

Sec. 12. REPORT ON RULEMAKING ACTIVITIES.

By January 1, 1993, the commissioner of the pollution control agency shall submit to the legislative commission to review administrative rules and legislative committees having jurisdiction over environmental and natural resource issues a report describing the ongoing rulemaking activities of the agency as of that date and any additional rulemaking activities the agency plans to begin before July 1, 1993.

Sec. 13. FUNDING FOR MONITORING PROGRAM.

The monitoring program established under section 3 must be implemented to the extent allowed by the additional revenues generated by section 1.

Sec. 14. EFFECTIVE DATE.

Section 4 is effective the day after final enactment. Section 1 is effective for fees collected in fiscal year 1994 and thereafter.

Presented to the governor April 17, 1992

Signed by the governor April 29, 1992, 8:04 a.m.

CHAPTER 547—H.F.No. 2649

An act relating to real estate foreclosures; establishing a voluntary foreclosure process with waiver of deficiency claims and equity; proposing coding for new law in Minnesota Statutes, chapter 582.

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

Section 1. [582.32] VOLUNTARY FORECLOSURE; PROCEDURE.

Subdivision 1. APPLICATION. This section applies to mortgages executed on or after August 1, 1993, under which there has been a default and where the mortgagor and mortgagee enter into a written agreement for voluntary foreclosure of the mortgaged real estate under this section. This section applies only to real estate no part of which is homestead or agricultural property.

Subd. 2. DEFINITIONS. (a) As used in this section, the following terms have the meanings given:

(b) "Agreement" means the agreement for voluntary foreclosure described in subdivision 3.

(c) "Date of agreement" means the effective date of the agreement which shall not be sooner than the date on which the agreement is executed and acknowledged by both the mortgagor and mortgagee.

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(d) "Junior lien" means a lien with a redeemable interest in the real estate under section 580.23 or 580.24 subordinate to the lien of the mortgage foreclosed under this section.

(e) "Mortgage" means a recorded mortgage on real estate no part of which is homestead as defined in section 510.01 or in agricultural use as defined in section 40A.02, subdivision 3.

(f) "Mortgagee" means the record holders of the mortgage, whether one or more.

(g) "Mortgagor" means the record holders, whether one or more, of the legal and equitable interest in the real estate encumbered by the mortgage.

(h) "Real estate" means the real property encumbered by the mortgage and, where applicable, fixtures, equipment, furnishings, and other personalty related to the real property and encumbered by the mortgage.

Subd. 3. PROCEDURE. (a) Voluntary foreclosure may occur only in accordance with this section.

(b) The mortgagor and mortgagee shall enter into a written agreement for voluntary foreclosure under this section only after default under the mortgage. The agreement shall identify the mortgage and the real estate by legal description, specify the date of the agreement and provide that:

(1) The mortgagor and mortgagee have agreed that the mortgage shall be voluntarily foreclosed with a shortened redemption period under this section.

(2) The mortgagee waives any rights to a deficiency or other claim for personal liability against the mortgagor arising from the mortgage or the debt secured by the mortgage. This does not preclude an agreement between the mortgagor and mortgagee to a stipulated payment to the mortgagee as part of the voluntary foreclosure or collection from a guarantor.

(3) The mortgagor waives its right of reinstatement, to excess sale proceeds, to contest foreclosure, and to rents and occupancy during the period before sale and during the redemption period.

(4) The mortgagor consents to the appointment of a receiver for, or grants mortgagee possession of, the real estate as of the date of agreement, for the purposes of operating, maintaining, and protecting the real estate, and the making of any additions or betterments to the real estate.

(c) Within seven days after the date of agreement, the mortgagee must record or file the agreement with the county recorder or registrar of titles, as appropriate, in the county where the real estate is located.

(d) A certificate signed by the county or city assessor where the real estate is located, stating that the real estate is not in agricultural use as defined in section 40A.02, subdivision 3, and is not a homestead as defined in section 510.01, as

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the date of agreement, must be recorded with the certificate of sale in the office of the county recorder or registrar of titles where the real estate is located, and shall be prima facie evidence of the facts contained in the certificate.

Subd. 4. REQUEST FOR NOTICE; CONTENT REQUIREMENTS. (a) A person having a junior lien may file for record a request for notice of a mortgage foreclosure under this section with the county recorder or registrar of titles of the county where the real estate is located.

(b) A request for notice must specify: (1) the name and mailing address of the junior lien holder requesting notice; (2) a legal description of the real estate; (3) a description of the junior lien including, if applicable, the date and recording information of the document creating the interest; and (4) a request for notice of a mortgage foreclosure under this section. The request must be executed and acknowledged by the junior lien holder.

(c) The recording of a request for notice by itself does not give the person requesting notice any interest in the real estate for any purpose. A recorded request for notice does not constitute actual or constructive notice of any interest in the real estate.

Subd. 5. NOTICE TO CREDITORS. At least 14 days before the date of sale, the mortgagee shall:

(1) serve the person in possession of the mortgaged real estate with notice of the voluntary foreclosure sale under this section in the same manner as in a foreclosure by advertisement as provided in section 580.03; and

(2) send by certified mail a notice of the voluntary foreclosure sale under this section to all junior lien holders of record upon the real estate or some part of the real estate who have filed or recorded a request for this notice under subdivision 3.

The mortgagee shall publish notice of the voluntary foreclosure sale under this section in the same manner as in a foreclosure by advertisement as provided in section 580.03 for four consecutive weeks.

The notice must include all information required under section 580.04, clauses (1) to (6), the date of the agreement, and shall state that each holder of a junior lien may redeem in the order and manner provided in subdivision 9, beginning one month after the foreclosure sale. Provided, if the real estate is subject to a federal tax lien entitled to the preemptive 120-day redemption period under section 7425(d)(1) of the Internal Revenue Code, as amended, the notice shall provide that the date of redemption for the first federal tax lien and all other liens junior thereto shall begin four months after the date of the foreclosure sale. Affidavits of service, mailing, publication, and other affidavits or certificates permitted by chapter 580, must be recorded with the certificate of sale, or within five days after the sale, in the office of the county recorder or registrar of titles where the real estate is located. These affidavits and certificates are prima facie evidence of the facts contained in them.

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Subd. 6. SALE, HOW AND BY WHOM MADE. Except as provided in this section, the sale shall be made in the same manner as in a foreclosure by advertisement as provided in chapter 580. The certificate of sale must be filed or recorded within five days after the sale.

Subd. 7. EFFECT OF FAILURE TO MAIL NOTICE. If a person foreclosing a mortgage under this section fails to mail a notice in accordance with subdivision 5 to a person with a properly recorded request for notice, the failure does not invalidate the foreclosure.

Subd. 8. REMEDIES. If notice of the sale is not mailed in accordance with subdivision 5 to a person with a properly recorded request for notice, the junior lien holder requesting notice has a cause of action against the person foreclosing the mortgage for money damages for the lessor of: (1) the equity in the mortgaged premises that would have been available to the person if the person had redeemed; or (2) the value of the junior lien. The value of a junior lien is the amount due on and secured by the lien. A junior lien holder has the burden of proving that the junior lien was valid and the junior lien holder had measurable damages and had the financial ability to redeem. An action for damages resulting from failure to mail notice must be brought within two years after the date of sale.

Subd. 9. CREDITOR REDEMPTION. A subsequent creditor having a junior lien upon the real estate or some part of the real estate may redeem in the order and manner specified in sections 580.24 and 580.25, but only if before the end of the redemption period the creditor files with the county recorder or registrar of titles of each county where the mortgaged real estate is located, a notice of intention to redeem. If a junior creditor fails to redeem as provided in this subdivision, its lien is extinguished on the real estate.

Sec. 2. EFFECTIVE DATE.

This act is effective August 1, 1993, and applies to mortgages entered into on or after August 1, 1993.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 2:02 p.m.

CHAPTER 548—H.F.No. 2000

An act relating to probate; changing provisions relating to merger of trusts, certificates of trust, affidavits of trustees, and powers of attorney; amending Minnesota Statutes 1990, sections 508.62; 508A.62; 523.02; 523.03; 523.07; 523.08; 523.09; 523.11, subdivisions 1 and 2; 523.17; 523.18; 523.19; 523.21; 523.22; 523.23, subdivisions 1, 2, 3, and by adding subdivisions; 523.24, subdivisions 1, 7, 8, and 9; Minnesota Statutes 1991 Supplement, section

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