

CHAPTER 17—H.F.No. 129

An act relating to commerce; regulating mortgage foreclosures; clarifying the definition of a foreclosure consultant; amending Minnesota Statutes 2012, section 325N.01.

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

Section 1. Minnesota Statutes 2012, section 325N.01, is amended to read:

325N.01 DEFINITIONS.

The definitions in paragraphs (a) to (h) apply to sections 325N.01 to 325N.09.

(a) "Foreclosure consultant" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale;
- (2) obtain any forbearance from any beneficiary or mortgagee;
- (3) assist the owner to exercise the right of reinstatement provided in section 580.30;
- (4) obtain any extension of the period within which the owner may reinstate the owner's obligation;
- (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- (6) assist the owner in foreclosure or loan default to obtain a loan or advance of funds;
- (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;
- (8) save the owner's residence from foreclosure; or
- (9) negotiate or modify the terms or conditions of an existing residential mortgage loan.

(b) A foreclosure consultant does not include any of the following:

- (1) a person licensed to practice law in this state when the person renders service in the course of the person's practice as an attorney-at-law;
- (2) a person licensed as a debt management services provider under chapter 332A, when the person is acting as a debt management services provider as defined in that chapter;
- (3) a person licensed as a real estate broker or salesperson under chapter 82 when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure;
- (4) a person licensed as an accountant under chapter 326A when the person is acting in any capacity for which the person is licensed under those provisions;

(5) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services;

(6) a person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

(7) any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities while engaged in the business of these persons or entities;

(8) a person licensed as a residential mortgage originator or servicer pursuant to chapter 58, when acting under the authority of that license, except that the provisions of ~~section 325N.04, clause (1)~~, sections 325N.01 to 325N.06, 325N.08, and 325N.09 shall apply to any person operating under a mortgage originator license who negotiates or offers to negotiate the terms or conditions of an existing residential mortgage loan;

(9) a nonprofit agency or organization that has tax-exempt status under section 501(c)(3) of the Internal Revenue Code that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or foreclosure purchasers, except that they shall comply with the provisions of section 325N.04, clause (1);

(10) a judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 580.03, but excluding a person who purchased the claim after such personal service; and

(11) a foreclosure purchaser as defined in section 325N.10.

(c) "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or any other real property, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

(1) debt, budget, or financial counseling of any type;

(2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(3) contacting creditors or servicers to negotiate or offer to negotiate the terms or conditions of an existing residential mortgage loan;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate the owner's obligation pursuant to section 580.30;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or

(7) giving any advice, explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage.

(f) "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property including, but not limited to, contract for deed payments.

(g) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.

(h) "Contract" means any agreement, or any term in any agreement, between a foreclosure consultant and an owner for the rendition of any service as defined in paragraph (e).

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

Presented to the governor April 19, 2013

Signed by the governor April 22, 2013, 11:19 a.m.