

Minnesota (MN) Foreclosure Laws

When you develop a definite plan of action with well-timed, well-informed steps, you can stop the foreclosure process and save your home. We have outlined the foreclosure process for the state of Minnesota.

Judicial Foreclosure Available:yes

Non-judicial Foreclosure Available: Yes

Minnesota allows foreclosure in two ways: by advertisement and by court action. If court action is selected, the lender must file a lawsuit and obtain a judgment for the amount due and a court order commanding the property to be sold. Prior to attempting any foreclosure, the lender should give at least 30 days' notice of the existence of a default. For agricultural property, complex mandatory mediation procedures must be followed.

Non-judicial Sale by Advertisement

If the mortgage contains a power of sale clause, it may be foreclosed by advertisement. However, a number of conditions must be met before sale by advertisement can be undertaken.

1. There must be a default on the mortgage,
2. no lawsuit to collect on the mortgage may be underway,
3. the mortgage itself and any assignments of the mortgage to new lenders must have been recorded and
4. the notice must be given eight weeks before foreclosure on a homestead.

If an attorney is involved in the foreclosure, the attorney's authority must be shown by a power of attorney that has been properly recorded. Attorney's fees are set by statute for foreclosure sales. Hence, the borrower cannot be billed indiscriminately for attorney's fees during the foreclosure process.

Certificate of Sale

After the sale, the sheriff will prepare a certificate showing the amount of the sale and the amount left unpaid on the loan.

Special Procedure - Right of First Refusal

Borrowers have a complex right of first refusal when land is acquired by a state agency, a federal agency, a limited partnership or a corporation (other

than a family farm corporation). Once the agency or business acquires land by foreclosure, it will ultimately try to resell it. When it tries to resell, the old owner who lost the property in foreclosure must be offered the property in preference to any other purchaser at the price and terms an outside buyer is willing to accept for the property. The lender must make a good-faith effort to let the old owner buy it first, hence the term right of first refusal. The law applies for the first five years after the property was foreclosed on. The right of first refusal may not be waived or assigned, except to family members by inheritance.

Deficiency

Any deficiency is limited to the difference between the fair market value of the property, as determined by a jury, and the unpaid balance remaining on the old loan. To recover a deficiency judgment against the borrower, the lender must file a lawsuit against the borrower. If the lender already seeks foreclosure by a lawsuit, then all the lender has to do is add a claim to the existing lawsuit. However, when the foreclosure is by advertisement, then an independent lawsuit must be filed to recover a deficiency.

Redemption

Redemption is unusual in Minnesota. The borrower or a junior lien holder has up to one year after the foreclosure to redeem the property by making all the past due payments rather than the entire loan balance after acceleration.

Preliminary Notices

Contents

The foreclosure notice must name the borrower the original lender, any takeover lender, the original loan amount, the date of the mortgage, recording information, the amount currently due on the loan including back taxes and unpaid insurance, a property description, the time and place of the impending foreclosure sale and the time allowed by law for the borrower to redeem the property.

Sale Procedures

Documentation

Before the sale, the lender must file a verified, itemized statement with the sheriff showing the amount due. This statement must be read during the sale by the sheriff.

Time and Place

The time, place and date of the foreclosure are set forth in the foreclosure notice.

Manner

In Minnesota, the actual foreclosure sale must be conducted by public auction. The sale is to the highest bidder.