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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 3600

February 28, 2008

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to mortgage foreclosures; declaring an emergency; permitting
1.3 postponement of certain mortgage foreclosure proceedings; proposing coding for
1.4 new law in Minnesota Statutes, chapter 582.

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

1.6 Section 1. **FINDINGS AND PURPOSE.**

1.7 The legislature finds and declares that subprime lending has grown rapidly, both
1.8 nationally and in the state of Minnesota, that subprime loans have led to an increase
1.9 in foreclosure rates which severely and adversely affects neighborhoods as well as the
1.10 families who are losing their homes, that homes vacated due to foreclosures attract crime
1.11 and lead to the deterioration of neighborhoods, that foreclosure rates tripled in some areas
1.12 of the state in 2007, and that the increase in foreclosures in 2008 is expected to exceed the
1.13 increase in 2007. The legislature declares that these conditions have created a housing
1.14 emergency that justifies legislation for the extension of the time of redemption from
1.15 mortgage foreclosure and execution sales and other similar relief. The state possesses
1.16 the right under its police power to declare a state of emergency in furtherance of the
1.17 inherent and fundamental purposes of government to safeguard the public and promote
1.18 the general welfare of the people.

1.19 Sec. 2. **[582.33] EMERGENCY DECLARED TO EXIST.**

1.20 The legislature of the state of Minnesota hereby declares that a public economic
1.21 emergency exists in the state of Minnesota.

2.1 Sec. 3. **[582.34] MORTGAGEE MAY APPLY TO DISTRICT COURT FOR**
2.2 **RELIEF.**

2.3 In any proceedings previously commenced for the foreclosure of a mortgage on
2.4 real estate by advertisement, in which a sale of the property has not been had, or in any
2.5 proceedings hereafter commenced, when the mortgager, or the owner in possession of the
2.6 mortgaged premises, or anyone claiming under the mortgager, or anyone liable for the
2.7 mortgage debt, at any time after the issuance of the notice of foreclosure proceedings, shall
2.8 apply to the district court of the county wherein such foreclosure proceedings are being
2.9 had, or are pending, by filing and serving a summons and verified complaint requesting
2.10 that the sale in foreclosure by advertisement be postponed and that the foreclosure, if any,
2.11 shall proceed by action. If it appears to the court that granting of the relief as requested
2.12 would be equitable and just, then the foreclosure proceedings by advertisement may be
2.13 postponed by the court by an ex parte order which shall be served with the summons and
2.14 complaint upon the party foreclosing or his attorney and at the time of the hearing upon
2.15 such order, the court may then further postpone such sale, and the parties seeking to
2.16 foreclose such mortgage shall proceed, if at all, to foreclose said mortgage by interposing
2.17 a cross complaint in such action. Such service may be made as now provided for the
2.18 service of a summons in a civil action, or by registered mail on the person foreclosing
2.19 or his authorized agent or attorney at the last known address of such person, agent, or
2.20 attorney respectively. As a condition precedent to the postponement of a foreclosure sale
2.21 by advertisement the party filing the verified complaint shall pay to the clerk for the person
2.22 foreclosing the mortgage the expenses incurred not including attorney fees which may
2.23 accrue prior to any postponement. The filing of the verified complaint shall be deemed a
2.24 waiver of publication of notice of postponement of the foreclosure sale and the sale at the
2.25 time which may be fixed by the court shall be deemed to be a sale postponed in lieu of the
2.26 time of sale specified in the published notice of mortgage foreclosure sale.

2.27 Sec. 4. **[582.35] COURT MAY ORDER RESALE.**

2.28 (a) When any mortgage has been foreclosed by action, the court shall, on the coming
2.29 in of the report of sale, cause notice of a hearing thereon to be served on the parties to the
2.30 action who have appeared, and fix the time and place for the hearing on the report. Before
2.31 granting an order confirming the sale, the court shall, if it appears upon due examination
2.32 that the sale price is unreasonably and unfairly inadequate, or that justice has otherwise
2.33 not been done, order a resale. If the sale is confirmed, the sheriff, or his deputy, shall
2.34 execute and deliver the proper certificate of sale which shall be recorded within 20 days
2.35 after such confirmation. Upon the hearing of the motion for an order confirming the sale

3.1 of the premises involved in the foreclosure of mortgages by action, in case the evidence
3.2 is insufficient to establish a fair and reasonable market or rental value of such property,
3.3 the court shall receive any competent evidence, including evidence tending to establish
3.4 the actual value of the property involved in the mortgage foreclosure proceedings, for
3.5 the purpose, or purposes, for which the property is or can be used. The court shall also
3.6 receive any evidence tending to show to what extent, if any, the property has decreased
3.7 in actual or market value by reason of the economic conditions existing at the time of or
3.8 prior to such sale.

3.9 (b) In case the parties to any foreclosure action shall agree in writing upon terms of
3.10 compromise settlement thereof, or of composition of the mortgage indebtedness, or both,
3.11 the court shall have jurisdiction and may by its order confirm and approve the settlement
3.12 or composition, or both, as the case may be.

3.13 (c) The court shall have the same jurisdiction to postpone the enforcement of
3.14 judgment by execution sale or to order resale or give other relief where a judgment is
3.15 rendered in an action to collect a debt or obligation secured by a real estate mortgage, the
3.16 foreclosure of which might be affected under the terms of this act, as is conferred by this
3.17 act with regard to the mortgage.

3.18 **Sec. 5. [582.36] PERIOD OF REDEMPTION MAY BE EXTENDED.**

3.19 Where any mortgage upon real property has been foreclosed and the period of
3.20 redemption has not yet expired, or where a sale is hereafter had, in the case of real estate
3.21 mortgage foreclosure proceedings, now pending, or which may subsequently be instituted
3.22 prior to the expiration of two years from the passage of this act, or upon the sale of any
3.23 real property under any judgment or execution where the period of redemption has not yet
3.24 expired, or where a sale is made hereafter within two years from and after the passage of
3.25 this act, the period of redemption may be extended for such additional time as the court
3.26 may deem just and equitable but in no event beyond May 1, 2010; provided that the
3.27 mortgagor, or the owner in possession of said property, in the case of mortgage foreclosure
3.28 proceedings, or the judgment debtor, in case of sale under judgment, or execution, shall
3.29 prior to the expiration of the period of redemption, apply to the district court having
3.30 jurisdiction of the matter, on not less than ten days' written notice to the mortgagee or
3.31 judgment creditor, or the attorney of either, as the case may be, for an order determining
3.32 the reasonable value of the income on said property, or, if the property has no income,
3.33 then the reasonable rental value of the property involved in such sale, and directing and
3.34 requiring such mortgagor or judgment debtor, to pay all or a reasonable part of the income
3.35 or rental value, in or toward the payment of taxes, insurance, interest, mortgage, or

4.1 judgment indebtedness at such times and in such manner as shall be fixed and determined
4.2 and ordered by the court; and the court shall thereupon hear said application and after the
4.3 hearing shall make and file its order directing the payment by the mortgagor, or judgment
4.4 debtor, of such an amount at such times and in such manner as to the court shall, under
4.5 all the circumstances, appear just and equitable. Provided that upon the service of the
4.6 notice or demand aforesaid that the running of the period of redemption shall be tolled
4.7 until the court shall its order upon such application. Provided, further, however, that if
4.8 the mortgagor or judgment debtor, or personal representative, defaults in the payments
4.9 required by the order, or commits waste, his right to redeem from the sale shall terminate
4.10 30 days after such default and holders of subsequent liens may redeem in the order and
4.11 manner now provided by law beginning 30 days after the filing of notice of the default
4.12 with the clerk of such district court, and his right to possession shall cease and the party
4.13 acquiring title to the real estate shall then be entitled to the immediate possession of said
4.14 premises. If default is claimed by allowance of waste, the 30-day period shall not begin to
4.15 run until the filing of an order of the court finding such waste. Provided, further, that the
4.16 time of redemption from any real estate mortgage foreclosure or judgment or execution
4.17 sale heretofore made, which otherwise would expire less than 30 days after the passage
4.18 and approval of this act, is extended to a date 30 days after the passage and approval of
4.19 this act, and in that case, the mortgagor, or judgment debtor, or the assigns or personal
4.20 representative of either, as the case may be, or the owner in the possession of the property,
4.21 may, prior, to that date, apply to the court for and the court may thereupon grant the relief
4.22 as provided in this section. Provided, further, that prior to May 1, 2010, no action shall
4.23 be maintained in this state for a deficiency judgment until the period of redemption as
4.24 allowed by existing law or as extended under the provisions of this act, has expired.

4.25 **Sec. 6. [582.37] COURT MAY REVISE AND ALTER TERMS.**

4.26 Upon the application of either party prior to the expiration of the extended period of
4.27 redemption as provided in this act and upon the presentation of evidence that the terms
4.28 fixed by the court are no longer just and reasonable, the court may revise and alter said
4.29 terms, in such manner as the changed circumstances and conditions may require.

4.30 **Sec. 7. [582.38] TRIAL TO BE HELD WITHIN 30 DAYS.**

4.31 The trial of any action, hearing, or proceeding mentioned in this act shall be held
4.32 within 30 days after the filing by either party of notice of hearing or trial, as the case may
4.33 be, and the hearing or trial may be held at any general or special term, or in chambers,
4.34 or during vacation of the court, and the order of the court shall be filed within five days

5.1 after trial or hearing, no more than five days stay shall be granted and review by the
5.2 Supreme Court may be had by certiorari, if application for the writ is made within 15
5.3 days after notice of such order and the writ shall be returnable within 30 days after the
5.4 filing of such order.

5.5 **Sec. 8. INCONSISTENT LAWS SUSPENDED UNTIL MAY 1, 2010.**

5.6 Every law and all the provisions thereof now in force insofar as inconsistent with the
5.7 provisions of this act, are hereby suspended until May 1, 2010. No extension of the period
5.8 for redemption nor any postponement of sale shall be ordered or allowed under this act
5.9 which would have the effect of extending the period for redemption beyond May 1, 2010.

5.10 **Sec. 9. APPLICATION OF ACT.**

5.11 This act as to mortgage foreclosures shall apply only to mortgages made prior to
5.12 the passage and approval of this act but shall not apply to mortgages made prior to the
5.13 passage of this act which shall hereafter be renewed or extended for a period ending more
5.14 than one year after the passage of this act; neither shall this act apply in any way which
5.15 would allow a resale, stay, postponement, or extension to such time that any right might be
5.16 adversely affected by a statute of limitation.

5.17 **Sec. 10. PROVISIONS SEVERABLE.**

5.18 The provisions of this act are hereby declared to be severable. If one provision shall
5.19 be found by the decision of a court of competent jurisdiction to be invalid, that decision
5.20 shall not affect the validity of the other provisions of this act.