

MINNESOTA'S NEW FORECLOSURE POSTPONEMENT LAW

Effective June 15, 2009, Minnesota Statutes § 580.07 was amended to allow a mortgagor or owner to delay, or postpone, the foreclosure sale ("Sheriff's Sale") of his/her homestead by five (5) months. This new law affects only foreclosures by advertisement governed by Minnesota Statutes Chapter 580.

What does it mean for a mortgagor/owner?

If a mortgagor/owner chooses to do so, postponing the Sheriff's Sale gives a mortgagor/owner five (5) additional months to bring the mortgage current, rather than attempting to pay the mortgage in full during the redemption period. The trade off, however, is that it reduces the customary six (6) month redemption period to five (5) weeks.

What does this mean for the foreclosing lender/mortgagee?

The foreclosing lender/mortgagee is not required to publish or serve anyone with the notice of the postponement of the Sheriff's Sale. Recording the affidavit by the mortgagor as indicated below will automatically reduce the mortgagor's redemption period to five (5) weeks. The Sheriff's Certificate of Sale will indicate the actual date of the foreclosure sale and the actual length of the mortgagor's redemption period.

What are the requirements to postpone a Sheriff's Sale?

- All or a part of the property to be sold must be classified as homestead under Minnesota Statutes Section 273.124 and contain one to four dwelling units.
- The property must be foreclosed by advertisement.
- The first publication of the Notice of Sheriff's Sale must have occurred AND it must be at least fifteen (15) days before the scheduled Sheriff's Sale date specified in that notice.
- The right to postpone a Sheriff's Sale by a mortgagor/owner may be exercised only once, regardless whether the mortgagor reinstates the mortgage prior to the postponed Sheriff's Sale.

How does a mortgagor/owner postpone the Sheriff's Sale?

To postpone the Sheriff's Sale, at any time after the first publication but at least fifteen (15) days prior to the scheduled Sheriff's Sale date, the mortgagor would need to:

- (1) Execute a sworn affidavit in the form set forth in Minnesota Statutes Section 580.07, subdivision 3;

- (2) Record the affidavit in the office of each county recorder and registrar of titles where the mortgage was recorded;
- (3) File an attested copy of the affidavit with the sheriff conducting the Sheriff's Sale;
and
- (4) Deliver an attested copy of the affidavit to the attorney foreclosing the mortgage.

When is the new Sheriff's Sale date?

The new Sheriff's Sale date will be the first day that is not a Saturday, Sunday or legal holiday and is five (5) months after the originally scheduled Sheriff's Sale.