

LEGISLATIVE UPDATE

Mortgage foreclosures were a hot topic in the 2008 Minnesota Legislative Regular Session. While Governor Pawlenty vetoed legislation aimed at substantially changing the foreclosure process, you should be aware of several smaller changes that become law on August 1, 2008, regarding:

- 1) Establishing vacancy to allow for a 5-week redemption; ([click here](#))
- 2) Residential leases on buildings in foreclosure; ([click here](#))
- 3) Additional Foreclosure Counseling Notice for loans under \$100,000.00; ([click here](#))
- 4) Changes in the information required on foreclosure documents; and, ([click here](#))
- 5) Notice of Intent to Redeem filing deadline change. ([click here](#))

ESTABLISHING VACANCY TO ALLOW FOR A 5-WEEK REDEMPTION

Minnesota Statute § 582.032

The amended statute improves the process of obtaining an order to reduce the redemption period on certain vacant properties to 5 weeks. The amended statute says that if the owner/mortgagor of a property in foreclosure is given proper notice and subsequently fails to appear at the hearing to prove abandonment, it is “conclusive evidence” that the property has been abandoned. This means that the judge no longer has discretion in this regard.

Should an owner/mortgagor actually appear at the hearing to reduce the redemption period to 5 weeks, the judge still has discretion to grant or deny the order.

RESIDENTIAL LEASES ON BUILDINGS IN FORECLOSURE

Minnesota Statute § 504B.151

The amended statute now says that a landlord who has received a Notice of Foreclosure Sale must notify a prospective tenant in writing of the same and must indicate the date which the redemption period is set to expire before entering into a residential lease.

The amended statute also restricts a landlord’s ability to enter into a periodic residential lease to a term of the lesser of two months or the time remaining in the mortgagor’s redemption period. The period of a fixed term lease cannot extend past the redemption period.

The amendment provides an exception to the above if the mortgagee agrees not to terminate the lease for at least one year from the start of the lease as long as the lease does not require the prepayment of any rent for any month commencing after the end of the redemption period.

The new law also provides that the tenant automatically becomes the tenant of the mortgagee or holder of the Sheriff's Certificate upon the expiration of the redemption period and after the mortgagee or holder of the Sheriff's Certificate provides notice to the tenant by first class mail that it has succeeded to the interest of the landlord.

The holder of the Sheriff's Certificate must now provide two month's written notice to the tenant to vacate rather than the one month notice previously required.

ADDITIONAL FORECLOSURE COUNSELING NOTICE FOR LOANS UNDER \$100,000.00

Minnesota Statute § 580.021

Prior to recording a Notice of Pendency and Power of Attorney to Foreclose, a foreclosing party must provide a "foreclosure counseling notice" for loans under \$100,000 which secure property consisting of one to four family units, one of which the owner occupies as the owner's principal place of residency. Service of the "foreclosure counseling notice" is required with the thirty (30) day default/cure notice required by Minn. Stat. § 47.20. Within one week of sending the notice, the foreclosing party must provide the mortgagor contact information to an "authorized foreclosure prevention counseling agency."

CHANGES IN THE INFORMATION REQUIRED ON FORECLOSURE DOCUMENTS

Minnesota Statute § 580.025

This new law requires additional information in the following foreclosure documents:

- Notice of Pendency and Power of Attorney to Foreclose Mortgage;
- Notice of Mortgage Foreclosure Sale; and
- Sheriff's Certificate of Sale.

In addition to the previously required information, these documents must contain the physical address of the property being foreclosed, the tax parcel identification number, and the name of all parties involved such as a transaction agent or residential mortgage service,.

NOTICE OF INTENT TO REDEEM FILING DEADLINE CHANGE

Minnesota Statute § 580.024

Previously, a redeeming creditor or lienholder had until the expiration of the mortgagor's redemption period to file a Notice of Intent to Redeem. The amendment now requires the creditor or lienholder to file a Notice of Intent to Redeem **at least one week prior** to the expiration of the mortgagor's redemption period.