

CHAPTER 576

RECEIVERS, PROPERTY OF ABSENTEES

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576.01 RECEIVERS, WHEN AUTHORIZED. Subdivision 1. A receiver may be appointed in the following cases:

(1) Before judgment, on the application of any party to the action who shall show an apparent right to property which is the subject of such action and is in the possession of an adverse party, and the property, or its rents and profits, are in danger of loss or material impairment, except in cases wherein judgment upon failure to answer may be had without application to the district court;

(2) By the judgment, or after judgment, to carry the same into effect, or to preserve the property pending an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;

(3) In the cases provided by law, when a corporation is dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and, in like cases, of the property within this state of foreign corporations;

(4) In such other cases as are now provided by law, or are in accordance with the existing practice, except as otherwise prescribed in this section.

Subd. 2. A receiver shall be appointed in the following case:

After the first publication of notice of sale for the foreclosure of a mortgage pursuant to chapter 580, or with the commencement of an action to foreclose a mortgage pursuant to chapter 581, and during the period of redemption, if the mortgage being foreclosed secured an original principal amount of \$500,000 or more and was not a lien upon property which was entirely homesteaded or agricultural property, the foreclosing mortgagee or the purchaser at foreclosure sale may at any time bring an action in the district court of the county in which the mortgaged premises or any part thereof is located for the appointment of a receiver; provided, however, if the foreclosure is by action under chapter 581, a separate action need not be filed. Pending trial of the action on the merits, the court may make a temporary appointment of a receiver following the procedures applicable to temporary injunctions under the rules of civil procedure. If the motion for temporary appointment of a receiver is denied, the trial of the action on the merits shall be held as early as practicable, but not to exceed 30 days after the motion for temporary appointment of a receiver is heard. The court shall appoint a receiver upon a showing that the mortgagor has breached a covenant contained in the mortgage relating to any of the following:

(1) Application of tenant security deposits as required by section 504.20;

(2) Payment when due of prior or current real estate taxes or special assessments with respect to the mortgaged premises, or the periodic escrow for the payment of the taxes or special assessments;

(3) Payment when due of premiums for insurance of the type required by the mortgage, or the periodic escrow for the payment of the premiums;

(4) Keeping of the covenants required of a lessor or licensor pursuant to section 504.18, subdivision 1.

The receiver shall be an experienced property manager. The court shall determine the amount of the bond to be posted by the receiver.

The receiver shall collect the rents, profits and all other income of any kind, manage the mortgaged premises so to prevent waste, execute leases within or beyond the period of the receivership if approved by the court, pay the expenses listed in clauses (1), (2), and (3) in the priority as numbered, pay all expenses for normal maintenance of the mortgaged premises and perform the terms of any assignment of rents which complies with section 559.17, subdivision 2. Reasonable fees to the receiver shall be paid prior thereto. The receiver shall file periodic accountings as the court determines are necessary and a final accounting at the time of his discharge.

The purchaser at foreclosure sale shall have the right, at any time and without limitation as provided in section 582.03, to advance money to the receiver to pay any or all of the expenses which the receiver should otherwise pay if cash were available from the mortgaged premises. Sums so advanced, with interest, shall be a part of the sum required to be paid to redeem from the sale. The sums shall be proved by the affidavit of the purchaser, his agent or attorney, stating the expenses and describing the mortgaged premises. The affidavit must be filed for record with the county recorder or the registrar of titles, and a copy thereof shall be furnished to the sheriff and the receiver at least ten days before the expiration of the period of redemption.

Any sums collected which remain in the possession of the receiver at termination of the receivership shall, in the event the termination of the receivership is due to the reinstatement of the mortgage debt or redemption of the mortgaged premises by the mortgagor, be paid to the mortgagor; and in the event termination of the receivership occurs at the end of the period of redemption without redemption by the mortgagor or any other party entitled to redeem, interest accrued upon the sale price pursuant to section 580.23 or section 581.10 shall be paid to the purchaser at foreclosure sale. Any net sum remaining shall be paid to the mortgagor, except if the receiver was enforcing an assignment of rents which complies with section 559.17, subdivision 2, in which case any net sum remaining shall be paid pursuant to the terms of the assignment.

This subdivision shall apply to all mortgages executed on or after August 1, 1977, and to amendments or modifications of such mortgages, and to amendments or modifications made on or after August 1, 1977, to mortgages executed before August 1, 1977, if the amendment or modification is duly recorded and is for the principal purpose of curing a default.

[*RL s 4262; 1974 c 447 s 5; 1977 c 202 s 1*] (9389)

576.011 DEFINITIONS. Subdivision 1. For the purpose of Laws 1974, Chapter 447, Sections 6 to 16 the terms defined in this section have the meanings given them.

Subd. 2. "Court" means the probate or county court having jurisdiction for the county where an absentee last resided.

Subd. 3. "Person in interest" means the absentee, heirs, any person who would have an interest in the absentee's estate had the absentee died intestate at any time between the commencement of his absence and the date set for any proceeding prescribed by section 576.142, any person who would have an interest under the absentee's will or purported will, an insurer or surety of the absentee, an owner of any reversionary, remainder, joint or contractual interest which might be affected by the death of the absentee, creditor of the absentee, and any other person whom the court finds is properly in interest.

[*1974 c 447 s 6*]

576.02 [Repealed, 1974 c 394 s 12]

576.04 ABSENTEES; POSSESSION, MANAGEMENT, AND DISPOSITION OF PROPERTY. If a person entitled to or having an interest in property within or without the jurisdiction of the state has disappeared or absconded from the place within or without the state where he was last known to be, and has no agent in the state, and it is not known where he is, or if such person, having a spouse or minor child or children dependent to any extent upon him for support, has thus disappeared, or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the state, any one who would under the law of the state be entitled to administer upon the estate of such absentee if he were deceased, or if no one is known to be so entitled, some person deemed suitable by the court, or such spouse, or some one in such spouse's or minors' behalf, may file a petition, under oath, in the probate or county court for the county where any such property is situated or found, stating the name, age, occupation, and last known resi-

dence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residences of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, whether or not such absentee is a citizen of the United States, and if not, of what country he is a citizen or native, and containing a schedule of the property, real and personal, so far as known, and its location within or without the state, and a schedule of contractual or property rights contingent upon the absentee's death, and praying that real and personal property may be taken possession of and a receiver thereof appointed under this chapter. No proceedings shall be commenced under the provisions of sections 576.04 to 576.16, except upon good cause shown until at least three months after the date on which it is alleged in such petition that such person so disappeared or absconded.

[1925 c 262 s 1; 1937 c 27 s 1; 1947 c 165 s 1; 1974 c 447 s 7] (8080-1)

576.05 WARRANT; SHERIFF TO TAKE POSSESSION OF PROPERTY; FEES AND COSTS. The court may thereupon issue a warrant directed to the sheriff or his deputy, which may run throughout the state, commanding him to take possession of the property named in the schedule and hold it subject to the order of the court and make return of the warrant as soon as may be, with his doings thereon and with a schedule of the property so taken. The officer shall post a copy of the warrant upon each parcel of land named in the schedule and cause so much of the warrant as relates to land to be recorded in the office of the county recorder for the county where the land is located. He shall receive such fees for serving the warrant as the court allows, but not more than those established by law for similar service upon a writ of attachment. If the petition is dismissed, the fees and the cost of publishing and serving the notice hereinafter provided shall be paid by the petitioner; if a receiver is appointed, they shall be paid by the receiver and allowed in his account.

[1925 c 262 s 2; 1976 c 181 s 2] (8080-2)

576.06 NOTICE OF SEIZURE; APPOINTMENT OF RECEIVER; DISPOSITION OF PROPERTY. Upon the return of such warrant, the court may issue a notice reciting the substance of the petition, warrant, and officer's return, which shall be addressed to such absentee and to all persons who claim an interest in such property, and to all whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the officer's schedule should not be appointed and the property held and disposed of under sections 576.04 to 576.16.

[1925 c 262 s 3] (8080-3)

576.07 PUBLICATION OF NOTICE. The return day of the notice shall be not less than 30, nor more than 60, days after its date. The court shall order the notice to be published once in each of three successive weeks in one or more newspapers within the state, and to be posted in two or more conspicuous places in the county within the state where the absentee last resided or was known to have been either temporarily or permanently, and upon each parcel of land named in the officer's schedule, and a copy to be mailed to the last known address of such absentee. In all cases where the absentee is not a citizen of the United States, a copy of the notice shall be ordered by the court to be served within such time, by mail, on the consular representative of the foreign country of which the absentee is a citizen, if there be one in this state, otherwise on the secretary of state, who shall forward the same to the chief diplomatic representatives of such country at Washington. The court may order other and further notice to be given within or without the state.

[1925 c 262 s 4] (8080-4)

576.08 HEARING BY COURT; DISMISSAL OF PROCEEDING; APPOINTMENT AND BOND OF RECEIVER. The absentee, or any person who claims an interest in any of the property, may appear and show cause why the prayer of the petition should not be granted. The court may, after hearing, dismiss the petition and order the property in possession of the officer to be returned to the person entitled thereto, or it may appoint a receiver of the property which is in the possession of the officer and named in his schedule. If a receiver is appointed, the court shall find and record the date of the disappearance or absconding of the absentee; and such receiver shall give a bond to the state in such sum and with such condition as the court orders, to be ap-

proved by the court. In the appointment of the receiver the court shall give preference to the wife of the absentee, if she is competent and suitable.

[1925 c 262 s 5] (8080-5)

576.09 POSSESSION OF PROPERTY BY RECEIVER. After the approval of the bond the court may order the sheriff or his deputy to transfer and deliver to such receiver the possession of the property under the warrant, and the receiver shall file in the office of the clerk of court a schedule of the property received by him.

[1925 c 262 s 6] (8080-6)

576.10 ADDITIONAL PROPERTY; RECEIVER TO TAKE POSSESSION. The receiver, upon petition filed by him, may be authorized and directed to take possession of any additional property, including a business concern, within or without the state which belongs to such absentee and to demand and collect all debts due the absentee from any person within or without the state and hold the same as if it had been transferred and delivered to him by the officer. The receiver, upon petition filed by him, may also be authorized and directed to exercise any rights under a life insurance policy or an annuity contract which the absentee could have exercised, including, but not limited to, the right to borrow against it, surrender it for its cash surrender value, or continue it in force by payment of premiums.

[1925 c 262 s 7; 1947 c 165 s 2; 1974 c 447 s 8] (8080-7)

576.11 WHERE NO CORPOREAL PROPERTY; RECEIVER; BOND. If the absentee has left no corporeal property within or without the state, but there are debts and obligations due or owing to him from persons within or without the state, a petition may be filed, as provided in section 576.04, stating the nature and amount of such debts and obligations, so far as known, and praying that a receiver thereof may be appointed. The court may thereupon issue a notice, as above provided, without issuing a warrant, and may, upon the return of the notice and after a hearing, dismiss the petition or appoint a receiver and authorize and direct him to demand and collect the debts and obligations specified in the petition. The receiver shall give bond, as provided in section 576.08, and hold the proceeds of such debts and obligations and all property received by him, and distribute the same as provided in sections 576.12 to 576.16. He may be further authorized and directed as provided in section 576.10.

[1925 c 262 s 8; 1947 c 165 s 3] (8080-8)

576.12 CARE OF PROPERTY; LEASE; SALE; CONTROL OF BUSINESS. Subdivision 1. The court may make orders for the care, custody, leasing, and investing of all property and its proceeds in the possession of the receiver. If any of the property consists of assets subject to likely rapid decline in value or live animals or is perishable or cannot be kept without a great or disproportionate expense, the court may, after the return of the warrant, order such property to be sold at public or private sale. After the appointment of a receiver, upon his petition and after notice, the court may order all or part of the property, including the rights of the absentee in land, to be sold at public or private sale to supply money for payments authorized by sections 576.04 to 576.16, to preserve value, or for reinvestment approved by the court.

Subd. 2. The court may make orders for the management of an absentee's business in possession of the receiver. The court may authorize the receiver or person designated by the receiver to operate the business in conformance with sound business practice. Upon the receiver's petition and after notice, the court may authorize the sale of the business to supply money for payments authorized by sections 576.04 to 576.16, to preserve value, or for reinvestment approved by the court.

[1925 c 262 s 9; 1974 c 447 s 9] (8080-9)

576.13 USE OF PROCEEDS. The court may order the property or its proceeds acquired by mortgages, lease, or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's spouse and minor child or children, and to the discharge of such debts and claims for maintenance, as defined in section 518.54, as may be proved against the absentee.

[1925 c 262 s 10; 1937 c 27 s 2; 1978 c 772 s 62] (8080-10)

576.14 CLAIMS; ADJUSTMENT BY RECEIVER. The court may authorize the

receiver to adjust by arbitration or compromise any demand in favor of or against the estate of the absentee. The court may authorize the receiver to pay all taxes for which the absentee is liable and all taxes assessed on his property.

[1925 c 262 s 11; 1974 c 447 s 10] (8080-11)

576.141 PRESUMPTION OF DEATH FROM ABSENCE. An absentee who is missing for a continuous period of four years, during which, after diligent search, he has not been seen or heard of or from, and whose absence is not satisfactorily explained, shall be presumed, in any action or proceeding involving the property of the person, contractual or property rights contingent upon his death or the administration of his estate, to have died four years after the date the unexplained absence commenced. If the person was exposed to a specific peril of death, that fact may be a sufficient basis for determining that he died less than four years after the date his absence commenced.

[1974 c 447 s 11]

576.142 HEARING BY COURT; DETERMINATION OF DEATH OF AN ABSENTEE. Subdivision 1. A person in interest may request a hearing in the following circumstances:

(a) If an absentee is absent from his domicile without being in communication after being exposed to a specific peril and a diligent search has been made; or

(b) If an absentee has been absent from his domicile for a period of four consecutive years or more without being in communication and a diligent search has been made; or

(c) If unforeseeable or changing circumstances necessitate court authorization for action in respect to the management or disposition of the absentee's business or property.

Subd. 2. The person requesting the hearing shall file a petition stating his name, address, relationship to the absentee, and the specific grounds for the hearing requested.

Subd. 3. Upon the filing of the petition, the court shall notify all proper persons in interest of the date, time and place of the hearing.

Subd. 4. The notice shall in all cases be served as follows:

(a) By publication in the county in which the petition is filed once in each of three successive weeks, in a newspaper designated by the court; and

(b) Upon all persons in interest by ordinary mail.

Subd. 5. The court, if satisfied by the evidence adduced at a hearing in support of a petition alleging the absentee is missing after being exposed to a specific peril or that an absentee has been absent for four or more consecutive years, shall enter an order establishing as a matter of law the death of the absentee and the date thereof. The court shall order the distribution of the absentee's property to the persons and in the manner prescribed in chapters 524 and 525.

Subd. 6. Upon a hearing brought pursuant to subdivision 1, clause (c), the court shall have full power to make orders appropriate to conserve the absentee's property or business or to protect the rights of the persons in interest.

[1974 c 447 s 12; 1975 c 347 s 142]

576.143 DEGREE OF BURDEN OF PROOF. The burden of proof is on the party bringing the action to declare the absentee dead. If there is a showing that the absentee was exposed to a specific peril at the time of his disappearance the burden of proof shall be by a fair preponderance of the evidence. If the absentee was in no unusual danger or peril at the time of his disappearance, the burden of proof shall be by clear and convincing evidence.

[1974 c 447 s 13]

576.144 DISSOLUTION OF MARRIAGE. If the court finds the absentee dead in accordance with section 576.142, the marriage between the absentee and his spouse is dissolved. The court shall enter the conclusion of law dissolving the marriage on the order which establishes the death of the absentee as a matter of law.

[1974 c 447 s 14]

576.15 COMPENSATION OF RECEIVER; TITLE OF ABSENTEE LOST AFTER

FOUR YEARS. The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of the property or proceeds. If, within four years after the date of the disappearance or absconding, as found and recorded by the court, the absentee appears, and has not been declared dead under section 576.142, or an administrator, executor, assignee in insolvency, or trustee in bankruptcy of the absentee is appointed, the receiver shall account for, deliver, and pay over to him the remainder of the property. If the absentee does not appear and claim the property within four years, all his right, title, and interest in the property, real or personal, or the proceeds thereof, shall cease, and no action shall be brought by him on account thereof.

If the absentee is declared dead pursuant to section 576.142 and appears before the expiration of four years, he shall have no right, title and interest in the property, real or personal, or the proceeds thereof.

[1925 c 262 s 12; 1974 c 447 s 15] (8080-12)

576.16 PROPERTY DISTRIBUTION; TIME LIMITATION. If the receiver is not appointed within three years after the date found by the court under section 576.08, the time limited for accounting for, or fixed for distributing, the property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the four years provided in sections 576.14 and 576.15.

The provisions of sections 576.04 to 576.16 shall not be construed as exclusive, but as providing additional and cumulative remedies.

[1925 c 262 s 13; 1974 c 447 s 16; 1975 c 347 s 143] (8080-13)