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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 83

01/14/2013 Authored by Freiberg, Dehn, R., and Clark

The bill was read for the first time and referred to the Committee on Housing Finance and Policy

1.1 A bill for an act
1.2 relating to mortgage foreclosure; requiring notice of rights of military service
1.3 members; requiring the lender to provide a single point of contact; prohibiting a
1.4 mortgage lender from beginning or continuing a foreclosure proceeding while
1.5 considering a request by a borrower for a mortgage modification; requiring that
1.6 the mortgage lender participate in and pay for mediation if the borrower requests
1.7 mediation; amending Minnesota Statutes 2012, sections 580.03; 580.041,
1.8 subdivisions 1b, 2; proposing coding for new law in Minnesota Statutes, chapter
1.9 580.

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

1.11 Section 1. Minnesota Statutes 2012, section 580.03, is amended to read:

1.12 **580.03 NOTICE OF SALE; SERVICE ON OCCUPANT.**

1.13 Six weeks' published notice shall be given that such mortgage will be foreclosed by
1.14 sale of the mortgaged premises or some part thereof, and at least four weeks before the
1.15 appointed time of sale a copy of such notice shall be served in like manner as a summons
1.16 in a civil action in the district court upon the person in possession of the mortgaged
1.17 premises, if the same are actually occupied. If there be a building on such premises used
1.18 by a church or religious corporation, for its usual meetings, service upon any officer or
1.19 trustee of such corporation shall be a sufficient service upon it. The notices required
1.20 by sections 580.041 and 580.042 must be served simultaneously with the notice of
1.21 foreclosure required by this section.

1.22 The notice required under this section may not be published or served upon the
1.23 person in possession of the mortgaged property until 15 days after the mortgage lender has
1.24 sent the borrower a statement that if the borrower is a service member, or a dependent of
1.25 a service member, the borrower may be entitled to certain protections under the federal
1.26 Servicemembers Civil Relief Act, United States Code, title 50, section 501, regarding the

2.1 service member's interest rate and the risk of foreclosure, and counseling for covered
 2.2 service members that is available at agencies such as Military OneSource and Armed
 2.3 Forces Legal Assistance.

2.4 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to
 2.5 foreclosures commenced on or after that date.

2.6 Sec. 2. Minnesota Statutes 2012, section 580.041, subdivision 1b, is amended to read:

2.7 Subd. 1b. **Form and delivery of foreclosure advice notice.** The foreclosure advice
 2.8 notice required by this section must be in 14-point boldface type and must be printed on
 2.9 colored paper that is other than the color of the notice of foreclosure required by sections
 2.10 580.03 and 580.04 and the notice of redemption rights required by this section, and that
 2.11 does not obscure or overshadow the content of the notice. The title of the notice must
 2.12 be in 20-point boldface type. The notice must be on its own page. The foreclosure
 2.13 advice notice required by this section must be delivered with the notice of foreclosure
 2.14 required by sections 580.03 and 580.04. The foreclosure advice notice required by this
 2.15 section also must be delivered with each subsequent written communication regarding the
 2.16 foreclosure mailed to the mortgagor by the foreclosing party up to the day of redemption.
 2.17 A foreclosing mortgagee will be deemed to have complied with this section if it sends
 2.18 the foreclosure advice notice required by this section at least once every 60 days during
 2.19 the period of the foreclosure process. The foreclosure advice notice required by this
 2.20 section must not be published.

2.21 The foreclosure advice notice must provide the homeowner with a single point
 2.22 of contact with the lender, consisting of an employee or department of the lender, that
 2.23 must be specified in the foreclosure advice notice. The point of contact must have the
 2.24 authority to perform specific relevant responsibilities, know the borrower's situation and
 2.25 current status, provide accurate information to the borrower, and coordinate all documents
 2.26 associated with the borrower's foreclosure prevention alternatives.

2.27 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to
 2.28 foreclosures commenced on or after that date.

2.29 Sec. 3. Minnesota Statutes 2012, section 580.041, subdivision 2, is amended to read:

2.30 Subd. 2. **Content of foreclosure advice notice.** The foreclosure advice notice
 2.31 required by this section must appear substantially as follows:

2.32 "Help For Homeowners in Foreclosure

3.1 The attorney preparing this foreclosure is:
3.2 (Attorney name, address, phone)

3.3 It is being prepared for:
3.4
3.5 (Lender name, ~~loss mitigation~~ name of employee or department of lender
3.6 that serves as a single point of contact for homeowner to contact, phone
3.7 number for that employee or department of lender)

3.8 AS OF [insert date], this lender says that you owe \$[insert dollar amount] to bring
3.9 your mortgage up to date (or "reinstate" your mortgage). You must pay this amount,
3.10 plus interest and other costs, to keep your house from going through a sheriff's sale.

3.11 The sheriff's sale is scheduled for [insert date] at [insert time] at [insert place].

3.12 Mortgage foreclosure is a complex process. People may contact you with advice and
3.13 offers to help "save" your home.

3.14 **Remember:** It is important that you learn as much as you can about foreclosure and
3.15 your situation. Find out about all your options before you make any agreements with
3.16 anyone about the foreclosure of your home.

3.17 **Getting Help**

3.18 As soon as possible, you should contact your lender at the above number to talk
3.19 about things you might be able to do to prevent foreclosure. You should also
3.20 consider contacting the foreclosure prevention counselor in your area. A foreclosure
3.21 prevention counselor can answer your questions, offer free advice, and help you
3.22 create a plan which makes sense for your situation.

3.23 Contact the Minnesota Home Ownership Center at 651-659-9336 or 866-462-6466
3.24 or www.hocmn.org or contact the United States Department of Housing and Urban
3.25 Development at 1-800-569-4287 or www.hud.gov to get the phone number and
3.26 location of the nearest certified counseling organization. Call today. The longer you
3.27 wait, the fewer options you may have for a desirable result."

3.28 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to
3.29 foreclosures commenced on or after that date.

3.30 Sec. 4. **[580.043] MORTGAGE FORECLOSURE DUAL TRACKING**

3.31 **PROHIBITED.**

3.32 Subdivision 1. Definitions. (a) For purposes of this section, the terms defined
3.33 in this section have the meanings given.

3.34 (b) "Dual tracking" means a lender beginning or continuing a mortgage foreclosure
3.35 under this chapter while the lender is considering a request by the borrower for a
3.36 modification of the mortgage loan.

4.1 (c) "Mortgage lender" means an entity that is responsible for interacting with
4.2 the borrower, including managing the loan account on a daily basis, such as collecting
4.3 and crediting periodic loan payments, managing an escrow account, or enforcing the
4.4 promissory note and mortgage, either as the current owner of the promissory note or
4.5 as the current owner's authorized agent.

4.6 (d) "Borrower" means the individual or entity that is liable on the promissory note
4.7 secured by the mortgage, except that the term does not include:

4.8 (1) a person who has surrendered the mortgaged property, as evidenced by either a
4.9 letter or other written notice confirming the surrender or by delivery of the keys to the
4.10 property to the mortgage lender or authorized agent; or

4.11 (2) a person who has filed a bankruptcy case under United States Code, title 11,
4.12 chapter 7, 11, 12, or 13, and the bankruptcy court has not entered an order closing or
4.13 dismissing the bankruptcy case or granting relief from a stay of foreclosure.

4.14 (e) "Loan modification request" means a written request from a borrower to the
4.15 borrower's mortgage lender for a modification of the borrower's mortgage loan in order
4.16 to prevent an anticipated foreclosure or to suspend or terminate a foreclosure that is in
4.17 progress.

4.18 (f) "Complete loan modification request" means a loan modification request that
4.19 contains all information required by the mortgage lender to determine eligibility for a
4.20 loan modification.

4.21 Subd. 2. **Applicability.** This section applies to mortgage foreclosures on the basis
4.22 specified in section 580.041, subdivision 1a.

4.23 Subd. 3. **Prohibition; dual tracking; continuation or commencement of**
4.24 **foreclosure after receipt of loan modification request.** (a) Upon receipt by a mortgage
4.25 lender of a loan modification request from a borrower regarding a mortgage loan for
4.26 which the mortgage lender is responsible, the mortgage lender shall defer beginning a
4.27 foreclosure for 60 days or, if a foreclosure of the mortgage loan is in progress, stop the
4.28 foreclosure process for 60 days or until the mortgage lender and borrower have agreed
4.29 upon and entered into a loan modification, whichever comes first.

4.30 (b) A mortgage lender need not consider a loan modification request if:

4.31 (1) the lender has already received, considered, and either accepted or denied a loan
4.32 modification request on the same loan within the immediately preceding 12 months; or

4.33 (2) the loan modification request is not a complete loan modification request as
4.34 defined in subdivision 1, paragraph (f).

4.35 Subd. 4. **Civil cause of action; dual tracking.** A borrower who incurs loss as a
4.36 result of dual tracking by the borrower's mortgage lender has a civil cause of action against

5.1 the mortgage lender for damage incurred by the borrower as a result of the dual tracking,
5.2 plus the borrower's reasonable attorney fees.

5.3 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to
5.4 foreclosures commenced on or after that date.

5.5 Sec. 5. **[580.0431] MANDATORY MEDIATION IF REQUESTED BY**
5.6 **BORROWER.**

5.7 (a) If a borrower, as defined in section 580.043, subdivision 1, paragraph (d), requests
5.8 in writing that the mortgage lender participate with the borrower in mandatory mediation,
5.9 the mortgage lender shall participate in good faith and shall pay the cost of the mediation.

5.10 (b) Prior to the mandatory mediation, the borrower must receive the foreclosure
5.11 prevention counseling described in section 580.041, subdivisions 2 and 2a.

5.12 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to
5.13 foreclosures commenced on or after that date.