 Wisconsin Act 2, a tenant whose tenancy is terminated as the result of a mortgage foreclosure may remain in possession of the rental unit for up to two months. This bill provides that during this period of possession the purchaser at the foreclosure sale and the tenant have all the rights and obligations of a landlord and tenant, respectively, with respect to each other.

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

1 **SECTION 1.** 704.35 (1) (c) of the statutes is created to read:

2 704.35 (1) (c) The rights and obligations of the tenant specified under s. 846.35
3 (2).

4 **SECTION 2.** 846.015 of the statutes is created to read:

5 **846.015 Additional mortgage foreclosure procedures for**
6 **owner-occupied residential property. (1) DEFINITIONS.** In this section:

7 (a) "Government-sponsored enterprises" means the Federal National
8 Mortgage Association, the Federal Home Loan Mortgage Corporation, and the
9 Government National Mortgage Association.

10 (b) "Mortgagee negotiator" means a mortgagee or mortgage servicer who has
11 the authority to enter into negotiations regarding modifications to a mortgage loan
12 involving owner-occupied residential property.

13 (c) "Mortgage modification program" means the federal home affordable
14 modification program established by the U.S. department of the treasury under 12
15 USC 5219.

16 (d) "Mortgage modification program participant" means a financial institution
17 or mortgage servicer that has executed an agreement with the Federal National

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1 Mortgage Association, in its capacity as financial agent for the United States, to be
2 a participant in the mortgage modification program.

3 (e) “Mortgage servicer” means the servicing agent of the mortgagee.

4 (f) “Owner-occupied residential property” means a one-family to 4-family
5 dwelling, which, at the time the mortgage loan was originated, was occupied or
6 intended to be occupied, by the mortgagor as his or her place of residence.

7 **(2) NOTIFICATION.** Before commencing an action to foreclose on a mortgage loan
8 involving owner-occupied residential property, a mortgage modification program
9 participant shall provide to the mortgagor at his or her last-known address by
10 certified mail a written notice that contains all of the following information:

11 (a) That the mortgage loan is in default and a mortgage foreclosure action may
12 be commenced, the reason that the mortgage loan is in default, and the action
13 required of the mortgagor to cure the default.

14 (b) The name, address, and telephone number of the mortgagee negotiator.

15 (c) The names and addresses of adjustment service companies licensed under
16 s. 218.02, and of independent nonprofit organizations approved by the federal
17 department of housing and urban development, that offer credit counseling services
18 to homeowners.

19 (d) That the mortgagor may request to be considered under the mortgage
20 modification program for a modification to the mortgage loan by contacting the
21 mortgagee negotiator.

22 **(3) AFFIDAVIT.** (a) In any mortgage foreclosure action involving owner-occupied
23 residential property, the plaintiff shall file an affidavit with the court stating
24 whether the mortgage loan is owned, securitized, or guaranteed by a

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1 government-sponsored enterprise and whether the mortgagee or mortgage servicer
2 is a mortgage modification program participant.

3 (b) If the affidavit in par. (a) states that the mortgage loan is owned, securitized,
4 or guaranteed by a government-sponsored enterprise and that the mortgagee or
5 mortgage servicer is a mortgage modification program participant, a copy of the
6 affidavit shall be attached to the complaint given to the mortgagor and the affidavit
7 shall include a statement showing one of the following:

8 1. That the mortgage loan is not eligible for modification under the mortgage
9 modification program.

10 2. That the process required by the mortgage modification program has been
11 properly completed without resulting in a modification of the mortgage loan and that
12 the plaintiff has sent written notification of that result to the mortgagor.

13 (c) If the affidavit in par. (a) includes a statement showing that the mortgage
14 loan is not eligible for modification under the mortgage modification program, the
15 affidavit shall include the reason for that determination.

16 **(4) DETERMINATION.** (a) In all mortgage foreclosure actions involving
17 owner-occupied residential property, the court shall not enter a judgment of
18 foreclosure and sale until the court has received a copy of the affidavit as required
19 under sub. (3) and made the determination required under par. (d).

20 (b) If the court determines that the mortgage modification program is
21 applicable to the mortgage loan but that the process to determine if a modification
22 will be made under that program has not been completed, the court shall stay the
23 foreclosure action until the program's requirements are completed. If the action is
24 stayed, the plaintiff shall advise the court of the status of the action every 45 days.

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1 If the plaintiff fails to advise the court of the status of the action every 45 days, the
2 court may dismiss the foreclosure action.

3 (c) If the mortgage loan is modified under the mortgage modification program,
4 and the mortgagor is complying with the terms of the modification, the plaintiff shall
5 immediately notify the court and the court shall dismiss the foreclosure action.

6 (d) If the court determines that the facts set forth in the affidavit under sub.
7 (3) are not in dispute, the foreclosure action may continue.

8 (e) This subsection does not preclude the plaintiff from voluntarily dismissing
9 the foreclosure action.

10 **(5) MORTGAGE MODIFICATION PROGRAM PARTICIPANTS.** The department of financial
11 institutions shall maintain a current list of mortgage modification program
12 participants on the department's public Internet Web site.

13 **(6) TERMINATION.** This section does not apply after December 31, 2012.

14 **SECTION 3.** 846.35 (1) (a) (intro.) of the statutes, as created by 2009 Wisconsin
15 Act 2, is amended to read:

16 846.35 **(1)** (a) (intro.) If residential rental property is the subject of a foreclosure
17 action, the plaintiff shall provide the following written notices at the following times
18 to the tenants who are in possession of each rental unit when a notice is given:

19 **SECTION 4.** 846.35 (1) (a) 1. of the statutes, as created by 2009 Wisconsin Act
20 2, is amended to read:

21 846.35 **(1)** (a) 1. No later than 5 30 days after the foreclosure action is filed,
22 notice that the plaintiff has commenced a foreclosure action with respect to the rental
23 property.

24 **SECTION 5.** 846.35 (1) (a) 2. of the statutes, as created by 2009 Wisconsin Act
25 2, is amended to read:

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1 846.35 (1) (a) 2. No later than 5 30 days after the judgment of foreclosure is
2 entered, notice that the plaintiff has been granted a judgment of foreclosure with
3 respect to the rental property and notice of the date on which the redemption period
4 ends.

5 **SECTION 6.** 846.35 (1) (am) of the statutes is created to read:

6 846.35 (1) (am) Each notice under par. (a) shall include a statement of the
7 rights and obligations of the tenant specified under sub. (2).

8 **SECTION 7.** 846.35 (1) (b) 2. of the statutes, as created by 2009 Wisconsin Act
9 2, is amended to read:

10 846.35 (1) (b) 2. By certified mail ~~with return receipt requested supported by~~
11 a certificate of mailing obtained from the U.S. post office from which the mailing was
12 made, and, separately, by first class mail. Notice given under this subdivision is
13 considered completed when it is mailed, ~~unless the envelope enclosing the notice is~~
14 ~~returned unopened to the plaintiff~~ both mailings are sent, postage pre-paid, to the
15 tenant, or, if the tenant's name is unknown to the plaintiff, to the occupant, at each
16 rental unit address. All notices mailed under this subdivision shall be mailed in
17 envelopes upon which the plaintiff's, or the plaintiff's attorney's, return address
18 appears, ~~with a request to return to that address.~~

19 **SECTION 8.** 846.35 (2) (a) (intro.) of the statutes, as created by 2009 Wisconsin
20 Act 2, is amended to read:

21 846.35 (2) (a) (intro.) Notwithstanding ss. 708.02 and 710.10 (3) and ch. 704,
22 all of the following apply to a tenant whose tenancy is terminated as a result of a
23 foreclosure judgment and sale with respect to the rental property:

24 **SECTION 9.** 846.35 (2) (c) of the statutes is created to read:

