

HOUSE RESEARCH

Bill Summary

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Overview

This bill gives mortgage loan borrowers up to a 12-month deferment on mortgage foreclosure, if they meet certain requirements.

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- 1 Citation.** Says this act shall be cited as the Mortgage Subprime Foreclosure Deferment Act of 2008.
- 2 Definitions.** Defines nine terms used in this bill. The definition of “deferment period” is the one year period that begins with the effective date of this act. The definition of “eligible foreclosed loan” is a loan that is subject to a pending foreclosure sale which was made between January 1, 2001 , and August 1, 2007 , which is either a subprime loan or a loan with negative amortization for which the required minimum payment has increased since the loan was made. An “eligible foreclosure borrower” is defined as a borrower under an eligible foreclosed loan who lives in the mortgaged property and plans to live there at least until the end of the deferment period.
- 3 Right to foreclosure deferment.** Says that an eligible foreclosure borrower has the right to have the sale deferred by providing an affidavit of deferment, which is described in the next section. Says the lender must defer the foreclosure sale upon receipt of the affidavit before the sale. Says how the lender may complete the sale at the end of the deferment period.
- 4 Affidavit of deferment.**
 - Subd. 1. Affidavit of deferment.** Lists the statements that must be included in the affidavit. Says it must be signed by at least one eligible foreclosed borrower who

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mortgaged the property.

Subd. 2. Service on foreclosing lender. States the ways in which the affidavit may be delivered to the lender.

Subd. 3. Acknowledgment by foreclosing lender. Requires the lender to promptly acknowledge in writing the receipt of the affidavit. Lists the statements that must be in that acknowledgment. Limits it to a single sheet of paper.

Subd. 4. Deleted by A1 amendment.

Subd. 5. Charges prohibited. Prohibits the lender from charging the borrower anything for the deferment, other than the deferment payment described in the next section.

5 **Borrower payment requirement.**

Subd. 1. Borrower payment required. Requires borrowers who have a deferment to make a monthly payment to the lender by the 15th of each month.

Subd. 2. Amount of payment. Requires the minimum monthly payment during deferment to be the lesser of (1) the minimum monthly payment when the loan was first made; or (2) 65 percent of the minimum monthly payment required when the foreclosure started. For a loan that has a negative amortization but is not a subprime loan, the deferment payment is the minimum monthly payment when the loan was made.

Subd. 3. Payment advice notice. Requires and describes a notice the lender must send to the borrower each month during deferment, stating the payment amount, due date, and the consequences of not making the payment on time.

Subd. 4. Borrower failure to pay. If the borrower does not make the payments on time, the borrower loses the deferment right.

6 **Resolution of disputes.**

Subd. 1. Dispute as to eligible foreclosed loan status. States how a lender may deny a deferment if the lender believes the borrower or the loan does not qualify. Gives the borrower the right to appeal that denial to court.

Subd. 2. Other disputes. Says that for disputes not covered under subdivision 1, either party may apply to the district court in which the property is located for an order determining the rights of the parties.

7 **Notice of right to deferment.**

Subd. 1. Notice requirement; form and delivery of notice. Requires lenders to notify eligible foreclosed borrowers of their rights under this act. Requires the notice to be sent to eligible foreclosed borrowers within three days after the effective date of this act if they have a foreclosure sale scheduled within 20 days. Requires that the notice be sent to other eligible foreclosed borrowers within 14 days after the effective

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date.

Subd. 2. Content. Provides the exact required wording of the notice.

8 **Bad faith or reckless violation.** Gives borrowers harmed by a lender's bad faith or reckless violation of this act a private cause of action for actual damages, statutory damages up to \$25,000, punitive damages in an amount determined by the court, and reasonable attorney fees.

9 **Effective date.** Makes the act effective the day following final enactment. This is significant because the one-year deferment period starts then.