

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	1265a	Comm report: To pass as amended
	1352	Second reading
05/16/2013		Special Order: Amended Third reading Passed

1.1

A bill for an act

1.2

relating to real estate; requiring loss mitigation by mortgage lenders and

1.3

servicers; amending Minnesota Statutes 2012, sections 580.02; 580.041,

1.4

subdivisions 1b, 1c, 2a; 580.15; proposing coding for new law in Minnesota

1.5

Statutes, chapters 580; 582.

1.6

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

1.7

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

1.8

**580.02 REQUISITES FOR FORECLOSURE.**

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To entitle any party to make such foreclosure, it is requisite:

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(1) that some default in a condition of such mortgage has occurred, by which the

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power to sell has become operative;

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(2) that no action or proceeding has been instituted at law to recover the debt then

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remaining secured by such mortgage, or any part thereof, or, if the action or proceeding

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has been instituted, that the same has been discontinued, or that an execution upon the

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judgment rendered therein has been returned unsatisfied, in whole or in part;

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(3) that the mortgage has been recorded and, if it has been assigned, that all

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assignments thereof have been recorded; provided, that, if the mortgage is upon registered

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land, it shall be sufficient if the mortgage and all assignments thereof have been duly

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registered; ~~and~~

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(4) before the notice of pendency as required under section 580.032 is recorded, the

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party has complied with section 580.021; and

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(5) before the notice of pendency required under section 580.032 is recorded, the

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party has complied with section 582.043, if applicable.

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

2.2 Subd. 1b. **Form and delivery of foreclosure advice notice.** The foreclosure advice  
2.3 notice required by this section must be in 14-point boldface type and must be printed on  
2.4 colored paper that is other than the color of the notice of foreclosure required by sections  
2.5 580.03 and 580.04 and the notice of redemption rights required by this section, and that  
2.6 does not obscure or overshadow the content of the notice. The title of the notice must  
2.7 be in 20-point boldface type. The notice must be on its own page. The foreclosure  
2.8 advice notice required by this section must be delivered with the notice of foreclosure  
2.9 required by sections 580.03 and 580.04. The foreclosure advice notice required by this  
2.10 section also must be delivered with each subsequent written communication regarding the  
2.11 foreclosure mailed to the mortgagor by the foreclosing party up to the day of redemption.  
2.12 ~~A foreclosing mortgagee will be deemed to have complied with this section if it sends~~  
2.13 ~~the foreclosure advice notice required by this section at least once every 60 days during~~  
2.14 ~~the period of the foreclosure process~~ the foreclosure sale. The foreclosure advice notice  
2.15 required by this section must not be published.

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

2.17 Subd. 1c. **Form and delivery of notice of redemption rights.** The notice of  
2.18 redemption rights required by this section must be in 14-point boldface type and must be  
2.19 printed on colored paper that is other than the color of the notice of foreclosure required by  
2.20 sections 580.03 and 580.04 and the foreclosure advice notice required by this section, and  
2.21 that 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 notice of redemption  
2.23 rights must be delivered with the notice of foreclosure required by sections 580.03 and  
2.24 580.04 and with each subsequent written communication regarding the foreclosure mailed  
2.25 to the mortgagor by the foreclosing party up to the day the redemption period expires. The  
2.26 notice of redemption rights required by this section must not be published.

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

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

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

2.31 After the sheriff's sale, you have the right to "redeem." Redeem means that you pay the  
2.32 amount bid for your house at the sheriff's sale, plus interest and costs, to keep your house.  
2.33 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 ask you 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 the house 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 the mortgage before the sale. 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 interest, fees, and other claims against the property. 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." A short sale is an agreement in which 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](http://www.hocmn.org) or contact the United States Department of Housing and Urban Development at 1-800-569-4287 or [www.hud.gov/offices/hsg/sfh/hcc/hes.cfm?webListAction=search=MN#searchArea](http://www.hud.gov/offices/hsg/sfh/hcc/hes.cfm?webListAction=search=MN#searchArea) [www.hud.gov](http://www.hud.gov) to get the phone number and location of the nearest certified counseling organization."

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

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

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

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

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

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

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

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

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

4.27 (g) "Small servicer" means a servicer that either services 5,000 or fewer mortgage  
4.28 loans in a calendar year, for all of which the servicer or an affiliate is the creditor or  
4.29 assignee; or is a Housing Finance Agency, as defined in Code of Federal Regulations, title  
4.30 24, section 266.5.

4.31 Subd. 2. **Applicability.** This section applies only to first lien mortgages that are  
4.32 secured by owner-occupied residential real property containing no more than four dwelling  
4.33 units. For purposes of this subdivision, "owner-occupied" means that the property is  
4.34 the principal residence of the owner and not used as security for business, commercial,  
4.35 and agricultural purposes.

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

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

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

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

5.13        (3) the borrower rejects all loan modification options offered by the servicer; or

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

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

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

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

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

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

5.25        **Subd. 5. Appeal process.** If a servicer receives a complete loan modification  
5.26 request 90 days or more before a foreclosure sale, a servicer shall permit a borrower to  
5.27 appeal the servicer's determination to deny a borrower's loan modification request for  
5.28 any trial or permanent loan modification program available to the borrower. A servicer  
5.29 shall permit a borrower to make an appeal within 14 days after the servicer provides the  
5.30 determination regarding a loan modification option to the borrower.

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

5.34        (b) Within 30 days of a borrower making an appeal, the servicer shall provide a  
5.35 notice to the borrower stating the servicer's determination of whether the servicer will  
5.36 offer the borrower a loan modification option based upon the appeal. A servicer may

require that a borrower accept or reject an offer of a loan modification option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

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

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

Subd. 9. **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 any notices required by this section have been delivered in compliance with this section. The affidavit and a certified copy of a recorded affidavit is prima facie evidence of the facts stated in the affidavit. The affidavit may be recorded regarding any foreclosure sale and may be recorded separately or as part of the record of a foreclosure.

Sec. 6. Minnesota Statutes 2012, section 580.15, is amended to read:

**580.15 PERPETUATING EVIDENCE OF SALE.**

Any party desiring to perpetuate the evidence of any sale made in pursuance of this chapter may procure:

(1) an affidavit of the publication of the notice of sale and of any notice of postponement to be made by the printer of the newspaper in which the same was inserted or by some person in the printer's employ knowing the facts;

(2) an affidavit or return of service of such notice upon the occupant of the mortgaged premises to be made by the officer or person making such service or, in case the premises were vacant or unoccupied at the time the service must be made, an affidavit or return showing that fact, to be made by the officer or person attempting to make such service;

(3) an affidavit by the person foreclosing the mortgage, or that person's attorney, or someone knowing the facts, setting forth the facts relating to the military service status of the owner of the mortgaged premises at the time of sale;

(4) an affidavit by the person foreclosing the mortgage, or that person's attorney, or someone having knowledge of the facts, setting forth the fact of service of notice of

sale upon the secretary of the Treasury of the United States or the secretary's delegate in accordance with the provisions of Section 7425 of the Internal Revenue Code of 1954 as amended by Section 109 of the Federal Tax Lien Act of 1966, and also setting forth the fact of service of notice of sale upon the commissioner of revenue of the state of Minnesota in accordance with the provisions of section 270C.63, subdivision 11. Any such affidavit recorded prior to May 16, 1967 shall be effective as prima facie evidence of the facts therein contained as though recorded subsequent to May 16, 1967;

(5) an affidavit by the person foreclosing the mortgage, or that person's attorney, or someone having knowledge of the facts, setting forth the names of the persons to whom a notice of sale was mailed as provided by section 580.032; ~~and~~

(6) one or more affidavits by the person foreclosing the mortgage, or that person's attorney or a person having knowledge of the facts, stating:

(i) whether section 580.021, 580.04, 580.041, 580.042, 582.039, 582.041, or 582.042 applies to the foreclosure proceedings; and

(ii) if any or all of those sections apply, that all notices required under those sections have been provided; and

(7) one or more affidavits by the person foreclosing the mortgage, the person's attorney, or a person having knowledge of the facts, stating:

(i) whether section 582.043 applies to the foreclosure proceedings; and

(ii) if that section applies, that all requirements of that section have been fully satisfied.

Such affidavits and returns shall be recorded by the county recorder and they and the records thereof, and certified copies of such records, shall be prima facie evidence of the facts therein contained.

The affidavit provided for in clause (3) hereof may be made and recorded for the purpose of complying with the provisions of the Servicemembers Civil Relief Act, and may be made and recorded at any time subsequent to the date of the mortgage foreclosure sale.

**Sec. 7. [582.043] REQUISITE APPLICABLE TO CERTAIN FORECLOSURES.**

Subdivision 1. **Applicability.** This section applies to foreclosures of first lien mortgages under chapters 580 and 581 on property consisting of one to four dwelling units, one of which the owner occupies as the owner's principal place of residence. This section does not apply to a small servicer, as that term is defined in Code of Federal Regulations, title 12, section 1026.41, paragraph (e).

Subd. 2. **Requisite.** (a) No party foreclosing a mortgage may record or file the notice of pendency required under section 580.032 or serve or file a summons and

complaint under chapter 581 until all loss mitigation obligations relevant to the mortgage loan being foreclosed have been fully satisfied.

(b) For the purposes of this section, "loss mitigation obligations" means actions required to be taken by a residential mortgage servicer, lender, mortgagee, note owner, note holder, or any other person in connection with a residential mortgage loan to review and consider the homeowner for a loan modification or other relief intended to allow the homeowner to retain ownership of the property under:

(1) state or federal law;

(2) rules or regulations promulgated by the Consumer Financial Protection Bureau;

(3) rules or regulations applicable to loans owned or guaranteed by the United States government, including rules and regulations issued by:

(i) the Department of Housing and Urban Development;

(ii) the Federal Housing Administration for FHA loans and Indian home loan guarantee loans;

(iii) the Department of Veterans Affairs for VA loans;

(iv) the Department of Agriculture for Rural Housing Service loans; and

(v) the Home Affordable Modification Program for loans covered under that program;

(4) an applicable consent, settlement, or other legal agreement, including:

(i) consent judgments entered in the case entitled United States of America et al. v. Bank of America Corporation et al., filed April 4, 2012, in the United States District Court for the District of Columbia, in a civil action number 120361; and

(ii) stipulations and Consent to the Issuance of an Amendment to 2011 Consent Order modifying Office of Thrift Supervision Orders No. NE-11-16 and, by reference NE-11-17; and Office of Comptroller of the Currency Consent Orders AA-EC-11-12; AA-EE-11-13; AA-EC-11-14; AA-EC-11-15; AA-EC-11-16; AA-EC-11-17; AA-EC-11-18; and AA-EC-11-19; or

(5) the Making Home Affordable Program applicable to loans owned or guaranteed by Fannie Mae or Freddie Mac or loans serviced by an entity that is participating in the Making Home Affordable Program.

**Subd. 3. Effective date; expiration.** This section applies to foreclosures commenced on or after August 1, 2013, and before January 1, 2018. This section expires on January 1, 2018.

## **Sec. 8. EFFECTIVE DATE.**

Sections 1 to 3 and 6 are effective for foreclosures commenced on or after August 1, 2013. Section 4 is effective the day following final enactment.

9.1 Section 5 is effective January 10, 2014, and applies to foreclosures by advertisement  
9.2 in which the power of attorney is acknowledged on or after January 10, 2014, and for  
9.3 foreclosures by action in which the lis pendens is dated on or after January 10, 2014,  
9.4 but does not apply to mortgage loans covered by any consent, settlement, or other legal  
9.5 agreement which is in effect at the time a notice of pendency could be filed, including,  
9.6 but not limited to:

9.7 (1) consent judgments entered in the case entitled United States of America et al. v.  
9.8 Bank of America Corporation et al., filed April 4, 2012, in the United States District Court  
9.9 for the District of Columbia, in a civil action number 120361; and

9.10 (2) stipulations and Consent to the Issuance of an Amendment to 2011 Consent  
9.11 Order modifying:

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

9.14 (ii) Office of Comptroller of the Currency Consent Orders AA-EC-11-12;  
9.15 AA-EE-11-13; AA-EC-11-14; AA-EC-11-15; AA-EC-11-16; AA-EC-11-17;  
9.16 AA-EC-11-18; and AA-EC-11-19.