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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 995

February 19, 2009

Authored by Mullery

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

March 12, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to mortgages; modifying certain provisions relating to foreclosure;
1.3 amending Minnesota Statutes 2008, sections 504B.285, subdivision 1; 580.021,
1.4 subdivisions 1, 2; 580.025; 580.04; 580.041, subdivision 1a; 580.042,
1.5 subdivision 1; 580.07; 580.15.

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

1.7 Section 1. Minnesota Statutes 2008, section 504B.285, subdivision 1, is amended to
1.8 read:

1.9 Subdivision 1. **Grounds.** The person entitled to the premises may recover
1.10 possession by eviction when:

1.11 (1) any person holds over real property:

1.12 (i) after a sale of the property on an execution or judgment; or

1.13 (ii) after the expiration of the time for redemption on foreclosure of a mortgage, or
1.14 after termination of contract to convey the property, provided that if the person holding
1.15 the real property after the expiration of the time for redemption or termination was a
1.16 tenant during the redemption or termination period, ~~the person entered into the lease of~~
1.17 ~~any duration after the date of the notice of mortgage foreclosure or contract for deed~~
1.18 ~~cancellation and~~ under a lease of any duration and the lease began after the date the
1.19 mortgage or contract for deed was executed but prior to the expiration of the time for
1.20 redemption or termination, and the person has received:

1.21 (A) at least two months' written notice to vacate no sooner than one month after the
1.22 expiration of the time for redemption or termination, provided that the tenant pays the
1.23 rent and abides by all terms of the lease; or

1.24 (B) at least two months' written notice to vacate no later than the date of the
1.25 expiration of the time for redemption or termination, which notice shall also state that the

2.1 sender will hold the tenant harmless for breaching the lease by vacating the premises if the
2.2 mortgage is redeemed or the contract is reinstated;

2.3 (2) any person holds over real property after termination of the time for which
2.4 it is demised or leased to that person or to the persons under whom that person holds
2.5 possession, contrary to the conditions or covenants of the lease or agreement under which
2.6 that person holds, or after any rent becomes due according to the terms of such lease or
2.7 agreement; or

2.8 (3) any tenant at will holds over after the termination of the tenancy by notice to quit.

2.9 Sec. 2. Minnesota Statutes 2008, section 580.021, subdivision 1, is amended to read:

2.10 Subdivision 1. **Applicability.** This section applies to foreclosure of mortgages under
2.11 this chapter on property consisting of one to four family dwelling units, one of which, when
2.12 the notice of pendency under section 580.03 is recorded, the owner occupies as the owner's
2.13 principal place of residency ~~on the date of service of the notice of sale of the owner.~~

2.14 **EFFECTIVE DATE.** This section is effective for notices of foreclosure published
2.15 or served on or after August 1, 2009.

2.16 Sec. 3. Minnesota Statutes 2008, section 580.021, subdivision 2, is amended to read:

2.17 Subd. 2. **Requirement to provide notice of opportunity for counseling.** ~~When~~
2.18 ~~the written notice required under section 47.20, subdivision 8, is provided and before~~
2.19 Before the notice of pendency under section 580.032, subdivision 3, is filed recorded, a
2.20 party foreclosing ~~on~~ a mortgage must provide to the mortgagor information contained in a
2.21 form prescribed in section 580.022, subdivision 1, that:

2.22 (1) foreclosure prevention counseling services provided by an authorized foreclosure
2.23 prevention counseling agency are available; and

2.24 (2) ~~notice that~~ the party will transmit the homeowner's name, address, and telephone
2.25 number to an approved foreclosure prevention agency.

2.26 ~~Nothing in this subdivision prohibits~~ The notices required by this subdivision ~~from~~
2.27 ~~being~~ may be provided concurrently with the a written notice required under section
2.28 ~~47.20, subdivision 8~~ of default.

2.29 For the purposes of this section, an "authorized foreclosure prevention counseling
2.30 agency" is a nonprofit agency approved by the Minnesota ~~Housing Finance Agency~~ Home
2.31 Ownership Center or the United States Department of Housing and Urban Development to
2.32 provide foreclosure prevention counseling services.

3.1 **EFFECTIVE DATE.** This section is effective for notices of foreclosure published
3.2 or served on or after August 1, 2009.

3.3 Sec. 4. Minnesota Statutes 2008, section 580.025, is amended to read:

3.4 **580.025 FORECLOSURE DATA.**

3.5 **Subdivision 1. Applicability.** This section applies to foreclosure of mortgages under
3.6 this chapter on property consisting of one to four family dwelling units.

3.7 **Subd. 2. Data required.** The notice of pendency required by section 580.032,
3.8 subdivision 3; the notice of sale required by section 580.04; and the certificate of sale
3.9 required by section 580.12 shall include the following information to the best of the
3.10 knowledge of the party foreclosing the mortgage:

3.11 (1) the physical street address, city, and zip code of the mortgaged premises;

3.12 (2) the name of the transaction agent, residential mortgage servicer, and the lender
3.13 or broker, as defined in section 58.02, if the person holding the mortgage is a transaction
3.14 agent as defined in section 58.02, subdivision 30, or the name of the residential mortgage
3.15 servicer and the lender or broker, as defined in section 58.02, if the person holding the
3.16 mortgage is not a transaction agent as defined in section 58.02, subdivision 30;

3.17 (3) the tax parcel identification number of the mortgaged premises;

3.18 (4) if stated on the mortgage, the transaction agent's mortgage identification number;
3.19 and

3.20 (5) if stated on the mortgage, the name of the residential mortgage originator as
3.21 defined in section 58.02.

3.22 No liability shall accrue to the party foreclosing the mortgage or the party's attorney
3.23 for de minimis, good faith, or commercially reasonable errors in this information. The
3.24 omission of all or some of the information required by this section from the notice shall
3.25 not invalidate the foreclosure of the mortgage.

3.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.27 Sec. 5. Minnesota Statutes 2008, section 580.04, is amended to read:

3.28 **580.04 REQUISITES OF NOTICE.**

3.29 **(a)** Each notice shall specify:

3.30 (1) the name of the mortgagor, the mortgagee, each assignee of the mortgage, if any,
3.31 and the original or maximum principal amount secured by the mortgage;

4.1 (2) the date of the mortgage, and when and where recorded, except where the
 4.2 mortgage is upon registered land, in which case the notice shall state that fact, and when
 4.3 and where registered;

4.4 (3) the amount claimed to be due on the mortgage on the date of the notice;

4.5 (4) a description of the mortgaged premises, conforming substantially to that
 4.6 contained in the mortgage;

4.7 (5) the time and place of sale; and

4.8 (6) the time allowed by law for redemption by the mortgagor, the mortgagor's
 4.9 personal representatives or assigns; ~~and.~~

4.10 (b) If the real estate is an owner-occupied, single-family dwelling, the notice must
 4.11 also specify the date and time by which the mortgagor must vacate the property if the
 4.12 mortgage is not reinstated under section 580.30 or the property redeemed under section
 4.13 580.23.

4.14 ~~(7)~~ (c) If the party foreclosing the mortgage desires to preserve the right to reduce the
 4.15 redemption period under section 582.032 after the first publication of the notice, the notice
 4.16 must also state in capital letters: "THE TIME ALLOWED BY LAW FOR REDEMPTION
 4.17 BY THE MORTGAGOR, THE MORTGAGOR'S PERSONAL REPRESENTATIVES
 4.18 OR ASSIGNS, MAY BE REDUCED TO FIVE WEEKS IF A JUDICIAL ORDER IS
 4.19 ENTERED UNDER MINNESOTA STATUTES, SECTION 582.032, DETERMINING,
 4.20 AMONG OTHER THINGS, THAT THE MORTGAGED PREMISES ARE IMPROVED
 4.21 WITH A RESIDENTIAL DWELLING OF LESS THAN FIVE UNITS, ARE NOT
 4.22 PROPERTY USED IN AGRICULTURAL PRODUCTION, AND ARE ABANDONED."

4.23 **EFFECTIVE DATE.** This section is effective for notices of foreclosure published
 4.24 or served on or after August 1, 2009.

4.25 Sec. 6. Minnesota Statutes 2008, section 580.041, subdivision 1a, is amended to read:

4.26 Subd. 1a. **Applicability.** This section applies to foreclosure of mortgages under this
 4.27 chapter on property consisting of one to four family dwelling units, one of which, when
 4.28 the notice of pendency under section 580.03 is recorded, the owner occupies as the owner's
 4.29 principal place of residency ~~on the date of service of the notice of sale on the owner.~~

4.30 **EFFECTIVE DATE.** This section is effective for notices of foreclosure published
 4.31 or served on or after August 1, 2009.

4.32 Sec. 7. Minnesota Statutes 2008, section 580.042, subdivision 1, is amended to read:

5.1 Subdivision 1. **Applicability.** This section applies to foreclosure of mortgages under
5.2 this chapter on property consisting of one or more family dwelling units, one or more of
5.3 which are occupied by a tenant as a residence.

5.4 Sec. 8. Minnesota Statutes 2008, section 580.07, is amended to read:

5.5 **580.07 POSTPONEMENT.**

5.6 (a) The sale may be postponed, from time to time, by the party conducting the
5.7 foreclosure, by inserting a notice of the postponement, as soon as practicable, in the
5.8 newspaper in which the original advertisement was published, at the expense of the
5.9 party requesting the postponement. The notice shall be published only once. The party
5.10 requesting the postponement must, at the party's expense:

5.11 (1) publish, only once, a notice of postponement and the rescheduled date, if known,
5.12 as soon as practicable, in the newspaper in which the notice under section 580.03 was
5.13 published; and

5.14 (2) send by first class mail to the occupant, or occupants, if any, postmarked within
5.15 three days of the postponed sale, notice:

5.16 (i) of the postponement; and

5.17 (ii) if known, the rescheduled date of the sale and the date and time by which the
5.18 mortgagor must vacate the property if the mortgage is not reinstated under section 580.30
5.19 or the property redeemed under section 580.23.

5.20 (b) If the rescheduled date of the sale is not known at the time of the initial
5.21 publication and notice to the occupant or occupants of the postponement, the foreclosing
5.22 party must, at its expense, if and when a new date of sale is scheduled:

5.23 (1) publish, only once, notice of the rescheduled date of the sale, as soon as
5.24 practicable, in the newspaper in which the notice under section 580.03 and the notice of
5.25 postponement under paragraph (a) was published; and

5.26 (2) send by first class mail to the occupant, or occupants, if any, postmarked within
5.27 ten days of the rescheduled sale, notice:

5.28 (i) of the date of the rescheduled sale; and

5.29 (ii) the date and time by which the mortgagor must vacate the property if the
5.30 mortgage is not reinstated under section 580.30 or the property redeemed under section
5.31 580.23.

5.32 **EFFECTIVE DATE.** This section is effective for notices of foreclosure published
5.33 or served on or after August 1, 2009.

6.1 Sec. 9. Minnesota Statutes 2008, section 580.15, is amended to read:

6.2 **580.15 PERPETUATING EVIDENCE OF SALE.**

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

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

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

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

6.15 (4) an affidavit by the person foreclosing the mortgage, or that person's attorney,
6.16 or someone having knowledge of the facts, setting forth the fact of service of notice of
6.17 sale upon the secretary of the Treasury of the United States or the secretary's delegate in
6.18 accordance with the provisions of Section 7425 of the Internal Revenue Code of 1954
6.19 as amended by Section 109 of the Federal Tax Lien Act of 1966, and also setting forth
6.20 the fact of service of notice of sale upon the commissioner of revenue of the state of
6.21 Minnesota in accordance with the provisions of section 270C.63, subdivision 11. Any
6.22 such affidavit recorded prior to May 16, 1967 shall be effective as prima facie evidence of
6.23 the facts therein contained as though recorded subsequent to May 16, 1967;

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

6.27 (6) one or more affidavits by the person foreclosing the mortgage, or that person's
6.28 attorney or another person having knowledge of the facts, stating that if sections 580.021,
6.29 580.041, 580.042, 582.039, 582.041, or 582.042 apply to the foreclosure proceedings all
6.30 notice required under those sections have been provided.

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

6.34 The affidavit provided for in clause (3) hereof may be made and recorded for the
6.35 purpose of complying with the provisions of the Servicemembers Civil Relief Act, and

7.1 may be made and recorded at any time subsequent to the date of the mortgage foreclosure
7.2 sale.

7.3 **EFFECTIVE DATE.** This section is effective for sales conducted on or after
7.4 August 1, 2009.