

A bill for an act

relating to mortgages; amending notice requirements during foreclosure; providing for certain costs and disbursements; amending Minnesota Statutes 2008, sections 580.03; 580.041, as amended; 580.06; 580.30, subdivision 1; 582.03, subdivision 1; 582.032, by adding a subdivision; Minnesota Statutes 2009 Supplement, section 580.04.

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

Section 1. Minnesota Statutes 2008, section 580.03, is amended to read:

580.03 NOTICE OF SALE; SERVICE ON OCCUPANT.

Six weeks' published notice shall be given that such mortgage will be foreclosed by sale of the mortgaged premises or some part thereof, and at least four weeks before the appointed time of sale a copy of such notice shall be served in like manner as a summons in a civil action in the district court upon the person in possession of the mortgaged premises, if the same are actually occupied. If there be a building on such premises used by a church or religious corporation, for its usual meetings, service upon any officer or trustee of such corporation shall be a sufficient service upon it. The ~~notice~~ notices required by sections 580.041 and 580.042 must be served simultaneously with the notice of foreclosure required by this section.

Sec. 2. Minnesota Statutes 2009 Supplement, section 580.04, is amended to read:

580.04 REQUISITES OF NOTICE.

(a) Each notice shall specify or contain:

(1) the name of the mortgagor, the mortgagee, each assignee of the mortgage, if any, and the original or maximum principal amount secured by the mortgage;

(2) the date of the mortgage, and when and where recorded, except where the mortgage is upon registered land, in which case the notice shall state that fact, and when and where registered;

(3) the amount claimed to be due on the mortgage on the date of the notice;

(4) a description of the mortgaged premises, conforming substantially to that contained in the mortgage, and the commonly used street address of the mortgaged premises;

(5) the time and place of sale;

(6) the time allowed by law for redemption by the mortgagor, the mortgagor's personal representatives or assigns; ~~and~~

(7) the name, address, and telephone number of a current representative of the mortgagee or an assignee of the mortgage who has the authority to negotiate a resolution of the foreclosure and respond to property maintenance concerns of the city or town in which the premises is located; and

(8) for mortgaged premises described in section 582.032, subdivision 1, the following statement in capital letters: "THE TIME ALLOWED BY LAW FOR REDEMPTION BY THE MORTGAGOR, THE MORTGAGOR'S PERSONAL REPRESENTATIVES OR ASSIGNS, MAY BE REDUCED TO FIVE WEEKS IF A JUDICIAL ORDER IS ENTERED UNDER MINNESOTA STATUTES, SECTION 582.032, DETERMINING, AMONG OTHER THINGS, THAT THE MORTGAGED PREMISES ARE IMPROVED WITH A RESIDENTIAL DWELLING OF LESS THAN FIVE UNITS, ARE NOT PROPERTY USED IN AGRICULTURAL PRODUCTION, AND ARE ABANDONED."

(b) If the real estate is an owner-occupied, single-family dwelling, the notice must also specify the date on or before which the mortgagor must vacate the property if the mortgage is not reinstated under section 580.30 or the property redeemed under section 580.23. The notice must state that the time to vacate the property is 11:59 p.m. on the specified date.

Sec. 3. Minnesota Statutes 2008, section 580.041, as amended by Laws 2009, chapter 123, section 7, and Laws 2009, chapter 130, section 7, is amended to read:

580.041 FORECLOSURE ADVICE AND REDEMPTION RIGHTS NOTICE TO OWNERS.

Subd. 1a. **Applicability.** This section applies to foreclosure of mortgages by advertisement under this chapter and foreclosure of mortgages by action under chapter 581 on property consisting of one to four family dwelling units, one of which the owner

occupies as the owner's principal place of residency when the notice of pendency under section 580.032 or the lis pendens for a foreclosure under chapter 581 is recorded.

Subd. 1b. **Form and delivery of foreclosure advice notice.** The foreclosure advice notice required by this section must be in 14-point boldface type and must be printed on colored paper that is other than the color of the notice of foreclosure required by sections 580.03 and 580.04 and the notice of redemption rights required by this section, and that does not obscure or overshadow the content of the notice. The title of the notice must be in 20-point boldface type. The notice must be on its own page. The foreclosure advice notice required by this section must be delivered with the notice of foreclosure required by sections 580.03 and 580.04. The foreclosure advice notice required by this section also must be delivered with each subsequent written communication regarding the foreclosure mailed to the mortgagor by the foreclosing party up to the day of redemption. A foreclosing mortgagee will be deemed to have complied with this section if it sends the foreclosure advice notice required by this section at least once every 60 days during the period of the foreclosure process. The foreclosure advice notice required by this section must not be published.

Subd. 1c. **Form and delivery of notice of redemption rights.** The notice of redemption rights required by this section must be in 14-point boldface type and must be printed on colored paper that is other than the color of the notice of foreclosure required by sections 580.03 and 580.04 and the foreclosure advice notice required by this section, and that does not obscure or overshadow the content of the notice. The title of the notice must be in 20-point boldface type. The notice must be on its own page. The notice of redemption rights must be delivered with the notice of foreclosure required by sections 580.03 and 580.04. The notice of redemption rights required by this section must not be published.

Subd. 2. **Content of foreclosure advice notice.** The foreclosure advice notice required by this section must appear substantially as follows:

"Help For Homeowners in Foreclosure

The attorney preparing this foreclosure is: _____
(Attorney name, address, phone)

It is being prepared for:

(Lender name, loss mitigation phone number)

AS OF [insert date], this lender says that you owe \$[insert dollar amount] to bring your mortgage up to date (or "reinstate" your mortgage). You must pay this amount, plus interest and other costs, to keep your house from going through a sheriff's sale.

The sheriff's sale is scheduled for [insert date] at [insert time] at [insert place].

Mortgage foreclosure is a complex process. People may contact you with advice and offers to help "save" your home.

Remember: It is important that you learn as much as you can about foreclosure and your situation. Find out about all your options before you make any agreements with anyone about the foreclosure of your home.

Getting Help

As soon as possible, you should contact your lender at the above number to talk about things you might be able to do to prevent foreclosure. You should also consider contacting the foreclosure prevention counselor in your area. A foreclosure prevention counselor can answer your questions, offer free advice, and help you create a plan which makes sense for your situation.

Contact the Minnesota Home Ownership Center at 651-659-9336 or 866-462-6466 or www.hocmn.org to get the phone number and location of the nearest counseling organization. Call today. The longer you wait, the fewer options you may have for a desirable result.

~~Information About the Foreclosure Process~~

~~You do not need to move at the time of the sheriff's sale. After the sheriff's sale you have the right to "redeem." Redeem means that you pay off the entire loan amount plus fees to keep your house. You can keep living in your home for a period of time. This is called a "redemption period." The redemption period is [insert number of months] months after the sheriff's sale. This redemption period is your chance to try and sell your home or refinance it with a different loan. You can also pay the redemption amount with any other funds you have available. At the end of the redemption period you will have to leave your home. If you do not, the person or company that bid on your home at the sheriff's sale has the right to file an eviction against you in district court."~~

Subd. 2a. **Content of notice of redemption rights.** The notice of redemption rights required by this section must appear substantially as follows:

"What Happens After the Foreclosure Sale

After the sheriff's sale, you have the right to "redeem." Redeem means that you pay the amount bid for your house at the sheriff's sale plus interest and costs to keep your house. You can keep living in your home for a period of time after the foreclosure sale. This is called a "redemption period." The redemption period is [insert number of months] months after the sheriff's sale.

At the end of the redemption period, if you do not redeem or sell, you will have to leave your home. If you do not leave, the person or company that bid on your home at the sheriff's sale has the right to file an eviction against you in court.

Be Careful of Foreclosure Scams

Be careful! After the foreclosure sale, people may approach you to buy your house or offer to transfer your house to them for little or no money.

Before you give up the rights to your house or sign any documents (including a deed), be sure you know how much the house sold for at the sheriff's sale and decide if you can save it by paying the amount of the bid, plus interest and costs.

How to Find Out How Much Your House Sold For at the Foreclosure Sale

The amount you need to pay to redeem your house may be less than the amount you owed on your mortgage before the sale (although it could also be more). You can learn what this amount is (and who the winning bidder at the sale was) by attending the sheriff's sale or by contacting the sheriff's office after the sale.

You Can Also Sell Your House

During the redemption period, if you sell your home, you must sell it for enough to pay off the winning bidder from the sheriff's sale AND pay any recorded liens, fines, or fees that have accumulated. (A lien is a legal claim that someone has put on your property because you owe that person money. A recorded lien means that it has been filed with the county as a public document.) If there is any money left from the sale of the house after all these debts are paid, you can keep the money. You can also enter into a "short sale" where the lender agrees to accept less than the full amount you owe on the mortgage.

Get More Information and Advice

For more information and advice, contact an attorney or a mortgage foreclosure prevention counselor. You can find a mortgage foreclosure prevention counselor by contacting the Minnesota Home Ownership Center at 651-659-9336 or 866-462-6466 or www.hocmn.org to get the phone number and location of the nearest counseling organization."

Subd. 3. **Affidavit.** Any person may establish compliance with or inapplicability of this section by recording, with the county recorder or registrar of titles, an affidavit by a person having knowledge of the facts, stating that the notice required by this section has been delivered in compliance with this section or that this section is not applicable because the property described in the notice of foreclosure did not consist of one to four family dwelling units, one of which was occupied by the owner as the owner's principal place of residency. The affidavit and a certified copy of a recorded affidavit shall be prima facie evidence of the facts stated in the affidavit. The affidavit may be recorded regarding

any foreclosure sale, including foreclosure sales which occurred prior to August 1, 2005, and may be recorded separately or as part of the record of a foreclosure.

Subd. 4. **Validation of foreclosure sales.** No mortgage foreclosure sale under this chapter shall be invalid because of failure to comply with this section unless an action to invalidate the sale is commenced and a notice of lis pendens is filed with the county recorder or registrar of titles within one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives, or assigns. This subdivision shall not affect any action or proceeding pending on August 1, 2005, or which is commenced before February 1, 2006, in any court of this state, provided a notice of lis pendens of the action is filed with the county recorder or registrar of titles before February 1, 2006.

Sec. 4. Minnesota Statutes 2008, section 580.06, is amended to read:

580.06 SALE, HOW AND BY WHOM MADE; NOTICE TO MORTGAGOR.

Subdivision 1. Requirements for sale. The sale shall be made by the sheriff or the sheriff's deputy at public venue to the highest bidder, in the county in which the premises to be sold, or some part thereof, are situated, between 9:00 a.m. and 4:00 p.m.

Subd. 2. Notice of results of sale required; contents. (a) Except as provided in paragraph (c), a person attempting to acquire fee title to the mortgagor's property from the mortgagor following the sheriff's sale and prior to the end of the redemption period, must provide to the mortgagor, by personal delivery three days prior to entering into an agreement to acquire title, notice of the results of the foreclosure as provided under paragraph (b).

(b) The notice required under paragraph (a) must contain the following information:

(1) the date the sale occurred;

(2) the identity of the purchaser and any assignees of the purchaser;

(3) the sheriff's sale price; and

(4) the following statement: "There are very important things you need to know now that your house has been auctioned at the sheriff's sale:

(i) you have (insert the number of months) to "redeem," which means to pay the winning bidder the sale price listed above (plus interest and costs) and keep your house;

(ii) whether you can pay off the amount or not, YOU DO NOT HAVE TO MOVE RIGHT AWAY. YOU CAN KEEP LIVING IN YOUR HOME until the end of this redemption period;

(iii) read all notices and documents related to the foreclosure of your home carefully!! THE AMOUNT YOU NEED TO PAY THE WINNING BIDDER TO

REDEEM YOUR HOUSE (THE SHERIFF'S SALE PRICE LISTED ABOVE PLUS INTEREST AND COSTS) MAY BE LESS THAN THE AMOUNT YOU OWED ON YOUR MORTGAGE BEFORE THE SHERIFF'S SALE; and

(iv) you can also try to sell your home during this "redemption period." You must sell it for enough to pay off the winning bidder from the sheriff's sale and pay any recorded liens, fines, or fees that have built up. A lien is a legal claim that someone has put on your property because you owe them money. A recorded lien means that it has been filed with the county as a public document. For example, if you owe on a second mortgage or to a contractor, there could be a recorded lien against the property. You can also enter into a "short sale" where the lender accepts less than the full amount you owe on the mortgage.

If there is any money left from the sale of the house after all these debts are paid, you can keep the money.

For more information and advice, contact an attorney or a mortgage foreclosure prevention counselor. You can find a mortgage foreclosure prevention counselor in your county by calling the Minnesota Home Ownership Center at 651-659-9336 or 866-462-6466 or www.hocmn.org.

(c) This subdivision does not apply to:

(1) a seller or buyer who has entered into a signed agency agreement, facilitator agreement, or other written agreement to buy or sell the mortgagor's property with a person licensed under chapter 82;

(2) a buyer who offers to buy the mortgagor's property for a purchase price that meets or exceeds the amount required to be paid by the mortgagor to redeem the property;

(3) a foreclosing lender acquiring the mortgagor's property by a deed in lieu of foreclosure;

(4) a nonprofit lender holding a certificate of exemption from the Department of Commerce;

(5) the state or a local unit of government or an agent of the state or a local unit of government; or

(6) a natural person who shows by affidavit that the natural person is not in the business of acquiring fee title to mortgaged property following the sheriff's sale and has a prior personal relationship with the foreclosed homeowner. An affidavit recorded in the real estate records to that effect is prima facie evidence that the person is not in the business of acquiring fee title to mortgaged property following the sheriff's sale and has a prior personal relationship with the foreclosed homeowner.

Subd. 3. **Private right of action.** (a) Any person who violates subdivision 2 is liable to the mortgagor for the sum of:

8.1 (1) actual, incidental, and consequential damages;

8.2 (2) \$1,000 statutory damages; and

8.3 (3) costs, disbursements, and reasonable attorney fees.

8.4 (b) It shall be a rebuttable presumption that a person has complied with subdivision
8.5 2 if the person has recorded with the county recorder or registrar of titles an affidavit by a
8.6 person having knowledge of the facts, stating that the mortgagor received the notice
8.7 required under subdivision 2. The affidavit and a certified copy of a recorded affidavit
8.8 shall be prima facie evidence of the facts stated in the affidavit.

8.9 Sec. 5. Minnesota Statutes 2008, section 580.30, subdivision 1, is amended to read:

8.10 Subdivision 1. **Reinstatement.** In any proceedings for the foreclosure of a real
8.11 estate mortgage, whether by action or by advertisement, if at any time before the sale
8.12 of the premises under such foreclosure the mortgagor, the owner, or any holder of any
8.13 subsequent encumbrance or lien, or any one for them, shall pay or cause to be paid to the
8.14 holder of the mortgage so being foreclosed, or to the attorney foreclosing the same, or
8.15 to the sheriff of the county, the amount actually due thereon and constituting the default
8.16 actually existing in the conditions of the mortgage at the time of the commencement of the
8.17 foreclosure proceedings, including insurance, delinquent taxes, if any, upon the premises,
8.18 interest to date of payment, cost of publication and services of process or notices,
8.19 attorney's fees not exceeding \$150 or one-half of the attorney's fees authorized by section
8.20 582.01, whichever is greater, any costs incurred when an order to reduce a mortgagor's
8.21 redemption period under section 582.032 is entered, including costs and disbursements
8.22 awarded under section 582.032, subdivision 9, together with other lawful disbursements
8.23 necessarily incurred in connection with the proceedings by the party foreclosing, then,
8.24 and in that event, the mortgage shall be fully reinstated and further proceedings in such
8.25 foreclosure shall be thereupon abandoned.

8.26 Sec. 6. Minnesota Statutes 2008, section 582.03, subdivision 1, is amended to read:

8.27 Subdivision 1. **Allowable costs collectable upon redemption.** The holder of any
8.28 sheriff's certificate of sale, from a foreclosure by advertisement or action of a mortgage
8.29 or lien or execution, or the holder of any certificate of redemption as a junior creditor
8.30 during the period of redemption, may pay and claim the following on redemption: any
8.31 taxes or assessments on which any penalty would otherwise accrue, and any costs of
8.32 a hazard insurance policy for the holder's interest in the mortgaged premises incurred
8.33 for the period of holding the sheriff's certificate, any costs incurred when an order to
8.34 reduce a mortgagor's redemption period under section 582.032 is entered, including costs

9.1 and disbursements awarded under section 582.032, subdivision 9, any fees paid to the
9.2 county recorder, registrar of titles, or sheriff to obtain or record the certificates of sale or
9.3 redemption or notices of intention to redeem, any reasonable fees paid to licensed real
9.4 estate brokers for broker price opinions or to licensed appraisers for appraisals, any deed
9.5 tax paid to file a certificate of redemption, reasonable attorney fees incurred after the
9.6 foreclosure sale not to exceed one-half of the amount authorized by section 582.01, any
9.7 costs incurred under section 582.031, and any interest or installment of principal upon
9.8 any prior or superior mortgage, lien, or contract for deed in default or that becomes due
9.9 during the period of redemption. In all such cases, the costs so paid and claimed due, with
9.10 interest, shall be a part of the sum required to be paid to redeem from such sale. No other
9.11 costs, fees, interest, or other amount may be added to the amount necessary to redeem.

9.12 Sec. 7. Minnesota Statutes 2008, section 582.032, is amended by adding a subdivision
9.13 to read:

9.14 Subd. 9. **Costs.** Upon motion of a political subdivision that initiated a proceeding
9.15 under subdivision 4 or intervened under subdivision 5, if an order is entered to reduce
9.16 the redemption period to five weeks, the court shall award costs and disbursements to
9.17 the political subdivision. The party foreclosing the mortgage or holding the sheriff's
9.18 certificate of sale is liable for an award under this subdivision but may recover these
9.19 amounts upon reinstatement or redemption as provided in section 580.30, subdivision 1,
9.20 or 582.03, subdivision 1.

9.21 Sec. 8. **EXPIRATION.**

9.22 Section 5 expires December 31, 2012.