

**2007 DRAFTING REQUEST**

**Bill**

Received: **06/04/2007**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Jim Sullivan (608) 266-2512**

By/Representing: **Matthew Swentkofske**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Real Estate - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Equity stripping in mortgage foreclosure

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 08/30/2007	bkraft 08/31/2007		_____			State Crime
/P1	pkahler 10/01/2007	bkraft 10/01/2007	pgreensl 09/04/2007	_____	sbasford 09/04/2007		State Crime
/1			rschluet 10/01/2007	_____	sbasford 10/01/2007	cduerst 10/08/2007	

FE Sent For: *at intro.*

<END>

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/?	pkahler	/1 bjk 10/1					

FE Sent For:

1017 <END>

**Kahler, Pam**

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**From:** Swentkofske, Matthew  
**Sent:** Thursday, May 31, 2007 4:17 PM  
**To:** Kahler, Pam  
**Subject:** FW: Minnesota Statute 325N and proposed amendments  
**Attachments:** HF1209.pdf; ATT8129874.htm; Mn Foreclosure legislation.pdf

Pam,

Here is a copy of the legislation we would like drafted. Below are some changes recommended by the Legal Aid Society to incorporate into the bill. Thank you for your time.

Matt

I would say there are four categories of changes in the proposed bill. The first is the most insignificant-- a mere renumbering of the clauses. Second, there are language changes that probably will not effect the statute's operation but should clarify the original intent of the statute. Third, there are some substantive "tweaks" to the law that will effect it's application, though they are not major changes. Finally, there is one major addition that seems to address a major problem not addressed in the original statute.

First, most of the changes seem rather technical and insubstantial. A bit of renumbering and reordering in places that shouldn't affect the application of the law.

Second, there are a few wording changes that could have an effect, though I suspect the changes aren't intended to change the law. For example, the original definition of a "foreclosure reconveyance" required the foreclosed homeowner (1) transfered title to the foreclosure purchaser with (2) a subsequent conveyance, or promise to convey, an interest back to the foreclosed homeowner "that allows the foreclosed homeowner to possess *real property following the completion of the foreclosure proceeding.*" The revised test would be the same, except (2) the interest transfered, or promised to be transfered, back to the homeowner would "allow the foreclosed homeowner to possess *either the residence in foreclosure or any other real property.*" It seems clear that the "real property" in the original would include both the foreclosed property and any other real property, while the revised text would make this explicit.

Third, there a few minor "tweaks" to the statute. The "Notice of Cancellation" that must be included in any contract relating to the covered transactions would include an option to cancel via email. This is convenient and smart, though not a major rewrite to the law. Also, the bill would alter the text to limit the use of PO boxes as mailing addresses for the Notice. I think this is also a minor tweak.

Another "tweak" relates to the closing requirement for any title transfer or mortgage created in relation to a foreclosure conveyance. The original language requires a "closing agent" who is not employed by or an affiliate of the foreclosure purchaser. In the proposed changes, the closing agent is also prohibited from being an employee of an affiliate or a personal acquaintance of the foreclosure purchaser. I wonder if they had problems with the closing agents even after the passage of 325N in Minnesota.



A third "tweak" creates a "friends and family" exception to the definition of "foreclosure purchaser" not found in the original. A "natural person," meaning a non-corporate entity or LLC, who had a "personal relationship" with the homeowner prior to the foreclosure may show that s/he is not "in the business of foreclosure purchasing" to avoid being classified as a "foreclosure purchaser." If I had to characterize this addition, I'd call it the "friends and family" exception to the law, for the addition attempts to prevent the statute from applying to people trying to help the foreclosed homeowner for personal reasons. If Foreclosed Homeowner's parents offer to buy the house with a promise to sell it back to Foreclosed Homeowner in the future, the parents shouldn't be governed by federal HOEPA requirements, according to this logic.

A final "tweak" is the elimination of the 24 month rule in the definition of a foreclosure purchaser. Under the original law that is now in place, a person is a "foreclosure purchaser" if s/he has participated in more than one foreclosure conveyance in any two year period. I always thought this created a difficult burden for a plaintiff, as it would be difficult to discover evidence of unrelated transactions in order to show the law applies to the plaintiff's transaction. But the proposed amendments would eliminate the multiple transaction and two year requirements.

Finally, there is one major addition to the law that requires attention: the addition of an automatic stay of eviction in eviction court should the defendant in eviction allege a foreclosure reconveyance violation. If a defendant in eviction court (1) asserts the property in question is also the subject of a foreclosure reconveyance scheme, (2) the defendant in eviction once owned the foreclosed property but (3) conveyed the property in a way that would constitute a covered transaction under 325N, and (4) the defendant in eviction has lived in the home continuously since the conveyance, the judge must issue an automatic stay of eviction. The stay is valid for 90 days while the foreclosed homeowner files a 325N complaint or until the court hearing the reconveyance suit ends the stay. In short, the addition allows for a quick method of keeping the foreclosed homeowner in the house until the foreclosure rescue scam issues can be decided.

Since most foreclosure reconveyance cases seem to surface in eviction court when the foreclosure purchaser tries to evict the foreclosed homeowner, this automatic stay addresses a very legitimate problem omitted from the current law. The courts will be more cognizant of the reconveyance

I hope this helps. Please let me know if there's anything I can do in addition. Also, I am attaching a copy of the proposed amendment for you.

Attachment # 2

This Document can be made available  
in alternative formats upon request

State of Minnesota

Printed Page No. **191**

**HOUSE OF REPRESENTATIVES**

**EIGHTY-FIFTH  
SESSION**

**HOUSE FILE No. 1209**

February 19, 2007

Authored by Mullery and Walker

The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

March 19, 2007

Committee Recommendation and Adoption of Report:

To Pass and re-referred to the Committee on Commerce and Labor

March 27, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act  
1.2 relating to commerce; regulating certain transactions with homeowners whose  
1.3 homes are in foreclosure; amending Minnesota Statutes 2006, sections 325N.01;  
1.4 325N.03; 325N.04; 325N.10, subdivisions 3, 4, by adding a subdivision;  
1.5 325N.13; 325N.14; 325N.17; 325N.18, by adding a subdivision; Laws 2004,  
1.6 chapter 263, section 26.

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

1.8 Section 1. Minnesota Statutes 2006, section 325N.01, is amended to read:

1.9 **325N.01 DEFINITIONS.**

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

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

- 1.15 (1) stop or postpone the foreclosure sale;
- 1.16 (2) obtain any forbearance from any beneficiary or mortgagee;
- 1.17 (3) assist the owner to exercise the right of reinstatement provided in section 580.30;
- 1.18 (4) obtain any extension of the period within which the owner may reinstate the  
1.19 owner's obligation;

1.20 (5) obtain any waiver of an acceleration clause contained in any promissory note or  
1.21 contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;

1.22 (6) assist the owner in foreclosure or loan default to obtain a loan or advance  
1.23 of funds;

1.24 (7) avoid or ameliorate the impairment of the owner's credit resulting from the  
1.25 recording of a notice of default or the conduct of a foreclosure sale; or

- 2.1 (8) save the owner's residence from foreclosure.
- 2.2 (b) A foreclosure consultant does not include any of the following:
- 2.3 (1) a person licensed to practice law in this state when the person renders service
- 2.4 in the course of his or her practice as an attorney-at-law;
- 2.5 (2) a person licensed as a debt prorater under sections 332.12 to 332.29, when the
- 2.6 person is acting as a debt prorater as defined in these sections;
- 2.7 (3) a person licensed as a real estate broker or salesperson under chapter 82 when the
- 2.8 person engages in acts whose performance requires licensure under that chapter unless the
- 2.9 person is engaged in offering services designed to, or purportedly designed to, enable the
- 2.10 owner to retain possession of the residence in foreclosure;
- 2.11 (4) a person licensed as an accountant under chapter 326A when the person is acting
- 2.12 in any capacity for which the person is licensed under those provisions;
- 2.13 (5) a person or the person's authorized agent acting under the express authority
- 2.14 or written approval of the Department of Housing and Urban Development or other
- 2.15 department or agency of the United States or this state to provide services;
- 2.16 (6) a person who holds or is owed an obligation secured by a lien on any residence
- 2.17 in foreclosure when the person performs services in connection with this obligation or lien
- 2.18 if the obligation or lien did not arise as the result of or as part of a proposed foreclosure
- 2.19 reconveyance;
- 2.20 (7) any person or entity doing business under any law of this state, or of the United
- 2.21 States relating to banks, trust companies, savings and loan associations, industrial loan and
- 2.22 thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee
- 2.23 which is a United States Department of Housing and Urban Development approved
- 2.24 mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or
- 2.25 employee of these persons or entities while engaged in the business of these persons
- 2.26 or entities;
- 2.27 (8) a person licensed as a residential mortgage originator or servicer pursuant to
- 2.28 chapter 58, when acting under the authority of that license ~~or a foreclosure purchaser as~~
- 2.29 ~~defined in section 325N.10;~~
- 2.30 (9) a nonprofit agency or organization that offers counseling or advice to an owner
- 2.31 of a home in foreclosure or loan default if they do not contract for services with for-profit
- 2.32 lenders or foreclosure purchasers; ~~and~~
- 2.33 (10) a judgment creditor of the owner, to the extent that the judgment creditor's claim
- 2.34 accrued prior to the personal service of the foreclosure notice required by section 580.03,
- 2.35 but excluding a person who purchased the claim after such personal service; and
- 2.36 (11) a foreclosure purchaser as defined in section 325N.10.

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

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

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

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

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

3.16 (1) debt, budget, or financial counseling of any type;

3.17 (2) receiving money for the purpose of distributing it to creditors in payment or  
3.18 partial payment of any obligation secured by a lien on a residence in foreclosure;

3.19 (3) contacting creditors on behalf of an owner of a residence in foreclosure;

3.20 (4) arranging or attempting to arrange for an extension of the period within which  
3.21 the owner of a residence in foreclosure may cure the owner's default and reinstate his or  
3.22 her obligation pursuant to section 580.30;

3.23 (5) arranging or attempting to arrange for any delay or postponement of the time of  
3.24 sale of the residence in foreclosure;

3.25 (6) advising the filing of any document or assisting in any manner in the preparation  
3.26 of any document for filing with any bankruptcy court; or

3.27 (7) giving any advice, explanation, or instruction to an owner of a residence in  
3.28 foreclosure, which in any manner relates to the cure of a default in or the reinstatement  
3.29 of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of  
3.30 that obligation, or the postponement or avoidance of a sale of a residence in foreclosure,  
3.31 pursuant to a power of sale contained in any mortgage.

3.32 (f) "Residence in foreclosure" means residential real property consisting of one to  
3.33 four family dwelling units, one of which the owner occupies as his or her principal place  
3.34 of residence, ~~and against which there is an outstanding notice of pendency of foreclosure,~~  
3.35 ~~recorded pursuant to section 580.032, or against which a summons and complaint has been~~  
3.36 ~~served under chapter 581~~ where there is a delinquency or default on any loan payment

4.1 or debt secured by or attached to the residential real property including, but not limited  
4.2 to, contract for deed payments.

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

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

4.8 Sec. 2. Minnesota Statutes 2006, section 325N.03, is amended to read:

4.9 **325N.03 CONTRACT.**

4.10 (a) Every contract must be in writing and must fully disclose the exact nature of the  
4.11 foreclosure consultant's services and the total amount and terms of compensation.

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

4.15 "NOTICE REQUIRED BY MINNESOTA LAW

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

4.18 (1) Take any money from you or ask you for money  
4.19 until ..... (Name) has completely finished  
4.20 doing everything he or she said he or she would do;  
4.21 and

4.22 (2) Ask you to sign or have you sign any lien,  
4.23 mortgage, or deed."

4.24 (c) The contract must be written in the same language as principally used by the  
4.25 foreclosure consultant to describe his or her services or to negotiate the contract, must  
4.26 be dated and signed by the owner, and must contain in immediate proximity to the space  
4.27 reserved for the owner's signature a conspicuous statement in a size equal to at least  
4.28 10-point boldface type, as follows:

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

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

4.35 (1) the name and physical address of the foreclosure consultant to which the  
4.36 notice of cancellation is to be mailed or otherwise delivered. A post office box does not  
4.37 constitute a physical address. A post office box may be designated for delivery by mail

5.1 only if it is accompanied by a physical address at which the notice could be delivered by a  
5.2 method other than mail. An e-mail address may be included, in addition to the physical  
5.3 address; and

5.4 (2) the date the owner signed the contract.

5.5 (e) Cancellation occurs when the foreclosed homeowner delivers, by any means,  
5.6 written notice of cancellation to the address specified in the contract. If cancellation is  
5.7 mailed, delivery is effective upon mailing. If e-mailed, cancellation is effective upon  
5.8 transmission. The contract must be accompanied by a completed form in duplicate,  
5.9 captioned "notice of cancellation," which must be attached to the contract, must be easily  
5.10 detachable, and must contain in at least 10-point type the following statement written in  
5.11 the same language as used in the contract:

5.12 "NOTICE OF CANCELLATION

5.13 .....  
5.14 (Enter date of transaction) (Date)

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

5.18 To cancel this transaction, you may use any of the  
5.19 following methods: (1) mail or otherwise deliver a  
5.20 signed and dated copy of this cancellation notice, or  
5.21 any other written notice of cancellation; or (2) e-mail  
5.22 a notice of cancellation

5.23 to .....  
5.24 (Name of foreclosure consultant)  
5.25 at .....  
5.26 (Physical address of foreclosure consultant's  
5.27 place of business)

5.28 .....  
5.29 (E-mail address of foreclosure consultant's  
5.30 place of business)

5.31 NOT LATER THAN MIDNIGHT OF .....  
5.32 (Date)

5.33 I hereby cancel this transaction .....  
5.34 (Date)

5.35 .....  
5.36 (Owner's signature)"

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

5.39 (g) The three business days during which the owner may cancel the contract shall  
5.40 not begin to run until the foreclosure consultant has complied with this section.

6.1 Sec. 3. Minnesota Statutes 2006, section 325N.04, is amended to read:

6.2 **325N.04 VIOLATIONS.**

6.3 It is a violation for a foreclosure consultant to:

6.4 (1) claim, demand, charge, collect, or receive any compensation until after the  
6.5 foreclosure consultant has fully performed each and every service the foreclosure  
6.6 consultant contracted to perform or represented he or she would perform;

6.7 (2) claim, demand, charge, collect, or receive any fee, interest, or any other  
6.8 compensation for any reason which exceeds eight percent per annum of the amount of  
6.9 any loan which the foreclosure consultant may make to the owner. Such a loan must not,  
6.10 as provided in clause (3), be secured by the residence in foreclosure or any other real or  
6.11 personal property;

6.12 (3) take any wage assignment, any lien of any type on real or personal property, or  
6.13 other security to secure the payment of compensation. Any such security is void and  
6.14 unenforceable;

6.15 (4) receive any consideration from any third party in connection with services  
6.16 rendered to an owner unless the consideration is first fully disclosed to the owner;

6.17 (5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate  
6.18 in a residence in foreclosure from an owner with whom the foreclosure consultant has  
6.19 contracted;

6.20 (6) take any power of attorney from an owner for any purpose, except to inspect  
6.21 documents as provided by law; or

6.22 (7) induce or attempt to induce any owner to enter a contract which does not comply  
6.23 in all respects with sections 325N.02 and 325N.03.

6.24 Sec. 4. Minnesota Statutes 2006, section 325N.10, subdivision 3, is amended to read:

6.25 Subd. 3. **Foreclosure reconveyance.** "Foreclosure reconveyance" means a  
6.26 transaction involving:

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

6.32 (2) the subsequent conveyance, or promise of a subsequent conveyance, of  
6.33 an interest back to the foreclosed homeowner by the acquirer or a person acting in  
6.34 participation with the acquirer that allows the foreclosed homeowner to possess either the  
6.35 residence in foreclosure or other real property following the completion of the foreclosure



7.1 ~~proceeding~~, which interest includes, but is not limited to, an interest in a contract for deed,  
7.2 purchase agreement, option to purchase, or lease.

7.3 Sec. 5. Minnesota Statutes 2006, section 325N.10, subdivision 4, is amended to read:

7.4 Subd. 4. **Foreclosure purchaser.** "Foreclosure purchaser" means a person that has  
7.5 acted as the acquirer in ~~more than one~~ a foreclosure reconveyance ~~during any 24-month~~  
7.6 ~~period~~. Foreclosure purchaser also includes a person that has acted in joint venture or joint  
7.7 enterprise with one or more acquirers in ~~more than one~~ a foreclosure reconveyance ~~during~~  
7.8 ~~any 24-month period~~. A foreclosure purchaser does not include: (i) a natural person  
7.9 who shows that the natural person is not in the business of foreclosure purchasing and  
7.10 has a prior personal relationship with the foreclosed homeowner, or (ii) a federal or state  
7.11 chartered bank, savings bank, thrift, or credit union is not a foreclosure purchaser.

7.12 Sec. 6. Minnesota Statutes 2006, section 325N.10, is amended by adding a subdivision  
7.13 to read:

7.14 Subd. 7. **Residence in foreclosure.** "Residence in foreclosure" means residential  
7.15 real property consisting of one to four family dwelling units, one of which the owner  
7.16 occupies as the owner's principal place of residence, where there is a delinquency or  
7.17 default on any loan payment or debt secured by or attached to the residential real property,  
7.18 including, but not limited to, contract for deed payments.

7.19 Sec. 7. Minnesota Statutes 2006, section 325N.13, is amended to read:

7.20 **325N.13 CONTRACT CANCELLATION.**

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

7.26 (b) Cancellation occurs when the foreclosed homeowner delivers, by any means,  
7.27 written notice of cancellation ~~to the address specified in the contract, provided that, at a~~  
7.28 minimum, the contract and the notice of cancellation must contain a physical address to  
7.29 which notice of cancellation may be mailed or otherwise delivered. A post office box may  
7.30 be designated for delivery by mail only if it is accompanied by a physical address at which  
7.31 the notice could be delivered by a method other than mail. An e-mail address may be  
7.32 provided in addition to the physical address. If cancellation is mailed, delivery is effective  
7.33 upon mailing. If e-mailed, cancellation is effective upon transmission.

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

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

8.6 Sec. 8. Minnesota Statutes 2006, section 325N.14, is amended to read:

8.7 **325N.14 NOTICE OF CANCELLATION.**

8.8 (a) The contract must contain in immediate proximity to the space reserved for the  
8.9 foreclosed homeowner's signature a conspicuous statement in a size equal to at least  
8.10 14-point boldface type, if the contract is printed, or in capital letters, if the contract is  
8.11 typed, as follows:

8.12 "You may cancel this contract for the sale of  
8.13 your house without any penalty or obligation  
8.14 at any time before  
8.15 .....  
8.16 (Date and time of day)  
8.17 See the attached notice of cancellation form  
8.18 for an explanation of this right."

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

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

8.29 "NOTICE OF CANCELLATION  
8.30 .....  
8.31 (Enter date contract signed)  
8.32 You may cancel this contract for the sale of  
8.33 your house, without any penalty or obligation,  
8.34 at any time before  
8.35 .....  
8.36 (Enter date and time of day)

9.1 To cancel this transaction, ~~personally~~ you may  
 9.2 use any of the following methods: (1) mail or  
 9.3 otherwise deliver a signed and dated copy of  
 9.4 this cancellation notice; or (2) e-mail a notice  
 9.5 of cancellation to  
 9.6 .....  
 9.7 (Name of purchaser)  
 9.8 at .....  
 9.9 (~~Street~~ Physical address of purchaser's  
 9.10 place of business)  
 9.11 .....  
 9.12 (E-mail address of foreclosure consultant's  
 9.13 place of business)  
 9.14 NOT LATER THAN .....  
 9.15 (Enter date and time of day)  
 9.16 I hereby cancel this transaction .....  
 9.17 (Date)  
 9.18 .....  
 9.19 (Seller's signature)"

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

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

9.26 Sec. 9. Minnesota Statutes 2006, section 325N.17, is amended to read:

9.27 **325N.17 PROHIBITED PRACTICES.**

9.28 A foreclosure purchaser shall not:

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

9.31 (1) the foreclosure purchaser verifies and can demonstrate that the foreclosed  
 9.32 homeowner has a reasonable ability to pay for the subsequent conveyance of an interest  
 9.33 back to the foreclosed homeowner. In the case of a lease with an option to purchase,  
 9.34 payment ability also includes the reasonable ability to make the lease payments and  
 9.35 purchase the property within the term of the option to purchase. There is a rebuttable  
 9.36 presumption that a homeowner is reasonably able to pay for the subsequent conveyance  
 9.37 if the owner's payments for primary housing expenses and regular principal and interest  
 9.38 payments on other personal debt, on a monthly basis, do not exceed 60 percent of  
 9.39 the owner's monthly gross income. For the purposes of this section, "primary housing  
 9.40 expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard

10.1 insurance, real estate taxes, and association dues. There is a rebuttable presumption that  
10.2 the foreclosure purchaser has not verified reasonable payment ability if the foreclosure  
10.3 purchaser has not obtained documents other than a statement by the foreclosed homeowner  
10.4 of assets, liabilities, and income;

10.5 (2) the foreclosure purchaser and the foreclosed homeowner complete a closing  
10.6 for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or  
10.7 mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an  
10.8 in-person meeting to complete final documents incident to the sale of the real property  
10.9 or creation of a mortgage on the real property conducted by a closing agent, as defined  
10.10 in section 82.17, who is not employed by or an affiliate of the foreclosure purchaser, or  
10.11 employed by such an affiliate, and who does not have a business or personal relationship  
10.12 with the foreclosure purchaser other than the provision of real estate settlement services;

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

10.16 (4) the foreclosure purchaser complies with the requirements ~~of~~ for disclosure, loan  
10.17 terms, and conduct in the federal Home Ownership Equity Protection Act, United States  
10.18 Code, title 15, section 1639, or its implementing regulation, Code of Federal Regulations,  
10.19 title 12, sections 226.31 ~~to~~, 226.32, and 226.34, for any foreclosure reconveyance in which  
10.20 the foreclosed homeowner obtains a vendee interest in a contract for deed, regardless of  
10.21 whether the terms of the contract for deed meet the annual percentage rate or points and  
10.22 fees requirements for a covered loan in Code of Federal Regulations, title 12, sections  
10.23 226.32 (a) and (b);

10.24 (b) fail to either:

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

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

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

11.4 (ii) the time for determining the fair market value amount shall be determined in the  
11.5 foreclosure reconveyance contract as either at the time of the execution of the foreclosure  
11.6 reconveyance contract or at resale. If the contract states that the fair market value shall  
11.7 be determined at the time of resale, the fair market value shall be the resale price if  
11.8 it is sold within 120 days of the eviction or voluntary relinquishment of the property  
11.9 by the foreclosed homeowner. If the contract states that the fair market value shall be  
11.10 determined at the time of resale, and the resale is not completed within 120 days of the  
11.11 eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair  
11.12 market value shall be determined by an appraisal conducted during this 120-day period  
11.13 and payment, if required, shall be made to the homeowner, but the fair market value  
11.14 shall be recalculated as the resale price on resale and an additional payment amount, if  
11.15 appropriate based on the resale price, shall be made to the foreclosed homeowner within  
11.16 15 days of resale, and a detailed accounting of the basis for the payment amount, or a  
11.17 detailed accounting of the reasons for failure to make additional payment, shall be made  
11.18 within 15 days of resale, including providing written documentation of expenses. The  
11.19 accounting shall be on a form prescribed by the attorney general, in consultation with  
11.20 the commissioner of commerce, without being subject to the rulemaking procedures  
11.21 of chapter 14;

11.22 (iii) "consideration" shall mean any payment or thing of value provided to the  
11.23 foreclosed homeowner, including unpaid rent or contract for deed payments owed by the  
11.24 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the  
11.25 property, reasonable costs paid to third parties necessary to complete the foreclosure  
11.26 reconveyance transaction, payment of money to satisfy a debt or legal obligation of the  
11.27 foreclosed homeowner, or the reasonable cost of repairs for damage to the dwelling caused  
11.28 by the foreclosed homeowner; or a penalty imposed by a court for the filing of a frivolous  
11.29 claim under section 325N.18, subdivision 6, but

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

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

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

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

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

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

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

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

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

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

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

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

12.34 (4) pay the foreclosed homeowner any consideration.

13.1 Sec. 10. Minnesota Statutes 2006, section 325N.18, is amended by adding a  
13.2 subdivision to read:

13.3 Subd. 6. Stay of eviction action. (a) A court hearing an eviction action against a  
13.4 foreclosed homeowner must issue an automatic stay, without imposition of a bond, if a  
13.5 defendant makes a prima facie showing that the defendant:

13.6 (1) has (i) commenced an action concerning a foreclosure reconveyance; (ii) asserts  
13.7 a defense under section 504B.121 that the property that is the subject of the eviction  
13.8 action is also the subject of a foreclosure reconveyance in violation of sections 325N.10  
13.9 to 325N.17; or (iii) asserts a claim or affirmative defense of fraud, false pretense, false  
13.10 promise, misrepresentation, misleading statement, or deceptive practice, in connection  
13.11 with a foreclosure reconveyance;

13.12 (2) owned the foreclosed residence;

13.13 (3) conveyed title to the foreclosed residence to a third party upon a promise that the  
13.14 defendant would be allowed to occupy the foreclosed residence or other real property in  
13.15 which the foreclosure purchaser or a person acting in participation with the foreclosure  
13.16 purchaser has an interest and that the foreclosed residence or other real property would be  
13.17 the subject of a foreclosure reconveyance; and

13.18 (4) since the conveyance, has continuously occupied the foreclosed residence or  
13.19 other real property in which the foreclosure purchaser or a person acting in participation  
13.20 with the foreclosure purchaser has an interest.

13.21 For purposes of this subdivision, notarized affidavits are acceptable means of proof  
13.22 to meet the defendant's burden. Upon good cause shown, a defendant may request and  
13.23 the court may grant up to an additional two weeks to produce evidence required to make  
13.24 the prima facie showing.

13.25 (b) A court may award to a plaintiff a \$500 penalty upon a showing that the  
13.26 defendant filed a frivolous claim or asserted a frivolous defense.

13.27 (c) The automatic stay expires upon the later of:

13.28 (1) the failure of the foreclosed homeowner to commence an action in a court of  
13.29 competent jurisdiction in connection with a foreclosed reconveyance transaction within  
13.30 90 days after the issuance of the stay; or

13.31 (2) the issuance of an order lifting the stay by a court hearing claims related to the  
13.32 foreclosure reconveyance.

13.33 (d) If, after the expiration of the stay or an order lifting the stay, a court finds that the  
13.34 defendant's claim or defense was asserted in bad faith and wholly without merit, the court  
13.35 may impose a sanction against the defendant of \$500 plus reasonable attorney fees.

14.1 Sec. 11. Laws 2004, chapter 263, section 26, is amended to read:

14.2 Sec. 26. **EFFECTIVE DATE; EXPIRATION.**

14.3 Sections 1 to 18, 22, 23, and 25 are effective August 1, 2004, ~~and expire December~~

14.4 ~~31, 2009.~~ Sections 19, 20, 21, and 24 are effective July 1, 2004.