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## State of Minnesota

## HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 83

01/14/2013 Authored by Freiberg; Dehn, R.; Clark; Moran; Benson, J., and others

The bill was read for the first time and referred to the Committee on Housing Finance and Policy

02/18/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Civil Law

1.1 A bill for an act  
1.2 relating to housing; providing certain tenant remedies; providing single point  
1.3 of contact and various notice provisions relating to mortgage foreclosures;  
1.4 prohibiting mortgage foreclosure dual tracking; requiring mandatory mediation  
1.5 prior to commencing a mortgage foreclosure; amending Minnesota Statutes  
1.6 2012, sections 504B.151, subdivision 1; 580.021, by adding a subdivision;  
1.7 580.022, subdivision 1; 580.03; 580.041, subdivisions 1b, 2; proposing coding  
1.8 for new law in Minnesota Statutes, chapter 580.

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

1.10 Section 1. Minnesota Statutes 2012, section 504B.151, subdivision 1, is amended to  
1.11 read:

1.12 Subdivision 1. **Limitation on lease and notice to tenant.** (a) Once a landlord has  
1.13 received notice of a contract for deed cancellation under section 559.21 or notice of a  
1.14 mortgage foreclosure sale under chapter 580 or 582, or summons and complaint under  
1.15 chapter 581, the landlord may only enter into (i) a periodic residential lease agreement  
1.16 with a term of not more than two months or the time remaining in the contract cancellation  
1.17 period or the mortgagor's redemption period, whichever is less or (ii) a fixed term  
1.18 residential tenancy not extending beyond the cancellation period or the landlord's period  
1.19 of redemption until:

- 1.20 (1) the contract for deed has been reinstated or paid in full;  
1.21 (2) the mortgage default has been cured and the mortgage reinstated;  
1.22 (3) the mortgage has been satisfied;  
1.23 (4) the property has been redeemed from a foreclosure sale; or  
1.24 (5) a receiver has been appointed.

1.25 (b) Before entering into a lease under this section and accepting any rent or security  
1.26 deposit from a tenant, the landlord must notify the prospective tenant in writing that the

landlord has received notice of a contract for deed cancellation or notice of a mortgage foreclosure sale as appropriate, and the date on which the contract cancellation period or the mortgagor's redemption period ends.

(c) This section does not apply to a manufactured home park as defined in section 327C.01, subdivision 5.

(d) A landlord who violates the requirements in this subdivision is liable to the lessee for a civil penalty of \$500.

Sec. 2. Minnesota Statutes 2012, section 580.021, is amended by adding a subdivision to read:

Subd. 5. **Single point of contact.** The party foreclosing on a mortgage must provide to the mortgagor a single point of contact in each of the forms prescribed in sections 580.022 and 580.041. The contact information must include a contact name, address, telephone number, and e-mail address. The party foreclosing on a mortgage must have alternative contacts to provide all of the assistance prescribed in this section when the single point of contact is not available to speak with a borrower for more than 48 hours. The servicer must provide written notice within ten days when the single point of contact has changed. The borrower must be able to access the information included in this section and may seek a civil penalty of \$500 against the servicer for failure to comply with this section. The single point of contact must be an employee of the servicer who can coordinate all of the information concerning that borrower's situation and must:

(1) be able to access all of the documents related to that borrower's loan and provide them to the borrower, if requested, in a timely manner;

(2) know of the borrower's prior contact with the servicer and track ongoing contact with the servicer;

(3) know the deadlines applicable to the borrower and provide that information if requested, including but not limited to:

(i) what is owed on the borrower's loan and when it is due;

(ii) if the servicer is eligible for mediation and the last date to request mediation; and

(iii) when all relevant foreclosure proceedings may commence or be completed;

(4) provide information about the current status of the loan; and

(5) provide information on the borrower's foreclosure prevention alternatives.

Sec. 3. Minnesota Statutes 2012, section 580.022, subdivision 1, is amended to read:

Subdivision 1. **Counseling form.** The notice required under section 580.021, subdivision 2, ~~elause (2)~~, must be printed on colored paper that is other than the color of any other document provided with it and must appear substantially as follows:

**"PREFORECLOSURE NOTICE**

**Foreclosure Prevention Counseling and Mediation**

**Why You Are Getting This Notice**

YOU HAVE DEFAULTED ON A MORTGAGE OF THE HOMESTEAD  
PROPERTY DESCRIBED AS [Legal Description and Property Address]. THE HOLDER  
OF THE MORTGAGE, [Name of Holder of Mortgage] INTENDS TO FORECLOSE ON  
THIS PROPERTY. YOU HAVE THE RIGHT TO PARTICIPATE IN A MEDIATION  
HEARING WITH A NEUTRAL MEDIATOR, A REPRESENTATIVE OF [Name of  
Servicer], AND TO BRING AN ATTORNEY, HOUSING COUNSELOR, OR OTHER  
TRAINED ADVOCATE TO DETERMINE IF AN ALTERNATIVE TO FORECLOSURE  
CAN BE FOUND. YOU WILL RECEIVE NOTICE OF A MEDIATION HEARING  
THAT WILL TAKE PLACE WITHIN 20 DAYS OF THE NOTICE. YOU MUST  
RESPOND WITHIN TEN DAYS OF THE SCHEDULED MEDIATION IF YOU  
INTEND TO PARTICIPATE. IF YOU DO NOT RESPOND, THE MEDIATION  
HEARING WILL BE CANCELED.

We do not want you to lose your home and your equity. Government-approved nonprofit agencies are available to, if possible, help you prevent foreclosure.

We have given your contact information to an authorized foreclosure prevention counseling agency to contact you to help you prevent foreclosure.

**Who Are These Foreclosure Prevention Counseling Agencies**

They are nonprofit agencies who are experts in housing and foreclosure prevention counseling and assistance. They are experienced in dealing with lenders and homeowners who are behind on mortgage payments and can help you understand your options and work with you to address your delinquency. They are approved by either the Minnesota Housing Finance Agency or the United States Department of Housing and Urban Development. They are not connected with us in any way.

**Which Agency Will Contact You**

[insert name, address, and telephone number of agency]

You can also contact them directly."

Sec. 4. Minnesota Statutes 2012, section 580.03, is amended to read:

**580.03 NOTICE OF SALE; SERVICE ON OCCUPANT.**

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

4.10 The notice required under this section may not be served upon the person in  
4.11 possession of the mortgaged property until 15 days after the mortgage servicer has sent  
4.12 the borrower a statement that if the borrower is a service member, or a dependent of a  
4.13 service member, the borrower may be entitled to certain protections under the federal  
4.14 Servicemembers Civil Relief Act, United States Code, title 50, section 501, regarding the  
4.15 service member's interest rate and the risk of foreclosure, and counseling for covered  
4.16 service members that is available at agencies such as Military OneSource and Armed  
4.17 Forces Legal Assistance. This notice shall be sent via certified United States mail. The  
4.18 borrower is entitled to a \$500 civil penalty from the mortgage servicer in a civil cause of  
4.19 action for failure to comply with the notice requirements in this section.

4.20 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to  
4.21 foreclosures commenced on or after that date.

4.22 Sec. 5. Minnesota Statutes 2012, section 580.041, subdivision 1b, is amended to read:

4.23 Subd. 1b. **Form and delivery of foreclosure advice notice.** (a) The foreclosure  
4.24 advice notice required by this section must be in 14-point boldface type and must be  
4.25 printed on colored paper that is other than the color of the notice of foreclosure required  
4.26 by sections 580.03 and 580.04 and the notice of redemption rights required by this section,  
4.27 and that does not obscure or overshadow the content of the notice. The title of the notice  
4.28 must be in 20-point boldface type. The notice must be on its own page. The foreclosure  
4.29 advice notice required by this section must be delivered with the notice of foreclosure  
4.30 required by sections 580.03 and 580.04. The foreclosure advice notice required by this  
4.31 section also must be delivered with each subsequent written communication regarding the  
4.32 foreclosure mailed to the mortgagor by the foreclosing party up to the day of redemption.  
4.33 A foreclosing mortgagee will be deemed to have complied with this section if it sends  
4.34 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.

(b) The foreclosure advice notice must provide the homeowner with a single point of contact with the servicer as defined in section 580.021, subdivision 5. A borrower shall have a civil cause of action, including a \$500 civil penalty against a mortgage servicer who fails to provide a single point of contact to the borrower in the foreclosure notice.

**EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to foreclosures commenced on or after that date.

Sec. 6. Minnesota Statutes 2012, section 580.041, subdivision 2, is amended to read:

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~~ name of employee of servicer or lender that serves as a single point of contact for homeowner to contact, phone number for that employee of servicer or lender)

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](http://www.hocmn.org) or contact the United States Department of Housing and Urban

Development at 1-800-569-4287 or [www.hud.gov](http://www.hud.gov) to get the phone number and location of the nearest certified counseling organization. Call today. The longer you wait, the fewer options you may have for a desirable result."

**Changing the Date of the Sheriff's Sale**

You may be able to postpone the sheriff's sale on your home. If you live in your home and it has four units or less, you can postpone the sheriff's sale for five months from the original date of sale if you have a six-month redemption period, or eleven months from the original date of sale if you have a twelve-month redemption period. If you postpone the sheriff's sale, your redemption period will be reduced to five weeks.

You must do all of the following things 15 days before the scheduled sheriff's sale:

(1) execute a sworn affidavit of postponement;

(2) record the affidavit in the county recorder and registrar of titles where the mortgage is recorded;

(3) file a copy with the sheriff; and

(4) provide a copy of the recorded affidavit showing the date it was recorded to the attorney foreclosing on the mortgage."

**EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to foreclosures commenced on or after that date.

Sec. 7. **[580.043] MORTGAGE FORECLOSURE DUAL TRACKING PROHIBITED.**

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

(b) "Borrower" means the individual or entity that is liable on the promissory note secured by the mortgage, except that the term does not include:

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

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

(c) "Complete loan modification request" means a loan modification request that contains a completed application form, documents verifying a borrower's income and assets, an explanation of the borrower's hardship, and documents verifying the borrower's tax information or a signed release for the Internal Revenue Service.

(d) "Dual tracking" means a servicer beginning or continuing a mortgage foreclosure under this chapter after the servicer has received a request by the borrower for a loan modification, forbearance, payment deferral, alternate repayment plan, or deed in lieu of foreclosure and has not accepted or rejected that request.

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

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

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

Subd. 3. **Prohibition; dual tracking; continuation or commencement of foreclosure after receipt of loan modification request.** (a) Upon receipt by a mortgage servicer of a request for a loan modification, forbearance, payment deferral, alternate repayment plan, or deed in lieu of foreclosure from a borrower regarding a mortgage loan for which the mortgage servicer is responsible, the mortgage servicer shall not begin a foreclosure for 90 days or, if a foreclosure of the mortgage loan is in progress, must stop the foreclosure process for 90 days or until the mortgage servicer and borrower have agreed upon and entered into a signed agreement, whichever comes first. The mortgage servicer shall not start or continue a foreclosure, even after the 90 days have passed, unless: (1) the servicer has provided notice to the borrower that the borrower's request has been rejected, including an explanation for why the request was rejected; or (2) the borrower has received a copy of a loan modification, forbearance, payment deferral, alternate repayment plan, or deed in lieu of a foreclosure agreement signed by the servicer.

(b) A mortgage servicer need not consider a loan modification request if the loan modification request is not a complete loan modification request as defined in subdivision 1, paragraph (e).

Subd. 4. **Civil cause of action; dual tracking.** A borrower who is the victim of dual tracking by the borrower's mortgage servicer has a civil cause of action against the mortgage servicer for any damages incurred by the borrower as a result of the dual tracking plus the borrower's reasonable attorney fees and costs. The servicer is prohibited from adding monetary judgments and awards under this section to a borrower's mortgage.

8.1        Subd. 5. **Injunctive relief.** A borrower may bring an action for injunctive relief to  
8.2        stop a foreclosure based on a material violation of this section. The injunction shall remain  
8.3        in place until the court determines that the mortgage service has corrected and remedied  
8.4        the violation or violations giving rise to the action for injunctive relief.

8.5        Subd. 6. **Redemption period.** The relief available in this section is available to a  
8.6        borrower during the redemption period under section 580.23. The failure of the servicer to  
8.7        comply with subdivision 3 shall annul a sheriff sale under this chapter.

8.8        **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to  
8.9        foreclosures commenced on or after that date.

8.10       Sec. 8. **[580.0431] MANDATORY MEDIATION.**

8.11       Subdivision 1. **Mandatory mediation.** This section applies to foreclosures of  
8.12       mortgages under chapters 580 and 581 on property consisting of one to four dwelling  
8.13       units, one of which the owner occupies as the owner's principal place of residency. Prior  
8.14       to beginning a mortgage foreclosure and before notice of the pendency under section  
8.15       580.032, subdivision 3, or the lis pendens for a foreclosure under chapter 581 is recorded,  
8.16       a party foreclosing a mortgage must participate in mandatory mediation and provide to the  
8.17       mortgagor information contained in a form prescribed in section 580.022, subdivision 1.  
8.18       The servicer must provide all the relevant contact information for the servicer and any  
8.19       representative of the servicer who will attend the mediation and the contact information  
8.20       for the borrower to the Office of Administrative Hearings. The borrower must contact the  
8.21       Office of Administrative Hearings to confirm participation in the mediation within ten  
8.22       days of the scheduled mediation. The servicer shall add a \$40 fee to the borrower's loan  
8.23       once the borrower and servicer have participated in mediation.

8.24       Subd. 2. **Counseling.** Prior to attending the mandatory mediation, the borrower  
8.25       must contact the foreclosure prevention counseling agency described in section 580.041,  
8.26       subdivisions 2 and 2a, to learn about the foreclosure prevention services available to them.

8.27       Subd. 3. **Representation.** (a) The borrower may have representation at the  
8.28       mediation conference. The representation may be an attorney, advocate, or other  
8.29       individual trained in housing counseling.

8.30       (b) The servicer must send a representative with the authority to negotiate a resolution.

8.31       Subd. 4. **Office of Administrative Hearings.** (a) The Office of Administrative  
8.32       Hearings shall provide mediation to servicers and borrowers as required in this section.  
8.33       The Office of Administrative Hearings shall within ten business days of receiving a  
8.34       request for mediation assign a mediator which may be a judge, an attorney, or other staff  
8.35       trained in mediation. The Office of Administrative Hearings must provide the following



9.1 information to the borrower, the servicer, and any subordinate mortgage lienholder within  
9.2 20 days of receipt of the request:

9.3 (1) what documents must be provided prior to mediation to the Office of  
9.4 Administrative Hearings;

9.5 (2) when the mediation will take place;

9.6 (3) where the mediation will take place;

9.7 (4) who may attend the mediation; and

9.8 (5) any rights and responsibilities of the parties to the mediation.

9.9 (b) The Office of Administrative Hearings is immune from civil liability for actions  
9.10 within the scope of its position under this chapter. The mediators assigned do not have a  
9.11 duty to advise the parties of their legal rights. Nothing in this chapter is a limitation  
9.12 to the immunity that otherwise extends to the Office of Administrative Hearings that  
9.13 otherwise exists under the law.

9.14 (c) The mediation must occur no later than 45 days after receiving contact from the  
9.15 servicer requesting the mediation with the Office of Administrative Hearings.

9.16 (d) The data regarding the finances and mortgages for these mediations that is  
9.17 created, collected, and maintained by the Office of Administrative Hearings is private data  
9.18 on individuals as defined by section 13.02, subdivision 12.

9.19 (e) A mediation agreement signed by both parties may be submitted to any court  
9.20 having jurisdiction over the parties and shall be enforced by any court having jurisdiction  
9.21 over the parties.

9.22 (f) The servicer shall submit a mediation fee of \$160 to the Office of Administrative  
9.23 Hearings at or before the initial mediation meeting.

9.24 Subd. 5. **Disposition of fees.** Mediation fees collected by the Office of  
9.25 Administrative Hearings under this section must be deposited in the administrative  
9.26 hearings account in the state treasury and are appropriated to the office for the purposes  
9.27 of this section.

9.28 Subd. 6. **Good faith required.** (a) The parties must engage in mediation in good  
9.29 faith. Not participating in good faith includes:

9.30 (1) failure to attend and participate in mediation sessions without cause;

9.31 (2) failure to provide full information regarding the financial obligations of the  
9.32 parties and other creditors;

9.33 (3) failure of the creditor to designate a representative to participate in the mediation  
9.34 with authority to make binding commitments;

9.35 (4) lack of a written statement of debt restructuring alternatives and a statement of  
9.36 reasons why alternatives are unacceptable to one of the parties; and

10.1 (5) other similar behavior that evidences lack of good faith by a party.

10.2 A failure to agree to reduce, restructure, refinance, or forgive debt is not, in itself, evidence  
10.3 of lack of good faith by the creditor.

10.4 (b) If the mediator determines that either party is not participating in good faith as  
10.5 defined in subdivision 1, the mediator must file an affidavit indicating the reasons for the  
10.6 finding with the attorney general and with parties to the mediation.

10.7 Subd. 7. **Creditor's bad faith; court supervision.** If the mediator finds the creditor  
10.8 has not participated in mediation in good faith, the debtor may require court-supervised  
10.9 mandatory mediation by filing the affidavit with the district court of the county of the  
10.10 debtor's residence with a request for court supervision of mediation and serving a copy of  
10.11 the request on the creditor. Upon request, the court shall require both parties to mediate  
10.12 under the supervision of the court in good faith for a period of not more than 180 days. All  
10.13 mortgage foreclosure proceedings must be suspended during this period. The court may  
10.14 issue orders necessary to effect good faith mediation. Following the mediation period, if  
10.15 the court finds the creditor has not participated in mediation in good faith, the court shall  
10.16 by order suspend the creditor's mortgage foreclosure proceeding for an additional period  
10.17 of 180 days. A creditor found by the mediator not to have participated in good faith shall  
10.18 pay the attorney fees and costs of the debtor requesting court supervision, in addition to  
10.19 further suspension of the creditor's mortgage foreclosure proceeding.

10.20 Subd. 8. **Debtor's lack of good faith.** A creditor may immediately proceed with  
10.21 the creditor's mortgage foreclosure proceedings upon receipt of a mediator's affidavit  
10.22 of a debtor's lack of good faith.

10.23 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to  
10.24 foreclosures commenced on or after that date.