

It's That Time of Year! 2010 Legislative Session Changes

Almost every year, the legislature amends and changes laws that affect the banking and lending community. This year is no exception. The following is a brief summary of some of the new changes and amendments:

1. Postponement of Mortgage Foreclosure Sale for Property Subject to 12-Month Redemption Period

In 2009, the Minnesota Legislature passed a law that allowed mortgagors subject to a 6-month redemption period to postpone a Sheriff's foreclosure sale of his/her homestead by 5 months. Effective August 1, 2010, Minnesota Statutes Section 580.07 has been amended to allow mortgagors with a 12-month redemption period, such as mortgagors of agricultural property or mortgagors in which the amount due under the mortgage is less than 66 and 2/3% of the original principal amount secured by the mortgage, to postpone a Sheriff's foreclosure sale for a period of 11 months. With this change, the legislator has simply given mortgagors with a 12-month redemption period, the same rights as those with a 6-month redemption period.

2. New Foreclosure Notice Requirements

Effective August 1, 2010, Minnesota Statutes Section 580.041 was amended to require an additional notice to be sent at the commencement of foreclosure proceedings for homestead property. Under the new amendment, a homestead property owner must be sent a new "Redemption Rights Notice" that advises the property owner of his/her rights during, and after, the applicable redemption period. The new "Redemption Rights Notice" must be included with the Notice of Sheriff's Foreclosure Sale that is mailed to the property owner, must be printed on different color paper than other statutorily required notices, and must be served upon the occupant of the property.

3. Release of Financial Records in Response to a Subpoena

Effective retroactively to August 1, 2009, Minnesota Statutes Section 13A.02 was amended to add an exception to the law that prohibits government authorities from accessing customer financial records at banking and financial institutions. Previously, Minnesota Statutes Section 13A.02, contained very limited exceptions to the law prohibiting government authorities from obtaining customer financial records. Under the new amendment, customer financial records can now be disclosed to a government authority if they are in response to a judicial or administrative subpoena. The new amendment broadens the government's ability to obtain customer financial records, but should also eliminate much confusion surrounding the circumstances in which customer financial records can be produced.

4. Evictions After Expiration of Redemption Period

Effective August 1, 2010, Minnesota Statute Section 504B.285, governing the eviction of tenants after foreclosure, will be amended to provide that a foreclosing lender of rental property must allow a tenant to remain for the duration of a lease. In the event the remaining term of the lease is less than 90 days after the expiration of the redemption period from the foreclosure, a foreclosing lender must provide a 90-day notice to vacate the property. For a tenant to be entitled to 90-day notice, they must continue to pay rent and abide by all terms of the lease. Effectively, this means that tenants of foreclosed properties under long term leases will become tenants of the foreclosing lender until the lease term expires. An exception to this rule exists when a landlord or foreclosing lender sells the property to a subsequent owner who will occupy the property as a primary residence. If a subsequent owner will occupy the property as a primary residence, the tenant is still entitled to its 90-day notice before the commencement of an eviction action. Additionally, tenants under month-to-month leases must be given a 90-day notice to vacate prior to the commencement of any eviction action.

5. Disposal of Abandoned Personal Property

Effective August 1, 2010, Minnesota Statutes Section 504B.271 was amended to shorten the waiting period before disposal of personal property that has been abandoned by a tenant or property owner after foreclosure. Previously, Minnesota Statute Section 504B.271 required that a landlord or foreclosing lender must wait 60 days prior to selling or disposing of personal property. The landlord or foreclosing lender is still required to pay for the storage and care of the of the personal property, but pursuant to the new amendment, a landlord or foreclosing lender may now sell or dispose of personal property 28 days after the landlord or foreclosing lender receives actual notice of the abandonment, or reasonably believes the tenant or property owner has abandoned the personal property, whichever is later. If the landlord or foreclosing lender elects to sell the abandoned personal property after 28 days, the landlord or foreclosing lender must make an effort to notify the tenant or property owner at least 14 days prior to the sale via first class and certified mail. The landlord or foreclosing lender must also post notice of the sale at the premises for at least 2 weeks prior to the sale.