

2009 SENATE BILL 78

February 18, 2009 – Introduced by Senators TAYLOR, CARPENTER and COGGS, cosponsored by Representatives HINTZ, SOLETSKI, FIELDS, CULLEN, RICHARDS, KRUSICK, STASKUNAS, SEIDEL, POCAN, GRIGSBY, TOLES, BERCEAU, ROYS, ZEPNICK, KESSLER, JORGENSEN, A. WILLIAMS and SINICKI. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT** *to create* 704.35 and 846.40 of the statutes; **relating to:** protections for
2 tenants in foreclosure actions.

Analysis by the Legislative Reference Bureau

Under current law, if the owner of real property that is subject to a mortgage defaults in making payments, the mortgagee, which is usually a financial institution, may commence a foreclosure action. If the mortgagee (plaintiff) prevails and obtains a foreclosure judgment, the property owner (mortgagor) may redeem the property before a sheriff's sale by paying the amount of the judgment to the clerk of court. If the mortgagor does not redeem the property, it will be sold at a sheriff's sale after the redemption period, which can last from three months to one year, depending on the type of property and whether the mortgagor will owe a deficiency, which is the amount by which the judgment exceeds the amount obtained at the sale.

Also under current law, if property that is subject to a mortgage is leased after the lien of the mortgage attaches, the lease is subject to termination if the interest of the mortgagor terminates. Thus, the lease of a tenant to property that is subject to a mortgage terminates and the tenant may be evicted, if the landlord loses the property in a foreclosure action.

This bill requires the plaintiff in a foreclosure action against residential rental property to provide the tenants of the property with notice that a foreclosure action has been filed, notice that the plaintiff has been granted judgment, along with notice of the date on which the redemption period ends, and notice of the date and time of the hearing to confirm the sale of the property. A tenant may recover \$250 in damages if a notice is not given. In addition, the bill provides that a tenant may

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retain possession of the rental unit for up to two months after the end of the month in which the sale of the property is confirmed, and may withhold rent in the amount of the security deposit for the last period during which the tenant actually retains possession of the rental unit.

The bill also requires a landlord to notify any prospective tenant in writing that a foreclosure action has been commenced and, if judgment has been entered, the date on which the redemption period ends. Any rental agreement entered into during the pendency of a foreclosure action must include a separate statement, signed by the tenant, that the landlord has provided the required notices, or it is voidable at the option of the tenant.

Under current law, the director of state courts has established a consolidated electronic system that contains information about cases filed in the circuit courts in the state, including both civil cases and criminal cases. This system, known as the Consolidated Court Automation Programs (CCAP), contains a variety of information about the parties to circuit court cases, their attorneys, documents filed with the court, and deadlines, decisions, and outcomes of cases. The information regarding case data contained on the CCAP system is available in the court's Internet Web site called the Wisconsin Circuit Court Access (WCCA). This bill prohibits the placing of any information on a civil action concerning the removal of a tenant from a residential rental property in the WCCA Internet Web site if that removal was the result of a mortgage foreclosure of the residential rental property.

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

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

2 **704.35 Residential rental property in foreclosure. (1) DUTY OF LANDLORD**
3 TO PROVIDE NOTICE OF FORECLOSURE. If a foreclosure action has been commenced
4 against residential rental property, during the pendency of the action and before the
5 expiration of the redemption period, the owner of the property shall notify any
6 prospective tenant in writing of all of the following:

7 (a) That a foreclosure action has been commenced against the rental property.

8 (b) If judgment has been entered, the date on which the redemption period
9 expires.

10 **(2) RENTAL AGREEMENT MUST VERIFY NOTICE OR IS VOIDABLE.** Any rental
11 agreement entered into between the property owner and a tenant during the

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1 pendency of the foreclosure action and before the expiration of the redemption period
2 shall include a separate written statement, signed by the tenant, that the owner has
3 provided written notice as required under sub. (1). A rental agreement that does not
4 include the statement signed by the tenant is voidable at the option of the tenant.

5 **(3) TENANT PROTECTIONS.** The protections under s. 846.40 apply to a residential
6 tenant if a foreclosure action is or has been commenced against the real property
7 containing the dwelling unit occupied by the tenant.

8 **SECTION 2.** 846.40 of the statutes is created to read:

9 **846.40 Protections for tenants in foreclosure actions. (1) NOTICES FROM**
10 **PLAINTIFF.** (a) If residential rental property is the subject of a foreclosure action, the
11 plaintiff shall provide the following notices at the following times to the tenants who
12 are in possession of each rental unit when a notice is given:

13 1. No later than 5 days after the foreclosure action is filed, notice that the
14 plaintiff has commenced a foreclosure action with respect to the rental property.

15 2. No later than 5 days after the judgment of foreclosure is entered, notice that
16 the plaintiff has been granted a judgment of foreclosure with respect to the rental
17 property and notice of the date on which the redemption period ends.

18 3. When the confirmation of sale hearing has been scheduled, notice of the date
19 and time of the hearing.

20 (b) The notices under par. (a) may be given in any of the following ways:

21 1. By personal service as provided in s. 801.11 (1).

22 2. By certified mail with return receipt requested. Notice given under this
23 subdivision is considered completed when it is mailed, unless the envelope enclosing
24 the notice is returned unopened to the plaintiff. All notices mailed under this

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1 subdivision shall be mailed in envelopes upon which the plaintiff's, or the plaintiff's
2 attorney's, return address appears, with a request to return to that address.

3 (c) If a plaintiff fails to provide a notice under par. (a) in accordance with pars.
4 (a) and (b), the court shall award the tenant to whom the notice should have been
5 given \$250 in damages, plus reasonable attorney fees. A tenant may not recover
6 under this paragraph for more than one notice violation.

7 **(2) EXTENDED POSSESSION OF PREMISES; WITHHOLDING LAST MONTH'S RENT.** (a)
8 Notwithstanding ch. 704, all of the following apply to a tenant whose tenancy is
9 terminated as a result of a foreclosure judgment and sale with respect to the rental
10 property:

11 1. Subject to subd. 3., the tenant may retain possession of the tenant's rental
12 unit for up to 2 months after the end of the month in which the sale of the property
13 is confirmed.

14 2. The tenant may withhold rent in an amount equal to the security deposit
15 during the last period the tenant actually retains possession of the rental unit,
16 regardless of whether the tenant retains possession after the sale of the property is
17 confirmed, as authorized under subd. 1.

18 3. The tenant's right to retain possession of the rental unit expires at the end
19 of the month for which the tenant withholds rent, as authorized under subd. 2.

20 (b) Subject to par. (a) 2., a tenant who retains possession of the rental unit after
21 the sale of the property is confirmed shall pay rent for the period during which the
22 tenant retains possession at the same rate that applied immediately before the
23 confirmation of the sale of the property.

24 **(3) EXECUTION OF WRIT OF ASSISTANCE OR RESTITUTION.** No writ of assistance or
25 writ of restitution for the removal of a tenant whose tenancy is terminated as a result

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1 of a foreclosure judgment and sale may be executed before the end of the 2nd month
2 beginning after the month in which the sale of the property is confirmed, unless the
3 tenant has waived in writing the right under sub. (2) (a) 1. to retain possession of the
4 rental unit.

5 **(4) EXCLUSION OF INFORMATION FROM THE CONSOLIDATED COURT AUTOMATION**
6 **PROGRAMS.** No information in a civil action, including a writ of assistance, writ of
7 restitution, or entry of judgment of eviction, concerning the removal of a tenant from
8 residential rental property may be included in the consolidated court automation
9 programs that are accessible to the public through the circuit court public access Web
10 site if that removal is the result of a mortgage foreclosure of that residential rental
11 property.

12 **SECTION 3. Initial applicability.**

13 **(1) TENANT PROTECTIONS.** The treatment of sections 704.35 (3) and 846.40 of the
14 statutes first applies to foreclosure actions that are commenced on the effective date
15 of this subsection.

16 **(2) RENTAL AGREEMENTS.** The treatment of section 704.35 (2) of the statutes first
17 applies to rental agreements entered into on the effective date of this subsection.

18 **(END)**