

Mortgage Foreclosure

Mortgage Foreclosures

The sale of property that is being foreclosed is substantively regulated by Minnesota law. REALTORS® who are engaged in representing or assisting clients or customers in the purchase and sale of foreclosed property should be familiar with the appropriate laws associated with these transactions. The following outlines the major issues from MN Statute [325N](#), [580](#), [581](#) and [582](#). This is **NOT** a comprehensive legal guideline but should serve to assist you in developing office policies to follow for transactions involving properties going through a mortgage foreclosure.

Foreclosure by Advertisement or Action

Minnesota Statute allows for two ways for foreclosures of mortgages on real property; by **Advertisement** (see [MN Statute 580](#)) and by **Action** (see [MN Statute 581](#)).

Foreclosure Requisites

FORECLOSURE BY ADVERTISEMENT ([MN Statute 580](#))

Any mortgage of real estate containing a power of sale upon default may be foreclosed by advertisement. In order for any party to be entitled to foreclose on a property, the following are required:

- ① a default in a condition of the mortgage has occurred; and
- ② no action or proceeding has been instituted at law to recover the debt remaining by the mortgagee; and
- ④ the mortgage has been recorded and if it has been assigned, all assignments have been recorded.

Notice of Sale

[MN Statute 580.03](#) requires mortgagee give six (6) weeks' published notice that such mortgage will be foreclosed by sale of the mortgage premises and at least four (4) weeks before the sale, a copy of the notice shall be served as a summons in a civil action in the district court (personal service) upon the person in possession of the mortgaged premises. In addition, if the bank foreclosing desires to preserve the right to reduce the redemption period after the first publication of the notice, the following notice must be included in the foreclosure notice.

"THE TIME ALLOWED BY LAW FOR REDEMPTION BY THE MORTGAGOR, THE MORTGAGOR'S PERSONAL REPRESENTATIVES OR ASSIGNS, MAY BE REDUCED TO FIVE WEEKS IF A JUDICIAL ORDER IS ENTERED UNDER [MINNESOTA STATUTES, SECTION 582.032](#), DETERMINING, AMONG OTHER THINGS, THAT THE MORTGAGED PREMISES ARE IMPROVED WITH A RESIDENTIAL DWELLING OF LESS THAN FIVE UNITS, ARE NOT PROPERTY USED IN AGRICULTURAL PRODUCTION, AND ARE ABANDONED."

Limited Right of Entry

A governing body may order a vacant building secured and shall cause notice of the order to be served upon the owner specifying that:

- ✗ costs may be assessed against the property for protecting the premise from waste or trespass,
- ✗ if the person does not secure the building;
- ✗ informs the owner of an appeal process; and
- ✗ the owner shall enter the vacant premise to protect it from waste and trespass.

The owner/certificate holder has 14 days to respond to the order by submitting a plan or schedule to secure the property or to request a hearing.

Foreclosure Advice Notice

At the same time the notice of sale (above) is given, the mortgagee must also give a Foreclosure Advice Notice to the property owners who occupy the property as their homestead as required by [MN Statute 580.041](#).

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Sale/Postponement

The sale of property shall be made by the sheriff or the sheriff's deputy at a public auction to the highest bidder in the county where the property is located. The sale can be postponed by the party conducting the foreclosure. The party requesting the postponement must, at the party's expense:

- ❶ publish, only once, a notice of postponement and the rescheduled date, if known, as soon as practicable, in the newspaper and
- ❷ send by first class mail to the occupant, or occupants, if any, postmarked within three (3) days of the postponed sale, notice:
 - ✓ of the postponement; and
 - ✓ if known, the rescheduled date of the sale and the date and time by which the mortgagor must vacate the property if the mortgage is not reinstated or the property redeemed.

The mortgagor or owner of a residential homestead may postpone a foreclosure sale five months after the originally scheduled date of the sale. The mortgagor, at least 15 days prior to the scheduled sale date, shall execute and record an affidavit and file with the sheriff conducting the foreclosure and the attorney foreclosing the mortgage, a copy of the recorded affidavit. Recording the affidavit and postponement of the foreclosure sale automatically reduces the mortgagor's redemption period to five weeks. The right to postpone a sale may only be exercised once. This allowance could provide a seller more time to sell their property or come current on their default by paying all arrears before facing the foreclosure sale.



Any surplus received by the foreclosure sale must be paid to mortgagor or mortgagors' legal representatives.

Surplus

Any surplus received by the foreclosure sale of the property must be paid to mortgagor or mortgagors' legal representatives or assigns.

Mortgagee may purchase

The mortgagee may purchase the premises so advertised at the foreclosure sale.

Certificate of Sale

A certificate of sale, including specific information, must be made and delivered by the officer to the purchaser and recorded within 20 days after the sale. This certificate can **NOT** contain a time allowed for redemption that is **less than** the time specified by the applicable redemption period.

Redemption

There are several redemption periods allowed depending on the circumstances of the loan including a **six month period, twelve months** (with requirements), **five weeks** for abandoned property, or **two months** by voluntary foreclosure. (See. MN Statute [580.23](#), [582.032](#) or [582.32](#) respectively.)

Six (6) Months ([MN Statute 580.23, Subd. 1](#))

Generally, the majority of loans which are sold in conformity with the foreclosure by advertisement statute will have a six-month redemption period.

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Redemption cont.

12-Months ([MN Statute 580.23, Subd. 2](#))

A mortgage sold in conformity with the foreclosure by advertisement statute can be redeemed within 12 months if:

- ❶ the mortgage was executed prior to July 1, 1967; or
- ❷ the amount claimed to be due is less than 66^{2/3}%; or
- ❸ the mortgage was executed prior to July 1, 1987 and the mortgaged premises exceeds 10 acres in size; or
- ❹ the mortgage was executed prior to August 1, 1994 and the mortgaged premises exceeded 10 acres but did not exceed 40 acres in size and was in agricultural use; or
- ❺ mortgaged premises exceeded 40 acres in size; or
- ❻ the mortgage was executed on or after August 1, 1994 and the mortgaged premises exceeded 10 acres but did not exceed 40 acres in size and was in agricultural use.



Five (5) Weeks ([MN Statute 582.032](#))

A five week redemption period can be applied to properties with mortgages executed after December 31, 1989 that are being foreclosed by either action or advertisement if the mortgaged premises are:

- ❶ ten acres or less in size; and
- ❷ improved with a residential dwelling consisting of less than five units which is neither a model home nor a dwelling under construction; and
- ❸ no property used in agricultural production.

The five week redemption period must be granted by court order after evidence has provided to the court showing that the mortgaged premises is not actually occupied and setting forth evidence of abandonment.

Two (2) Months ([MN Statute 582.32](#))

This section applies to mortgages in default that were executed on or after August 1, 1993 where the mortgagor and mortgagee have entered into an agreement for voluntary foreclosure. It only applies to mortgages on non-homesteaded real estate or in agricultural use.

Local Government Authority

In a foreclosure by advertisement or by action, a political subdivision/local government may also initiate a proceeding in district court or make a motion to reduce the redemption period. If the proceeding is initiated by a political subdivision/local government, the party foreclosing the mortgage or holding the sheriff's certificate must also be named as a defendant and the summons and complaint shall be delivered to the foreclosing attorney.

Disclosure Requirements

Minnesota requires sellers of single-family residential property to provide buyers with numerous disclosures, including a material fact disclosure made to the best of the seller's knowledge. With the increase in foreclosures, there has been confusion as to whether a lender/bank, that has taken title to property by foreclosure, is required to provide these disclosures when they sell the foreclosed property.

The confusing provision seems to be under [MN Statute 513.54 \(5\)](#) which provides an exemption for transfers by foreclosure or deed in lieu of foreclosure. This provision provides an exception to the material fact disclosure requirement only when the property is being transferred from the borrower to the lender/bank by foreclosure. Once the property title is transferred to the bank, and the bank subsequently proceeds to sell the property, the bank must provide a material fact disclosure in compliance with [MN Statute 513.55](#) and other disclosure required under state and federal laws

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Disclosure Requirements cont.

Material Fact Disclosure

[MN Statute 513.22-513.60](#) requires sellers of existing single-family residential property to make a written disclosure to a prospective buyer before signing a purchase agreement. The disclosure must be made in good faith and based upon the best of the seller's knowledge at the time of the disclosure.

The disclosure must include all material facts of which the seller is aware, that could adversely and significantly affect:

- ① an ordinary buyer's use and enjoyment of the property; or
- ② any intended use of the property of which the seller is aware.

Sellers may utilize the MNAR approved *Seller's Property Disclosure Statement* to meet this requirement.

Other Disclosure Requirements

Numerous other state and federal disclosure requirements must also be provided in the transfer of lender/bank-owned property, including but not limited to:

- ✗ **Private Sewer System Disclosure** as required by [MN Statute 115.55, Subd. 6](#).
- ✗ **Private Well Disclosure** as required under [MN Statute 103I.235](#). Information from the MDH regarding bank sales can be found at www.health.state.mn.us/divs/eh/wells/disclosures/foreclosed.html.
- ✗ **Valuation Exclusion Disclosure** as required under [MN Statute 273.11, Subd. 16](#).
- ✗ **Preferential Property Tax Treatments** that end on transfer.
- ✗ **Methamphetamine Production Disclosure** as required under [MN Statute 152.1275, Subd. 2 \(m\)](#).
- ✗ Notice regarding **Airport Zoning Regulations** see [MN Statute 513.56, Subd. 3](#).
- ✗ Notice regarding **Predatory Offenders** see [MN Statute 513.56, Subd. 2](#).
- ✗ **Lead-Based Paint Disclosure** as required under the *Federal Lead-Based Paint Reduction Act: Title X*.
- ✗ **Local Truth-in Housing Disclosures**, if applicable.

Seller Disclosure Alternatives

The Seller Disclosure law does allow the seller to provide a written inspection report prepared by an independent third party in place of providing their own material fact disclosure. See the MNAR *Seller's Disclosure Alternatives*, option 1.

Additionally, a buyer may agree to a waiver of the seller disclosure requirements under [MN Statute 513.52-513.60](#). However, the buyer must agree to a waiver of the seller's material fact disclosure requirement, in writing, prior to entering into the Purchase Agreement.

NOTE: Waiver of this disclosure does not waive, limit or abridge any obligation for seller disclosure created by any other law such as those listed above.

NOTE: There is no like waiver for real estate licensees. Utilizing the waiver provision is essentially a reversion back to no seller disclosure requirements. Real estate licensees are required under [MN Statute 82.22, Subd. 8](#), to disclose all material facts of which they are aware. MNAR successfully pursued the legislation requiring seller's to disclose material facts since, to a large degree, REALTORS® must rely on sellers to know material facts regarding the property. All real estate licensees must disclose ALL material facts of which they are aware that could adversely and significantly affect an ordinary purchaser's use or enjoyment of the property or any intended use of the property of which they are aware.

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OTHER ISSUES: Tax Implications

There is the potential for substantive tax implications for sellers when they sell a property that is in foreclosure or negotiate with the bank for a "short sale", such as property deficiency judgments. REALTORS® should advise clients to obtain appropriate legal or tax advice on these matters.

Foreclosure Counseling and Assistance

Property owners who are going through foreclosure or know they will not be able to afford their mortgage have many resources available to assist them in understanding their rights as well as their options. Following are three agencies to contact for assistance:

Home Ownership Center

www.hocmn.org

Email: info@hocmn.org

651/659-9336 or 866/462-6466 (toll free)

633 South Concord St., Suite 250

South St. Paul, MN 55075

MN Housing Finance Agency

www.mhfa.state.mn.us

Email: mn.housing@state.mn.us

651/296-7608 or 800/657-3769 (toll free)

400 Sibley Street

Suite #300

St. Paul, MN 55101

HUD Housing Counseling

www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm

800/569-4287



OTHER ISSUES: Foreclosure Consultants and Purchasers

In 2004, the Minnesota Legislature adopted [MN Statute 325N](#) to regulate foreclosure consultants and foreclosure purchasers.

Foreclosure consultants are persons who, for compensation, offer services for another to:

- ❶ stop or postpone the foreclosure sale;
- ❷ obtain any forbearance from any beneficiary or mortgagee;
- ❸ assist the owner to exercise the right of reinstatement;
- ❹ obtain any extension of the period within which the owner may reinstate the owner's obligation;
- ❺ obtain any waiver of an acceleration clause;
- ❻ assist the owner in foreclosure or loan default to obtain a loan or advance funds;
- ❼ avoid the impairment of the owner's credit;
- ❽ Save the owner's residence from foreclosure; or
- ❾ Negotiate or modify the terms or conditions of an existing residential mortgage loan.

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**OTHER ISSUES:
Foreclosure
Consultants and
Purchasers
cont.**

A foreclosure consultant does not include a person licensed as a real estate broker or salesperson under Chapter 82 when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure.

Foreclosure Purchasers are persons who have acquired more than one foreclosure reconveyance during any 24-month period.

Agent Practice Tips

Agents Representing Sellers of Property in Foreclosure

- ✘ Confirm debt balance and status of foreclosure in writing.
- ✘ Identify various risks to seller and confirm in writing.
- ✘ Understand and consider risks of non-payment of commission, shortage of funds and short sale issues.
- ✘ If sale is subject to lender approval, identify and confirm all applicable timeframes and set buyer expectations accordingly.
- ✘ If short sale – secure written commitment from lender regarding acceptable purchase price, if possible.
- ✘ Identify with seller that various tax or legal issues may require consideration (including deficiency judgment, tax on “income” for debt forgiveness, etc.)

Agents Representing Buyer’s of Properties in a Foreclosure Process or Already Foreclosed

- ✘ If sale is subject to lender approval, identify and confirm all applicable timeframes and include such terms in the purchase agreement as applicable.
- ✘ Clearly identify what will occur in event lender approval is not obtained, or what occurs in the event seller fails to obtain lender’s agreement within set time.
- ✘ Verify with buyer in writing that buyer understands risks, uncertainty and possible time delays or time urgency that may be applicable in foreclosure property purchase.
- ✘ Obtain all required disclosures from seller (including banks).

Agents Representing Banks who are Reselling Foreclosed Properties

- ✘ Make certain that seller (bank) adheres to all applicable federal, state and local laws including seller disclosure laws.