

HOUSE RESEARCH

Bill Summary

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Authors: Hortman

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Analyst: Tom Pender (651) 296-1885

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Overview

This bill makes changes in Minnesota's mortgage foreclosure laws.

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- 1 Requisites for foreclosure.** Amends the requirements for foreclosure to add compliance with section 4 of this bill. Requires that requirement must be satisfied before the notice of pendency under section 580.032 is recorded.
- 2 Form and delivery of foreclosure advice notice.** Changes the requirement that the lender provide the foreclosure advice notice with each written communication mailed to the borrower, by eliminating the requirement that it continue to be sent between the day of the foreclosure sale and the end of the redemption period.
- 3 Content of notice of redemption rights.** Technical change to update or correct the relevant Web address of the U.S. Department of Housing and Urban Development. This address is in state law because it is required to be included in the notice of redemption rights sent by the lender to the borrower.
- 4 Mortgage foreclosure dual tracking prohibited.** Prohibits "dual tracking" in mortgage foreclosure proceedings. Dual tracking involves continuing the foreclosure process while a the lender is considering a request from the borrower for a mortgage loan modification.

Subd. 1. Definitions. Defines the terms "borrower," "complete loan modification request," "dual tracking," loan modification request," "servicer," and "small servicer." The definition of "servicer" is especially important to understanding this bill.

Subd. 2. Applicability. Makes this section apply only to first lien mortgages

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secured by owner-occupied residential property that have no more than four residential units. Excludes mortgage loans secured by business, commercial, or agricultural purposes (even if the loan is also secured by the borrower's owner-occupied residence). Defines "owner-occupied." Provides that this section does not supersede the servicer's loss mitigation obligations.

Subd. 3. Prohibition; dual tracking; continuation or commencement of foreclosure after receipt of loan modification request. Prohibits servicers from starting a foreclosure unless the loan is more than 120 days delinquent. If the borrower has submitted a *complete* loan modification request *before the loan is more than 120 days delinquent*, prohibits the servicer from starting a foreclosure unless: (1) the servicer has sent the borrower a notice saying the borrower is not eligible for a modification, (2) the borrower did not accept a modification offer within 14 days of the date of the offer, (3) the borrower has rejected a loan modification offer, or (4) the borrower has failed to perform under a loan modification agreement.

Subd. 4. Prohibition on foreclosure sale. Provides that if a borrower has submitted a complete loan modification request *after the servicer has started a foreclosure, but before 37 days before the sale*, prohibits the servicer from continuing the foreclosure unless: (1) the servicer has sent the borrower a notice saying the borrower is not eligible for a modification, (2) the borrower did not accept a modification offer within 14 days of the date of the offer, (3) the borrower has rejected a loan modification offer, or (4) the borrower has failed to perform under a loan modification agreement.

Subd. 5. Appeal process. Requires a servicer to permit the borrower to appeal the servicer's denial of any trial or permanent loan modification available to the borrower, if the servicer receives a complete loan modification request 90 days or more before the scheduled foreclosure sale. Requires the servicer to permit the borrower to appeal if the request is made within 14 days after the servicer notifies the borrower of the servicer's decision. (This seems to permit an appeal of an offer of a modification by the servicer, if the borrower is not satisfied with the offer.)

Subd. 6. Independent evaluation; determination. (a) Requires servicers to have a different employee review an appeal of a denial of a complete loan modification application. (b) Requires the servicer to provide a written notice to the borrower of the servicer's decision on the appeal within 30 days after the appeal. Permits the servicer to require the borrower to accept or reject an offer made after an appeal within 14 days. Provides that the servicer's determination under this paragraph (b) is not subject to further appeal.

Subd. 7. Duplicative requests. A servicer is required to comply with this section only for a single complete application for a loan modification of the borrower's loan account.

Subd. 8. Small servicer requirements. Provides that a small servicer (defined in subdivision 1) is not subject to this section, except that a small servicer must not start a

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foreclosure unless the borrower is at least 120 days delinquent and must not have a foreclosure sale if the borrower is performing in compliance with a loan modification agreement.

Subd. 9. Affidavit. Permits “any person” to prove compliance with, or inapplicability of, this section by recording an affidavit in the county real estate records in the office of the county recorder or of the county registrar of titles, whichever applies to the real estate.

5 Perpetuating evidence of sale. Adds to an existing law relating to affidavits that may be filed in the office of the county recorder to establish facts relating to real estate.

6 Requisites applicable to certain foreclosures.

Subd. 1. Applicability. Makes this new section of law apply to foreclosures that are subject to this act. Provides that it does not apply to “small servicers,” as defined in the Code of Federal Regulations and as referenced in section 4, subdivision 1, paragraph (g), of this bill.

Subd. 2. Requisite. (a) Prohibits starting a foreclosure until all loss mitigation obligations relevant to the loan have been fulfilled. (b) Defines “loss mitigation obligations” at great length. The definition is a list of all actions that a servicer could take under state or federal law to avoid foreclosure.

Subd. 3. Effective date; expiration. Provides that this section applies to foreclosures started on or after August 1, 2013, and before January 1, 2018. Provides that this section expires on the latter date.

7 Effective date. Makes sections 1, 5, and 6 effective for foreclosures commenced on or after August 1, 2013, and before January 1, 2018, on which date it will expire. Makes section 2 effective for foreclosures that begin on or after August 1, 2013. Makes section 3 effective the day following final enactment. Makes section 4 effective January 10, 2014.