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HOUSE FILE NO. 19

FIRST COMMITTEE ENGROSSMENT

January 12, 2009

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The bill was read for the first time and referred to the Committee on Commerce and Labor

Referred by Chair to Labor and Consumer Protection Division.

March 23, 2009

Returned to the Committee on Commerce and Labor as Amended.

1.1 A bill for an act
1.2 relating to real property; mortgages; providing for postponement of sale;
1.3 amending Minnesota Statutes 2008, section 580.07.

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

1.5 Section 1. Minnesota Statutes 2008, section 580.07, is amended to read:

1.6 **580.07 POSTPONEMENT.**

1.7 Subdivision 1. Postponement by mortgagee. The sale may be postponed, from
1.8 time to time, by the party conducting the foreclosure, by inserting a notice of the
1.9 postponement, as soon as practicable, in the newspaper in which the original advertisement
1.10 was published, at the expense of the party requesting the postponement. The notice shall
1.11 be published only once.

1.12 Subd. 2. Postponement by mortgagor or owner. (a) If all or a part of the property
1.13 to be sold is classified as homestead under section 273.124 and contains one to four
1.14 dwelling units, the mortgagor or owner may postpone the sale to the first date that is not
1.15 a Saturday, Sunday, or legal holiday and is five months after the originally scheduled
1.16 date of sale in the manner provided in this subdivision. To postpone a foreclosure sale
1.17 pursuant to this subdivision, at any time after the first publication of the notice of mortgage
1.18 foreclosure sale under section 580.03 but at least 15 days prior to the scheduled sale date
1.19 specified in that notice, the mortgagor shall: (1) execute a sworn affidavit in the form set
1.20 forth in subdivision 3, (2) record the affidavit in the office of each county recorder and
1.21 registrar of titles where the mortgage was recorded, and (3) file with the sheriff conducting
1.22 the sale and deliver to the attorney foreclosing the mortgage, a copy of the recorded
1.23 affidavit, showing the date and office in which the affidavit was recorded. Recording of
1.24 the affidavit and postponement of the foreclosure sale pursuant to this subdivision shall

2.1 automatically reduce the mortgagor's redemption period under section 580.23 to five
 2.2 weeks. The postponement of a foreclosure sale pursuant to this subdivision does not
 2.3 require any change in the published or served notice of mortgage foreclosure sale under
 2.4 sections 580.03 and 580.04, but the sheriff's certificate of sale shall indicate the actual
 2.5 date of the foreclosure sale and the actual length of the mortgagor's redemption period.
 2.6 No notice of postponement need be published. An affidavit complying with subdivision
 2.7 3 shall be prima facie evidence of the facts stated therein, and shall be entitled to be
 2.8 recorded. The right to postpone a foreclosure sale pursuant to this subdivision may be
 2.9 exercised only once, regardless whether the mortgagor reinstates the mortgage prior to
 2.10 the postponed mortgage foreclosure sale.

2.11 (b) If the automatic stay under United States Code, title 11, section 362, applies
 2.12 to the mortgage foreclosure after a mortgagor or owner requests postponement of the
 2.13 sheriff's sale under this section, then when the automatic stay is no longer applicable, the
 2.14 mortgagor's or owner's election to shorten the redemption period to five weeks under this
 2.15 section remains applicable to the mortgage foreclosure.

2.16 Subd. 3. **Affidavit form.** The affidavit referred to in subdivision 2 shall be in
 2.17 substantially the following form and shall contain all of the following information.

2.18 STATE OF _____

2.19 COUNTY OF _____

2.20 _____ (whether one or more, "Owner"),
 2.21 being first duly sworn on oath, states as follows:

2.22 1. (He is) (She is) (They are) the owner(s) or mortgagor(s) of the real property (the
 2.23 "Property") situated in _____ (Name of) County, Minnesota, legally described in the
 2.24 attached published Notice of Mortgage Foreclosure Sale (the "Notice"), and make this
 2.25 affidavit for the purpose of postponing the foreclosure sale of the Property pursuant to
 2.26 Minnesota Statutes, section 580.07, subdivision 2, for five months from the date scheduled
 2.27 in the attached Notice.

2.28 2. The Property is classified as homestead under Minnesota Statutes, section
 2.29 273.124, is occupied by Owner as a homestead, and is improved with not more than
 2.30 four dwelling units.

2.31 3. Owner has elected to shorten Owner's redemption period from any foreclosure
 2.32 sale of the Property to five weeks in exchange for the postponement of the foreclosure
 2.33 sale for five months.

2.34 _____ (signature(s) of owner)

3.1 Signed and sworn to (or affirmed) before me on (date) by (name(s)
3.2 of person(s) making statement).

3.3 _____ (signature of notary public)

3.4 Notary Public

3.5 **EFFECTIVE DATE.** This section is effective one month after the date of final
3.6 enactment, and applies to foreclosure sales scheduled to occur on or after said effective
3.7 date.