

2009 Minnesota Legislative Update
prepared by
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Set forth below is a final summary of real estate-related bills that passed the Minnesota Legislature and were signed in to law by Governor Pawlenty. The new laws took effect August 1, 2009 unless otherwise indicated.

1. **Contracts for Deed.** (SF1302/HF1214) The Legal Aid Society advocated for significant modifications to the contract for deed laws this session. The majority of the modifications did not pass. One provision that did pass requires that a seller entering into a contract for deed involving residential property must contemporaneously with the execution of the contract for deed:
 - (a) deliver to the vendee a copy of the contract for deed containing original signatures in recordable form; and
 - (b) pay, or reimburse the vendee for payment of, any delinquent taxes necessary to record the contract for deed, unless the contract for deed requires the vendee to pay the delinquent taxes.

2. **Foreclosure – Limited Right of Entry.** (SF1147/HF1394) This bill allows a political subdivision (generally a city or county) to initiate a proceeding in district court or make a motion to reduce the redemption period in a foreclosure proceeding. If the proceeding is commenced by a political subdivision, the party foreclosing the mortgage or holding the sheriff's certificate must be named as a defendant and the summons and complaint must be delivered by certified mail to the foreclosing attorney.

The bill also allows a political subdivision that has ordered a vacant, hazardous building secured to assess costs against the property if the owner or certificate holder does not secure the building. The owner/certificate holder has 14 days to respond to the order by submitting a plan to secure the building or request a hearing.

This bill also requires, in the event there is evidence of abandonment of the property, that the holder of the sheriff's certificate or the holder's contractors to enter the premises and make reasonable periodic inspections, install or change the locks on the doors, install locks on all windows, and ensure that existing window locks work. The holder may also enter the premises and board all openings, install and operate an alarm, and otherwise prevent damage and other illegal activity. The

costs to secure the building may be added to the principal balance of the mortgage or the costs allowable upon redemption.

3. **Foreclosure – Postponement of Sheriff’s Sale and Shortening of Redemption Period.** (SF1926/HF2088)
Pursuant to this amendment to Minn. Stat. §580.07, the mortgagor or owner of a residential homestead may now postpone a foreclosure sale five months after the originally scheduled date of the sale. The mortgagor, at least 15 days prior to the scheduled foreclosure sale date, must: (1) execute an affidavit in the form set forth in the statute; (2) record the affidavit with each of the offices of the county recorder and registrar of titles where the mortgage was recorded; and (3) file a copy of the recorded affidavit with the sheriff conducting the sale and deliver a copy of the recorded affidavit to the foreclosure attorney. Recording the affidavit and postponement of the foreclosure sale automatically reduces the mortgagor’s redemption period to five weeks.

The purpose of the new law is to allow the owner more time to sell the property or to pay all mortgage arrearages prior to the sheriff’s sale.

This new law took effect on July 1, 2009.

4. **Postponement of Foreclosure Sale.** (SF1302/HF995) The postponement provisions of Minn. Stat. §580.07 have been modified to require the party requesting the postponement to publish notice of the postponement and the rescheduled date of sale, if known, as soon as practicable, in the newspaper and send notice to the occupant by first class mail. This amendment reduces the number of times the postponement notice must be published.
5. **Foreclosure Consultant Modifications.** (SF708/HF903). This law expands the definition of “foreclosure consultant” set forth in Minn. Stat. §325N.01 to include “a person who negotiates or modifies the terms or conditions of an existing residential mortgage loan.”

This new law took effect on June 20, 2009.

6. **Transfer on Death Deeds (TODDs).** (SF261/HF332) This bill amends Minn.Stat. §507.071, subd. 20 to require that the affidavit of identify and survivorship to establish the death of a transfer on death deed grantor must include the name and

mailing address of the person to whom future tax statements should be sent. It also amends Minn. Stat. §507.071 by adding a subdivision required that any actions to enforce a medical assistance lien or claim against real property described in a TODD must be commenced in the probate division in counties where the district court has a probate division.

7. **Common Element Certificates.** (SF261/HF332). This law amends Minn. Stat. §508.351 and Minn. Stat. §508A.351 to expand common element certificates of title to include planned communities. It also changes the name of the certificate from Common Elements Certificate of Title to Common Interest Community Certificate of Title (CICCT). This new law affects Torrens property only.
8. **Affidavits of Attorney-in-Fact When Principal is a Corporation, Partnership, Limited Liability Company, or Trust.** (SF261/HF332) An affidavit of attorney-in-fact is no longer required when the principal under a power of attorney in a real property transaction is a corporation, partnership, limited liability company, or trust. This amendment to Minn.Stat. §523.17 is retroactive and applies to actions taken and signatures made by attorneys-in-fact on, after, or before August 1, 2009.
9. **Cartways.** (SF 261/HF332). This bill establishes procedures for cartways in cities.
10. **Changes to Green Acres Agricultural Property Tax Program and Establishment of Rural Preserve Property Tax Program.** (SF252/HF392). Numerous changes were made to the Green Acres Agricultural Property Tax Program to remedy the problems created in the 2008 legislation. These changes include:
 - (a) The program now allows for most state and federal sponsored conservation programs to be enrolled in the Green Acres program provided the land was originally used for agriculture.
 - (b) Enrollees are now allowed to withdraw a share of their rural vacant land from the Green Acres program without withdrawing all of it.
 - (c) The property that was in the Green Acres program prior to 2008 but no longer qualified under the 2008 legislation will continue to qualify until the 2013 assessment or until sold, whichever is sooner. If the rural vacant land is not

enrolled in the new Rural Preserve Property Tax Program, then it must be removed from the Green Acres program by 2013

- (d) The seven year tax pay back for rural vacant lands is eliminated.
- (e) Rural vacant land may be withdrawn from the Green Acres program prior to May 1, 2010, with no back taxes due.

This new law took effect on April 5, 2009.

11. Regulation of Nonconforming Lots in Shoreland Areas.

(SF747/HF519) New regulations have been adopted for nonconforming lots in shoreland areas as follows:

- (a) For a nonconforming single lot (an undeveloped lot that does not meet lot size requirements), an owner may build on the land without a variance as long as three requirements are met: (1) all structure and septic system setback distance requirements can be met; (2) a Type 1 sewage treatment system can be installed or the lot is connected to a public sewer; and (3) the impervious surface coverage (i.e. a driveway or cemented area) does not exceed 25% of the lot.
- (b) For a group of two or more contiguous nonconforming lots under common ownership, an individual lot will be considered as a separate parcel of land for the purpose of sale or development provided the following requirements are met: (1) the lot width must be at least 66% of the dimensional lot width standard, consistent with Minnesota rules; (2) a Type 1 sewage system can be installed or the lot is connected to a public sewer; (3) the impervious surface coverage does not exceed 25% of the lot; and (4) development of the lot must be consistent with an adopted comprehensive plan.

The new regulations are codified as Minn. Stat. §394.36, subd. and took effect May 22, 2009.

As part of the compromise regarding this bill, the Minnesota Association of Realtors agreed to add the following statement to the Seller's Property Disclosure Statement:

For property abutting a lake, stream or river, does the property meet the minimum local government lot size requirements?

Yes No Unknown

If no or unknown, the buyer should consult the local zoning authority.

12. Education Changes. (SF 1910/HF2099) The Minnesota Department of Commerce bill repealed the preclicensing and continuing education rules set forth in Minnesota Administrative Rules Chapter 2809 and codified a slightly modified version of the rule into Minnesota Statutes Chapter 45. This information is important to education providers (sponsors) such as MLTA.

13. Uniform Disclaimer of Property Interests Act. (SF1810/HF2082) This law repeals Minn. Stat. sections 501B.86 and 525.32 and enacts the Uniform Disclaimer of Property Interests Act as Minn. Stat. §§524.2-1110 to 524.2-1116.

14. Prompt Payment to Subcontractors. (SF638/HF1056) This bill amends Minn. Stat. §337.10, subs. 3 and 4 to also require prompt payment to subcontractors involved in construction or improvements to residential real estate. Prompt payment means that the prime contractor and subcontractors must pay any subcontractor or supplier within 10 days of receipt of a request for payment.

15. Medical Assistance Claims and Liens. (SF695 /HF1362) This bill substantially changes Minn. Stat. §256B.15. Under the current version of the statute, direct medical assistance estate recovery claims are asserted only against the estates of a medical assistance recipient and the recipient's surviving spouse. The state and county agencies can trace funds from those estates into the hands of others, but the claims must start with the estates of the recipient and the recipient's surviving spouse. Effective July 1, 2009, the medical assistance program can assert a direct estate recovery claim under the amendment to Min Stat. §256B.15 against any assets of the recipient or the recipient's surviving spouse which pass to others at the time of the recipient's death or the death of the recipient's surviving spouse.

Although these provisions are supposedly effective July 1, 2009, Minnesota elder law attorney Julian Zweber has opined that the changes cannot be implemented without the State of Minnesota first obtaining federal approval of State Plan Amendments to implement the changes.

Numerous other bills affecting real estate were not passed during the 2009 legislative session but may resurface in the 2010 session. They include:

1. Increases in state deed tax, mortgage registration tax or recording fees.
2. Sales tax on services, including attorney's fees.
3. Changes to contract for deed provisions.
4. Homestead-lender mediation.
5. Closing agents to establish interest-bearing trust accounts with interest to be paid to Commissioner of Finance.

Any of the above-referenced bills may be viewed on the Minnesota Legislature website at www.leg.state.mn.us.