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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 1394

March 5, 2009

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

1.1 A bill for an act
1.2 relating to real property; specifying notice requirements; modifying provisions
1.3 governing the reduced redemption period for abandoned property; establishing
1.4 a duty to protect vacant foreclosed property under certain circumstances;
1.5 providing for the imposition of fines for failure to maintain property; altering the
1.6 posting requirement for trespassing on construction sites; modifying provisions
1.7 governing public nuisances; imposing civil and criminal penalties; amending
1.8 Minnesota Statutes 2008, sections 463.251, subdivision 2; 580.04; 582.031;
1.9 582.032, subdivision 2, by adding a subdivision; 609.605, subdivision 1; 617.80,
1.10 subdivision 7, by adding a subdivision; 617.81, subdivisions 2, 4.

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

1.12 Section 1. Minnesota Statutes 2008, section 463.251, subdivision 2, is amended to read:

1.13 Subd. 2. **Order; notice.** If in any city a building becomes vacant or unoccupied
1.14 and is deemed hazardous due to the fact that the building is open to trespass and has not
1.15 been secured and the building could be made safe by securing the building, the governing
1.16 body may order the building secured and shall cause notice of the order to be served upon
1.17 the owner of record of the premises or the owner's agent, ~~the taxpayer identified in the~~
1.18 ~~property tax records for that parcel, the holder of the mortgage or sheriff's certificate, and~~
1.19 ~~any neighborhood association for the neighborhood in which the building is located that~~
1.20 ~~has requested notice;~~ by delivering or mailing a copy to ~~the owner or agent, the identified~~
1.21 ~~taxpayer, the holder of the mortgage or sheriff's certificate, and the neighborhood~~
1.22 ~~association,~~ at the last known address. Service by mail is complete upon mailing.

1.23 Sec. 2. Minnesota Statutes 2008, section 580.04, is amended to read:

1.24 **580.04 REQUISITES OF NOTICE.**

1.25 Each notice shall specify or contain:

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

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

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

2.7 (4) a description of the mortgaged premises, conforming substantially to that
2.8 contained in the mortgage, and the commonly used street address of the mortgaged
2.9 premises;

2.10 (5) the time and place of sale;

2.11 (6) the time allowed by law for redemption by the mortgagor, the mortgagor's
2.12 personal representatives or assigns; and

2.13 (7) ~~if the party foreclosing the mortgage desires to preserve the right to reduce the~~
2.14 ~~redemption period under section 582.032 after the first publication of the notice, the~~
2.15 ~~notice must also state the following statement in capital letters: "THE TIME ALLOWED~~
2.16 ~~BY LAW FOR REDEMPTION BY THE MORTGAGOR, THE MORTGAGOR'S~~
2.17 ~~PERSONAL REPRESENTATIVES OR ASSIGNS, MAY BE REDUCED TO FIVE~~
2.18 ~~WEEKS IF A JUDICIAL ORDER IS ENTERED UNDER MINNESOTA STATUTES,~~
2.19 ~~SECTION 582.032, DETERMINING, AMONG OTHER THINGS, THAT THE~~
2.20 ~~MORTGAGED PREMISES ARE IMPROVED WITH A RESIDENTIAL DWELLING~~
2.21 ~~OF LESS THAN FIVE UNITS, ARE NOT PROPERTY USED IN AGRICULTURAL~~
2.22 ~~PRODUCTION, AND ARE ABANDONED."~~

2.23 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to
2.24 notices of sale first published on or after that date.

2.25 Sec. 3. Minnesota Statutes 2008, section 582.031, is amended to read:

2.26 **582.031 LIMITED RIGHT OF ENTRY; DUTY TO ENTER AND PROTECT**
2.27 **PREMISES.**

2.28 Subdivision 1. **Right of entry.** (a) If premises described in a mortgage or sheriff's
2.29 certificate are vacant or unoccupied, the holder of the mortgage or sheriff's certificate or
2.30 the holder's agents and contractors may, but is under no obligation to, enter upon the
2.31 premises to protect the premises from waste and trespass, until the holder of the mortgage
2.32 or sheriff's certificate receives notice that the premises are occupied. The holder of the
2.33 mortgage or sheriff's certificate does not become a mortgagee in possession by taking
2.34 actions authorized or required under this section. An affidavit of the sheriff, the licensing,

3.1 regulatory, or inspection authority of a municipality in which the property is located, the
 3.2 holder of the mortgage or sheriff's certificate, or a person acting on behalf of the holder,
 3.3 describing the premises and stating that the same are vacant or unoccupied, is prima facie
 3.4 evidence of the facts stated in the affidavit and is entitled to be recorded in the office of the
 3.5 county recorder or the registrar of titles in the county where the premises are located, if it
 3.6 contains a legal description of the premises.

3.7 (b) The holder of the mortgage or sheriff's certificate shall enter the premises and
 3.8 take the actions authorized under subdivision 2, to the extent reasonably necessary to
 3.9 protect the premises, if the holder knows or has reason to know that there is prima facie
 3.10 evidence of abandonment of the property as described in section 582.032, subdivision 7,
 3.11 clauses (1) to (6).

3.12 Subd. 2. **Authorized actions.** The holder of the mortgage or sheriff's certificate may
 3.13 take the following actions to protect the premises from waste, trespass, or from falling
 3.14 below minimum community standards for public safety and sanitation: make reasonable
 3.15 periodic inspections, install or change locks on doors and windows, board windows,
 3.16 doors, and other openings, install and operate an alarm system, and otherwise prevent or
 3.17 minimize damage to the premises from the elements, vandalism, trespass, or other illegal
 3.18 activities. If the holder of the mortgage or sheriff's certificate installs or changes locks
 3.19 under this section, a key to the premises must be promptly delivered to the mortgagor or
 3.20 any person lawfully claiming through the mortgagor, upon request.

3.21 Subd. 3. **Costs.** All costs incurred by the holder of the mortgage or sheriff's
 3.22 certificate to protect the premises from waste or trespass or from falling below minimum
 3.23 community standards for public safety and sanitation may be added to the principal
 3.24 balance of the mortgage or the costs allowable upon redemption. The costs may bear
 3.25 interest to the extent provided in the mortgage and may be added to the redemption price
 3.26 if the costs are incurred after a foreclosure sale. If the costs are incurred after a foreclosure
 3.27 sale, the holder of any sheriff's certificate of sale or certificate of redemption must comply
 3.28 with the provisions of section 582.03. The provisions of this section are in addition to, and
 3.29 do not limit or replace, any other rights or remedies available to holders of mortgages and
 3.30 sheriff's certificates, at law or under the applicable mortgage agreements.

3.31 Sec. 4. Minnesota Statutes 2008, section 582.032, subdivision 2, is amended to read:

3.32 Subd. 2. **Before foreclosure sale.** Notwithstanding section 580.23 or 581.10, if at
 3.33 any time before the foreclosure sale but not more than 30 days before the first publication
 3.34 of the notice of sale, a court order is entered reducing the mortgagor's redemption period to
 3.35 five weeks under subdivision 7, after the mortgaged premises have been sold as provided in

4.1 chapter 580 or 581, the mortgagor, and the mortgagor's personal representatives or assigns,
4.2 within five weeks after the sale under chapter 580, or within five weeks after the date of
4.3 the order confirming the sale under chapter 581, may redeem the mortgaged premises as
4.4 provided in section 580.23, subdivision 1, or 581.10, as applicable. ~~If an order is obtained~~
4.5 ~~after the first publication of the notice of sale, the five-week redemption period applies~~
4.6 ~~only if the notice of sale contained the statement required by section 580.04, clause (7).~~

4.7 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to
4.8 foreclosures for which the notice of sale is first published on or after that date.

4.9 Sec. 5. Minnesota Statutes 2008, section 582.032, is amended by adding a subdivision
4.10 to read:

4.11 **Subd. 5a. Initiation of reduced redemption period by municipality.** (a) The
4.12 municipality in which mortgaged premises are located may obtain a court order requiring
4.13 the party foreclosing a mortgage, the plaintiff in a foreclosure by action, or the holder of
4.14 the sheriff's certificate of sale to initiate a proceeding or make a motion to reduce the
4.15 mortgagor's redemption period under this section if the municipality determines that there
4.16 is prima facie evidence of abandonment as described in subdivision 7.

4.17 (b) The municipality may proceed under this subdivision by bringing a petition for
4.18 relief that includes the commonly used street address of the mortgaged premises and the
4.19 evidence of abandonment and names the party to whom the order is to be directed. In a
4.20 foreclosure by action, the municipality may intervene in the action by bringing a motion
4.21 for the requested relief. The petition or motion must include a notice that if the petition or
4.22 motion is not contested and a hearing requested within ten days of service of the petition
4.23 or motion on all parties, the requested relief will be granted and the party to whom the
4.24 order is directed will be required to proceed under this section for an order to reduce the
4.25 redemption period.

4.26 (c) If a hearing on the petition or motion is not requested within ten days of service
4.27 on all parties, the court shall issue an ex parte order granting the requested relief. If a
4.28 hearing is requested, the court shall grant the requested relief unless the court finds that
4.29 there is not evidence of abandonment or the responding party establishes good cause
4.30 for not proceeding under this section to reduce the redemption period. In determining
4.31 whether there is good cause, the court shall consider efforts by the responding party to
4.32 enter and protect the mortgaged premises under section 582.031, to maintain the property
4.33 as required under section 582.031, and the impact that the condition of the property has on
4.34 public health or safety and the value of surrounding properties.

5.1 Sec. 6. Minnesota Statutes 2008, section 609.605, subdivision 1, is amended to read:

5.2 Subdivision 1. **Misdemeanor.** (a) The following terms have the meanings given
5.3 them for purposes of this section.

5.4 (1) "Premises" means real property and any appurtenant building or structure.

5.5 (2) "Dwelling" means the building or part of a building used by an individual as a
5.6 place of residence on either a full-time or a part-time basis. A dwelling may be part of a
5.7 multidwelling or multipurpose building, or a manufactured home as defined in section
5.8 168.002, subdivision 16.

5.9 (3) "Construction site" means the site of the construction, alteration, painting, or
5.10 repair of a building or structure.

5.11 (4) "Owner or lawful possessor," as used in paragraph (b), clause (9), means the
5.12 person on whose behalf a building or dwelling is being constructed, altered, painted, or
5.13 repaired and the general contractor or subcontractor engaged in that work.

5.14 (5) "Posted," as used:

5.15 (i) in paragraph (b), clause (4), means the placement of a sign at least 8-1/2 inches
5.16 by 11 inches in a conspicuous place on the exterior of the building, or in a conspicuous
5.17 place within the property on which the building is located. The sign must carry a general
5.18 notice warning against trespass;

5.19 (ii) in paragraph (b), clause (9), means the placement of a sign at least 8-1/2 inches
5.20 by 11 inches square in a conspicuous place on the exterior of the building that is under
5.21 construction, alteration, or repair, and additional signs in at least two conspicuous places
5.22 for each ten acres being protected, or in a conspicuous place within the area being
5.23 protected. If the area being protected is less than three acres, one additional sign must
5.24 be conspicuously placed within that area. If the area being protected is three acres but
5.25 less than ten acres, two additional signs must be conspicuously placed within that area.
5.26 For each additional full ten acres of area being protected beyond the first ten acres of
5.27 area, two additional signs must be conspicuously placed within the area being protected.
5.28 The sign must carry an appropriate a general notice and the name of the person giving
5.29 the notice, followed by the word "owner" if the person giving the notice is the holder of
5.30 legal title to the land on which the construction site is located or by the word "occupant"
5.31 if the person giving the notice is not the holder of legal title but is a lawful occupant
5.32 of the land warning against trespass; and

5.33 ~~(ii)~~ (iii) in paragraph (b), clause (10), means the placement of signs that:

5.34 (A) ~~state "no trespassing" or similar terms~~ carry a general notice warning against
5.35 trespass;

5.36 (B) display letters at least two inches high;

6.1 (C) state that Minnesota law prohibits trespassing on the property; and

6.2 (D) are posted in a conspicuous place and at intervals of 500 feet or less.

6.3 (6) "Business licensee," as used in paragraph (b), clause (9), includes a representative
6.4 of a building trades labor or management organization.

6.5 (7) "Building" has the meaning given in section 609.581, subdivision 2.

6.6 (b) A person is guilty of a misdemeanor if the person intentionally:

6.7 (1) permits domestic animals or fowls under the actor's control to go on the land
6.8 of another within a city;

6.9 (2) interferes unlawfully with a monument, sign, or pointer erected or marked to
6.10 designate a point of a boundary, line or a political subdivision, or of a tract of land;

6.11 (3) trespasses on the premises of another and, without claim of right, refuses to
6.12 depart from the premises on demand of the lawful possessor;

6.13 (4) occupies or enters the dwelling or locked or posted building of another, without
6.14 claim of right or consent of the owner or the consent of one who has the right to give
6.15 consent, except in an emergency situation;

6.16 (5) enters the premises of another with intent to take or injure any fruit, fruit trees, or
6.17 vegetables growing on the premises, without the permission of the owner or occupant;

6.18 (6) enters or is found on the premises of a public or private cemetery without
6.19 authorization during hours the cemetery is posted as closed to the public;

6.20 (7) returns to the property of another with the intent to abuse, disturb, or cause
6.21 distress in or threaten another, after being told to leave the property and not to return, if the
6.22 actor is without claim of right to the property or consent of one with authority to consent;

6.23 (8) returns to the property of another within one year after being told to leave the
6.24 property and not to return, if the actor is without claim of right to the property or consent
6.25 of one with authority to consent;

6.26 (9) enters the locked or posted construction site of another without the consent of the
6.27 owner or lawful possessor, unless the person is a business licensee; or

6.28 (10) enters the locked or posted aggregate mining site of another without the consent
6.29 of the owner or lawful possessor, unless the person is a business licensee.

6.30 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to crimes
6.31 committed on or after that date.

6.32 Sec. 7. Minnesota Statutes 2008, section 617.80, subdivision 7, is amended to read:

6.33 Subd. 7. **Owner.** "Owner," for purposes of sections 617.80 to 617.87, means ~~the~~
6.34 ~~person in whose name the building or affected portion is recorded with the county auditor~~
6.35 ~~for taxation purposes.~~ a person having legal title to the premises, a mortgagee or vendee in

7.1 possession, a trustee in bankruptcy, a receiver, or any other person having legal ownership
 7.2 or control of the premises.

7.3 Sec. 8. Minnesota Statutes 2008, section 617.80, is amended by adding a subdivision
 7.4 to read:

7.5 Subd. 7a. **Possessor.** "Possessor" means a person who occupies or resides in a
 7.6 building or rental unit with the permission of the owner or a tenant or lessee.

7.7 Sec. 9. Minnesota Statutes 2008, section 617.81, subdivision 2, is amended to read:

7.8 Subd. 2. **Acts constituting a nuisance.** (a) For purposes of sections 617.80 to
 7.9 617.87, a public nuisance exists (1) upon proof of one or more separate behavioral
 7.10 incidents described in item (i), (v), ~~or~~ (viii), or (ix), or (2) upon proof of two or more
 7.11 separate behavioral incidents described in item (ii), (iii), (iv), (vi), (vii), or ~~(ix)~~ (x),
 7.12 committed within the previous 12 months within the building:

7.13 (i) prostitution or prostitution-related activity committed within the building;

7.14 (ii) gambling or gambling-related activity committed within the building;

7.15 (iii) maintaining a public nuisance in violation of section 609.74, clause (1) or (3);

7.16 (iv) permitting a public nuisance in violation of section 609.745;

7.17 (v) unlawful sale, possession, storage, delivery, giving, manufacture, cultivation, or
 7.18 use of controlled substances committed within the building;

7.19 (vi) unlicensed sales of alcoholic beverages committed within the building in
 7.20 violation of section 340A.401;

7.21 (vii) unlawful sales or gifts of alcoholic beverages by an unlicensed person
 7.22 committed within the building in violation of section 340A.503, subdivision 2, clause (1);

7.23 (viii) unlawful sales or gifts of alcoholic beverages committed within the building
 7.24 in violation of section 340A.401 or 340A.503, subdivision 2, clause (1), if multiple
 7.25 violations occur during the same behavioral incident when the building is not occupied by
 7.26 the owner or a tenant, lessee, or possessor;

7.27 (ix) unlawful use or possession of a dangerous weapon as defined in section 609.02,
 7.28 subdivision 6, committed within the building; or

7.29 ~~(ix)~~ (x) violation by a commercial enterprise of local or state business licensing
 7.30 regulations, ordinances, or statutes prohibiting the maintenance of a public nuisance as
 7.31 defined in section 609.74 or the control of a public nuisance as defined in section 609.745.

7.32 (b) If the building contains more than one rental unit, two or more behavioral
 7.33 incidents must consist of conduct:

8.1 (1) anywhere in the building by the same tenant ~~or~~, lessee, possessor, or persons
8.2 acting in conjunction with or under the control of the same tenant ~~or~~, lessee, or possessor;

8.3 (2) by any persons within the same rental unit while occupied by the same tenant
8.4 ~~or~~, lessee, or possessor, or within two or more rental units while occupied by the same
8.5 tenant ~~or~~, lessee, or possessor; or

8.6 (3) by the owner of the building or persons acting in conjunction with or under
8.7 the control of the owner.

8.8 (c) Proof of a nuisance exists if each of the elements of the conduct constituting the
8.9 nuisance is established by clear and convincing evidence.

8.10 Sec. 10. Minnesota Statutes 2008, section 617.81, subdivision 4, is amended to read:

8.11 Subd. 4. **Notice.** (a) If a prosecuting attorney has reason to believe that a nuisance is
8.12 maintained or permitted in the jurisdiction the prosecuting attorney serves, and intends to
8.13 seek abatement of the nuisance, the prosecuting attorney shall provide the written notice
8.14 described in paragraph (b), by personal service or certified mail, return receipt requested,
8.15 to ~~the owner~~ all owners and ~~all~~ interested parties known to the prosecuting attorney.

8.16 (b) The written notice must:

8.17 (1) state that a nuisance as defined in subdivision 2 is maintained or permitted in the
8.18 building and must specify the kind or kinds of nuisance being maintained or permitted;

8.19 (2) summarize the evidence that a nuisance is maintained or permitted in the
8.20 building, including the date or dates on which nuisance-related activity or activities are
8.21 alleged to have occurred;

8.22 (3) inform the recipient that failure to abate the conduct constituting the nuisance or
8.23 to otherwise resolve the matter with the prosecuting attorney within 30 days of service of
8.24 the notice may result in the filing of a complaint for relief in district court that could, among
8.25 other remedies, result in enjoining the use of the building for any purpose for one year or,
8.26 in the case of a tenant, lessee, or possessor, could result in cancellation of the lease; and

8.27 (4) inform the owner of the options available under section 617.85.