

Date Issued: May 7, 1985 (AGO 85-18)

Requested by: Representative Jim Brokaw

- QUESTION PRESENTED -

Whether a farmer whose farm is the subject of a mortgage may petition the Farm Foreclosure Negotiation Board for relief pursuant to House Bill No. 1494 when the farmer is in danger of immediate foreclosure, when the farmer has received a notice of foreclosure, or when the farmer's farm has been sold at a foreclosure sale although the statutory period of redemption has not yet expired.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a farmer whose farm is the subject of a mortgage may petition the Farm Foreclosure Negotiation Board for relief pursuant to House Bill No. 1494 when the farmer is in danger of immediate foreclosure, when the farmer has received a notice of foreclosure, or when the farmer's farm has been sold at a foreclosure sale although the statutory period of redemption has not yet expired.

- ANALYSIS -

Subsection 1 of section 4 of House Bill No. 1494, passed by the 1985 Legislative Assembly, (hereinafter referred to as H.B. 1494) states as follows:

Any farmer may petition the board for aid after receipt of a notice of foreclosure, or if the farmer is in danger of immediate foreclosure. Upon receipt of the petition, the board or its authorized agent shall enter into negotiations with the lender, on behalf of the farmer. (Emphasis supplied).

Section 4 of H.B. 1494 as originally introduced read, in pertinent part, as follows:

Any farmer may petition the board for aid after receipt of a notice of foreclosure and before expiration of any period of redemption.

The legislative history is silent as to the reasons for this change. Nevertheless, section 5 of House Bill 1494 still indicates that the end of the period of redemption is the cutoff date for qualifying. Subsection 1 of that section reads, in pertinent part, as follows:

If the board, or its authorized agent, is unable to mediate a settlement in the negotiation of a farmer's debt, the board may approve the purchase, refinancing, or redemption of the farmer's home-quarter.

Equity of redemption is an incident of every mortgage. *Robar v. Ellingson* 301 N.W.2d. 653 (N.D. 1981). However, in North Dakota there are statutory rights as well as equitable rights in redemption. See N.D.C.C. chapter 28-24. Foreclosure is not complete until the mortgagor's equity of redemption in property is cut off beyond the possibility of recall. There must be a termination of all rights of

the mortgagor, or his grantee, in the property covered by the mortgage. In its essential meaning, the word "foreclosure" imports definiteness in point of time as well as finality of consequence. See generally Words and Phrases, Foreclosure at 396 (1958).

Redemption in subsection 1 of section 4 of H.B. 1494 means the statutory right to redeem from the foreclosure sale. When a mortgagor redeems the effect of redemption is to nullify the foreclosure sale and the mortgagor is restored to the title he had before the foreclosure sale. See Franklin v. Jameson-Wohler 109 N.W. 56 (N.D. 1906). Indeed, pursuant to N.D.C.C. section 28-24-11, the debtor under execution or foreclosure sale is entitled to the possession, rents, use, and benefit of the property sold from the date of sale until the expiration of the redemption period. Also, the deed to the property is not made out or executed until after the period of redemption has expired. See N.D.C.C. sections 32-19-09, 35-22-21.

It is only the mortgagor's equitable rights that are extinguished by foreclosure suit and subsequent sale. The mortgagor's statutory right to redemption remains as an impediment to foreclosure. The foreclosure is not complete until the end of the period of redemption. H.B. 1494 contemplated the possibility of negotiation and interest rate buydowns applying to a farmer's home-quarter when redemption is the only alternative, even though the foreclosure sale has already taken place.

To reconcile any possible conflict in the provisions of H.B. 1494, it is necessary that it be read in its entirety and applied to those situations of foreclosure during the time period beginning when the farmer receives a notice of foreclosure and extending until the end of the statutory period of redemption. The only exception to that limitation is when the farmer can show that he is in danger of immediate foreclosure even though he has not received a notice of foreclosure.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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