

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1276

(SENATE AUTHORS: TORRES RAY, Cohen, Latz, Hayden and Goodwin)

DATE	D-PG	OFFICIAL STATUS
03/11/2013	776	Introduction and first reading Referred to Commerce
03/14/2013	1019a	Comm report: To pass as amended and re-refer to Judiciary
03/20/2013	1265a	Comm report: To pass as amended
	1352	Second reading
05/16/2013	3933a	Special Order: Amended
	3941	Third reading Passed
05/19/2013	4974	Returned from House Presentment date 05/22/13 Governor's action Approval 05/24/13 Secretary of State Chapter 115 05/24/13 Effective date Sec. 1-5 08/01/13; Sec. 3, Sub. 6 10/31/13

1.1

A bill for an act

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relating to real estate; requiring loss mitigation by mortgage lenders and

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servicers; amending Minnesota Statutes 2012, sections 580.02; 580.041,

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subdivision 1b; 582.25; 582.27, subdivision 1; proposing coding for new law in

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Minnesota Statutes, chapter 582.

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

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Section 1. Minnesota Statutes 2012, section 580.02, is amended to read:

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**580.02 REQUISITES FOR FORECLOSURE.**

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To entitle any party to make such foreclosure, it is requisite:

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(1) that some default in a condition of such mortgage has occurred, by which the

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power to sell has become operative;

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(2) that no action or proceeding has been instituted at law to recover the debt then

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remaining secured by such mortgage, or any part thereof, or, if the action or proceeding

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has been instituted, that the same has been discontinued, or that an execution upon the

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judgment rendered therein has been returned unsatisfied, in whole or in part;

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(3) that the mortgage has been recorded and, if it has been assigned, that all

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assignments thereof have been recorded; provided, that, if the mortgage is upon registered

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land, it shall be sufficient if the mortgage and all assignments thereof have been duly

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registered; ~~and~~

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(4) before the notice of pendency as required under section 580.032 is recorded, the

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party has complied with section 580.021; and

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(5) before the foreclosure sale, the party has complied with section 582.043, if

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applicable.

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

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

Sec. 3. **[582.043] LOSS MITIGATION; MORTGAGE FORECLOSURE DUAL TRACKING.**

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

(b) "Foreclosure sale date" means either:

(1) the date of the foreclosure sale contained in the notice that has been either served or published as required under section 580.03, or 550.18 and 550.19; or

(2) the date to which the foreclosure sale is postponed by the borrower under section 580.07, subdivision 2, whichever is later.

(c) "Loss mitigation option" means a temporary or permanent loan modification, a forbearance agreement, a repayment agreement, a principal reduction, capitalizing arrears, or any other relief, intended to allow a mortgagor to retain ownership of the property.

(d) "Mortgagor" means a person who is liable on the promissory note secured by the mortgage, except that the mortgagor does not include a person who has surrendered the mortgaged property, as evidenced by either a letter or other written notice confirming the surrender or by delivery of the keys to the property to the servicer or authorized agent.

(e) "Servicer" means a residential mortgage servicer as defined in section 58.02, subdivision 20.

(f) "Small servicer" means a servicer that is either:

(1) a small servicer, as defined in Code of Federal Regulations, title 12, section 1026.41, paragraph (e), clause (4); or

(2) a Housing Finance Agency, as defined in Code of Federal Regulations, title 24, section 266.5.

Until August 1, 2014, "small servicer" also means a servicer that has conducted 125 or fewer foreclosure sales during the preceding 12 months.

Subd. 2. **Applicability.** This section applies only to first lien mortgages subject to foreclosure under chapters 580 or 581 that are secured by owner-occupied residential real property containing no more than four dwelling units and where the subject mortgage does not secure a loan for business, commercial, or agricultural purposes. For purposes of this subdivision, "owner-occupied" means that the property is the principal residence of the owner.

Nothing in this section imposes a duty on a servicer to provide any mortgagor with any specific loan modification option.

Subd. 3. **Compliance required.** A servicer shall not conduct a foreclosure sale unless the servicer has complied with subdivisions 5, 6, and 7, if applicable.

Subd. 4. **Small servicer requirements.** A small servicer is not subject to this section, except that a small servicer shall not refer a mortgage loan to an attorney for foreclosure, record the notice of pendency or lis pendens, or conduct a foreclosure sale if a mortgagor is performing pursuant to the terms of a loan modification or other loss mitigation agreement.

Subd. 5. **Loss mitigation.** A servicer must:

(1) notify a mortgagor in writing of available loss mitigation options offered by the servicer that are applicable to the mortgagor's loan before referring the mortgage loan to an attorney for foreclosure;

(2) after receiving a request for a loan modification or other loss mitigation option, exercise reasonable diligence in obtaining documents and information from the mortgagor to complete a loss mitigation application, facilitate the submission and review of loss mitigation applications, and give the mortgagor a reasonable amount of time to provide the required documents;

(3) upon the timely receipt of a loss mitigation application, evaluate the mortgagor for all available loss mitigation options prior to referring a mortgage loan to an attorney for foreclosure;

(4) after review of the loss mitigation application, timely offer the mortgagor a loan modification if the mortgagor is eligible or, if not, timely offer the mortgagor any other loss mitigation option for which the mortgagor is eligible; and

4.1 (5) comply with any applicable appeal period and procedures applicable to the  
4.2 specific loss mitigation option.

4.3 Subd. 6. **Dual tracking.** (a) If the servicer has received a loss mitigation application  
4.4 and the subject mortgage loan has not already been referred to an attorney for foreclosure,  
4.5 a servicer shall not refer the subject mortgage loan to an attorney for foreclosure while the  
4.6 mortgagor's application is pending, unless:

4.7 (1) the servicer determines that the mortgagor is not eligible for any loss mitigation  
4.8 option, the servicer informs the mortgagor of the determination in writing, and the  
4.9 applicable appeal period has expired without an appeal or the appeal has been properly  
4.10 denied;

4.11 (2) where a written offer is made and a written acceptance is required, the mortgagor  
4.12 fails to accept the loss mitigation offer within the time frame specified in the offer or  
4.13 within 14 days after the date of the offer, whichever is longer; or

4.14 (3) the mortgagor declines the loss mitigation offer in writing.

4.15 (b) If the servicer receives a loss mitigation application after the subject mortgage  
4.16 loan has been referred to an attorney for foreclosure, but before a foreclosure sale has  
4.17 been scheduled, a servicer shall not move for an order of foreclosure, seek a foreclosure  
4.18 judgment, or conduct a foreclosure sale unless:

4.19 (1) the servicer determines that the mortgagor is not eligible for a loss mitigation  
4.20 option, the servicer informs the mortgagor of this determination in writing, and the  
4.21 applicable appeal period has expired without an appeal or the appeal has been properly  
4.22 denied;

4.23 (2) where a written offer is made and a written acceptance is required, the mortgagor  
4.24 fails to accept the loss mitigation offer within the time frame specified in the offer or  
4.25 within 14 days after the date of the offer, whichever is longer; or

4.26 (3) the mortgagor declines a loss mitigation offer in writing.

4.27 (c) If the servicer receives a loss mitigation application after the foreclosure sale has  
4.28 been scheduled, but before midnight of the seventh business day prior to the foreclosure  
4.29 sale date, the servicer must halt the foreclosure sale and evaluate the application. If required  
4.30 to halt the foreclosure sale and evaluate the application, the servicer must not move for an  
4.31 order of foreclosure, seek a foreclosure judgment, or conduct a foreclosure sale unless:

4.32 (1) the servicer determines that the mortgagor is not eligible for a loss mitigation  
4.33 option, the servicer informs the mortgagor of this determination in writing, and the  
4.34 applicable appeal period has expired without an appeal or the appeal has been properly  
4.35 denied;

(2) where a written offer is made and a written acceptance is required, the mortgagor fails to accept the loss mitigation offer within the time frame specified in the offer or within 14 days after the date of the offer, whichever is longer; or

(3) the mortgagor declines a loss mitigation offer in writing.

(d) A servicer shall not move for an order of foreclosure or conduct a foreclosure sale under any of the following circumstances:

(1) the mortgagor is in compliance with the terms of a trial or permanent loan modification, or other loss mitigation option; or

(2) a short sale has been approved by all necessary parties and proof of funds or financing has been provided to the servicer.

Subd. 7. **Relief.** (a) A mortgagor has a cause of action, based on a violation of this section, to enjoin or set aside a sale. A mortgagor who prevails in an action to set aside or enjoin a sale, or who successfully defends a foreclosure by action, based on a violation of this section is entitled to reasonable attorney fees and costs.

(b) A lis pendens must be recorded prior to the expiration of the mortgagor's applicable redemption period under section 580.23 or 582.032 for an action taken under paragraph (a). The failure to record the lis pendens creates a conclusive presumption that the servicer has complied with this section.

Sec. 4. Minnesota Statutes 2012, section 582.25, is amended to read:

**582.25 MORTGAGES; VALIDATING FORECLOSURE SALES.**

Every mortgage foreclosure sale by advertisement in this state under power of sale contained in any mortgage duly executed and recorded in the office of the county recorder or registered with the registrar of titles of the proper county of this state, together with the record of such foreclosure sale, is, after expiration of the period specified in section 582.27, hereby legalized and made valid and effective to all intents and purposes, as against any or all of the following objections:

(1) that the power of attorney, recorded or filed in the proper office provided for by section 580.05:

(a) did not definitely describe and identify the mortgage,

(b) did not definitely describe and identify the mortgage, but instead described another mortgage between the same parties,

(c) did not have the corporate seal affixed thereto, if executed by a corporation,

(d) had not been executed and recorded or filed prior to sale, or had been executed prior to, but not recorded or filed until after such sale,

(e) was executed subsequent to the date of the printed notice of sale or subsequent to the date of the first publication of such notice;

(2) that no power of attorney to foreclose such mortgage as provided in section 580.05, was ever given, or recorded, or registered;

(3) that the notice of sale:

(a) was published only three, four or five times, or that it was published six times but not for six weeks prior to the date of sale,

(b) properly described the property to be sold in one or more of the publications thereof but failed to do so in the other publications thereof, the correct description having been contained in the copy of said notice served on the occupant of the premises,

(c) correctly stated the date of the month and hour and place of sale but named a day of the week which did not fall on the date given for such sale, or failed to state or state correctly the year of such sale,

(d) correctly described the real estate but omitted the county and state in which said real estate is located,

(e) correctly described the land by government subdivision, township and range, but described it as being in a county other than that in which said mortgage foreclosure proceedings were pending, and other than that in which said government subdivision was actually located,

(f) did not state the amount due or failed to state the correct amount due or claimed to be due,

(g) incorrectly stated the municipal status of the place where the sale was to occur,

(h) in one or more of the publications thereof, or in the notice served on the occupant or occupants designated either a place or a time of sale other than that stated in the certificate of sale,

(i) failed to state the names of one or more of the assignees of the mortgage and described the subscriber thereof as mortgagee instead of assignee,

(j) failed to state or incorrectly stated the name of the mortgagor, the mortgagee, or assignee of mortgage,

(k) was not served upon persons whose possession of the mortgaged premises was otherwise than by their personal presence thereon, if a return or affidavit was recorded or filed as a part of the foreclosure record that at a date at least four weeks prior to the sale the mortgaged premises were vacant and unoccupied,

(l) was not served upon all of the parties in possession of the mortgaged premises, provided it was served upon one or more of such parties,

(m) was not served upon the persons in possession of the mortgaged premises, if, at least two weeks before the sale was actually made, a copy of the notice was served upon the owner in the manner provided by law for service upon the occupants, or the owner received actual notice of the proposed sale,

(n) gave the correct description at length, and an incorrect description by abbreviation or figures set off by the parentheses, or vice versa,

(o) was served personally upon the occupants of the premises as such, but said service was less than four weeks prior to the appointed time of sale,

(p) did not state the original principal amount secured, or failed to state the correct original principal amount secured;

(4) that distinct and separate parcels of land were sold together as one parcel and to one bidder for one bid for the whole as one parcel;

(5) that no authenticated copy of the order appointing, or letters issued to a foreign representative of the estate of the mortgagee or assignee, was properly filed or recorded, provided such order or letters have been filed or recorded in the proper office prior to one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns;

(6) that a holder of a mortgage was a representative appointed by a court of competent jurisdiction in another state or county in which before the foreclosure sale an authenticated copy of the representative's letters or other record of authority were filed for record in the office of the county recorder of the proper county but no certificate was filed and recorded therewith showing that said letters or other record of authority were still in force;

(7)(a) that said mortgage was assigned by a decree of a court exercising probate jurisdiction in which decree the mortgage was not specifically or sufficiently described,

(b) that the mortgage foreclosed had been assigned by the final decree of the court exercising probate jurisdiction to the heirs, devisees, or legatees of the deceased mortgagee, or the mortgagee's assigns, and subsequent thereto and before the representative of the estate had been discharged by order of the court, the representative had assigned the mortgage to one of the heirs, devisees, or legatees named in such final decree, and such assignment placed on record and the foreclosure proceedings conducted in the name of such assignee and without any assignment of the mortgage from the heirs, devisees, or legatees named in such final decree, and the mortgaged premises bid in at the sale by such assignee, and the sheriff's certificate of sale, with accompanying affidavits recorded in the office of the county recorder of the proper county,

(c) that a mortgage owned by joint tenants or tenants in common was foreclosed by only one tenant;

(8) that the sheriff's certificate of sale or the accompanying affidavits and return of service were not executed, filed or recorded within 20 days after the date of sale, but have been executed and filed or recorded prior to the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns;

(9) that the year, or the month, or the day, or the hour of the sale is omitted or incorrectly or insufficiently stated in the notice of sale or the sheriff's certificate of sale;

(10)(a) that prior to the foreclosure no registration tax was paid on the mortgage, provided such tax had been paid prior to one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns,

(b) that an insufficient registration tax has been paid on the mortgage;

(11) that the date of the mortgage or any assignment thereof or the date, the month, the day, hour, book, and page, or document number of the record or filing of the mortgage or any assignment thereof, in the office of the county recorder or registrar of titles is omitted or incorrectly or insufficiently stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments;

(12) that the notice of mortgage foreclosure sale or sheriff's certificate of sale designated the place of sale as the office of a county official located in the court house of the county when such office was not located in such court house;

(13) that no notice of the pendency of the proceedings to enforce or foreclose the mortgage as provided in section 508.57, was filed with the registrar of titles or no memorial thereof was entered on the register at the time of or prior to the commencement of such proceedings; or that when required by section 508.57, the notice of mortgage foreclosure sale failed to state the fact of registration;

(14) that the power of attorney to foreclose or the notice of sale was signed by the person who was the representative of an estate, but failed to state or correctly state the person's representative capacity;

(15) that the complete description of the property foreclosed was not set forth in the sheriff's certificate of sale, if said certificate correctly refers to the mortgage by book and page numbers or document number and date of filing and the premises are accurately described in the printed notice of sale annexed to said foreclosure sale record containing said sheriff's certificate of sale;

(16) that the date of recording of the mortgage was improperly stated in the sheriff's certificate of mortgage foreclosure sale, the mortgage being otherwise properly described in said sheriff's certificate of mortgage foreclosure sale and said certificate of mortgage foreclosure sale further referring to the printed notice of mortgage foreclosure sale



attached to said sheriff's certificate of mortgage foreclosure sale in which printed notice the mortgage and its recording was properly described;

(17) that prior to the first publication of the notice of sale in foreclosure of a mortgage by advertisement, an action or proceeding had been instituted for the foreclosure of said mortgage or the recovery of the debt secured thereby and such action or proceeding had not been discontinued;

(18) that at the time and place of sale the sheriff considered and accepted a bid submitted prior to the date of the sale by the owner of the mortgage and sold the mortgaged premises for the amount of such bid, no other bid having been submitted, and no one representing the owner of the mortgage being present at the time and place of sale;

(19) that such sale was postponed by the sheriff to a date or time subsequent to the one specified in the notice of sale but there was no publication or posting of a notice of such postponement;

(20) that there was not recorded with letters or other record of authority issued to a representative appointed by a court of competent jurisdiction in another state or county, a certificate that said letters or other record of authority were still in force and effect;

(21) that the sheriff's affidavit of sale correctly stated in words the sum for which said premises were bid in and purchased by the mortgagee, but incorrectly stated the same in figures immediately following the correct amount in words;

(22) that the notice of pendency of the foreclosure as required by section 580.032 was not filed for record before the first date of publication of the foreclosure notice, but was filed before the date of sale; and

(23) that the servicer did not comply with the requirements of section 582.043.

Sec. 5. Minnesota Statutes 2012, section 582.27, subdivision 1, is amended to read:

Subdivision 1. **Section 582.25.** Upon expiration of the periods specified in this section, the provisions of section 582.25 apply to a mortgage foreclosure sale subject to this section:

(A) as to all of the provisions of section 582.25, except ~~clause (2)~~ clauses (2) and (23), one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns;

(B) as to clause (2), ten years after the date of the foreclosure sale.

(C) as to clause (23), the expiration of the mortgagor's applicable redemption period as specified in sections 580.23 or 582.032.

Sec. 6. **EFFECTIVE DATE.**

10.1        Sections 1, 4, and 5, are effective August 1, 2013, for foreclosures with a notice of  
10.2 pendency under Minnesota Statutes, section 580.032, or a lis pendens for a foreclosure  
10.3 under Minnesota Statutes, chapter 581, recorded on or after August 1, 2013.

10.4        Section 2 is effective August 1, 2013.

10.5        Section 3 is effective August 1, 2013, for foreclosures with a notice of pendency  
10.6 under Minnesota Statutes, section 580.032, or a lis pendens for a foreclosure under  
10.7 Minnesota Statutes, chapter 581, recorded on or after August 1, 2013, except that  
10.8 subdivision 6 is effective October 31, 2013.