

Minnesota foreclosure laws could make it difficult to get your next loan

By Mark Petersen and Tom Gump

Minnesota's foreclosure procedures are time consuming, expensive and cumbersome and may have a chilling effect on the availability of loans when the dust settles on the current economy.

Too much time

Foreclosing a mortgage by advertisement in Minnesota takes approximately eight to nine months. The foreclosing lender must comply with any notice requirement in the mortgage prior to a six-week publication of the notice of foreclosure in a legal newspaper.

Then the sheriff's sale is held. Next, the borrower and subordinate lien holders typically have six months to redeem the mortgaged property from the foreclosure sale by paying the balance of the loan, plus the expenses of foreclosure.

Through this entire period, the borrower has the right to possession of the mortgaged premises. Frequently, during this period, real estate taxes, utilities and insurance are not kept current.

There is also loss of interest income to the lender. On a \$1 million mortgage

with a 7 percent note, the lender will forego \$52,500 of interest during the nine-month foreclosure process.

Too much money

It is expensive for a lender to foreclose a mortgage in Minnesota. At a minimum, it costs a lender \$2,000 to foreclose a mortgage. This assumes an otherwise clean title, no prior or junior interests affecting the property, no tax liens and paid-up taxes. A complex foreclosure can run many times this amount.

Attorneys receive their fees. Small-town newspapers charge for notice publication. Title companies are kept busy with tract searches. Process servers are paid. And for good measure, the county recorder and sheriff need to be compensated for their efforts. It adds up quickly.

Too much paper

It takes 24 letters, affidavits, notices and other pieces of paper to process even the simplest foreclosure. If there is a tax lien, prior or subordinate lien holder or borrower bankruptcy, the paper multiplies like suburban hares.

The foreclosure process is a holdover from a prior age. Most steps in the process simply are not set up to

be handled electronically.

This is not to mention the deforestation that results from the publication of foreclosure notices. Open up any suburban or small-town newspaper and the pages of foreclosure notices outnumber the coverage of municipal politics, reports on high school sports and ads for antique malls combined.

How do we fix the system?

Bring the system into the 21st Century. The publication of foreclosure notices in community newspapers runs counter to how information is gathered in the electronic age. Minnesota, in concert with lenders and the real estate bar, should consider instituting an Internet-based clearinghouse for the publication of foreclosure notices.

An electronic system would result in numerous advantages over the current public notice regime. Data could be searchable and accessible to anyone who has access to the Internet.

The predictable argument that some individuals do not have access to the Internet doesn't hold water. Currently, notices are published in local newspapers. Certainly, more people interested in foreclosure information have access to the Internet than to each of the literally hundreds of newspapers

currently publishing foreclosure notices throughout the state.

The system could also act as a scheduling mechanism between attorneys and sheriffs' offices, provide map links to subject properties and allow for entry of sheriffs' sale-day bid information. Lenders could even post photographs.

Foreclosure sale publication costs run approximately \$500 to \$600 per foreclosure. Lengthy metes and bounds legal descriptions and multiple mortgage assignments can run that figure to more than \$1,000. An electronic system would be less expensive.

This idea may be met with opposition from the Minnesota Newspaper Association and its members, as many small-town and suburban newspapers rely on the revenue derived from public notice publication. However, lenders should not be forced to be in the business of subsidizing small-town newspapers.

Eliminate personal service requirements. The notice of foreclosure must be personally served upon each occupant of the mortgaged property. If there are multiple occupants (such as in a leased building), everyone must be served. Shockingly, there is no requirement that the owner be given any

notice whatsoever, if the owner is not an occupant.

Do we have so little confidence in the U.S. Postal Service? The foreclosing lender should be required to do no more than mail notices to the occupants, owner, taxpayer and other lien holders. This might create some complexities for multi-tenant properties, but special rules should be created for those, rather than personal service being the general rule.

Shorten the timeline. The six-week period from public notice to sale should be shortened. The right length of time that is justifiable is subject to debate. However, most anyone working in the foreclosure field will concede that six weeks is an unnecessary remnant from when information moved more slowly.

The redemption period should also be shortened. Again, to what length can be debated. There are provisions in Minnesota law to shorten redemption periods for abandoned properties (five weeks) and for a shorter redemption period for voluntary foreclosures (two months). However, if an uncooperative borrower continues to occupy the foreclosed premises, the lender is without recourse.

Foreclosed borrowers have no motive to pay real estate taxes, maintain their premises or insure their property. The cost of the lengthy process is born by the community as a whole.

How changing the system will help

It is difficult to borrow money right now. Banks have money to lend for great deals. It is the marginal projects that are not getting funded.

Some would say that the marginal deals just should not get done. However, the marginal deals keep the economy moving in a positive direction. Marginal deals keep people employed. Employed people spend money on products and services offered by the owners and tenants of the last marginal deal.

The average lender is a bit more reluctant to make the next loan now that she knows how expensive and time consuming it is to get collateral back when a deal goes sideways.

Simplifying and modernizing the foreclosure process might just mitigate this reluctance. That would be good for developers, good for lenders, and ultimately, good for everyone.

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