

A bill for an act

relating to mortgages; regulating acquisition of the legal right to redeem a residence in foreclosure; requiring a notice to the mortgagee after a sheriff's sale of residential real property in foreclosure; amending Minnesota Statutes 2008, sections 325N.10, by adding a subdivision; 325N.17; 580.06; 582.25.

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

Section 1. Minnesota Statutes 2008, section 325N.10, is amended by adding a subdivision to read:

Subd. 4a. **Foreclosure procurement.** "Foreclosure procurement" means the acquisition after a foreclosure sale of the legal right to redeem the residence in foreclosure prior to 21 days from:

(1) the date of a sale provided for under section 580.06; or

(2) the order confirming the sale is granted under section 581.08.

Sec. 2. Minnesota Statutes 2008, section 325N.17, is amended to read:

325N.17 PROHIBITED PRACTICES.

Subdivision 1. **Procurement prohibited.** Foreclosure procurement is prohibited.

Subd. 2. **Prohibited practices.** A foreclosure purchaser shall not:

(a) enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed homeowner unless:

(1) the foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and

purchase the property within the term of the option to purchase. There is a rebuttable presumption that a homeowner is reasonably able to pay for the subsequent conveyance if the owner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60 percent of the owner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard insurance, real estate taxes, and association dues. There is a rebuttable presumption that the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the foreclosed homeowner of assets, liabilities, and income;

(2) the foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by a closing agent, as defined in section 82.17, who is not employed by or an affiliate of the foreclosure purchaser, or employed by such an affiliate, and who does not have a business or personal relationship with the foreclosure purchaser other than the provision of real estate settlement services;

(3) the foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property; and

(4) the foreclosure purchaser complies with the requirements for disclosure, loan terms, and conduct in the federal Home Ownership Equity Protection Act, United States Code, title 15, section 1639, or its implementing regulation, Code of Federal Regulations, title 12, sections 226.31, 226.32, and 226.34, for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, regardless of whether the terms of the contract for deed meet the annual percentage rate or points and fees requirements for a covered loan in Code of Federal Regulations, title 12, sections 226.32 (a) and (b);

(b) fail to either:

(1) ensure that title to the subject dwelling has been reconveyed to the foreclosed homeowner; or

(2) make a payment to the foreclosed homeowner such that the foreclosed homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days of either the eviction or voluntary relinquishment of possession of the dwelling by the foreclosed homeowner. The

foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this 150-day period. The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14. For purposes of this provision, the following applies:

(i) there is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the property;

(ii) the time for determining the fair market value amount shall be determined in the foreclosure reconveyance contract as either at the time of the execution of the foreclosure reconveyance contract or at resale. If the contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner. If the contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair market value shall be determined by an appraisal conducted during this 120-day period and payment, if required, shall be made to the homeowner, but the fair market value shall be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, shall be made to the foreclosed homeowner within 15 days of resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make additional payment, shall be made within 15 days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14;

(iii) "consideration" shall mean any payment or thing of value provided to the foreclosed homeowner, including unpaid rent or contract for deed payments owed by the foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or legal obligation of the foreclosed homeowner, or the reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner; or a penalty imposed by a court for the filing of a frivolous claim under section 325N.18, subdivision 6, but

(iv) "consideration" shall not include amounts imputed as a down payment or fee to the foreclosure purchaser, or a person acting in participation with the foreclosure purchaser, incident to a contract for deed, lease, or option to purchase entered into as part of the foreclosure reconveyance, except for reasonable costs paid to third parties necessary to complete the foreclosure reconveyance;

(c) enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(d) represent, directly or indirectly, that:

(1) the foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represents that the foreclosure purchaser is acting on behalf of the homeowner;

(2) the foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue;

(3) the foreclosure purchaser is assisting the foreclosed homeowner to "save the house" or substantially similar phrase; or

(4) the foreclosure purchaser is assisting the foreclosed homeowner in preventing a completed foreclosure if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property;

(e) make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including, but not limited to, statements regarding the value of the residence in foreclosure, the amount of proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract term, or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance; or

(f) do any of the following until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed:

(1) accept from any foreclosed homeowner an execution of, or induce any foreclosed homeowner to execute, any instrument of conveyance of any interest in the residence in foreclosure;

(2) record with the county recorder or file with the registrar of titles any document, including but not limited to, any instrument of conveyance, signed by the foreclosed homeowner;

(3) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party, provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of sections 325N.10 to 325N.18, and knowledge

on the part of any such person or entity that the property was "residential real property in foreclosure" does not constitute notice of a violation of sections 325N.10 to 325N.18. This section does not abrogate any duty of inquiry which exists as to rights or interests of persons in possession of the residential real property in foreclosure; or

(4) pay the foreclosed homeowner any consideration.

Sec. 3. Minnesota Statutes 2008, section 580.06, is amended to read:

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

(a) 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.

(b) Within seven days of the sale of residential real property, as defined in section 82.17, subdivision 21, the party foreclosing the mortgage must send to the mortgagor, by certified mail, a notice containing the following information:

(1) the date the sale occurred;

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

(3) the 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 off the winning bidder and keep your house. 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.

(ii) Read your papers carefully!! THE AMOUNT YOU NEED TO PAY TO KEEP YOUR HOUSE MAY BE LESS THAN THE AMOUNT YOU OWED ON YOUR MORTGAGE BEFORE THE SALE.

(iii) You can also try to sell your home during this "redemption period." BUT, 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 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, they could record a lien against you.

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

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 contacting the Minnesota Home Ownership Center at 651-659-9336 or 866-462-6466 or www.hocmn.org.

(c) If the notice required in paragraph (b) is not sent within seven days of the sale, the redemption period under section 580.23 shall not commence until the foreclosed homeowner is personally served with the notice.

Sec. 4. Minnesota Statutes 2008, section 582.25, is amended to read:

582.25 MORTGAGES; VALIDATING FORECLOSURE SALES.

Every mortgage foreclosure sale by advertisement in this state under power of sale contained in any mortgage duly executed and recorded in the office of the county recorder or registered with the registrar of titles of the proper county of this state, together with the record of such foreclosure sale, is, after expiration of the period specified in section 582.27, hereby legalized and made valid and effective to all intents and purposes, as against any or all of the following objections:

(1) that the power of attorney, recorded or filed in the proper office provided for by section 580.05:

(a) did not definitely describe and identify the mortgage,

(b) did not definitely describe and identify the mortgage, but instead described another mortgage between the same parties,

(c) did not have the corporate seal affixed thereto, if executed by a corporation,

(d) had not been executed and recorded or filed prior to sale, or had been executed prior to, but not recorded or filed until after such sale,

(e) was executed subsequent to the date of the printed notice of sale or subsequent to the date of the first publication of such notice;

(2) that no power of attorney to foreclose such mortgage as provided in section 580.05, was ever given, or recorded, or registered;

(3) that the notice of sale:

(a) was published only three, four or five times, or that it was published six times but not for six weeks prior to the date of sale,

(b) properly described the property to be sold in one or more of the publications thereof but failed to do so in the other publications thereof, the correct description having been contained in the copy of said notice served on the occupant of the premises,

(c) correctly stated the date of the month and hour and place of sale but named a day of the week which did not fall on the date given for such sale, or failed to state or state correctly the year of such sale,

(d) correctly described the real estate but omitted the county and state in which said real estate is located,

(e) correctly described the land by government subdivision, township and range, but described it as being in a county other than that in which said mortgage foreclosure proceedings were pending, and other than that in which said government subdivision was actually located,

(f) did not state the amount due or failed to state the correct amount due or claimed to be due,

(g) incorrectly stated the municipal status of the place where the sale was to occur,

(h) in one or more of the publications thereof, or in the notice served on the occupant or occupants designated either a place or a time of sale other than that stated in the certificate of sale,

(i) failed to state the names of one or more of the assignees of the mortgage and described the subscriber thereof as mortgagee instead of assignee,

(j) failed to state or incorrectly stated the name of the mortgagor, the mortgagee, or assignee of mortgagee,

(k) was not served upon persons whose possession of the mortgaged premises was otherwise than by their personal presence thereon, if a return or affidavit was recorded or filed as a part of the foreclosure record that at a date at least four weeks prior to the sale the mortgaged premises were vacant and unoccupied,

(l) was not served upon all of the parties in possession of the mortgaged premises, provided it was served upon one or more of such parties,

(m) was not served upon the persons in possession of the mortgaged premises, if, at least two weeks before the sale was actually made, a copy of the notice was served upon the owner in the manner provided by law for service upon the occupants, or the owner received actual notice of the proposed sale,

(n) gave the correct description at length, and an incorrect description by abbreviation or figures set off by the parentheses, or vice versa,

(o) was served personally upon the occupants of the premises as such, but said service was less than four weeks prior to the appointed time of sale,

(p) did not state the original principal amount secured, or failed to state the correct original principal amount secured;

(4) that distinct and separate parcels of land were sold together as one parcel and to one bidder for one bid for the whole as one parcel;

(5) that no authenticated copy of the order appointing, or letters issued to a foreign representative of the estate of the mortgagee or assignee, was properly filed or recorded,

provided such order or letters have been filed or recorded in the proper office prior to one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns;

(6) that a holder of a mortgage was a representative appointed by a court of competent jurisdiction in another state or county in which before the foreclosure sale an authenticated copy of the representative's letters or other record of authority were filed for record in the office of the county recorder of the proper county but no certificate was filed and recorded therewith showing that said letters or other record of authority were still in force;

(7)(a) that said mortgage was assigned by a decree of a court exercising probate jurisdiction in which decree the mortgage was not specifically or sufficiently described,

(b) that the mortgage foreclosed had been assigned by the final decree of the court exercising probate jurisdiction to the heirs, devisees, or legatees of the deceased mortgagee, or the mortgagee's assigns, and subsequent thereto and before the representative of the estate had been discharged by order of the court, the representative had assigned the mortgage to one of the heirs, devisees, or legatees named in such final decree, and such assignment placed on record and the foreclosure proceedings conducted in the name of such assignee and without any assignment of the mortgage from the heirs, devisees, or legatees named in such final decree, and the mortgaged premises bid in at the sale by such assignee, and the sheriff's certificate of sale, with accompanying affidavits recorded in the office of the county recorder of the proper county,

(c) that a mortgage owned by joint tenants or tenants in common was foreclosed by only one tenant;

(8) that the sheriff's certificate of sale or the accompanying affidavits and return of service were not executed, filed or recorded within 20 days after the date of sale, but have been executed and filed or recorded prior to the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns;

(9) that the year, or the month, or the day, or the hour of the sale is omitted or incorrectly or insufficiently stated in the notice of sale or the sheriff's certificate of sale;

(10)(a) that prior to the foreclosure no registration tax was paid on the mortgage, provided such tax had been paid prior to one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns,

(b) that an insufficient registration tax has been paid on the mortgage;

(11) that the date of the mortgage or any assignment thereof or the date, the month, the day, hour, book, and page, or document number of the record or filing of the mortgage or any assignment thereof, in the office of the county recorder or registrar of

H.F. No. 2699, as introduced - 86th Legislative Session (2009-2010) [10-4890]

titles is omitted or incorrectly or insufficiently stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments;

(12) that the notice of mortgage foreclosure sale or sheriff's certificate of sale designated the place of sale as the office of a county official located in the court house of the county when such office was not located in such court house;

(13) that no notice of the pendency of the proceedings to enforce or foreclose the mortgage as provided in section 508.57, was filed with the registrar of titles or no memorial thereof was entered on the register at the time of or prior to the commencement of such proceedings; or that when required by section 508.57, the notice of mortgage foreclosure sale failed to state the fact of registration;

(14) that the power of attorney to foreclose or the notice of sale was signed by the person who was the representative of an estate, but failed to state or correctly state the person's representative capacity;

(15) that the complete description of the property foreclosed was not set forth in the sheriff's certificate of sale, if said certificate correctly refers to the mortgage by book and page numbers or document number and date of filing and the premises are accurately described in the printed notice of sale annexed to said foreclosure sale record containing said sheriff's certificate of sale;

(16) that the date of recording of the mortgage was improperly stated in the sheriff's certificate of mortgage foreclosure sale, the mortgage being otherwise properly described in said sheriff's certificate of mortgage foreclosure sale and said certificate of mortgage foreclosure sale further referring to the printed notice of mortgage foreclosure sale attached to said sheriff's certificate of mortgage foreclosure sale in which printed notice the mortgage and its recording was properly described;

(17) that prior to the first publication of the notice of sale in foreclosure of a mortgage by advertisement, an action or proceeding had been instituted for the foreclosure of said mortgage or the recovery of the debt secured thereby and such action or proceeding had not been discontinued;

(18) that at the time and place of sale the sheriff considered and accepted a bid submitted prior to the date of the sale by the owner of the mortgage and sold the mortgaged premises for the amount of such bid, no other bid having been submitted, and no one representing the owner of the mortgage being present at the time and place of sale;

(19) that such sale was postponed by the sheriff to a date or time subsequent to the one specified in the notice of sale but there was no publication or posting of a notice of such postponement;

10.1 (20) that there was not recorded with letters or other record of authority issued to a
10.2 representative appointed by a court of competent jurisdiction in another state or county, a
10.3 certificate that said letters or other record of authority were still in force and effect;

10.4 (21) that the sheriff's affidavit of sale correctly stated in words the sum for which
10.5 said premises were bid in and purchased by the mortgagee, but incorrectly stated the same
10.6 in figures immediately following the correct amount in words;

10.7 (22) that the notice of pendency of the foreclosure as required by section 580.032
10.8 was not filed for record before the first date of publication of the foreclosure notice, but
10.9 was filed before the date of sale; or

10.10 (23) that the notice required under section 580.06, paragraph (b), was not sent to the
10.11 mortgagor, or incorrectly stated either the amount of the sale price or the identity of the
10.12 purchaser and any assignees of the purchaser.