

# Rights and Responsibilities of Junior Lienors

**Question:** What are the rights and responsibilities of junior lienors when the senior lienor is foreclosing? In other words, what happens if a property in foreclosure has more than one mortgage?

Junior lienors have several options if the senior mortgage on a property is in default or going through foreclosure. In Minnesota, there are two types of foreclosure, foreclosure “by advertisement” or “by action.” The overwhelming majority of foreclosures in Minnesota are done by advertisement. When a mortgage is foreclosed by advertisement, the court is not involved and notice of the sheriff’s sale is simply published for six weeks and notice of it is served on the occupant of the home. In order to foreclose by action, a mortgagee must initiate a law suit against the homeowner.

## The Junior Lienor May Redeem

First, if a senior lien is foreclosed upon by advertisement *or* action, a junior lienor may ‘redeem’ the property by paying the default amount along with all taxes, insurance, assessment or any penalties owed on the property and the costs of foreclosure.<sup>1</sup> A junior lienor can only redeem after the 6 month period for the homeowner to redeem has expired. The junior lienor loses their right to redeem when they fail to file a notice of intent to redeem at least one week before the homeowner’s redemption period runs out. By redeeming, the junior lienor essentially purchases the property by paying off any senior mortgages. Any junior lienor that redeems cannot sue the borrower for a deficiency.

## When the Junior Lienor May Seek a Deficiency Judgment

Second, if a senior mortgage is foreclosed upon by advertisement *or* action, and a junior lienor does not redeem, the junior lienor could choose to sue the borrower for the amount due under the terms of the note.<sup>2</sup> This is called a deficiency judgment. A deficiency judgment is a claim for money against a debtor, but unlike a mortgage, it is not secured by the debtor’s real property. A deficiency judgment happens when the property is sold at a sheriff’s sale, but not enough is raised at the sale to cover the amount due on both loans, leaving the junior lienor holding the bag.

In order to do this, the junior lienor has to initiate a law suit against the borrower by serving them with a summons and complaint. Anyone who receives a summons and complaint, in which the note holder is asking for a deficiency judgment, should seek legal counsel immediately. If a junior lienor obtains a judgment against a borrower, the borrower may be able to discharge this debt by filing bankruptcy.

In addition, when a mortgage is foreclosed by advertisement, the foreclosing lender has no right to seek a deficiency judgment on **that** mortgage. However if one lender has multiple mortgages on the property and forecloses only one mortgage by advertisement, the lender could still sue the borrower on any mortgages that were not foreclosed, and that were not redeemed.

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<sup>1</sup> MINN. STAT. § 580.24 (2008) & MINN. STAT. § 580.10 (2008)

<sup>2</sup> MINN. STAT. § 582.30 (2008)

## Other Considerations

Lastly, a junior lienor on a property that is going through foreclosure could choose to do nothing. A junior lienor may choose not to redeem and not to sue. In that case, the borrower would not need to pay the money back. However, borrowers should be aware that in foreclosure by advertisement, a lender who does not redeem has six years from the date of the last payment made by the borrower to sue on the Note.

*Note: This document provides general information and is not meant to be legal advice. Homeowners should consult a competent legal professional or tax adviser for advice specific to their situation.*

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