

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1587

(SENATE AUTHORS: INGEBRIGTSEN)

| DATE | D-PG | OFFICIAL STATUS |
|------------|------|---|
| 03/11/2015 | | Introduction and first reading Referred to Judiciary |

1.1 A bill for an act
 1.2 relating to real property; extending the protection of the equity-stripping law to
 1.3 owners of agricultural property; amending Minnesota Statutes 2014, sections
 1.4 325N.10, subdivisions 2, 7; 325N.17.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2014, section 325N.10, subdivision 2, is amended to read:

1.7 Subd. 2. **Foreclosed homeowner.** "Foreclosed homeowner" means an owner of
 1.8 residential real property, including a condominium, or an owner of real property that is
 1.9 principally used for farming as defined in section 500.24, subdivision 2, that is the primary
 1.10 residence of the owner and whose mortgage on the real property is or was in foreclosure.

1.11 Sec. 2. Minnesota Statutes 2014, section 325N.10, subdivision 7, is amended to read:

1.12 Subd. 7. **Residence in foreclosure.** "Residence in foreclosure" means residential real
 1.13 property consisting of one to four family dwelling units, one of which the owner occupies
 1.14 as the owner's principal place of residence, or real property that is principally used for
 1.15 farming, as defined in section 500.24, subdivision 2, whether or not parcels are contiguous,
 1.16 so long as the owner occupies one of the parcels as the owner's principal place of residence,
 1.17 where there is a delinquency or default on any loan payment or debt secured by or attached
 1.18 to the residential real property, including, but not limited to, contract for deed payments.

1.19 Sec. 3. Minnesota Statutes 2014, section 325N.17, is amended to read:

1.20 **325N.17 PROHIBITED PRACTICES.**

1.21 A foreclosure purchaser shall not:

2.1 (a) enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed
2.2 homeowner unless:

2.3 (1) the foreclosure purchaser verifies and can demonstrate that the foreclosed
2.4 homeowner has a reasonable ability to pay for the subsequent conveyance of an interest
2.5 back to the foreclosed homeowner. In the case of a lease with an option to purchase,
2.6 payment ability also includes the reasonable ability to make the lease payments and
2.7 purchase the property within the term of the option to purchase. There is a rebuttable
2.8 presumption that a homeowner is reasonably able to pay for the subsequent conveyance
2.9 if the owner's payments for primary housing expenses and regular principal and interest
2.10 payments on other personal debt, on a monthly basis, do not exceed 60 percent of
2.11 the owner's monthly gross income. For the purposes of this section, "primary housing
2.12 expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard
2.13 insurance, real estate taxes, and association dues. There is a rebuttable presumption that
2.14 the foreclosure purchaser has not verified reasonable payment ability if the foreclosure
2.15 purchaser has not obtained documents other than a statement by the foreclosed homeowner
2.16 of assets, liabilities, and income;

2.17 (2) the foreclosure purchaser and the foreclosed homeowner complete a closing
2.18 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or
2.19 mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an
2.20 in-person meeting to complete final documents incident to the sale of the real property
2.21 or creation of a mortgage on the real property conducted by a closing agent, as defined
2.22 in section 82.55, who is not employed by or an affiliate of the foreclosure purchaser, or
2.23 employed by such an affiliate, and who does not have a business or personal relationship
2.24 with the foreclosure purchaser other than the provision of real estate settlement services;

2.25 (3) the foreclosure purchaser obtains the written consent of the foreclosed
2.26 homeowner to a grant by the foreclosure purchaser of any interest in the property during
2.27 such times as the foreclosed homeowner maintains any interest in the property; and

2.28 (4) the foreclosure purchaser complies with the requirements for disclosure, loan
2.29 terms, and conduct in the federal Home Ownership Equity Protection Act, United States
2.30 Code, title 15, section 1639, or its implementing regulation, Code of Federal Regulations,
2.31 title 12, sections 226.31, 226.32, and 226.34, for any foreclosure reconveyance in which
2.32 the foreclosed homeowner obtains a vendee interest in a contract for deed, regardless of
2.33 whether the terms of the contract for deed meet the annual percentage rate or points and
2.34 fees requirements for a covered loan in Code of Federal Regulations, title 12, sections
2.35 226.32 (a) and (b);

2.36 (b) fail to either:

3.1 (1) ensure that title to the subject dwelling has been reconveyed to the foreclosed
3.2 homeowner; or

3.3 (2) make a payment to the foreclosed homeowner such that the foreclosed homeowner
3.4 has received consideration in an amount of at least 82 percent of the fair market value of the
3.5 property within 150 days of either the eviction or voluntary relinquishment of possession of
3.6 the dwelling by the foreclosed homeowner. The foreclosure purchaser shall make a detailed
3.7 accounting of the basis for the payment amount, or a detailed accounting of the reasons
3.8 for failure to make a payment, including providing written documentation of expenses,
3.9 within this 150-day period. The accounting shall be on a form prescribed by the attorney
3.10 general, in consultation with the commissioner of commerce, without being subject to the
3.11 rulemaking procedures of chapter 14. For purposes of this provision, the following applies:

3.12 (i) there is a rebuttable presumption that an appraisal by a person licensed or certified
3.13 by an agency of the federal government or this state to appraise real estate constitutes the
3.14 fair market value of the property;

3.15 (ii) the time for determining the fair market value amount shall be determined in the
3.16 foreclosure reconveyance contract as either at the time of the execution of the foreclosure
3.17 reconveyance contract or at resale. If the contract states that the fair market value shall
3.18 be determined at the time of resale, the fair market value shall be the resale price if it is
3.19 sold within 120 days of the eviction or voluntary relinquishment of the property by the
3.20 foreclosed homeowner. If the contract states that the fair market value shall be determined
3.21 at the time of resale, and the resale is not completed within 120 days of the eviction or
3.22 voluntary relinquishment of the property by the foreclosed homeowner, the fair market
3.23 value shall be determined by an appraisal conducted during this 120-day period and
3.24 payment, if required, shall be made to the homeowner, but the fair market value shall be
3.25 recalculated as the resale price on resale and an additional payment amount, if appropriate
3.26 based on the resale price, shall be made to the foreclosed homeowner within 15 days
3.27 of resale, and a detailed accounting of the basis for the payment amount, or a detailed
3.28 accounting of the reasons for failure to make additional payment, shall be made within 15
3.29 days of resale, including providing written documentation of expenses. The accounting
3.30 shall be on a form prescribed by the attorney general, in consultation with the commissioner
3.31 of commerce, without being subject to the rulemaking procedures of chapter 14;

3.32 (iii) "consideration" shall mean any payment or thing of value provided to the
3.33 foreclosed homeowner, including unpaid rent or contract for deed payments owed by the
3.34 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the
3.35 property, reasonable costs paid to third parties necessary to complete the foreclosure
3.36 reconveyance transaction, payment of money to satisfy a debt or legal obligation of the

4.1 foreclosed homeowner, or the reasonable cost of repairs for damage to the dwelling caused
4.2 by the foreclosed homeowner; or a penalty imposed by a court for the filing of a frivolous
4.3 claim under section 325N.18, subdivision 6, but

4.4 (iv) "consideration" shall not include amounts imputed as a down payment or fee
4.5 to the foreclosure purchaser, or a person acting in participation with the foreclosure
4.6 purchaser, incident to a contract for deed, lease, or option to purchase entered into as part
4.7 of the foreclosure reconveyance, except for reasonable costs paid to third parties necessary
4.8 to complete the foreclosure reconveyance;

4.9 (c) enter into repurchase or lease terms as part of the subsequent conveyance that are
4.10 unfair or commercially unreasonable, or engage in any other unfair conduct;

4.11 (d) represent, directly or indirectly, that:

4.12 (1) the foreclosure purchaser is acting as an advisor or a consultant, or in any other
4.13 manner represents that the foreclosure purchaser is acting on behalf of the homeowner;

4.14 (2) the foreclosure purchaser has certification or licensure that the foreclosure
4.15 purchaser does not have, or that the foreclosure purchaser is not a member of a licensed
4.16 profession if that is untrue;

4.17 (3) the foreclosure purchaser is assisting the foreclosed homeowner to "save the
4.18 house" or substantially similar phrase; or

4.19 (4) the foreclosure purchaser is assisting the foreclosed homeowner in preventing a
4.20 completed foreclosure if the result of the transaction is that the foreclosed homeowner will
4.21 not complete a redemption of the property;

4.22 (e) make any other statements, directly or by implication, or engage in any other
4.23 conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion
4.24 or misunderstanding, including, but not limited to, statements regarding the value of
4.25 the residence in foreclosure, the amount of proceeds the foreclosed homeowner will
4.26 receive after a foreclosure sale, any contract term, or the foreclosed homeowner's rights or
4.27 obligations incident to or arising out of the foreclosure reconveyance; or

4.28 (f) do any of the following until the time during which the foreclosed homeowner
4.29 may cancel the transaction has fully elapsed:

4.30 (1) accept from any foreclosed homeowner an execution of, or induce any foreclosed
4.31 homeowner to execute, any instrument of conveyance of any interest in the residence
4.32 in foreclosure;

4.33 (2) record with the county recorder or file with the registrar of titles any document,
4.34 including but not limited to, any instrument of conveyance, signed by the foreclosed
4.35 homeowner;

5.1 (3) transfer or encumber or purport to transfer or encumber any interest in
5.2 the residence in foreclosure to any third party, provided no grant of any interest or
5.3 encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for
5.4 value and without notice of a violation of sections 325N.10 to 325N.18, and knowledge
5.5 on the part of any such person or entity that the property was "~~residential~~ real property
5.6 in foreclosure" does not constitute notice of a violation of sections 325N.10 to 325N.18.
5.7 This section does not abrogate any duty of inquiry which exists as to rights or interests of
5.8 persons in possession of the ~~residential~~ real property in foreclosure; or
5.9 (4) pay the foreclosed homeowner any consideration.