

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1276

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DATE	D-PG	OFFICIAL STATUS
03/11/2013	776	Introduction and first reading Referred to Commerce
03/14/2013	1019a	Comm report: To pass as amended and re-refer to Judiciary
03/20/2013		Comm report: To pass as amended Second reading

A bill for an act

relating to real estate; requiring loss mitigation by mortgage lenders and servicers;
amending Minnesota Statutes 2012, sections 580.02; 580.041, subdivisions 1b,
1c, 2a; proposing coding for new law in Minnesota Statutes, chapter 580.

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

Section 1. Minnesota Statutes 2012, section 580.02, is amended to read:

580.02 REQUISITES FOR FORECLOSURE.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Foreclosing party" means any entity that is foreclosing a residential mortgage in any manner permitted by law.

(c) "Loss mitigation obligations" means each and every required action to be taken by a residential mortgage servicer, lender, mortgagee, note owner, note holder, or any other person or entity in connection with a residential mortgage loan to review and consider the homeowner for a loan modification or other relief which will allow the homeowner to retain ownership of the property.

(d) "Required action" means an action required under:

(1) any applicable statute or rule;

(2) any regulation, guidance, directive, or other publication issued by a federal agency or government-sponsored enterprise; or

(3) any consent, settlement, or other legal agreement.

Subd. 2. **Generally applicable requisites.** To entitle any foreclosing party to make such a foreclosure described in section 580.01, it is requisite:

2.1 (1) that some default in a condition of such mortgage has occurred, by which the
2.2 power to sell has become operative;

2.3 (2) that no action or proceeding has been instituted at law to recover the debt then
2.4 remaining secured by such mortgage, or any part thereof, or, if the action or proceeding
2.5 has been instituted, that the same has been discontinued, or that an execution upon the
2.6 judgment rendered therein has been returned unsatisfied, in whole or in part;

2.7 (3) that the mortgage has been recorded and, if it has been assigned, that all
2.8 assignments thereof have been recorded; provided, that, if the mortgage is upon registered
2.9 land, it shall be sufficient if the mortgage and all assignments thereof have been duly
2.10 registered; and

2.11 (4) before the notice of pendency as required under section 580.032 is recorded, the
2.12 party has complied with section 580.021.

2.13 Subd. 3. **Requisites applicable to certain foreclosing parties.** No foreclosing
2.14 party may publish or serve a notice of sale under section 580.03 until all loss mitigation
2.15 obligations relevant to the mortgage loan being foreclosed have been fully satisfied.

2.16 Sec. 2. Minnesota Statutes 2012, section 580.041, subdivision 1b, is amended to read:

2.17 Subd. 1b. **Form and delivery of foreclosure advice notice.** The foreclosure advice
2.18 notice required by this section must be in 14-point boldface type and must be printed on
2.19 colored paper that is other than the color of the notice of foreclosure required by sections
2.20 580.03 and 580.04 and the notice of redemption rights required by this section, and that
2.21 does not obscure or overshadow the content of the notice. The title of the notice must
2.22 be in 20-point boldface type. The notice must be on its own page. The foreclosure
2.23 advice notice required by this section must be delivered with the notice of foreclosure
2.24 required by sections 580.03 and 580.04. The foreclosure advice notice required by this
2.25 section also must be delivered with each subsequent written communication regarding the
2.26 foreclosure mailed to the mortgagor by the foreclosing party up to the day of redemption.
2.27 ~~A foreclosing mortgagee will be deemed to have complied with this section if it sends~~
2.28 ~~the foreclosure advice notice required by this section at least once every 60 days during~~
2.29 ~~the period of the foreclosure process~~ the foreclosure sale. The foreclosure advice notice
2.30 required by this section must not be published.

2.31 Sec. 3. Minnesota Statutes 2012, section 580.041, subdivision 1c, is amended to read:

2.32 Subd. 1c. **Form and delivery of notice of redemption rights.** The notice of
2.33 redemption rights required by this section must be in 14-point boldface type and must be
2.34 printed on colored paper that is other than the color of the notice of foreclosure required by

3.1 sections 580.03 and 580.04 and the foreclosure advice notice required by this section, and
3.2 that does not obscure or overshadow the content of the notice. The title of the notice must
3.3 be in 20-point boldface type. The notice must be on its own page. The notice of redemption
3.4 rights must be delivered with the notice of foreclosure required by sections 580.03 and
3.5 580.04 and with each subsequent written communication regarding the foreclosure mailed
3.6 to the mortgagor by the foreclosing party up to the day the redemption period expires. The
3.7 notice of redemption rights required by this section must not be published.

3.8 Sec. 4. Minnesota Statutes 2012, section 580.041, subdivision 2a, is amended to read:

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

3.11 **"What Happens After the Foreclosure Sale**

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

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

3.20 **Be Careful of Foreclosure Scams**

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

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

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

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

3.31 **You Can Also Sell Your House**

3.32 During the redemption period, if you sell your home, you must sell it for enough
3.33 to pay off the winning bidder from the sheriff's sale and pay interest, fees, and other
3.34 claims against the property. If there is any money left from the sale of the house after all
3.35 these debts are paid, you can keep the money. You can also enter into a "short sale." A

4.1 short sale is an agreement in which the lender agrees to accept less than the full amount
4.2 you owe on the mortgage.

4.3 **Get More Information and Advice**

4.4 For more information and advice, contact an attorney or a mortgage
4.5 foreclosure prevention counselor. You can find a mortgage foreclosure
4.6 prevention counselor by contacting the Minnesota Home Ownership Center
4.7 at 651-659-9336 or 866-462-6466 or www.hocmn.org or contact the United
4.8 States Department of Housing and Urban Development at 1-800-569-4287 or
4.9 www.hud.gov/offices/hsg/sfh/hcc/hes.cfm?webListAction=search=MN#searchArea
4.10 www.hud.gov to get the phone number and location of the nearest certified counseling
4.11 organization."

4.12 **Sec. 5. [580.043] MORTGAGE FORECLOSURE DUAL TRACKING**
4.13 **PROHIBITED.**

4.14 Subdivision 1. Definitions. (a) For purposes of this section, the terms defined in
4.15 this section have the meaning given them.

4.16 (b) "Borrower" means the person that is liable on the promissory note secured by the
4.17 mortgage, except that borrower does not include:

4.18 (1) a person who has surrendered the mortgaged property, as evidenced by either a
4.19 letter or other written notice confirming the surrender or by delivery of the keys to the
4.20 property to the servicer or authorized agent; or

4.21 (2) a person who has filed a bankruptcy case under United States Code, title 11,
4.22 chapters 7, 11, 12, or 13, if the bankruptcy court has not entered an order closing or
4.23 dismissing the bankruptcy case or granting relief from a stay of foreclosure.

4.24 (c) "Complete loan modification request" means an application in connection with
4.25 which a servicer has received all the information that the servicer requires from a borrower
4.26 in evaluating applications for the loan modification options available to the borrower.
4.27 A servicer shall exercise reasonable diligence in obtaining documents and information
4.28 to complete a loan modification request.

4.29 (d) "Dual tracking" means a servicer beginning or continuing a mortgage foreclosure
4.30 under this chapter after the servicer has received a request by the borrower for a loan
4.31 modification, and has not accepted or rejected that request.

4.32 (e) "Loan modification request" means a written request from a borrower to the
4.33 borrower's servicer for a modification of the borrower's mortgage loan in order to prevent
4.34 an anticipated foreclosure or to suspend or terminate a foreclosure that is pending.

5.1 (f) "Servicer" means an entity that is responsible for interacting with the borrower,
5.2 including managing the loan account on a daily basis, such as collecting and crediting
5.3 periodic loan payments, managing an escrow account, or enforcing the promissory note
5.4 and mortgage, either as the current owner of the promissory note or as the current owner's
5.5 authorized agent.

5.6 (g) "Small servicer" means a servicer that either services 5,000 or fewer mortgage
5.7 loans in a calendar year, for all of which the servicer or an affiliate is the creditor or
5.8 assignee; or is a Housing Finance Agency, as defined in Code of Federal Regulations, title
5.9 24, section 266.5.

5.10 Subd. 2. **Applicability.** This section applies to mortgage foreclosures on the basis
5.11 specified in section 580.041, subdivision 1a.

5.12 Subd. 3. **Prohibition; dual tracking; continuation or commencement of**
5.13 **foreclosure after receipt of loan modification request.** (a) A servicer shall not file the
5.14 notice of pendency or lis pendens for any judicial or nonjudicial foreclosure unless a
5.15 borrower's mortgage loan obligation is more than 120 days delinquent.

5.16 (b) If a borrower submits a complete loan modification request before the borrower's
5.17 mortgage loan obligation is more than 120 days delinquent or before a servicer has filed
5.18 the notice of pendency or lis pendens, a servicer must not file the notice of pendency or
5.19 lis pendens unless:

5.20 (1) the servicer has sent the borrower a notice that the borrower is not eligible for
5.21 any loan modification option;

5.22 (2) the borrower rejects all loan modification options offered by the servicer; or

5.23 (3) the borrower fails to perform under a loan modification agreement.

5.24 Subd. 4. **Prohibition on foreclosure sale.** If a borrower submits a complete loan
5.25 modification request after a servicer has filed the notice of pendency or lis pendens, but
5.26 more than 37 days before a foreclosure sale, a servicer must not move for foreclosure
5.27 judgment or order of sale, or conduct a foreclosure sale, unless:

5.28 (1) the servicer has sent the borrower a notice that the borrower is not eligible for
5.29 any loan modification option;

5.30 (2) the borrower does not accept the loan modification offer within 14 days after
5.31 the date of the offer;

5.32 (3) the borrower rejects the loan modification option offered by the servicer; or

5.33 (4) the borrower fails to perform under a loan modification agreement.

5.34 Subd. 5. **Appeal process.** If a servicer receives a complete loan modification
5.35 request 90 days or more before a foreclosure sale, a servicer shall permit a borrower to
5.36 appeal the servicer's determination to deny a borrower's loan modification request for

6.1 any trial or permanent loan modification program available to the borrower. A servicer
6.2 shall permit a borrower to make an appeal within 14 days after the servicer provides the
6.3 determination regarding a loan modification option to the borrower.

6.4 Subd. 6. **Independent evaluation; determination.** (a) An appeal must be reviewed
6.5 by different personnel than those responsible for evaluating the borrower's complete loan
6.6 modification application.

6.7 (b) Within 30 days of a borrower making an appeal, the servicer shall provide a
6.8 notice to the borrower stating the servicer's determination of whether the servicer will
6.9 offer the borrower a loan modification option based upon the appeal. A servicer may
6.10 require that a borrower accept or reject an offer of a loan modification option after an
6.11 appeal no earlier than 14 days after the servicer provides the notice to a borrower. A
6.12 servicer's determination under this paragraph is not subject to any further appeal.

6.13 Subd. 7. **Duplicative requests.** A servicer is only required to comply with
6.14 the requirements of this section for a single complete loan modification request for a
6.15 borrower's mortgage loan account.

6.16 Subd. 8. **Small servicer requirements.** A small servicer is not subject to this
6.17 section, except that a small servicer must not file the notice of pendency or lis pendens
6.18 unless a borrower's mortgage loan obligation is more than 120 days delinquent. A small
6.19 servicer must not file the notice of pendency or lis pendens and must not conduct a
6.20 foreclosure sale if a borrower is performing pursuant to the terms of an agreement on a
6.21 loan modification option.

6.22 Subd. 9. **Affidavit.** Any person may establish compliance with or inapplicability of
6.23 this section by recording, with the county recorder or registrar of titles, an affidavit by
6.24 a person having knowledge of the facts, stating that any notices required by this section
6.25 have been delivered in compliance with this section. The affidavit and a certified copy
6.26 of a recorded affidavit is prima facie evidence of the facts stated in the affidavit. The
6.27 affidavit may be recorded regarding any foreclosure sale and may be recorded separately
6.28 or as part of the record of a foreclosure.

6.29 Sec. 6. **EFFECTIVE DATE.**

6.30 Sections 1 to 3 are effective for foreclosures commenced on or after August 1, 2013.
6.31 Section 4 is effective the day following final enactment.

6.32 Section 5 is effective January 10, 2014, and applies to foreclosures by advertisement
6.33 in which the power of attorney is acknowledged on or after January 10, 2014, and for
6.34 foreclosures by action in which the lis pendens is dated on or after January 10, 2014,
6.35 but does not apply to mortgage loans covered by any consent, settlement, or other legal

7.1 agreement which is in effect at the time a notice of pendency could be filed, including, but
7.2 not limited to, (i) consent judgments entered in the case entitled United States of America et
7.3 al. v. Bank of America Corporation et al., filed April 4, 2012, in the United States District
7.4 Court for the District of Columbia, in a civil action number 120361 and Stipulations and
7.5 Consent to the Issuance of an Amendment to 2011 Consent Order modifying:

7.6 (i) Office of Thrift Supervision Orders No. NE-11-16 and, by reference NE-11-17;

7.7 and

7.8 (ii) Office of Comptroller of the Currency Consent Orders AA-EC-11-12;

7.9 AA-EE-11-13; AA-EC-11-14; AA-EC-11-15; AA-EC-11-16; AA-EC-11-17;

7.10 AA-EC-11-18; and AA-EC-11-19.