HOUSE RESEARCH
Bill Summary

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Subject: Mortgage foreclosure moratorium and tenant rights in mortgage foreclosures and contract for deed cancellations

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Overview

Sections 1 to 7 of this bill deal with the rights of tenants when the real estate they are renting becomes subject to a mortgage foreclosure or contract for deed cancellation. Section 8 provides for a two-year moratorium on mortgage foreclosures on residential property, whether rented or owner-occupied. The traditional legal principle on tenant rights in foreclosure is that the foreclosure of a mortgage or cancellation of a contract for deed wipes out rights to the property created after the time the mortgage or contract for deed was signed, which usually meant that tenants lost their rights under their lease. This bill gives tenants some rights to stay as tenants, and also provides the general two-year residential foreclosure moratorium. The bill makes all sections effective the day following final enactment.

Section

1 **Limitation on lease and notice to homeowner.** Requires that a landlord of a property that is being foreclosed tell a prospective tenant that the tenant has the right to continued utility services if the landlord does not pay for utilities during the foreclosure process. (This would usually involve the tenant or a group of tenants arranging with the utility company to pay for the utilities directly under section 504B.215, subd. 4.) (As it is worded, the sentence added in this section of the bill applies only to mortgage foreclosures and not to cancellations of contracts for deed.)

2 **Exception allowing a longer term lease.** Technical change to make the following section of this bill not subject to the exceptions in the existing subdivision 2 of the same statute.

3 **Rights of tenant of foreclosed property.** Makes a tenant of a foreclosed property that has been taken over by the holder of a contract for deed or mortgage automatically a tenant of the new owner under a new lease that contains all the written and unwritten terms of the lease or other agreements which the tenant had with the previous landlord. (This is what lawyers call "attornment.") Requires the new owner to maintain it as rental property, offer tenants renewal leases, and offer a fair market rent not to exceed the "current rent."

4 **Eviction.** Prohibits the new owner after completion of a mortgage foreclosure or contract for deed cancellation from evicting the tenant without cause. Defines "cause" as any one of a list of five infractions by the tenant.

5 **Termination of tenancy.** Prohibits a new owner after a mortgage foreclosure or contract for deed cancellation from terminating a tenancy without "cause" as defined in the preceding section. This covers a termination (such as through nonrenewal) other than through eviction, which is covered in the previous section.

6 **Periodic leases.** Requires a new owner after foreclosure or contract for deed cancellation to offer a tenant a fixed term lease if the tenant previously had a periodic lease with the former owner.

7 **Applicability.** Makes sections 3 to 6 of this bill apply to all tenants regardless of when the tenant became a tenant of the property or what stage the foreclosure process was at then.

8 **Foreclosure moratorium.**

Subd. 1. Emergency declared to exist. Says that the legislature declares a state of public economic emergency due to an increase in foreclosures, justifying a moratorium on foreclosures.

Subd. 2. Stay of foreclosure procedure. Permits a borrower or tenant of property being foreclosed to obtain a stay of the foreclosure by serving a right to stay document on the holder of the mortgage or sheriff's certificate of sale. (It would be the holder of the sheriff's certificate if the foreclosure sale has already occurred, in which case the holder may or may not be the former holder of the mortgage.) The document must also be served on the court if the foreclosure is being conducted in court (rare in Minnesota) and on the county sheriff. Upon serving the document, the stay becomes effective immediately and lasts for two years if the conditions in subdivision 3 below are met.

Subd. 3. Maintenance of stay. Says the stay remains in effect if :

(1) the borrower maintains homestead status and continues to live there, or if a tenant lives there, the tenant continues to live there;

(2) the borrower or tenant makes monthly payments on the mortgage loan equal to the amount required at the time the foreclosure began, but not to exceed 41 percent of the payer's monthly gross income; or

(3) the holder of the stay (borrower or tenant) does nothing that is "just cause" for dissolution of the stay, as described in the following subdivision.

Subd. 4. Dissolution of stay. Gives the lender or holder of the sheriff's certificate of sale the right to apply to a court to get the stay dissolved if the court determines that dissolving the stay would be in the public interest and if the holder of the stay (borrower or tenant) has violated subdivision 3 above (not living there and making payments on the mortgage debt) or has done any of the following things (called “other just cause”):

(1) a tenant who is holder of the stay has violated a condition of the tenancy other than surrender of possession and has not cured the violation after receiving written notice from the new owner;

(2) the holder of the stay is permitting a nuisance to exist, is doing substantial damage to the property, or interfering with the quiet enjoyment of the property by other occupants;

(3) the holder of the stay is allowing use of the property for an illegal purpose; or

(4) the holder of the stay has refused the foreclosing owner access to the property to make repairs or improvements required by law, to inspect the property if permitted or required by law or agreement, or to show the property to a perspective purchaser or mortgage lender.

Subd. 5. Application. Makes this section apply only to mortgages entered into before the effective date of this section.