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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2822

03/12/2012 Authored by Mullery, Clark and Hilstrom

The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to real estate; providing a process for requesting mortgage loan
1.3 modifications and for responses by lenders; proposing coding for new law as
1.4 Minnesota Statutes, chapter 584.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[584.01] DEFINITIONS.**

1.7 Subdivision 1. **Scope.** For purposes of this chapter, the terms defined in this section
1.8 have the meanings given.

1.9 Subd. 2. **Affidavit of compliance.** "Affidavit of compliance" means a sworn
1.10 affidavit recorded by the mortgagee with the county recorder or registrar of titles as
1.11 required under section 584.02.

1.12 Subd. 3. **Completed loan modification application.** "Completed loan modification
1.13 application" means all the documents and information reasonably necessary for a
1.14 mortgagee to determine the mortgagor's eligibility for a loan modification program have
1.15 been provided to the mortgagee.

1.16 Subd. 4. **Foreclosure.** "Foreclosure" means foreclosure of a residential mortgage
1.17 loan by advertisement under chapter 580, by action under chapter 581, or by any other
1.18 method permitted by law.

1.19 Subd. 5. **Incomplete loan modification application.** "Incomplete loan modification
1.20 application" means a loan modification application that lacks documents or information
1.21 necessary for a completed loan modification application, or a written submission from or
1.22 on behalf of a mortgagor demonstrating the mortgagor's intent to seek a loan modification.

1.23 Subd. 6. **Loan modification.** "Loan modification" means a permanent alteration to
1.24 the terms and conditions of a residential mortgage loan under a loan modification program.

2.1 Subd. 7. **Loan modification notice.** "Loan modification notice" means the notice
 2.2 required by section 584.04.

2.3 Subd. 8. **Loan modification program.** "Loan modification program" means any
 2.4 federal, state, or local government program that requires the mortgagee to make a loan
 2.5 modification to a residential mortgage loan or any other loan modification program
 2.6 the mortgagee offers voluntarily or offers or is required to offer in compliance with a
 2.7 settlement, court judgment, consent decree, or other resolution of a legal proceeding.

2.8 Subd. 9. **Mortgagee.** "Mortgagee" means a person foreclosing a residential
 2.9 mortgage, and any agent or employee of that person acting in connection with the
 2.10 foreclosure of a residential mortgage, including but not limited to a mortgagee, a mortgage
 2.11 servicer, or the owner of the mortgage loan.

2.12 Subd. 10. **Residential mortgage loan.** "Residential mortgage loan" means a
 2.13 mortgage loan on real property consisting of one to four family dwelling units, one of
 2.14 which the owner occupies as the owner's principal place of residency at the time of default.

2.15 Subd. 11. **Telephone contact attempt.** "Telephone contact attempt" means an
 2.16 attempt by the mortgagee to contact the mortgagor that complies with the requirements
 2.17 of section 584.03, subdivision 4.

2.18 **Sec. 2. [584.02] REQUISITES TO FORECLOSE.**

2.19 Subdivision 1. **Required recording of loan modification affidavit of compliance**
 2.20 **before foreclosure.** No foreclosure shall commence until the mortgagee has complied
 2.21 with this chapter. Before the notice required by section 580.021 is provided to the
 2.22 mortgagor, the mortgagee must record an affidavit of compliance. The affidavit must be
 2.23 accurate and must attach supporting documents that establish that all requirements of
 2.24 this chapter have been met. The affidavit must include the date, time, and name of the
 2.25 representative who made each required telephone contact attempt. Within five days of
 2.26 recording this affidavit, the mortgagee shall mail a copy of the affidavit to the mortgagor.

2.27 Subd. 2. **Form of affidavit of compliance.** To comply with the requirements of this
 2.28 chapter, a mortgagee must record an affidavit of compliance that appears substantially
 2.29 as follows:

2.30 **LOAN MODIFICATION AFFIDAVIT OF COMPLIANCE**

2.31 [Identifying information relating to the case, such as party names, addresses, contact
 2.32 information, etc.]

2.33 The undersigned, being duly sworn, hereby deposes and says:

2.34 1. I am the [job title] of [mortgagee] and am authorized to sign on behalf of
 2.35 [mortgagee].

3.1 2. I am familiar with the business records and procedures of [mortgagee].

3.2 3. I have specific knowledge of the mortgage loan held by the mortgagor and of
3.3 all information sworn to in this affidavit.

3.4 4. [Mortgagee] has the right to proceed with foreclosure and is not required to offer
3.5 a loan modification to mortgagor because (mortgagee MUST list one of the following
3.6 reasons):

3.7 (1) Prior to mortgagor applying for a loan modification, [mortgagee] had reliable
3.8 information that led the [mortgagee] in good faith to conclude that the mortgagor is
3.9 ineligible for a loan modification program and has notified the mortgagor of that; (2)
3.10 mortgagor did not send to [mortgagee] a loan modification application within 60 days
3.11 of the sending of the loan modification notice; (3) mortgagor sent an incomplete loan
3.12 modification application, was notified by [mortgagee] of the deficiencies, and has not
3.13 remedied the missing information by the deadline for a completed loan modification
3.14 application; (4) mortgagor sent a completed loan modification application, but based
3.15 upon reliable information, and in good faith, [mortgagee] has concluded that mortgagor
3.16 is ineligible for a modification and has notified the mortgagor; (5) mortgagor has sent a
3.17 completed loan modification application and has been offered a loan modification, but has
3.18 elected not to accept the modification offer; and (6) [mortgagee] has previously granted a
3.19 mortgage loan modification to mortgagor, and mortgagor is in default on that mortgage
3.20 loan modification agreement, and [mortgagee] has concluded in good faith that mortgagor
3.21 is not eligible for any additional mortgage loan modification.

3.22 5. [Mortgagee] has notified the mortgagor of the reason listed above and complied
3.23 with all notice requirements of this chapter.

3.24 6. Attached are documents which [mortgagee] represents to be accurate and correct
3.25 and which support the reason listed above.

3.26 [Mortgagee must attach supporting documents that establish that all requirements
3.27 of this chapter have been met].

3.28 Signature: [agent of mortgagee]

3.29 Legibly printed name [agent of mortgagee]

3.30 **Sec. 3. [584.03] NOTICE REQUIREMENTS.**

3.31 Subdivision 1. **General.** Notices required by this chapter must comply with the
3.32 requirements of this section.

3.33 Subd. 2. **Form of written notice.** Written notices required by this chapter must
3.34 be in 14-point boldface type. The color and format of the notice must not obscure or
3.35 overshadow the content of the notice. The title of the notice must be in 20-point boldface

4.1 type. The notice must be on its own, separate page and must not be accompanied by any
4.2 other documents or notices other than as specified in this chapter. The envelope or mailing
4.3 package in which the notice is sent must be colored and contain the phrase "LOAN
4.4 MODIFICATION INFORMATION" and "NOTICE REQUIRED BY THE STATE OF
4.5 MINNESOTA" in a minimum of 14-point boldface type, located above the recipient's
4.6 name and address. The written notices required by this chapter shall not contain any bills,
4.7 requests for payment of current or past due amounts, collection notices, or references to
4.8 collection of any kind, unless any such information is necessary for the determination
4.9 of loan modification or is requested by the mortgagor. Any time a written response is
4.10 required by the mortgagor, the mailing must include a return-addressed envelope. Any
4.11 return-addressed envelope required by this chapter must state conspicuously, "Please
4.12 consider sending this letter by a method that provides proof of delivery."

4.13 Subd. 3. **Delivery of written notices.** Notices required by this chapter must be
4.14 sent to the last known address of the mortgagor. Notices must be sent by a method that
4.15 provides proof of delivery. Notices required by this chapter shall also be transmitted
4.16 within one business day in substantially similar form by email to the mortgagor if the
4.17 mortgagee has a valid email address for the mortgagor.

4.18 Subd. 4. **Telephone contact attempt.** A telephone contact attempt by a mortgagee
4.19 under this chapter must meet the following requirements:

4.20 (1) the mortgagee shall use the last known telephone number of the mortgagor;

4.21 (2) no call shall be initiated by the mortgagee between 9:00 p.m. and 8:00 a.m. in
4.22 the mortgagor's time zone;

4.23 (3) all calls must be conducted by a live representative, and the use of automated
4.24 dialers is prohibited; and

4.25 (4) the representative of the mortgagee must be authorized to and reasonably capable
4.26 of discussing available loan modification programs and must encourage the mortgagor to
4.27 take the next applicable steps for loan modification.

4.28 Subd. 5. **Transparency of loan modification formula.** The mortgagee shall publish
4.29 on a Web site any net present value (NPV) formula the mortgagee uses to make any
4.30 determination of eligibility under a loan modification program. Any NPV or similar tests
4.31 and any data inputs used for making the determination of eligibility for a loan modification
4.32 for a mortgagor must be retained by the mortgagee for a period of three years and must be
4.33 provided to the mortgagor within seven days of request by the mortgagor.

4.34 Sec. 4. **[584.04] NOTICES OF LOAN MODIFICATION AVAILABILITY.**

5.1 Subdivision 1. **Notice required.** A mortgagee shall provide to the mortgagor the
5.2 notices required by this section. The mortgagee may record an affidavit of compliance if
5.3 the mortgagor fails to mail to the mortgagee a completed loan modification application
5.4 or an incomplete loan modification application within 60 days of the mortgagee sending
5.5 the notices.

5.6 Subd. 2. **Loan modification notice.** The mortgagee shall send to the mortgagor a
5.7 notice that appears substantially as follows:

5.8 **Loan Modification Notice**

5.9 Date of Notice: (insert date sent)

5.10 Name of Mortgagor(s):

5.11 **Why You are Getting This Notice**

5.12 You may be eligible to prevent foreclosure by receiving a loan modification under
5.13 a loan modification program. If you apply for a loan modification within 60 days from
5.14 the date of this notice, you will have certain rights under Minnesota law to a prompt
5.15 evaluation of your request for a loan modification.

5.16 You may apply for a loan modification by completing the enclosed Loan
5.17 Modification Application and providing all requested information. We have included a
5.18 return-addressed envelope for your convenience. Please consider sending these documents
5.19 by a method that provides proof of delivery to ensure accurate record keeping.

5.20 **Please Read Carefully**

5.21 Please make sure to read this letter carefully so that you can take advantage of your
5.22 potential options for a loan modification. Please make sure all documents mentioned in
5.23 this letter are enclosed or available to you, and contact us immediately if a document is
5.24 missing.

5.25 **Foreclosure Prevention Counselor**

5.26 We strongly encourage you to contact a foreclosure prevention counselor from the
5.27 list below, and have the counselor review and assist you with your loan modification
5.28 application.

5.29 **Contact Information**

5.30 [Mortgagee contact information, including mailing address, toll-free phone number,
5.31 and e-mail address.]

5.32 [Contact information for at least one HUD-certified foreclosure counseling agency
5.33 that serves the county in which the mortgagor lives and contact information for the
5.34 Minnesota Home Ownership Center. Include: name, mailing address, toll-free phone
5.35 number, e-mail address, and Web site.]

6.1 Subd. 3. **Application for loan modification.** The mortgagee shall send with the
 6.2 notice required by subdivision 2 an application form that appears substantially as follows:

6.3 **Application for Loan Modification**

6.4 YOU MAY BE ELIGIBLE FOR A LOAN MODIFICATION TO AVOID FORECLOSURE

6.5 Date of Notice: (insert date sent)

6.6 Name of Mortgagor(s):

6.7 Property Address:

6.8 Please complete this loan application form and attach the documents and information
 6.9 requested from the "required documents list." Return the completed application to the
 6.10 address at the bottom of this form within 60 days of the date of this form.

6.11 For questions or assistance completing this application, please contact [mortgagee
 6.12 representative(s) who can provide assistance] at [telephone number of representative(s)] or
 6.13 [e-mail address of representative(s)] immediately; OR [loan counselor(s) who can provide
 6.14 assistance] at [telephone number of counselor(s)] or [e-mail address of counselor(s)].

6.15 Required Documents List. The following documents must be sent to us in order for
 6.16 us to process your loan modification application.

6.17 [All documents required by the applicable Loan Modification Program, listed
 6.18 separately and numbered, with attached documents listed first.]

6.19 Attached Documents List. To make your application as easy as possible, we have
 6.20 included some of the documents you need to complete in order to apply for a modification.
 6.21 These documents are listed below. Remember that they must be sent with all materials
 6.22 listed in the Required Documents List. Please verify that every document listed below is
 6.23 included:

6.24 [All documents required by the applicable loan modification program which can be
 6.25 provided by the mortgagee must be attached, listed separately, and numbered.]

6.26 If any of these documents is not included in this packet, please contact [mortgagee
 6.27 representative(s) who can forward the missing information] at [telephone number of
 6.28 representative(s)] or [e-mail address of representative(s)] immediately.

6.29 PLEASE MAKE A COPY OF ALL ENCLOSED FORMS AND DOCUMENTS
 6.30 FOR YOUR RECORDS.

6.31 For accurate record keeping, we strongly encourage you to send this completed form
 6.32 and all requested documents with return receipt requested or by other method with proof
 6.33 of delivery to the address below:

6.34 [mortgagee's mailing address]

6.35 Thank you. [Mortgagee] will contact you within 30 days of receipt to inform you of
 6.36 the status of your loan modification application.

7.1 Subd. 4. **Required attached documents.** The mortgagee shall enclose any
 7.2 documents required for a completed loan modification application which can be provided
 7.3 by the mortgagee.

7.4 Subd. 5. **Telephone contact attempt required.** The mortgagee is required to make
 7.5 six telephone contact attempts to inform the mortgagor of possible eligibility for a loan
 7.6 modification program within 50 days after the date the loan modification notice is sent. If
 7.7 the mortgagee speaks with the mortgagor or someone authorized to speak on behalf of the
 7.8 mortgagor, no further contact attempts are required under this subdivision.

7.9 Subd. 6. **Deadline notice.** If the mortgagee has not received a completed loan
 7.10 modification application or incomplete loan modification application 50 days after the date
 7.11 the loan modification notice is sent, the mortgagor shall within five days do the following:
 7.12 (1) make one telephone contact attempt to inform the mortgagor of the approaching
 7.13 deadline and communicate to the mortgagor the documents necessary to submit a loan
 7.14 modification application; and (2) if mortgagee has an email address for the mortgagor,
 7.15 send an e-mail to the mortgagor stating the approaching deadline.

7.16 Sec. 5. **[584.05] NOTICE OF INCOMPLETE LOAN MODIFICATION**
 7.17 **APPLICATION.**

7.18 Subdivision 1. **Receipt of incomplete loan modification application.** If the
 7.19 mortgagor mails an incomplete loan modification application within 60 days of the
 7.20 date the loan modification notice is sent by the mortgagee, the mortgagee must send to
 7.21 the mortgagor the notice required by subdivision 2 within ten days of the receipt of the
 7.22 incomplete loan application. The mortgagee may record an affidavit of compliance if the
 7.23 mortgagor has not mailed to the mortgagee a completed loan application within 30 days
 7.24 after the date of mailing of the notice required by subdivision 2, but not less than 60 days
 7.25 after the date the loan modification notice is sent by the mortgagee.

7.26 Subd. 2. **Incomplete loan modification application notice.** If an incomplete loan
 7.27 modification application has been received by the mortgagee, the mortgagee must send a
 7.28 notice to the mortgagor that appears substantially as follows:

7.29 NOTICE OF INCOMPLETE LOAN MODIFICATION APPLICATION

7.30 Date of Notice: (insert date sent)

7.31 Name of Mortgagor(s):

7.32 You recently submitted an application for a loan modification. Unfortunately, it was
 7.33 not complete. We require more information to evaluate your eligibility for a modification.

7.34 PLEASE SUBMIT THE FOLLOWING DOCUMENTS AS SOON AS POSSIBLE:

8.1 [numbered list of all missing or incomplete documents, described in plain language.
8.2 For each incomplete document, the mortgagee must describe in plain language the
8.3 information that is missing.]

8.4 PLEASE NOTE: We must receive this information within 30 days of the date of
8.5 this notice for you to protect certain rights under Minnesota law to a prompt evaluation
8.6 of your request for a loan modification.

8.7 Subd. 3. **Inclusions with incomplete loan modification application.** The
8.8 second page of this notice must be a glossary describing the nature of any missing or
8.9 incomplete documents and in plain language where the documents are available and how
8.10 to submit them. If the mortgagor has partially completed a form from section 584.04, any
8.11 information from that form must be included on the copy sent to the mortgagor pursuant
8.12 to this section, with the locations of the missing information conspicuously marked.

8.13 Subd. 4. **Telephone contact attempts.** The mortgagee must make three telephone
8.14 contact attempts to inform the mortgagor of any deficiencies necessary to make a
8.15 completed loan modification application. The first telephone contact attempt must be
8.16 made within ten days of receipt of the incomplete loan modification application, and all
8.17 three attempts must be completed within 15 days of the first attempt.

8.18 Sec. 6. **[584.06] NOTICE OF DETERMINATION.**

8.19 Subdivision 1. **Determination required.** The mortgagee must determine eligibility
8.20 for each loan modification program for which the mortgagor may be eligible and issue a
8.21 notice of determination as specified under this section within 30 days of the receipt of a
8.22 completed loan modification application. The mortgagee shall comply with all guidelines
8.23 and requirements of each loan modification program in connection with this determination.

8.24 Subd. 2. **Loan modification offer.** If the mortgagee determines that the mortgagor
8.25 is eligible for a loan modification program, the mortgagee shall state the following in
8.26 plain language in a written notice of the loan modification offer or offers for each loan
8.27 modification program for which the mortgagor is eligible: a description of the terms of the
8.28 modified loan offer; an explanation of any required timeline to respond to the offer; that the
8.29 mortgagee is permitted to initiate foreclosure proceedings upon failure of the mortgagor to
8.30 accept the offer; instructions regarding how the mortgagor should respond to the offer; and
8.31 accurate contact information for how the mortgagor should respond to the offer.

8.32 Subd. 3. **Refusal to offer loan modification.** If the mortgagee determines that the
8.33 mortgagor is not eligible for any loan modification program, the mortgagee shall state the
8.34 following in plain language in a written notice: the timeline and procedures, if applicable,
8.35 for how the mortgagor may request review of the determination; that failure to do so will

9.1 free the mortgagee to initiate foreclosure proceedings; and the toll-free telephone number,
 9.2 address, e-mail address, and other contact information that will provide access during
 9.3 regular business hours to a live representative authorized to discuss the determination
 9.4 on behalf of the mortgagee. The timeline for the mortgagor to request a review of the
 9.5 determination must be at least 30 days after the date of mailing of the written notice of
 9.6 ineligibility and must be stated prominently in the written notice of ineligibility. The
 9.7 written notice of ineligibility must be accompanied by a form for the mortgagee to use in
 9.8 appealing the determination of ineligibility. The mortgagee may record an affidavit of
 9.9 compliance after making a determination in good faith that the mortgagor is ineligible for
 9.10 a loan modification, but the mortgagee shall not record an affidavit of compliance until at
 9.11 least 35 days after mailing the notice of ineligibility.

9.12 Subd. 4. **General inclusions.** Any notice described in this section must contain
 9.13 a detailed, clear description of any and all net present value (NPV) calculations used in
 9.14 making the determination, instructions explaining how to access the published NPV
 9.15 calculations contained on the mortgagee's Web site as required under section 584.03,
 9.16 subdivision 5, and a plain language statement that if the mortgagor believes there is an
 9.17 error in any element of the determination that the mortgagor has the right to contact an
 9.18 attorney or loan counselor for assistance. This mailing must include any and all data
 9.19 inputs used in the NPV calculations, which must be on a separate piece of paper.

9.20 Sec. 7. **[584.07] NOTICE FOR INELIGIBLE HOMEOWNER.**

9.21 The mortgagee may record an affidavit of compliance if, prior to sending the loan
 9.22 modification notices, the mortgagee has reliable information that leads the mortgagee in
 9.23 good faith to conclude that the mortgagor is ineligible for any applicable loan modification
 9.24 program. Ten days prior to recording the affidavit of compliance, the mortgagee must
 9.25 send a written communication to the ineligible mortgagor. This written communication
 9.26 must contain a plain language statement explaining why the mortgagor is ineligible,
 9.27 and a toll-free telephone number, address, and e-mail address of a representative of the
 9.28 mortgagee that the mortgagor may contact to dispute any finding of ineligibility. The
 9.29 plain language statement must state that the mortgagor may contact a loan counselor or
 9.30 foreclosure prevention counselor for advice.

9.31 Sec. 8. **[584.08] ENFORCEMENT; REMEDIES.**

9.32 Subdivision 1. **Private right of action.** A mortgagee who fails to comply with any
 9.33 provision of this chapter is liable to a mortgagor for actual, incidental, and consequential

10.1 damages in a private right of action and for any or all other remedies specified in this
10.2 section.

10.3 Subd. 2. **Statutory damages.** (a) A mortgagee who violates any provision of this
10.4 chapter is liable to the mortgagor for up to \$2,000 for each violation.

10.5 (b) De minimus violations are not subject to the statutory damages available under
10.6 this subdivision.

10.7 Subd. 3. **Punitive damages.** (a) A mortgagor is entitled to punitive damages under
10.8 paragraphs (b) and (c) and section 549.20.

10.9 (b) The court may award punitive damages if the mortgagee has failed to issue
10.10 a notice of determination within 30 days of the mortgagee's receipt of a completed
10.11 loan modification application. There is a rebuttable presumption that all required
10.12 documentation has been provided to the mortgagee for purposes of a completed loan
10.13 modification application if the mortgagor can provide:

10.14 (1) copies of all such required documents to the court; and either

10.15 (2) proof of mortgagee's receipt of a completed loan modification application; or

10.16 (3) a sworn affidavit by a HUD-approved counseling agency or substantially similar
10.17 third party that those documents were sent to the mortgagee.

10.18 (c) The court may award punitive damages to the mortgagor if the mortgagee did not
10.19 in good faith attempt to comply with the standards, duties, prohibitions, or requirements of
10.20 this chapter. Factors the court must consider in determining a lack of good faith include,
10.21 but are not limited to:

10.22 (1) the frequency, nature, and persistence of noncompliance;

10.23 (2) a pattern of violations;

10.24 (3) the extent to which the violation was reckless or intentional; or

10.25 (4) a violation that results in, or substantially contributes to, the mortgagor's loss
10.26 of home.

10.27 Subd. 4. **Injunctive relief.** The court may issue an injunction to prevent violations
10.28 of this chapter and to enjoin foreclosure in violation of this chapter.

10.29 Subd. 5. **Reimbursement for litigation costs.** A prevailing plaintiff shall recover
10.30 costs and disbursements of the action, plus reasonable attorney fees.

10.31 Subd. 6. **Remedies cumulative.** The remedies provided in this section are
10.32 cumulative and do not restrict any remedy that is otherwise available.

10.33 Subd. 7. **Public enforcement.** (a) The attorney general may enforce this chapter
10.34 under section 8.31.

10.35 (b) The commissioner of commerce may enforce this chapter under chapter 45.

11.1 Sec. 9. **[584.09] APPLICABILITY TO PRIORITY OF LOANS.**

11.2 A loan modification, as defined in section 584.01, does not affect the priority of the
11.3 lien of the mortgage that secures the loan.

11.4 Sec. 10. **EFFECTIVE DATE; APPLICABILITY.**

11.5 Sections 1 to 9 are effective 60 days after enactment, and apply to foreclosures of
11.6 residential mortgages commenced on or after that date.