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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 3612

February 28, 2008

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The bill was read for the first time and referred to the Committee on Commerce and Labor

March 18, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Public Safety and Civil Justice

March 27, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to real property; providing for the Minnesota Subprime Foreclosure
1.3 Deferment Act of 2008; proposing coding for new law in Minnesota Statutes,
1.4 chapter 583.

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

1.6 Section 1. [583.33] CITATION.

1.7 Sections 583.33 to 583.40 shall be cited as the "Minnesota Subprime Foreclosure
1.8 Deferment Act of 2008."

1.9 Sec. 2. [583.34] DEFINITIONS.

1.10 Subdivision 1. Scope. For purposes of sections 583.33 to 583.40, the terms defined
1.11 in this section have the meanings given to them.

1.12 Subd. 2. The act. "The act" means the Minnesota Subprime Foreclosure Deferment
1.13 Act of 2008.

1.14 Subd. 3. Deferment payment. "Deferment payment" means the monthly amount
1.15 that is due to the foreclosing lender by an eligible foreclosed borrower under section
1.16 538.37 to maintain the right to deferment.

1.17 Subd. 4. Deferment period. "Deferment period" means the period that begins on
1.18 the effective date of the act and expires one year following the effective date of the act.

1.19 Subd. 5. Deferment right. "Deferment right" means the relief provided to an
1.20 eligible foreclosed borrower in section 583.35.

1.21 Subd. 6. Eligible foreclosed loan. "Eligible foreclosed loan" means a residential
1.22 mortgage loan for which a foreclosing lender has scheduled a foreclosure sale under
1.23 chapter 580 or 581 or schedules a foreclosure sale during the deferment period for which:

2.1 (1) the closing of the loan occurred after January 1, 2001, and prior to August 1, 2007; and  
2.2 (2) either is a subprime loan, or is a loan with negative amortization for which the required  
2.3 minimum payment of principal and interest increased after the date the loan was originated.

2.4 Subd. 7. **Eligible foreclosed borrower.** "Eligible foreclosed borrower" means a  
2.5 borrower who: (1) is a mortgagor under an eligible foreclosed loan; and (2) resides at the  
2.6 mortgaged property and intends to reside at the mortgaged property at least until the end  
2.7 of the deferment period. A borrower does not reside at the property unless the property  
2.8 has been the borrower's primary residence for six months prior to the date of the affidavit  
2.9 of deferment.

2.10 Subd. 8. **Foreclosing lender.** "Foreclosing lender" means the mortgagee who is  
2.11 foreclosing the mortgage of an eligible foreclosed borrower.

2.12 Subd. 9. **Minnesota Residential Mortgage Originator and Servicer Licensing**  
2.13 **Act definitions.** The following terms defined in section 58.02 have the same meanings for  
2.14 purposes of sections 583.33 to 583.40: "residential mortgage loan"; "residential mortgage  
2.15 servicer or servicer"; "residential real property" or "residential real estate"; "subprime  
2.16 loan"; "negative amortization" and "fully indexed rate." For purposes of sections 583.33  
2.17 to 583.40, "subprime loan" does not include a subprime loan originated by a state or  
2.18 federally chartered bank, savings bank, credit union, or an organization majority owned by  
2.19 one or more credit unions.

2.20 **Sec. 3. [583.35] RIGHT TO FORECLOSURE DEFERMENT.**

2.21 An eligible foreclosed borrower has the right to defer a foreclosure sale under  
2.22 chapter 580 or 581 until the expiration of the deferment period by providing an affidavit  
2.23 of deferment to the foreclosing lender in accordance with section 583.36. A foreclosing  
2.24 lender shall rescind notice of a foreclosure sale if the eligible foreclosed borrower has  
2.25 submitted to the foreclosing lender an affidavit of deferment prior to or at the time of the  
2.26 foreclosure sale, unless the lender has served a notice of denial in accordance with section  
2.27 583.38. A lender is not required to rescind notice of a foreclosure sale if a borrower has  
2.28 previously obtained a deferment under this act. Upon expiration of the deferment period  
2.29 or the loss of the deferment under section 583.37, subdivision 4, a foreclosing lender may  
2.30 schedule a deferred foreclosure sale by publishing the notice of foreclosure sale once in  
2.31 the newspaper in which the original advertisement was published and by serving a copy of  
2.32 the notice of foreclosure sale in a like manner as a summons in a civil action in the district  
2.33 court upon the person in possession of the mortgaged premises, if the same are actually  
2.34 occupied, at least four weeks prior to the sale.

3.1 Sec. 4. **[583.36] AFFIDAVIT OF DEFERMENT.**

3.2 Subdivision 1. **Affidavit of deferment.** The affidavit of deferment shall state the  
3.3 name of the eligible foreclosed borrower, the address of the property in foreclosure, and  
3.4 contain the following statements:

3.5 "(1) I am the borrower on a mortgage loan on residential property located at [address  
3.6 of property] (hereinafter "subject property");

3.7 (2) A foreclosure sale has been scheduled on the subject property;

3.8 (3) I currently reside at the subject property;

3.9 (4) If permitted to reside at the subject property as my primary residence for six  
3.10 months prior to the date of this affidavit;

3.11 (5) If permitted to reside at the subject property, I intend to reside at the subject  
3.12 property until at least [end of deferment period];

3.13 (6) I believe that the mortgage loan on the subject property is either:

3.14 (i) a subprime loan; or

3.15 (ii) a loan with negative amortization for which the required minimum payment  
3.16 has increased."

3.17 The affidavit shall be signed by at least one eligible foreclosed borrower who is the  
3.18 mortgagor of the residential real property being foreclosed.

3.19 Subd. 2. **Service on foreclosing lender.** An affidavit of deferment shall be served  
3.20 by personal service, United States mail, or other reliable delivery service to the address  
3.21 provided in the notice of deferment or to the address of the counsel for the mortgagee in  
3.22 the notice of foreclosure.

3.23 Subd. 3. **Acknowledgment by foreclosing lender.** Unless the foreclosing lender  
3.24 has served a notice of denial under section 583.38, the foreclosing lender shall, within  
3.25 ten days of receiving the affidavit of deferment, provide to the eligible foreclosed  
3.26 borrower a written acknowledgment that it has received the affidavit of deferment. The  
3.27 acknowledgment shall state the following:

3.28 (1) that the foreclosure sale has been canceled;

3.29 (2) the deferment payment amount that is due by the eligible foreclosed borrower;

3.30 (3) the date that the first deferment payment is due;

3.31 (4) the date that each subsequent deferment payment is due; and

3.32 (5) the address to which the borrower should send the deferment payment or  
3.33 the payment delivery methods that are acceptable to the foreclosing lender. The  
3.34 acknowledgment shall be on a single sheet of paper, shall use plain language, and  
3.35 no other documents shall be included with the acknowledgment. The bottom of the  
3.36 acknowledgment shall include the following disclosure in bold, 14-point type:

4.1 The cancellation of the foreclosure sale on your property is the result of a law passed  
4.2 by the Minnesota Legislature in 2008. You must make the monthly payment in full  
4.3 by the due dates listed in this letter. If you do not make the payments on time, we  
4.4 will have the right to schedule a foreclosure sale on your property.

4.5 Subd. 4. **Charges prohibited.** A foreclosing lender shall not charge an eligible  
4.6 foreclosed borrower any amount other than the deferment payment for exercising the  
4.7 deferment right.

4.8 **Sec. 5. [583.37] BORROWER PAYMENT REQUIREMENT.**

4.9 Subdivision 1. **Borrower payment required.** An eligible foreclosed borrower  
4.10 who has a deferment right shall make monthly payments to the foreclosing lender. The  
4.11 payment shall be made no later than the 15th day of each month. The first payment is not  
4.12 due until the 15th day of the month that is a minimum of 30 days after the date that the  
4.13 foreclosing lender sends the acknowledgment required by section 583.36, subdivision 3.

4.14 Subd. 2. **Amount of payment.** For an eligible foreclosed borrower with a subprime  
4.15 loan, the amount of payment shall be the lesser of: (1) the minimum monthly payment  
4.16 of principal and interest on the date the loan was originated; or (2) 65 percent of the  
4.17 minimum monthly payment of principal and interest at the time the borrower defaulted  
4.18 prior to foreclosure. For an eligible foreclosed borrower with a negative amortization loan  
4.19 that is not also a subprime loan, the amount of payment would be the minimum monthly  
4.20 payment on the date the loan was originated.

4.21 Subd. 3. **Payment advice notice.** The foreclosing lender shall provide to the  
4.22 eligible foreclosed borrower monthly written payment advice notices. The notice shall  
4.23 be sent by the first day of each month until the expiration of the deferment period or  
4.24 the loss of the deferment under subdivision 4. Each notice shall state (1) the amount  
4.25 of payment owed from the eligible foreclosed borrower; (2) the address to which the  
4.26 borrower should send the deferment payment; and (3) the date that the payment must be  
4.27 received to avoid loss of the deferment right under subdivision 4. The payment advice  
4.28 notice shall be on a single sheet of paper, shall use plain language, and no other documents  
4.29 shall be included with the notice. The bottom of the notice shall include the following  
4.30 disclosure in bold, 14-point type:

4.31 The deferment of the foreclosure sale on your property is the result of a law passed  
4.32 by the Minnesota Legislature in 2008. You must continue to make the monthly  
4.33 payment in full by the 15th day of each month. If you do not make the payments on  
4.34 time, we will have the right to schedule a foreclosure sale on your property. The  
4.35 deferment period will end on (last day of deferment period). By the end of the

5.1 deferment period, you will need to pay the entire amount that has been deferred plus  
5.2 other costs allowed by law in order to avoid a foreclosure sale.

5.3 Subd. 4. **Borrower failure to pay.** An eligible foreclosed borrower who fails to  
5.4 make payments in the amount required and by the date required under this section shall  
5.5 lose the deferment right.

5.6 Subd. 5. **Borrower residency requirement.** An eligible foreclosed borrower loses  
5.7 the right to deferment if the borrower ceases to reside at the mortgaged property during  
5.8 the deferment period.

5.9 **Sec. 6. [583.38] RESOLUTION OF DISPUTES.**

5.10 Subdivision 1. **Dispute as to eligible foreclosed loan status.** If the foreclosing  
5.11 lender determines after a reasonable investigation and in good faith that the person  
5.12 submitting an affidavit of deferment is not the mortgagor under an eligible foreclosed  
5.13 loan, the foreclosing lender shall provide a notice of denial of deferment to the person  
5.14 submitting the affidavit of deferment. The foreclosing lender must send a notice of denial  
5.15 by certified mail through the United States mail within five business days of receiving the  
5.16 affidavit of deferment. The notice is effective upon mailing. The notice of denial shall  
5.17 be on a single sheet of paper and no other documents shall be included with the notice.  
5.18 Such notice must include an explanation, in plain language, of the reasons that the loan is  
5.19 not an eligible foreclosed loan. Such notice must also inform the person who executed  
5.20 the affidavit of deferment that the person has the right to apply to the court for an order  
5.21 deferring the foreclosure sale.

5.22 Subd. 2. **Other disputes.** For any other dispute about the deferment right or  
5.23 other rights or requirements under the act, a person can apply to the district court in the  
5.24 county where the property is located for an order establishing the rights of the parties  
5.25 to the dispute.

5.26 Subd. 3. **Effect of deferral right.** Nothing in this act shall alter contractual rights of  
5.27 the parties to the mortgage loan other than providing the right to defer the foreclosure sale.  
5.28 A bona fide purchaser of an interest in real property mortgaged by an eligible foreclosed  
5.29 loan takes the interest in the real property not subject to any claims of ownership by a  
5.30 party based on any rights under this act. Execution by the sheriff of the sheriff's certificate  
5.31 of sale is prima facie evidence of compliance with this act, provided that an eligible  
5.32 foreclosed homeowner has the remedies for monetary relief under section 583.40 for a  
5.33 reckless or bad faith violation of the act.

5.34 **Sec. 7. [583.39] NOTICE OF RIGHT TO DEFERMENT.**

6.1 Subdivision 1. **Notice requirement; form and delivery of notice.** Every  
6.2 foreclosing lender shall send to each borrower who has an eligible foreclosed loan a notice  
6.3 of right to deferment. The notice of right to deferment shall be in the form of, and subject  
6.4 to the delivery requirements specified in, section 580.041, subdivision 1b. The notice of  
6.5 right to deferment must also indicate an address at which the foreclosing lender will  
6.6 accept service of an affidavit of deferment under section 583.36, subdivision 2. No notice  
6.7 is required for a foreclosure commenced on or before the effective date of this section.

6.8 Subd. 2. **Content.** The notice required by this section must appear substantially  
6.9 as follows:

6.10 "Emergency Help For Homeowners in Foreclosure:

6.11 **IMPORTANT: You are eligible to have the foreclosure of your home stopped**  
6.12 **until at least (end of deferment period).**

6.13 The state of Minnesota recently passed a law which lets homeowners stop a  
6.14 foreclosure sale. To qualify, you must currently live at the home in foreclosure and intend  
6.15 to live at the home for at least the next 12 months.

6.16 You will also need to complete and sign a special form (called an "affidavit")  
6.17 and provide that affidavit to us at the following address: (insert address in the state  
6.18 of Minnesota).

6.19 There are many government agencies and nonprofit organizations that can help  
6.20 you complete this affidavit. For the name and telephone number of an organization near  
6.21 you, contact the Minnesota Home Ownership Center at 651-659-9336 or 866-462-6466  
6.22 or [www.hocmn.org](http://www.hocmn.org).

6.23 **Do not delay** dealing with the foreclosure because your options for foreclosure  
6.24 deferment end with the foreclosure sale."

6.25 Sec. 8. **[583.40] BAD FAITH OR RECKLESS VIOLATION.**

6.26 A foreclosing lender who acts in bad faith or recklessly in violation of sections  
6.27 583.35 to 583.39 shall be liable to a person injured by the violation for actual damages,  
6.28 statutory damages of up to \$25,000, punitive damages in an amount determined by the  
6.29 court, costs, and reasonable attorney's fees.

6.30 Sec. 9. **EFFECTIVE DATE.**

6.31 Sections 1 to 8 are effective seven days following final enactment.