

CHAPTER 580

MORTGAGES; FORECLOSURE BY ADVERTISEMENT

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580.032 REQUEST FOR NOTICE; MAILED NOTICE.

Subdivision 1. **Recording request for notice.** A person having a redeemable interest in real property under section 580.23 or 580.24, may record a request for notice of a mortgage foreclosure by advertisement with the county recorder or registrar of titles of the county where the property is located. To be effective for purposes of this section, a request for notice must be recorded as a separate and distinct document, except a mechanic's lien statement recorded pursuant to section 514.08 also constitutes a request for notice if the mechanic's lien statement includes a legal description of the real property and the name and mailing address of the mechanic's lien claimant.

[For text of subd 2, see M.S.2004]

Subd. 3. **Notice of pendency.** A person foreclosing a mortgage by advertisement shall record a notice of the pendency of the foreclosure with the county recorder or registrar of titles in the county in which the property is located before the first date of publication of the foreclosure notice but not more than six months before the first date of publication.

[For text of subds 4 to 9, see M.S.2004]

History: 2005 c 4 s 144,145

580.041 FORECLOSURE ADVICE NOTICE.

Subdivision 1. [Renumbered subd 1b]

Subd. 1a. **Applicability.** This section applies to foreclosure of mortgages under this chapter on property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residency on the date of service of the notice of sale on the owner.

Subd. 1b. **Form and delivery of notice.** The notice required by this section must be in 14-point boldface type and must be printed on colored paper that is other than the color of the notice of foreclosure and that does not obscure or overshadow the content of the notice. The title of the notice must be in 20-point boldface type. The notice must be on its own page. The notice required by this section must be delivered with the notice of foreclosure required by sections 580.03 and 580.04. The notice required by this section also must be delivered with each subsequent written communication regarding the foreclosure mailed to the mortgagor by the foreclosing party up to the day of redemption. A foreclosing mortgagee will be deemed to have complied with this section if it sends the notice required by this section at least once every 60 days during the period of the foreclosure process. The notice required by this section must not be published.

Subd. 2. **Content of notice.** The notice required by this section must appear substantially as follows:

“Help For Homeowners in Foreclosure

Minnesota law requires that we send you this notice about the foreclosure process. Please read it carefully.

Mortgage foreclosure is a complex process. Some people may approach you about "saving" your home. You should be careful about any such promises.

The state encourages you to become informed about your options in foreclosure before entering into any agreements with anyone in connection with the foreclosure of your home. There are government agencies and nonprofit organizations that you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you please call the Minnesota Housing Finance Agency (MHFA) at (insert telephone number). The state does not guarantee the advice of these agencies.

Do not delay dealing with the foreclosure because your options may become more limited as time passes."

Subd. 3. Affidavit. Any person may establish compliance with or inapplicability of this section by recording, with the county recorder or registrar of titles, an affidavit by a person having knowledge of the facts, stating that the notice required by this section has been delivered in compliance with this section or that this section is not applicable because the property described in the notice of foreclosure did not consist of one to four family dwelling units, one of which was occupied by the owner as the owner's principal place of residency. The affidavit and a certified copy of a recorded affidavit shall be prima facie evidence of the facts stated in the affidavit. The affidavit may be recorded regarding any foreclosure sale, including foreclosure sales which occurred prior to August 1, 2005, and may be recorded separately or as part of the record of a foreclosure.

Subd. 4. Validation of foreclosure sales. No mortgage foreclosure sale under this chapter shall be invalid because of failure to comply with this section unless an action to invalidate the sale is commenced and a notice of lis pendens is filed with the county recorder or registrar of titles within one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives, or assigns. This subdivision shall not affect any action or proceeding pending on August 1, 2005, or which is commenced before February 1, 2006, in any court of this state, provided a notice of lis pendens of the action is filed with the county recorder or registrar of titles before February 1, 2006.

History: 2005 c 10 art 1 s 76; 2005 c 119 s 5-7,9

580.09 FORECLOSURE OF INSTALLMENT; SALE; PROCEEDS; REDEMPTION.

Where a mortgage is given to secure the payment of money by installments, each installment, either for principal or interest, or both, as is due at any time, may be taken and deemed to be a separate and independent mortgage, and such mortgage for each such installment may be foreclosed by advertisement or by action, in the same manner and with like effect as if a separate mortgage were given for each of such installments, and such foreclosure may be made and sale had subject to the installments yet to become due upon the mortgage; and a redemption from any such sale shall have the like effect as if the sale for such installment had been made upon an independent subsequent mortgage; provided in such cases the attorney's fee on the foreclosure so made shall not exceed the amount permitted by law in case of a mortgage securing the amount of the debt then due on such foreclosure. The proceeds of the sale shall be applied first in payment of the costs of the foreclosure sale, and of the installment due, with interest thereon, taxes and insurance premiums paid, if any, and then towards the payment of the residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and, if such residue does not bear interest, such application shall be made with rebate of the legal interest for the time during which the residue shall not be due and payable; and the surplus, if any, shall be paid to the subsequent lienors, if any, in the order of their priority, and then to the owner of the equity of redemption, the owner's legal representatives or assigns. In case of redemption from any sale herein authorized, at the option of the redemptioner, the whole amount remaining unpaid on the mortgage, with interest and other items, if any, which have

become part of the amount secured by the lien of the mortgage, may be included in the amount paid on redemption and, in such event, the redemption so made shall have like effect as if the foreclosure sale had been made for the entire amount secured by the mortgage, including such additional items.

Before any sale herein authorized, the holder of the mortgage shall file with the sheriff a verified itemized statement in writing showing the entire amount remaining unpaid on the mortgage, including taxes and insurance premiums paid and other items which have become part of the amount secured, and the rate of interest to accrue on same, which statement shall be subject to public inspection and shall be read by the sheriff at the sale, immediately after reading the notice of sale. The certificate of sale shall set forth correctly, in addition to the amount of sale, the remaining amount still unpaid on and secured by the mortgage, subject to which the sale is made, and the rate of interest to accrue on same. If, during the time to redeem from the sale, any additional or other item, other than interest at the rate so stated in the certificate, shall attach to such amount subject to which the sale was made, or any change shall occur in such amount or the rate of interest thereon, the facts with respect thereto shall be set forth by affidavit, made and recorded, and a copy furnished the sheriff, in accordance with the provisions of section 582.03, and the provisions of that section shall apply thereto.

History: 2005 c 4 s 146

580.15 PERPETUATING EVIDENCE OF SALE.

Any party desiring to perpetuate the evidence of any sale made in pursuance of this chapter may procure:

(1) an affidavit of the publication of the notice of sale and of any notice of postponement to be made by the printer of the newspaper in which the same was inserted or by some person in the printer's employ knowing the facts;

(2) an affidavit or return of service of such notice upon the occupant of the mortgaged premises to be made by the officer or person making such service or, in case the premises were vacant or unoccupied at the time the service must be made, an affidavit or return showing that fact, to be made by the officer or person attempting to make such service;

(3) an affidavit by the person foreclosing the mortgage, or that person's attorney, or someone knowing the facts, setting forth the facts relating to the military service status of the owner of the mortgaged premises at the time of sale;

(4) an affidavit by the person foreclosing the mortgage, or that person's attorney, or someone having knowledge of the facts, setting forth the fact of service of notice of sale upon the secretary of the Treasury of the United States or the secretary's delegate, in accordance with the provisions of Section 7425 of the Internal Revenue Code of 1954 as amended by Section 109 of the Federal Tax Lien Act of 1966, and also setting forth the fact of service of notice of sale upon the commissioner of revenue of the state of Minnesota in accordance with the provisions of section 270C.63, subdivision 11. Any such affidavit recorded prior to May 16, 1967 shall be effective as prima facie evidence of the facts therein contained as though recorded subsequent to May 16, 1967;

(5) an affidavit by the person foreclosing the mortgage, or that person's attorney, or someone having knowledge of the facts, setting forth the names of the persons to whom a notice of sale was mailed as provided by section 580.032.

Such affidavits and returns shall be recorded by the county recorder and they and the records thereof, and certified copies of such records, shall be prima facie evidence of the facts therein contained.

The affidavit provided for in clause (3) hereof may be made and recorded for the purpose of complying with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, passed by the Congress of the United States and approved on October 17,

1940, and may be made and recorded at any time subsequent to the date of the mortgage foreclosure sale.

History: 2005 c 4 s 147; 2005 c 151 art 2 s 17

580.16 [Repealed, 2005 c 4 s 153]

580.17 AFFIDAVIT OF COSTS.

Within ten days after the filing for record of the certificate of sale, the party foreclosing, or the party's attorney, shall make and record with the county recorder an affidavit containing a detailed bill of the costs and disbursements of the foreclosure, including attorney's fees, and setting forth that the same have been absolutely and unconditionally paid or incurred. Costs and disbursements shall be allowed as provided in section 549.04.

History: 2005 c 4 s 148

580.23 REDEMPTION BY MORTGAGOR; AFFIDAVIT OF NONAGRICULTURAL USE; WAIVER.

[For text of subsds 1 to 3, see M.S.2004]

Subd. 4. **Waiver; 12-month redemption for ag use.** A mortgagor, before or at the time of granting a mortgage executed on or after August 1, 1994, may waive in writing the mortgagor's right under subdivision 2, clause (6), to have a 12-month redemption period based upon the premises being in agricultural use as of the date of execution of the mortgage. The written waiver must be either a document separate from the mortgage or a separately executed and acknowledged addendum to the mortgage on a separate page. If the written waiver is a separate document, it must be in recordable form and must either recite the recorded document number of the mortgage or recite the names of the mortgagor and mortgagee, the legal description of the mortgaged property, and the date of the mortgage. If the written waiver is a separate document, it must be recorded in the office of the county recorder or registrar of titles no later than ten days after the recording of the mortgage. Where there is a waiver of the rights under subdivision 2, clause (6), the redemption period in subdivision 1 applies.

History: 2005 c 4 s 149

580.24 REDEMPTION BY CREDITOR.

(a) If no redemption is made by the mortgagor, the mortgagor's personal representatives or assigns, the most senior creditor having a legal or equitable lien upon the mortgaged premises, or some part of it, subsequent to the foreclosed mortgage, may redeem within seven days after the expiration of the redemption period determined under section 580.23 or 582.032, whichever is applicable; and each subsequent creditor having a lien may redeem, in the order of priority of their respective liens, within seven days after the time allowed the prior lienholder by paying the amount required under this section. However, no creditor is entitled to redeem unless, within the period allowed for redemption by the mortgagor, the creditor:

(1) records with each county recorder and registrar of titles where the foreclosed mortgage is recorded a notice of the creditor's intention to redeem;

(2) records in each office where the notice is recorded all documents necessary to create the lien on the mortgaged premises and to evidence the creditor's ownership of the lien; and

(3) after complying with clauses (1) and (2), delivers to the sheriff who conducted the foreclosure sale or the sheriff's successor in office a copy of each of the documents required to be recorded under clauses (1) and (2), with the office, date and time of filing for record stated on the first page of each document.

The sheriff shall maintain for public inspection all documents delivered to the sheriff and shall note the date of delivery on each document. The sheriff may charge a fee of \$100 for the documents delivered to the sheriff relating to each lien. The sheriff

shall maintain copies of documents delivered to the sheriff for a period of six months after the end of the mortgagor's redemption period.

(b) Saturdays, Sundays, legal holidays, and the first day following the expiration of the prior redemption period must be included in computing the seven-day redemption period. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day must be omitted from the computation. All mechanic's lienholders who have coordinate liens shall have one combined seven-day period to redeem.

(c) The amount required to redeem from the holder of the sheriff's certificate of sale is the amount required under section 580.23. The amount required to redeem from a person holding a certificate of redemption is:

(1) the amount paid to redeem as shown on the certificate of redemption; plus

(2) interest on that amount to the date of redemption; plus

(3) the amount claimed due on the person's lien, as shown on the affidavit under section 580.25, clause (3).

The amount required to redeem may be paid to the holder of the sheriff's certificate of sale or the certificate of redemption, as the case may be, or to the sheriff for the holder.

History: 2005 c 4 s 150

580.29 HOLDER OF JUNIOR MORTGAGE MAY PAY DEFAULT IN PRIOR MORTGAGE.

Any person who has a mortgage lien upon any land against which there exists a prior mortgage may pay any taxes or assessments on which any penalty would otherwise accrue, and may pay the premium upon any policy of insurance procured in renewal of any expiring policy upon mortgaged premises, and may, in case any interest upon any prior or superior lien is in default, or any part of the principal shall become due, or amortized installment which may be in default upon any such prior lien, pay the same, and all such sums so paid shall become due upon such payment and be a part of the debt secured by such junior mortgage, shall bear interest from date of payment at the same rate as the indebtedness secured by such prior lien, and shall be collectible with, as a part of, and in the same manner as, the amount secured by such junior mortgage. Such payments shall be proved by the affidavit of the junior mortgagee, the junior mortgagee's agent or attorney, stating the items and describing the premises, and a copy must be recorded with the county recorder.

History: 2005 c 4 s 151