



September 2013 Tip of the Month
Changes in Minnesota Foreclosure Law
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Though foreclosures are on the decline, many low-income Minnesotans are still underwater on their mortgages and are seeking relief to stay in their homes.¹ Banks and servicers have loss mitigation programs that provide an avenue for struggling homeowners to avoid foreclosure. Historically, many VLN clients have struggled to navigate the different avenues for relief, sometimes mailing and re-mailing modification applications so many times that their copies could fill a suitcase (one client actually did fill one). Unfortunately, often while the client was in the process of applying for relief, another branch of the lender was actively foreclosing the lien, resulting in the client losing his/her home without ever being considered for a modification that could have prevented the foreclosure.

The Minnesota legislature has enacted new provisions aimed at helping struggling borrowers remain in their homes. Provisions of Minn. Stat. § 582.043 took effect on August 1, 2013. This tip highlights important aspects of the new law that attorneys advising clients facing foreclosure should know.

Notice of Mitigation Options before Foreclosure

The new law requires a servicer to give the homeowner notice of loss mitigation options as a precondition to foreclosure. Before referring a mortgage to an attorney for foreclosure, a servicer must “notify a mortgagor in writing of available loss mitigation options offered by the servicer that are applicable to the mortgagor’s loan.”² This provision applies to judicial foreclosures as well as foreclosures by advertisement on owner-occupied residential real property. For more information on the applicability of this provision, see Minn. Stat. § 582.043 Subd. 2.

There are free foreclosure counseling services available for borrowers who are struggling to make their mortgage payments or who have defaulted. Foreclosure counselors can review the homeowner’s financial situation and help work with the lender to avoid foreclosure. To locate a foreclosure counselor, visit: <http://www.hocmn.org/foreclosure-prevention/find-a-foreclosure-counselor/>.

Practice Tip: Scam artists frequently target struggling homeowners. A homeowner should never pay advance fees to get assistance with a modification or foreclosure counseling. Some scams even tell the homeowner not to work with the lender or tell them the lender is prohibited from working with them. When your client receives notice of mortgage assistance opportunities, contact the servicer of the loan or consult the Minnesota Attorney General’s website to investigate its validity.

¹ For statistical data, see the *2013 Semi-Annual Foreclosures in Minnesota* report released on August 9, 2013 by the Minnesota Homeownership Center available at: http://www.hocmn.org/wp-content/uploads/2013/08/SemiAnnual_ForeclosuresInMN_Report_2013.pdf.

² Minn. Stat. § 582.043, Subd. 5 (1)

Due Diligence Requirement and Elimination of Dual Tracking

New provisions of the law require the servicer to comply with their own loss mitigation procedures, an obligation that had been practically unenforceable. When a homeowner submits a request for one of the loss mitigation options, the servicer must “exercise reasonable diligence in obtaining documents and information from the mortgagor to completed a loss mitigation application...” and to “give the mortgagor a reasonable amount of time to provide the required documents.”³

Dual Tracking is the friendly label for the aforementioned process where a lender would proceed with foreclosure while at the same time processing a homeowner’s loss mitigation application. According to Minn. Stat. § 582.043 Subd. 6, if the servicer receives the application:

- prior to referring the loan to an attorney for foreclosure;
- after the loan has been referred to an attorney for foreclosure but before a foreclosure sale has been scheduled; or
- after the foreclosure sale has been scheduled but before midnight on the seventh business day before the sale date;

the servicer cannot proceed with foreclosure until:

1. the servicer determines that the homeowner is not eligible, notifies the homeowner in writing, and options for appeal have been exhausted;
2. a written offer is made, but the homeowner has not accepted it within the required time frame; or
3. the homeowner declines the loss mitigation offer in writing.

Private Cause of Action Created

During the foreclosure crisis, VLN clients reported enduring nearly every imaginable problem or delay a servicer could occasion upon the loss mitigation application process, and many were foreclosed upon while their application was ‘out there.’ Now, homeowners have a cause of action to enjoin or set aside a sale if the servicer does not comply with loss mitigation requirements. The statute also allows for attorney fees and costs in prevailing actions. The homeowner must bring the action and record a *lis pendens* prior to the expiration of the redemption period. Loss mitigation options already existed, but the new statutes give attorneys a tool to ensure that their clients have access to every available option when fighting to save their homes.

Practice Tip: If you are representing a client on a pro bono case, sign up for an account at www.ProJusticeMN.org to access trainings and resources to help with your case and to join the Foreclosure Defense Taskforce, a listserv that facilitates communication and collaboration among foreclosure defense attorneys.

Full Text

For the full text of the new law and exact effective dates, see Chapter 115 in the Minnesota Session Laws for the 2013 regular session, S.F.No. 1276, available at:

<https://www.revisor.mn.gov/laws/?id=115&doctype=Chapter&year=2013&type=0>.

³ Minn. Stat. § 582.043 Subd. 5 (2)