



Minnesota Session Laws

Minnesota Session Laws - 2004

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CHAPTER 263-H.F.No. 2095

An act relating to mortgage foreclosure; providing for rescission of foreclosure consultant contracts; regulating foreclosure consultant contracts; providing remedies for foreclosure violations; requiring foreclosure purchasers to enter foreclosure reconveyances in the form of written contracts; regulating foreclosure contracts; prohibiting certain foreclosure purchaser practices; providing enforcement remedies; requiring certain foreclosure notices; imposing criminal penalties; amending Minnesota Statutes 2002, sections 462A.05, by adding a subdivision; 469.018, by adding a subdivision; 580.03; Minnesota Statutes 2003 Supplement, section 462A.03, subdivision 13; Laws 2003, chapter 128, article 10, section 4, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 580; proposing coding for new law as Minnesota Statutes, chapter 325N.

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

Section 1. [325N.01] [DEFINITIONS.]

The definitions in paragraphs (a) to (h) apply to sections 325N.01 to 325N.09.

(a) "Foreclosure consultant" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale;
- (2) obtain any forbearance from any beneficiary or mortgagee;
- (3) assist the owner to exercise the right of reinstatement provided in section 580.30;
- (4) obtain any extension of the period within which the owner may reinstate the owner's obligation;
- (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;
- (6) assist the owner in foreclosure or loan default to obtain a loan or advance of funds;
- (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale; or
- (8) save the owner's residence from foreclosure.

(b) A foreclosure consultant does not include any of the following:

- (1) a person licensed to practice law in this state when

the person renders service in the course of his or her practice as an attorney-at-law;

(2) a person licensed as a debt prorater under sections 332.12 to 332.29, when the person is acting as a debt prorater as defined in these sections;

(3) 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;

(4) a person licensed as an accountant under chapter 326A when the person is acting in any capacity for which the person is licensed under those provisions;

(5) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services;

(6) a person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

(7) any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities while engaged in the business of these persons or entities;

(8) a person licensed as a residential mortgage originator or servicer pursuant to chapter 58, when acting under the authority of that license or a foreclosure purchaser as defined in section 325N.10;

(9) a nonprofit agency or organization that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or foreclosure purchasers; and

(10) a judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 580.03, but excluding a person who purchased the claim after such personal service.

(c) "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to

purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

- (1) debt, budget, or financial counseling of any type;
- (2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;
- (3) contacting creditors on behalf of an owner of a residence in foreclosure;
- (4) arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate his or her obligation pursuant to section 580.30;
- (5) arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure;
- (6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or
- (7) giving any advice, explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage.

(f) "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as his or her principal place of residence, and against which there is an outstanding notice of pendency of foreclosure, recorded pursuant to section 580.032, or against which a summons and complaint has been served under chapter 581.

(g) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.

(h) "Contract" means any agreement, or any term in any agreement, between a foreclosure consultant and an owner for the rendition of any service as defined in paragraph (e).

Sec. 2. [325N.02] [RESCISSION OF FORECLOSURE CONSULTANT CONTRACT.]

(a) In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the third business day after the day on which the owner signs a contract which complies with section 325N.03.

(b) Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

Sec. 3. [325N.03] [CONTRACT.]

(a) Every contract must be in writing and must fully

disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

(b) The following notice, printed in at least 14-point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the statement required by paragraph (c):

"NOTICE REQUIRED BY MINNESOTA LAW

..... (Name) or anyone working for him or her CANNOT:

- (1) Take any money from you or ask you for money until (Name) has completely finished doing everything he or she said he or she would do; and
- (2) Ask you to sign or have you sign any lien, mortgage, or deed."

(c) The contract must be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

"You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(d) The contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) the name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and
- (2) the date the owner signed the contract.

(e) The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation," which must be attached to the contract, must be easily detachable, and must contain in at least ten-point type the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....
(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to

(Name of foreclosure consultant)

at

(Address of foreclosure consultant's place of business)

NOT LATER THAN MIDNIGHT OF

(Date)

I hereby cancel this transaction

(Date)

.....
(Owner's signature)"

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.

(g) The three business days during which the owner may

cancel the contract shall not begin to run until the foreclosure consultant has complied with this section.

Sec. 4. [325N.04] [VIOLATIONS.]

It is a violation for a foreclosure consultant to:

- (1) claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he or she would perform;
- (2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds eight percent per annum of the amount of any loan which the foreclosure consultant may make to the owner;
- (3) take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;
- (4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;
- (5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted;
- (6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or
- (7) induce or attempt to induce any owner to enter a contract which does not comply in all respects with sections 325N.02 and 325N.03.

Sec. 5. [325N.05] [WAIVER NOT ALLOWED.]

Any waiver by an owner of the provisions of sections 325N.01 to 325N.09 is void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of sections 325N.01 to 325N.09.

Sec. 6. [325N.06] [REMEDIES.]

(a) A violation of sections 325N.01 to 325N.09 is considered to be a violation of section 325F.69, and all remedies of section 8.31 are available for such an action. A private cause of action under section 8.31 by a foreclosed homeowner is in the public interest. An owner may bring an action against a foreclosure consultant for any violation of sections 325N.01 to 325N.09. Judgment must be entered for actual damages, reasonable attorney fees and costs, and appropriate equitable relief.

(b) The rights and remedies provided in paragraph (a) are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section must be commenced within four years from the date of the alleged violation.

(c) The court may award exemplary damages up to one and one-half times the compensation charged by the foreclosure consultant if the court finds that the foreclosure consultant violated the provisions of section 325N.04, clause (1), (2), or (4), and the foreclosure consultant's conduct was in bad faith.

(d) Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of sections 325N.01 to 325N.09, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by the commissioner of commerce.

Sec. 7. [325N.07] [PENALTY.]

Any person who commits any violation described in section 325N.04 may, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year or both. Prosecution or conviction for any violation described in section 325N.04 will not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.

Sec. 8. [325N.08] [PROVISIONS SEVERABLE.]

If any provision of sections 325N.01 to 325N.09 or the application of any of these provisions to any person or circumstance is held to be unconstitutional and void, the remainder of sections 325N.01 to 325N.09 remains valid.

Sec. 9. [325N.09] [LIABILITY.]

(a) Any provision in a contract which attempts or purports to require arbitration of any dispute arising under sections 325N.01 to 325N.09 is void at the option of the owner.

(b) This section applies to any contract entered into on or after August 1, 2004.

FORECLOSURE PURCHASERS

Sec. 10. [325N.10] [DEFINITIONS.]

Subdivision 1. [SCOPE.] For the purposes of sections 325N.10 to 325N.18, the terms defined in this section have the meanings given them.

Subd. 2. [FORECLOSED HOMEOWNER.] "Foreclosed homeowner" means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure.

Subd. 3. [FORECLOSURE RECONVEYANCE.] "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

Subd. 4. [FORECLOSURE PURCHASER.] "Foreclosure purchaser" means a person that has acted as the acquirer in more than one foreclosure reconveyance during any 24-month period. Foreclosure purchaser also includes a person that has acted in joint venture or joint enterprise with one or more acquirers in more than one foreclosure reconveyance during any 24-month period. A federal or state chartered bank, savings bank, thrift, or credit union is not a foreclosure purchaser.

Subd. 5. [RESALE.] "Resale" means a bona fide market sale of the property subject to the foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.

Subd. 6. [RESALE PRICE.] "Resale price" means the gross sale price of the property on resale.

Sec. 11. [325N.11] [CONTRACT REQUIREMENT; FORM AND LANGUAGE.]

A foreclosure purchaser shall enter into every foreclosure reconveyance in the form of a written contract. Every contract

must be written in letters of a size equal to at least 12-point boldface type, in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence in foreclosure and must be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.

Sec. 12. [325N.12] [CONTRACT TERMS.]

Every contract required by section 325N.11 must contain the entire agreement of the parties and must include the following terms:

(1) the name, business address, and the telephone number of the foreclosure purchaser;

(2) the address of the residence in foreclosure;

(3) the total consideration to be given by the foreclosure purchaser in connection with or incident to the sale;

(4) a complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the foreclosure purchaser represents he or she will perform for the foreclosed homeowner before or after the sale;

(5) the time at which possession is to be transferred to the foreclosure purchaser;

(6) a complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in the home, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;

(7) a notice of cancellation as provided in section 325N.14, paragraph (b); and

(8) the following notice in at least 14-point boldface type, if the contract is printed or in capital letters if the contract is typed, and completed with the name of the foreclosure purchaser, immediately above the statement required by section 325N.14, paragraph (a):

"NOTICE REQUIRED BY MINNESOTA LAW

Until your right to cancel this contract has ended,

(Name) or anyone working for (Name) CANNOT ask you to sign or have you sign any deed or any other document."

The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, and has no effect on persons other than the parties to the contract.

Sec. 13. [325N.13] [CONTRACT CANCELLATION.]

(a) In addition to any other right of rescission, the foreclosed homeowner has the right to cancel any contract with a foreclosure purchaser until midnight of the fifth business day following the day on which the foreclosed homeowner signs a contract that complies with sections 325N.10 to 325N.15 or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first.

(b) Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to the address specified in the contract.

(c) A notice of cancellation given by the foreclosed homeowner need not take the particular form as provided with the contract.

(d) Within ten days following receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the

foreclosed homeowner.

Sec. 14. [325N.14] [NOTICE OF CANCELLATION.]

(a) The contract must contain in immediate proximity to the space reserved for the foreclosed homeowner's signature a conspicuous statement in a size equal to at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before

.....
(Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The foreclosure purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(b) The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in a size equal to a 12-point boldface type if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the foreclosed homeowner executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in type of at least 10 points, if the contract is printed or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....
(Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

.....
(Enter date and time of day)

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice to

.....
(Name of purchaser)

at
(Street address of purchaser's place of business)

NOT LATER THAN
(Enter date and time of day)

I hereby cancel this transaction
(Date)

.....
(Seller's signature)"

(c) The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(d) The five business days during which the foreclosed homeowner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this section.

Sec. 15. [325N.15] [WAIVER.]

Any waiver of the provisions of sections 325N.10 to 315N.18 is void and unenforceable as contrary to public policy except a consumer may waive the five-day right to cancel provided in section 325N.13 if the property is subject to a foreclosure sale

within the five business days, and the foreclosed homeowner agrees to waive his or her right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

Sec. 16. [325N.16] [LIABILITY.]

(a) Any provision in a contract which attempts or purports to require arbitration of any dispute arising under sections 325N.10 to 325N.18 is void at the option of the owner.

(b) This section applies to any contract entered into on or after August 1, 2004.

Sec. 17. [325N.17] [PROHIBITED PRACTICES.]

A foreclosure purchaser shall not:

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

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

(2) the foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by a closing agent, as defined in section 82.17, who is not employed by or an affiliate of the foreclosure purchaser;

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

(4) the foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, United States Code, title 15, section 1639, or its implementing regulation, Code of Federal Regulations, title 12, sections 226.31 to 226.34, for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed;

(b) fail to either:

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

(2) make a payment to the foreclosed homeowner such that the foreclosed homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property

within 150 days of either the eviction or voluntary relinquishment of possession of the dwelling by the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this 150-day period. The accounting shall be on a form prescribed by the attorney general, in consultation with the commissioner of commerce, without being subject to the rulemaking procedures of chapter 14. For purposes of this provision, the following applies:

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

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

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

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

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

(d) represent, directly or indirectly, that:

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

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

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

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

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

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

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

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

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

(4) pay the foreclosed homeowner any consideration.

Sec. 18. [325N.18] [ENFORCEMENT.]

Subdivision 1. [REMEDIES.] A violation of sections 325N.10 to 325N.17 is considered to be a violation of section 325F.69, and all the remedies of section 8.31 are available for such an action. A private right of action under section 8.31 by a foreclosed homeowner is in the public interest.

Subd. 1a. [LIMITATION.] Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of sections 325N.10 to 325N.18, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by the commissioner of commerce.

Subd. 2. [EXEMPLARY DAMAGES.] In a private right of action under section 8.31 for a violation of section 325N.17, the court

may award exemplary damages of any amount. In the event the court determines that an award of exemplary damages is appropriate, the amount of exemplary damages awarded shall not be less than 1-1/2 times the foreclosed homeowner's actual damages. Any claim for exemplary damages brought pursuant to this section must be commenced within four years after the date of the alleged violation.

Subd. 3. [REMEDIES CUMULATIVE.] The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of sections 325N.10 to 325N.18 are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. No action under this section shall affect the rights in the foreclosed property held by a good faith purchaser for value under sections 507.34, 508.48, 508A.48, or other applicable law.

Subd. 4. [CRIMINAL PENALTY.] Any foreclosure purchaser who engages in any practice which would operate as a fraud or deceit upon a foreclosed homeowner may, upon conviction, be fined not more than \$50,000 or imprisoned not more than one year, or both. Prosecution or conviction for any one of the violations does not bar prosecution or conviction for any other offenses.

Subd. 5. [FAILURE OF TRANSACTION.] Failure of the parties to complete the reconveyance transaction, in the absence of additional misconduct, shall not subject a foreclosure purchaser to the criminal penalties under section 325N.07 or 325N.18.

Sec. 19. Minnesota Statutes 2003 Supplement, section 462A.03, subdivision 13, is amended to read:

Subd. 13. [ELIGIBLE MORTGAGOR.] "Eligible mortgagor" means a nonprofit or cooperative housing corporation; the Department of Administration for the purpose of developing nursing home beds under section 251.011 or community-based programs as defined in sections 252.50 and 253.28; a limited profit entity or a builder as defined by the agency in its rules, which sponsors or constructs residential housing as defined in subdivision 7; or a natural person of low or moderate income, except that the return to a limited dividend entity shall not exceed ~~ten~~ 15 percent of the capital contribution of the investors or such lesser percentage as the agency shall establish in its rules, provided that residual receipts funds of a limited dividend entity may be used for agency-approved, housing-related investments owned by the limited dividend entity without regard to the limitation on returns. Owners of existing residential housing occupied by renters shall be eligible for rehabilitation loans, only if, as a condition to the issuance of the loan, the owner agrees to conditions established by the agency in its rules relating to rental or other matters that will insure that the housing will be occupied by persons and families of low or moderate income. The agency shall require by rules that the owner give preference to those persons of low or moderate income who occupied the residential housing at the time of application for the loan.

Sec. 20. Minnesota Statutes 2002, section 462A.05, is amended by adding a subdivision to read:

Subd. 3c. [REFINANCING; LONG-TERM MORTGAGES.] It may agree to purchase, make, or otherwise participate in the making and enter into commitments for the purchase, making, or participation in the making of long-term mortgage loans to persons and families of low and moderate income to refinance a long-term mortgage or other financing secured by the residential housing occupied by the owner of the property. The loans shall

be made only upon determination by the agency that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon equivalent terms and conditions.

Sec. 21. Minnesota Statutes 2002, section 469.018, is amended by adding a subdivision to read:

Subd. 3. [PROHIBITION ON LEASE RESTRICTIONS.] Notwithstanding any other law to the contrary, no declaration governing a common interest community, as defined in chapter 515B, whether or not the common interest community is subject to chapter 515B, and no bylaw, regulation, rule, or policy adopted by or on behalf of the unit owners' association for a common interest community, may prohibit or limit an authority from leasing a residential unit owned by it to eligible persons of low or moderate income and their families under applicable state or federal legislation. Nothing in this subdivision shall prohibit common interest community declarations, bylaws, regulations, rules, or policies from otherwise regulating the use of a unit owned by an authority or the conduct of unit occupants, provided the regulations apply to all units in the common interest community; nor from enforcing a prohibition against leasing residential units that was effective before the authority owned the unit. This subdivision applies to all common interest community units owned by an authority for which title was acquired by the authority after January 1, 1999.

Sec. 22. Minnesota Statutes 2002, section 580.03, is amended to read:

580.03 [NOTICE OF SALE; SERVICE ON OCCUPANT.]

Six weeks' published notice shall be given that such mortgage will be foreclosed by sale of the mortgaged premises or some part thereof, and at least four weeks before the appointed time of sale a copy of such notice shall be served in like manner as a summons in a civil action in the district court upon the person in possession of the mortgaged premises, if the same are actually occupied. If there be a building on such premises used by a church or religious corporation, for its usual meetings, service upon any officer or trustee of such corporation shall be a sufficient service upon it. The notice required by section 580.041 must be served simultaneously with the notice of foreclosure required by this section.

Sec. 23. [580.041] [FORECLOSURE ADVICE NOTICE.]

Subdivision 1. [FORM AND DELIVERY OF NOTICE.] The notice required by this section must be in 14-point boldface type and must be printed on colored paper that is other than the color of the notice of foreclosure and that does not obscure or overshadow the content of the notice. The title of the notice must be in 20-point boldface type. The notice must be on its own page. The notice required by this section must be delivered with the notice of foreclosure required by sections 580.03 and 580.04. The notice required by this section also must be delivered with each subsequent written communication regarding the foreclosure mailed to the mortgagor by the foreclosing party up to the day of redemption. A foreclosing mortgagee will be deemed to have complied with this section if it sends the notice required by this section at least once every 60 days during the period of the foreclosure process. The notice required by this section must not be published.

Subd. 2. [CONTENT OF NOTICE.] The notice required by this section must appear substantially as follows:

"Help For Homeowners in Foreclosure
Minnesota law requires that we send you this notice

about the foreclosure process. Please read it carefully.

Mortgage foreclosure is a complex process. Some people may approach you about "saving" your home. You should be careful about any such promises.

The state encourages you to become informed about your options in foreclosure before entering into any agreements with anyone in connection with the foreclosure of your home. There are government agencies and nonprofit organizations that you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you please call the Minnesota Home Finance Agency (MHFA) at (insert telephone number). The state does not guarantee the advice of these agencies.

Do not delay dealing with the foreclosure because your options may become more limited as time passes."

Sec. 24. Laws 2003, chapter 128, article 10, section 4, subdivision 3, is amended to read:

Subd. 3. Affordable Rental Investment Fund

\$9,273,000 the first year and

\$9,273,000 the second year are for the

affordable rental investment fund

program under Minnesota Statutes,

section 462A.21, subdivision 8b.

This appropriation is to finance the

acquisition, rehabilitation, and debt

restructuring of federally assisted

rental property and for making equity

take-out loans under Minnesota

Statutes, section 462A.05, subdivision

39. This appropriation also may be

used to finance the acquisition,

rehabilitation, and debt restructuring

of existing supportive housing

properties. For purposes of this

subdivision, supportive housing means

affordable rental housing with linkages

to services necessary for individuals,

youth, and families with children to

maintain housing stability. The owner

of the federally assisted rental

property must agree to participate in

the applicable federally assisted

housing program and to extend any

existing low-income affordability

restrictions on the housing for the

maximum term permitted. The owner must

also enter into an agreement that gives

local units of government, housing and

redevelopment authorities, and

nonprofit housing organizations the

right of first refusal if the rental

property is offered for sale. Priority

must be given among comparable

properties to properties with the

longest remaining term under an

agreement for federal rental

assistance. Priority must also be

given among comparable rental housing

developments to developments that are

or will be owned by local government units, a housing and redevelopment authority, or a nonprofit housing organization.

Sec. 25. [PROVISIONS SEVERABLE.]

If any provision of this act, or if any application of this act to any person or circumstances is held unconstitutional and void, the remainder of this act remains valid.

Sec. 26. [EFFECTIVE DATE; EXPIRATION.]

Sections 1 to 18, 22, 23, and 25 are effective August 1, 2004, and expire December 31, 2009. Sections 19, 20, 21, and 24 are effective July 1, 2004.

Presented to the governor May 18, 2004

Signed by the governor May 28, 2004, 5:01 p.m.