

HOUSE RESEARCH

Bill Summary

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Overview

This bill changes the foreclosure requirements for mortgagees and lenders. It requires a loan modification application be sent to the borrower or homeowner prior to foreclosure and additional notices providing information to the borrower or lender about their ability to make a loan modification request. This bill also defers or stops a foreclosure until mortgagee responds to a loan modification request.

Section

1 Refinancing Opportunity Required; Certain underwater home mortgage loans.

Subd. 1. Qualifications. Applies the provision of this section to all mortgagees, lenders, and their assignees and servicers. Applies the provision of this section to home mortgage loan customers, mortgagors, who meet certain specific criteria including that their loan is underwater and their interest rate is higher than 5.25 percent.

Subd. 2. Opportunity to refinance. Those eligible under subdivision 1 would have to be offered an opportunity to refinance at a lower interest rate within 60 days off the passage of the bill and be given at least 60 days to respond.

Subd. 3. Consequences of noncompliance. If a lender fails to offer the lower interest rate and then tries to foreclose the redemption period for the homeowner is extended to 12 months.

Effective date. This section would go into effect immediately after enactment.

2 **Transparency in loan modification criteria.** Requires lenders and services to provide information about how to get a loan modification at least annually to residential mortgage loan customers. The lender and servicer are also required to provide a written explanation of any denial of a loan modification request within five days and to provide accurate information about the lender.

Effective date. This section is effective the day following final enactment.

3 **Response to short sale requests.** Defines “short sale” as the sale of a home to a buyer for a price less than what is owed on the mortgage loan. This section requires a lender to respond to a short sale request within 30 days and if the lender fails to do so the homeowner is entitled to a redemption period of 12 months in a foreclosure, instead of the standard five months, and the lender cannot seek any deficiency judgment on any future foreclosure.

4 **No fees for services not provided.** Prevents lenders or mortgage brokers from charging fees for services that were not provided or in excess of what was paid to a third party for services by the lender or mortgage broker.

5 **Limitation.** Prevents foreclosure by advertisement after April 1, 2013.

6 **Requisites for foreclosure.** Prevents the mortgagee from foreclosing unless they have responded in writing to a loan modification request made by a homeowner. If the request follows a previous request and less than 60 days have elapsed then this requirement does not apply.

Effective date. This section is effective for foreclosures commenced on or after June 1, 2013.

7 **Foreclosure forbearance for financial hardship of employed long-term homeowners.** Requires a mortgagee to defer commencing or stop an ongoing foreclosure for at least 12 months if the homeowner has lived in the home for ten years, and 24 months if they have lived there 20 years, and at least one of the homeowners is unemployed and was or is eligible for unemployment benefits.

This bill also provides that: that the homeowner can request the deferral before a foreclosure or can ask to stop an ongoing foreclosure at any time; interest may accrue during the deferral period; that the mortgagee can request in district court that the mortgagor pay 30 percent of their income as a partial payment towards the mortgage loan; and that in notifying a mortgagor of their default on the loan they must also provide notice of their rights under this section.

Effective date. This section is effective the day following final enactment.

8 **Notice of Counseling and Request for Contact Information form.** Adds additional requested contact information to the preforeclosure notice.

Effective date. This section applies to preforeclosure notices provided on or after August 1, 2013.

9 **Certain preforeclosure calculations required.** Requires a lender, prior to a foreclosure, to determine the net present value to the lender of the mortgage loan if it were modified in any way and if the value exceeds the net present value of foreclosure the lender has a duty to offer to modify the loan. The lender is to provide these calculations to the borrower prior to beginning the foreclosure and keep these calculations and communications for at least six years.

Effective date. This section applies to foreclosures commenced on or after August 1, 2013.

10 **Content of foreclosure advice notice.** Provides the information that must be contained in the foreclosure advice notice.

11 **Content of foreclosure advice notice.** Adds to the foreclosure advice notice that the borrower has a right to ask for a loan modification and that a borrower can remain in the home until four weeks before the purchaser move after the redemption period.

12 **Limited right to remain in home after redemption period.** Provides that the current homeowner whose home was foreclosed on and who did not redeem does not have to move out of the home until four weeks before a “new owner” moves into the home, which does not include the former lender.

13 **Obligation to offer property to former owner after foreclosure.** Requires the lender to offer for at least 60 days the home for purchase with the lowest available interest rate from that lender to the previous owner at a price that would be expected in an arms-length sale.

14 **Foreclosed properties; sale to persons with unremedied housing code violation prohibited.** Prohibits the sale of a foreclosed property that has a violation of a local government housing code that has not been corrected or for which a fine or other penalty imposed as a result of the violation has not been paid. This section requires the mortgage lender to correct the violations and to recoup that cost from a purchaser. The mortgage lender can request information on the code violations from the local government unit and if the government unit fails to respond or does not report any violations or unpaid fines the lender can transfer the property without any liability. The mortgage lender can terminate a purchase agreement with a purchaser if the purchaser has unremedied property code violations or unpaid fines on the property.

Effective date. This section applies to sales of foreclosed properties that occur on or after August 1, 2013.

15 **Deficiency allowed.** Prevents deficiency judgments in homesteaded properties that are foreclosed on after April 1, 2013.

16 **Reduction of mortgage amount to reflect net benefit of foreclosure to lender.** Requires the servicer or mortgagee to determine certain costs related to the home, including the cost of foreclosure, and to then offer the owner the opportunity to replace the existing mortgage loan for 60 days. The owner may accept this offer or obtain financing from another lender to accept the offer.

Effective date. This applies to mortgage foreclosures commenced on or after August 1, 2013.

- 17 Definitions.** Provides the definitions for the requirements for foreclosure and affidavit of compliance.
- 18 Requisites to foreclosure.** Requires that a mortgagee complete a “loan modification affidavit of compliance” to provide information to the mortgagor that proves that they do not believe the mortgagor is eligible for a loan modification.
- 19 Notice requirements.** Provides the format requirements for any notices sent out under this chapter, including how mailed notice must be provided and provides specific regulations on how telephone contact with a mortgagee should occur. This section also requires the mortgagee to publish on a Web site the net present value formula used to determine eligibility on loan modification programs.
- 20 Notices of loan modification availability.** Requires the mortgagee to provide a notice to explain the borrower rights to request a loan modification as well as a loan modification application, both forms are provided in the statute. The mortgagee can record an affidavit of compliance if the borrower does not return the application for a loan modification or a completed application. The mortgagee is to provide any necessary documents to process the application that the mortgagee has available to them. The mortgagee must attempt six phone calls to try to determine if the homeowner is eligible for a home modification program within the 50 days after the loan modification notice is sent. The mortgagee must also provide a notice to the mortgagor if the loan modification application has not yet been received that the deadline is approaching.
- 21 Notice of incomplete loan modification application.** Requires the mortgagee to provide a notice to the borrower that the loan modification application they submitted is incomplete and that they provide instructions on how to complete it. The document must also include how to find the missing information and requires the mortgagee to make additional telephone contact attempts to the borrower to provide information about the deficiencies with the loan modification application.
- 22 Notice of determination.** Requires the mortgagee to determine if a borrower is eligible for a loan modification within 30 days and provide a written notice about which loan modification programs the borrower is eligible for and how to respond to the offer, including the timeline to respond to the offer. If the mortgagee determines the borrower is not eligible for a loan modification they must provide that in a notice the borrower and explain how to request a review of that determination and notice about the foreclosure proceeding and contact information for the mortgagee. Any notices in this section must also include the net present value calculations used to make the determinations on loan modification applications.

- 23** **Notice for ineligible homeowner.** Requires the mortgagee to provide a written notice to the borrower that they believe the borrower is not eligible for a loan modification and contact information for the borrower to contact a representative of the mortgagee to dispute the findings of ineligibility.
- 24** **Enforcement; remedies.**
- Private right of action.* Provides the homeowner with a private right of action against any mortgagee, lender, who violates this chapter for actual, incidental, or consequential damages in a private right of action.
- Statutory damages.* Allows a statutory damage award of up to \$2,000 for each violation of the chapter that is not a de minimus violation.
- Punitive damages.* Allows punitive damages in certain specific situations.
- Injunctive Relief.* Allows the court to issue an injunction to prevent violations of this chapter and stop a foreclosure action when there has been a violation of this chapter.
- Reimbursement for litigation costs.* Allows a prevailing plaintiff to recover the cost of the action including reasonable attorneys fees.
- Remedies cumulative.* The remedies in this chapter are cumulative and do not restrict any other remedies available.
- Public enforcement.* Allows the attorney general and the commissioner of commerce to enforce the provisions of this chapter.
- 25** **Applicability to priority of loans.** Provides that a loan modification does not affect the priority of the lien of the mortgage that secures the loan.
- 26** **Funding for mortgage foreclosure counseling.** Appropriates money from the general fund for fiscal year 2013 to the commissioner of Housing Finance Agency for a grant to the Minnesota Home Ownership Center to provide funding for mortgage foreclosure counseling of residents of this state who face mortgage foreclosure.
- Effective date.** This section is effective the day following final enactment.
- 27** **Effective date; applicability.** Except as otherwise provided, this act is effective 60 days after enactment and applies to foreclosures of residential mortgages commenced on or after that date.