

## SHORTENING FORECLOSURE REDEMPTION PERIODS IN MINNESOTA

Whether a lender is foreclosing a mortgage by publication or action, the process can be long and drawn out. This is especially true considering the fact that mortgagors in Minnesota are afforded a 6 month, or even a 12 month, redemption period after the Sheriff's sale takes place in a foreclosure by publication, and after entry of the Court's Order confirming the Sheriff's sale in a foreclosure by action. During the applicable redemption period, in most cases, the mortgagor is legally entitled to retain possession and control of the property. Unless the property is vacant or the mortgagor is cooperative, a lender often times does not have unfettered access to the property to obtain an appraisal or evaluate the property for marketing and resale until after the foreclosure redemption period has run. Fortunately, Minnesota law does provide certain tools that allow a lender to shorten the redemption period or to avoid the foreclosure process altogether.

- **Voluntary Foreclosure** – Minnesota Statutes Section 582.32 allows a mortgagor and lender to enter into a voluntary foreclosure agreement to foreclose a mortgage by publication, and reduce the redemption period after the Sheriff's sale to two (2) months. Not only does Minnesota Statutes Section 582.32 reduce the applicable redemption period, it also provides that, by entering into a voluntary foreclosure agreement with a lender, the mortgagor automatically relinquishes physical control of the property to the lender. Although a voluntary foreclosure, can be beneficial, there are limitations and disadvantages to foreclosing a mortgage pursuant to a voluntary foreclosure agreement. First, the voluntary foreclosure process is not available when the property being foreclosed upon is tax classified as homestead or agricultural property on the effective date of the voluntary foreclosure agreement. Furthermore, if a lender forecloses its mortgage pursuant to a voluntary foreclosure agreement, it automatically waives its right to pursue a deficiency against the mortgagor. Deficiency rights against the guarantors, if any, remain intact.
- **5-Week Redemption Action** – For certain abandoned or vacant residential properties, pursuant to Minnesota Statutes Section 582.032, lenders can request that a Minnesota District Court Judge issue an order that reduces the redemption period to five (5) weeks. If a lender is foreclosing a mortgage by publication, the lender must initiate a separate court proceeding seeking to reduce the redemption period. The proceeding can be commenced prior to, or after, the Sheriff's sale. If a lender is foreclosing a mortgage by action, the request can be made by motion as part of the foreclosure by action proceeding. The request to reduce the redemption period requires a hearing before a Judge where the lender is required to offer evidence to prove that the property is abandoned or vacant. As with voluntary foreclosures, there are restrictions on the type of property for which a 5-week redemption action can be commenced. The property must be located on less than ten (10) acres and must be improved with a residential dwelling consisting of less than five (5) units that is not a model or residential dwelling under construction. Furthermore, the property cannot be used in agricultural production. Unlike voluntary foreclosures, the commencement of a 5-week redemption action does not affect or limit a lender's deficiency rights.

- **Deed in Lieu of Foreclosure** – With the mortgagor’s cooperation, lenders can avoid the foreclosure process and redemption period altogether by accepting a deed in lieu of foreclosure. The recording of a deed in lieu of foreclosure automatically transfers fee title ownership of the property to the lender allowing the lender to immediately market and sell the property. However, a deed in lieu of foreclosure may not always be optimal if there are junior liens encumbering the property. If junior liens exist and a lender accepts a deed in lieu of foreclosure, the lender will take title to the property subject to the junior liens. Furthermore, upon recording of the deed in lieu of foreclosure, the lender will have to pay any past due real estate taxes and assessments. Prior to accepting a deed in lieu of foreclosure, a lender should always obtain a current title report and consult with an attorney to ensure that the lender’s rights will be adequately protected and that its mortgage will remain intact after conveyance of the property. The acceptance of a deed in lieu of foreclosure does not affect a lender’s right to pursue the borrower or guarantor for any deficiency.

Voluntary foreclosures, 5-week redemption actions, and deeds in lieu of foreclosure all are very useful tools available to lenders to shorten or eliminate the long redemption periods provided to mortgagors under Minnesota law. Each has its advantages, limitations, and drawbacks, but each should be considered as potential options when foreclosing a mortgage in Minnesota.