

**CHAPTER 106—S.F.No. 1533**

*An act relating to commerce; regulating certain transactions with homeowners whose homes are in foreclosure; regulating homestead property; modifying provisions governing exemptions and the enforcement of judgements against homestead property; amending Minnesota Statutes 2006, sections 325N.01; 325N.03; 325N.04; 325N.10, subdivisions 3, 4, by adding a subdivision; 325N.13; 325N.14; 325N.17; 325N.18, by adding a subdivision; 510.02; 510.05; 550.175, subdivisions 1, 4, by adding a subdivision; 550.18; 550.19; 550.22; 550.24; 580.24; Laws 2004, chapter 263, section 26; proposing coding for new law in Minnesota Statutes, chapter 550.*

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

Section 1. Minnesota Statutes 2006, section 325N.01, is amended to read:

**325N.01 DEFINITIONS.**

The definitions in paragraphs (a) to (h) apply to sections 325N.01 to 325N.09.

(a) "Foreclosure consultant" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale;
- (2) obtain any forbearance from any beneficiary or mortgagee;
- (3) assist the owner to exercise the right of reinstatement provided in section 580.30;
- (4) obtain any extension of the period within which the owner may reinstate the owner's obligation;
- (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- (6) assist the owner in foreclosure or loan default to obtain a loan or advance of funds;
- (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale; or
- (8) save the owner's residence from foreclosure.

(b) A foreclosure consultant does not include any of the following:

- (1) a person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney-at-law;
- (2) a person licensed as a debt prorater under sections 332.12 to 332.29, when the person is acting as a debt prorater as defined in these sections;

(3) a person licensed as a real estate broker or salesperson under chapter 82 when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure;

(4) a person licensed as an accountant under chapter 326A when the person is acting in any capacity for which the person is licensed under those provisions;

(5) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services;

(6) a person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

(7) any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities while engaged in the business of these persons or entities;

(8) a person licensed as a residential mortgage originator or servicer pursuant to chapter 58, when acting under the authority of that license ~~or a foreclosure purchaser as defined in section 325N.10;~~

(9) a nonprofit agency or organization that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or foreclosure purchasers; ~~and~~

(10) a judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 580.03, but excluding a person who purchased the claim after such personal service; and

(11) a foreclosure purchaser as defined in section 325N.10.

(c) "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or any other real property ~~following the completion of the foreclosure proceeding~~, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

- (1) debt, budget, or financial counseling of any type;
- (2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;
- (3) contacting creditors on behalf of an owner of a residence in foreclosure;
- (4) arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate his or her obligation pursuant to section 580.30;
- (5) arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure;
- (6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or
- (7) giving any advice, explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage.

(f) "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as his or her principal place of residence, ~~and against which there is an outstanding notice of pendency of foreclosure, recorded pursuant to section 580.032, or against which a summons and complaint has been served under chapter 581 where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property including, but not limited to, contract for deed payments.~~

(g) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.

(h) "Contract" means any agreement, or any term in any agreement, between a foreclosure consultant and an owner for the rendition of any service as defined in paragraph (e).

Sec. 2. Minnesota Statutes 2006, section 325N.03, is amended to read:

**325N.03 CONTRACT.**

(a) Every contract must be in writing and must fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the statement required by paragraph (c):

"NOTICE REQUIRED BY MINNESOTA LAW

..... (Name) or anyone working for him or her CANNOT:

- (1) Take any money from you or ask you for money until ..... (Name) has completely finished doing everything he or she said he or she would do; and
- (2) Ask you to sign or have you sign any lien, mortgage, or deed."

(c) The contract must be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

"You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(d) The notice of cancellation must contain, and the contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) the name and physical address of the foreclosure consultant to which the notice of cancellation is to be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An e-mail address may be included, in addition to the physical address; and

(2) the date the owner signed the contract.

(e) Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to the address specified in the contract. If cancellation is mailed, delivery is effective upon mailing. If e-mailed, cancellation is effective upon transmission. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation," which must be attached to the contract, must be easily detachable, and must contain in at least 10-point type the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....  
(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation; or (2) e-mail a notice of cancellation

to .....  
(Name of foreclosure consultant)

at .....(Physical address of foreclosure consultant's place of business)

.....  
(E-mail address of foreclosure consultant's place of business)

NOT LATER THAN MIDNIGHT OF .....  
(Date)

I hereby cancel this transaction .....  
(Date)

.....  
(Owner's signature)"

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

(g) The three business days during which the owner may cancel the contract shall not begin to run until the foreclosure consultant has complied with this section.

Sec. 3. Minnesota Statutes 2006, section 325N.04, is amended to read:

**325N.04 VIOLATIONS.**

It is a violation for a foreclosure consultant to:

(1) claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he or she would perform;

(2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds eight percent per annum of the amount of any loan which the foreclosure consultant may make to the owner. Such a loan must not, as provided in clause (3), be secured by the residence in foreclosure or any other real or personal property;

(3) take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;

(4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;

(5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted;

(6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) induce or attempt to induce any owner to enter a contract which does not comply in all respects with sections 325N.02 and 325N.03.

Sec. 4. Minnesota Statutes 2006, section 325N.10, subdivision 3, is amended to read:

Subd. 3. **Foreclosure reconveyance.** "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

Sec. 5. Minnesota Statutes 2006, section 325N.10, subdivision 4, is amended to read:

Subd. 4. **Foreclosure purchaser.** "Foreclosure purchaser" means a person that has acted as the acquirer in ~~more than one~~ a foreclosure reconveyance ~~during any 24-month period~~. Foreclosure purchaser also includes a person that has acted in joint venture or joint enterprise with one or more acquirers in ~~more than one~~ a foreclosure reconveyance ~~during any 24-month period~~. A foreclosure purchaser does not include: (i) a natural person who shows that the natural person is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner, or (ii) a federal or state chartered bank, savings bank, thrift, or credit union is not a foreclosure purchaser.

Sec. 6. Minnesota Statutes 2006, section 325N.10, is amended by adding a subdivision to read:

Subd. 7. **Residence in foreclosure.** "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including, but not limited to, contract for deed payments.

Sec. 7. Minnesota Statutes 2006, section 325N.13, is amended to read:

#### **325N.13 CONTRACT CANCELLATION.**

(a) In addition to any other right of rescission, the foreclosed homeowner has the right to cancel any contract with a foreclosure purchaser until midnight of the fifth business day following the day on which the foreclosed homeowner signs a contract that

complies with sections 325N.10 to 325N.15 or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first.

(b) Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation ~~to the address specified in the contract~~, provided that, at a minimum, the contract and the notice of cancellation must contain a physical address to which notice of cancellation may be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An e-mail address may be provided in addition to the physical address. If cancellation is mailed, delivery is effective upon mailing. If e-mailed, cancellation is effective upon transmission.

(c) A notice of cancellation given by the foreclosed homeowner need not take the particular form as provided with the contract.

(d) Within ten days following receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

Sec. 8. Minnesota Statutes 2006, section 325N.14, is amended to read:

**325N.14 NOTICE OF CANCELLATION.**

(a) The contract must contain in immediate proximity to the space reserved for the foreclosed homeowner's signature a conspicuous statement in a size equal to at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the sale of  
your house without any penalty or obligation  
at any time before

.....  
(Date and time of day)

See the attached notice of cancellation form  
for an explanation of this right."

The foreclosure purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(b) The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in a size equal to a 12-point boldface type if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the foreclosed homeowner executes ~~any~~ the contract. This form must be attached to the contract, must be easily detachable, and must contain in type of at least 10 points, if the contract is printed or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....  
(Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

.....  
(Enter date and time of day)

To cancel this transaction, ~~personally~~ you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice; or (2) e-mail a notice of cancellation to

.....  
(Name of purchaser)

at .....(~~Street.~~ Physical address of purchaser's.....  
place of business)

.....  
(E-mail address of foreclosure consultant's  
place of business)

NOT LATER THAN .....  
(Enter date and time of day)

I hereby cancel this transaction .....  
(Date)

.....  
(Seller's signature)"

(c) The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(d) The five business days during which the foreclosed homeowner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this section.

Sec. 9. Minnesota Statutes 2006, section 325N.17, is amended to read:

**325N.17 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 ~~of~~ 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. 10. Minnesota Statutes 2006, section 325N.18, is amended by adding a subdivision to read:

Subd. 6. Stay of eviction action. (a) A court hearing an eviction action against a foreclosed homeowner must issue an automatic stay, without imposition of a bond, if a defendant makes a prima facie showing that the defendant:

(1) has (i) commenced an action concerning a foreclosure reconveyance; (ii) asserts a defense under section 504B.121 that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance in violation of sections 325N.10 to 325N.17; or (iii) asserts a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice, in connection with a foreclosure reconveyance;

(2) owned the foreclosed residence;

(3) conveyed title to the foreclosed residence to a third party upon a promise that the defendant would be allowed to occupy the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the foreclosed residence or other real property would be the subject of a foreclosure reconveyance; and

(4) since the conveyance, has continuously occupied the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest.

For purposes of this subdivision, notarized affidavits are acceptable means of proof to meet the defendant's burden. Upon good cause shown, a defendant may request and the court may grant up to an additional two weeks to produce evidence required to make the prima facie showing.

(b) A court may award to a plaintiff a \$500 penalty upon a showing that the defendant filed a frivolous claim or asserted a frivolous defense.

(c) The automatic stay expires upon the later of:

(1) the failure of the foreclosed homeowner to commence an action in a court of competent jurisdiction in connection with a foreclosed reconveyance transaction within 90 days after the issuance of the stay; or

(2) the issuance of an order lifting the stay by a court hearing claims related to the foreclosure reconveyance.

(d) If, after the expiration of the stay or an order lifting the stay, a court finds that the defendant's claim or defense was asserted in bad faith and wholly without merit, the court may impose a sanction against the defendant of \$500 plus reasonable attorney fees.

Sec. 11. Minnesota Statutes 2006, section 510.02, is amended to read:

**510.02 AREA AND VALUE; HOW LIMITED.**

Subdivision 1. **Exemption.** The homestead may include any quantity of land not exceeding 160 acres, and not included in the laid out or platted portion of any city. If the homestead is within the laid out or platted portion of a city, its area must not exceed one-half of an acre. The value of the homestead exemption. The exemption per homestead, whether the exemption is claimed jointly or individually by one or more debtors, may not exceed ~~\$200,000~~ \$300,000 or, if the homestead is used primarily for agricultural purposes, ~~\$500,000~~ \$750,000, exclusive of the limitations set forth in section 510.05.

Subd. 2. **Adjustment of dollar amounts.** The dollar amounts in subdivision 1 must change periodically in the manner provided for under section 550.37, subdivision 4a. The commissioner of commerce shall include the changes in the dollar amounts as part of the announcement and publication made under those provisions.

Sec. 12. Minnesota Statutes 2006, section 510.05, is amended to read:

**510.05 LIMITATIONS.**

~~Such~~ The amount of the homestead exemption shall not be reduced by and shall not extend to any mortgage lawfully obtained thereon, to any valid lien for taxes or assessments, to a claim filed pursuant to section 256B.15 or section 246.53 or, to any charge arising under the laws relating to laborers or material suppliers' liens or to any charge obtained pursuant to a valid waiver of the homestead exemption.

Sec. 13. Minnesota Statutes 2006, section 550.175, subdivision 1, is amended to read:

Subdivision 1. **Order directing sale of real property.** The executing creditor must obtain an order from the court directing a sale of the real property that includes a homestead before service of the notice of execution on real property containing the homestead of the debtor. The order shall contain the following findings:

(1) whether the real property is the homestead of a nondebtor;

(2) the amount of the debtor's homestead exemption, if any; and

(3) whether the fair market value of the real property exceeds the sum of the debtor's homestead exemption and the present encumbrances.

If the court finds that there is no nondebtor with a valid homestead interest in the real property and that the fair market value of the homestead real property exceeds the sum of the debtor's homestead exemption and the present encumbrances, the court shall order a sale of the real property for cash or cash equivalents to the extent of the homestead exemption at the time of sale.

Subd. 1a. Notification of homestead designation. If real property is to be sold on execution and the property contains a portion of the homestead of the debtor, the debtor must be notified by the executing creditor that the homestead may be sold and redeemed separately from the remaining property. The notice in subdivision 2 must be included in the notice of execution served on the debtor under section 550.19.

Sec. 14. Minnesota Statutes 2006, section 550.175, subdivision 4, is amended to read:

**Subd. 4. Sale of property.** (a) If the sheriff receives a homestead property designation under subdivision 3, the sheriff must offer and sell the designated homestead property, and the remaining property, separately, unless the executing creditor denies the right to the exemption, objects to the property designated, or claims the value exceeds the exemption.

(b) If the executing creditor is dissatisfied with the homestead property designation or the debtor's valuation of the property, upon proper motion to the district court of the county in which any part of the property is located, the executing creditor is entitled to a court approved designation of the homestead and a court determination of value. The court shall either approve the debtor's designation or cause the property to be surveyed and order a homestead designation consistent with the standards of subdivision 3 and require an appraisal of fair market value, as applicable. The court's designation of the homestead property must conform to the debtor's request, to the extent not inconsistent with the standards of subdivision 3.

(c) The court, in determining appraised value, shall review any appraisals provided by the debtor and executing creditor and may require a court appointed independent appraisal. The appraisals shall evaluate the property's fair market value, net of reasonable costs of sale.

(d) If the court determines that the property claimed as a homestead exceeds in value the amount of the homestead exemption or if the court determines that the property cannot be divided without material injury, the court shall order the sale of the entire property, including the designated homestead. ~~Out of the proceeds of the sale, the court shall pay the debtor the amount of the homestead exemption and apply the balance of the proceeds of the sale on the execution for cash or cash equivalents to the extent of the homestead exemption at the time of sale.~~

(e) At the sale, no bid may be accepted unless it exceeds the amount of the homestead exemption. If no bid exceeds the exemption, the homestead is exempt.

(f) The cost of any court ordered survey or appraisal and of the sale must be collected on the execution, if the debtor designated as the debtor's homestead a greater quantity of property, property of greater value than the debtor was entitled to, or designated a parcel that does not meet the standards of subdivision 3. In all other cases, the costs shall be borne by the executing creditor.

Sec. 15. Minnesota Statutes 2006, section 550.175, is amended by adding a subdivision to read:

Subd. 6. **Real property not subject to execution.** Real property that includes a homestead as defined under section 510.01 is not subject to execution under this chapter if there is a nondebtor with:

- (1) homestead rights under sections 507.02 and 510.01 to 510.04;
- (2) rights as a joint tenant or life tenant; or
- (3) rights to take the homestead under section 524.2-402.

Sec. 16. Minnesota Statutes 2006, section 550.18, is amended to read:

**550.18 NOTICE OF SALE.**

Before the sale of property on execution notice shall be given as follows:

(1) if the sale be of personal property, by giving ten days posted notice of the time and place thereof;

(2) if the sale be of real property, on execution or on judgment, by six weeks posted and published notice of the time and place thereof, describing the property with sufficient certainty to enable a person of common understanding to identify it; and

(3) a judgment creditor shall record a certified copy of the order directing sale of real property issued pursuant to section 550.175, if the real property is a homestead, with the county recorder or registrar of titles as appropriate in the county in which the real property is located before the first date of publication of the notice of sale required under clause (2).

An officer who sells without such notice shall forfeit \$100 to the party aggrieved, in addition to paying actual damages; and a person who before the sale or the satisfaction of the execution, and without the consent of the parties, takes down or defaces the notice posted, shall forfeit \$50; but the validity of the sale shall not be affected by either act, either as to third persons or parties to the action.

Sec. 17. Minnesota Statutes 2006, section 550.19, is amended to read:

**550.19 SERVICE ON JUDGMENT DEBTOR.**

~~At or before the time of posting notice of sale, the officer shall serve a copy of the execution and inventory, and of such notice, upon the judgment debtor, if the debtor be a resident of the county, in the manner required by law for the service of a summons in a civil action. A judgment creditor must, at least four weeks before the appointed time of sale, serve a copy of the notice of sale in like manner as a summons in a civil action in the district court upon the judgment debtor if the judgment debtor is a resident of the county and upon any person in possession of the homestead other than the judgment debtor. In addition, the notice of sale must also be served upon all persons who have recorded a request for notice in accordance with section 580.032.~~

Sec. 18. **[550.206] REPORT OF SALE OF HOMESTEAD ON EXECUTION; CONFIRMATION; RESALE.**

Upon sale of a homestead on execution, the sheriff shall file a report of the sale with the court. Upon the filing of the report of sale, the court shall grant an order confirming the sale, or, if it appears upon due examination that justice has not been done, the court

may order a resale on terms the court determines are just. Upon confirmation of the sale and execution of the certificate of sale, the sheriff shall hold the amount of the homestead exemption in trust for the judgment debtor until the debtor vacates the property, or the redemption period expires, whichever occurs first. The balance of the proceeds of the sale shall be applied to the execution. The sheriff shall pay any surplus thereafter in the manner provided in section 580.09.

Sec. 19. Minnesota Statutes 2006, section 550.22, is amended to read:

**550.22 CERTIFICATE OF SALE OF REALTY.**

When a sale of real property is made upon execution, or pursuant to a judgment or order of a court, unless otherwise specified therein, the officer shall execute and deliver to the purchaser a certificate containing:

- (1) a description of the execution, judgment, or order;
- (2) a description of the property;
- (3) the date of the sale and the name of the purchaser;
- (4) the price paid for each parcel separately;
- (5) if subject to redemption, the time allowed by law therefor;

(6) the amount of the debtor's homestead exemption, if any, as determined under section 550.175.

Such certificate shall be executed, acknowledged, and recorded in the manner provided by law for a conveyance of real property, shall be prima facie evidence of the facts ~~therein~~ stated, and, upon expiration of the time for redemption, shall operate as a conveyance to the purchaser of all the right, title, and interest of the person whose property is sold in and to the same, at the date of the lien upon which the same was sold. Any person desiring to perpetuate evidence that any real property sold under this section was not homestead real property may procure an affidavit by the person enforcing the judgment, or that person's attorney, or someone having knowledge of the facts, setting forth that the real property was not homestead real property. The affidavit shall be recorded by the county recorder or registrar of titles, and the affidavit and certified copies of the affidavit shall be prima facie evidence of the facts stated in the affidavit.

Sec. 20. Minnesota Statutes 2006, section 550.24, is amended to read:

**550.24 REDEMPTION OF REALTY.**

(a) Upon the sale of real property, if the estate sold is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the property sold, or any portion thereof which has been sold separately, is subject to redemption as provided in this section.

(b) The judgment debtor, the debtor's heirs, successors, legal representatives, or assigns may redeem within one year after the day of sale, or order confirming sale if the property is a homestead, by paying, to the purchaser or the officer making the sale, the amount for which the property was sold with interest at the judgment rate and if the purchaser is a creditor having a prior lien, the amount thereof, with interest, on the amount of the sale in excess of the homestead exemption, at the judgment rate together with any costs as provided in sections 582.03 and 582.031.

(c) If there is no redemption during the debtor's redemption period, creditors having a lien, legal or equitable, on the property or some part thereof, subsequent to that on which it was sold may redeem in the manner provided for redemption by creditors of the mortgagor in section 580.24, in the order of their respective liens.

(d) If the property is abandoned during the judgment debtor's redemption period, the person holding the sheriff's certificate may request that the court reduce the judgment debtor's redemption period to five weeks using the procedures provided for a foreclosure by action in section 582.032, subdivision 5.

Sec. 21. Minnesota Statutes 2006, section 580.24, is amended to read:

**580.24 REDEMPTION BY CREDITOR.**

(a) If no redemption is made by the mortgagor, the mortgagor's personal representatives or assigns, the most senior creditor having a legal or equitable lien upon the mortgaged premises, or some part of it, subsequent to the foreclosed mortgage, may redeem within seven days after the expiration of the redemption period determined under section 580.23 or 582.032, whichever is applicable; and each subsequent creditor having a lien may redeem, in the order of priority of their respective liens, within seven days after the time allowed the prior lienholder by paying the amount required under this section. However, no creditor is entitled to redeem unless, within the period allowed for redemption by the mortgagor, the creditor:

(1) records with each county recorder and registrar of titles where the foreclosed mortgage is recorded a notice of the creditor's intention to redeem;

(2) records in each office where the notice is recorded all documents necessary to create the lien on the mortgaged premises and to evidence the creditor's ownership of the lien; and

(3) after complying with clauses (1) and (2), delivers to the sheriff who conducted the foreclosure sale or the sheriff's successor in office a copy of each of the documents required to be recorded under clauses (1) and (2), with the office, date and time of filing for record stated on the first page of each document.

The sheriff shall maintain for public inspection all documents delivered to the sheriff and shall note the date of delivery on each document. The sheriff may charge a fee of \$100 for the documents delivered to the sheriff relating to each lien. The sheriff shall maintain copies of documents delivered to the sheriff for a period of six months after the end of the mortgagor's redemption period.

(b) Saturdays, Sundays, legal holidays, and the first day following the expiration of the prior redemption period must be included in computing the seven-day redemption period. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day must be omitted from the computation. The order of redemption by judgment creditors subsequent to the foreclosed mortgage shall be determined by the order in which their judgments were entered as memorials on the certificate of title for the foreclosed premises or docketed in the office of the district court administrator if the property is not registered under chapter 508 or 508A, regardless of the homestead status of the property. All mechanic's lienholders who have coordinate liens shall have one combined seven-day period to redeem.



(c) The amount required to redeem from the holder of the sheriff's certificate of sale is the amount required under section 580.23. The amount required to redeem from a person holding a certificate of redemption is:

- (1) the amount paid to redeem as shown on the certificate of redemption; plus
- (2) interest on that amount to the date of redemption; plus
- (3) the amount claimed due on the person's lien, as shown on the affidavit under section 580.25, clause (3).

The amount required to redeem may be paid to the holder of the sheriff's certificate of sale or the certificate of redemption, as the case may be, or to the sheriff for the holder.

Sec. 22. Laws 2004, chapter 263, section 26, is amended to read:

Sec. 26. **EFFECTIVE DATE; EXPIRATION.**

Sections 1 to 18, 22, 23, and 25 are effective August 1, 2004, ~~and expire December 31, 2009~~. Sections 19, 20, 21, and 24 are effective July 1, 2004.

Presented to the governor May 18, 2007

Signed by the governor May 21, 2007, 3:03 p.m.