

## CHAPTER 580

## MORTGAGES; FORECLOSURE BY ADVERTISEMENT

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**580.001 APPLICATION OF LAWS 2005, CHAPTER 56, TERMINOLOGY CHANGES.**

State agencies shall use the terminology changes specified in Laws 2005, chapter 56, section 1, when printed material and signage are replaced and new printed material and signage are obtained. State agencies do not have to replace existing printed material and signage to comply with Laws 2005, chapter 56, sections 1 and 2. Language changes made according to Laws 2005, chapter 56, sections 1 and 2, shall not expand or exclude eligibility to services.

**History:** 2005 c 56 s 3

**580.01 LIMITATION.**

Subject to the provisions of section 541.03, any mortgage of real estate containing a power of sale, upon default being made in any condition thereof, may be foreclosed by advertisement.

**History:** (9602) RL s 4457; 1953 c 277 s 1

**580.02 REQUISITES FOR FORECLOSURE.**

To entitle any party to make such foreclosure, it is requisite:

(1) that some default in a condition of such mortgage has occurred, by which the power to sell has become operative;

(2) that no action or proceeding has been instituted at law to recover the debt then remaining secured by such mortgage, or any part thereof, or, if the action or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein has been returned unsatisfied, in whole or in part;

(3) that the mortgage has been recorded and, if it has been assigned, that all assignments thereof have been recorded; provided, that, if the mortgage is upon registered land, it shall be sufficient if the mortgage and all assignments thereof have been duly registered.

**History:** (9603) RL s 4458

**580.03 NOTICE OF SALE; SERVICE ON OCCUPANT.**

Six weeks' published notice shall be given that such mortgage will be foreclosed by sale of the mortgaged premises or some part thereof, and at least four weeks before the appointed

time of sale a copy of such notice shall be served in like manner as a summons in a civil action in the district court upon the person in possession of the mortgaged premises, if the same are actually occupied. If there be a building on such premises used by a church or religious corporation, for its usual meetings, service upon any officer or trustee of such corporation shall be a sufficient service upon it. The notice required by section 580.041 must be served simultaneously with the notice of foreclosure required by this section.

**History:** (9604) *RL s 4459; 2004 c 263 s 22*

**NOTE:** This section, as amended by Laws 2004, chapter 263, section 22, expires December 31, 2009. Laws 2004, chapter 263, section 26.

**580.031** [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7; 1990 c 575 s 11]

### **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.

Subd. 2. **Content requirements.** A request for notice must specify: (1) the name and mailing address of the person requesting notice; (2) a legal description of the real property; (3) a description of the person's redeemable interest including, if applicable, the date and recording information of the document creating the interest; and (4) a request for notice of a mortgage foreclosure by advertisement. The request must be executed and acknowledged by the person requesting notice.

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.

Subd. 4. **Mailed notice.** A person foreclosing a mortgage by advertisement shall mail, at least 14 days before the date of sale, a copy of the notice of sale to each person requesting notice in a recorded request for notice at the address specified in the recorded request for notice. Mailed notice is deemed given upon deposit in the United States mail first class, postage prepaid, and addressed to the person requesting notice. Notice need not be mailed to a person: (1) whose request for notice was recorded before the recording of the mortgage being foreclosed or after the recording of the notice of pendency provided in subdivision 3; (2) served pursuant to section 580.03; or (3) who no longer has a redeemable interest.

Subd. 5. **Effect of failure to mail notice.** If a person foreclosing a mortgage by advertisement fails to mail a notice of the sale in accordance with subdivision 4, the failure does not invalidate the foreclosure.

Subd. 6. **Remedies.** If notice of the sale is not mailed in accordance with subdivision 4 to a person with a properly recorded request for notice, the person requesting notice has a cause of action against the person foreclosing the mortgage for money damages for the lesser of: (1) the equity in the mortgaged premises that would have been available to the person if the person had redeemed; or (2) the value of the person's redeemable interest. The value of a lien holder's redeemable interest is the amount due on and secured by the lien. The person requesting notice has the burden of proving that the notice of the sale was not mailed in accordance with subdivision 4 and that the person requesting notice had a valid redeemable interest in the mortgaged premises, had measurable damages, had the financial ability to redeem, and did not have actual notice of the sale at least 60 days before expiration of the mortgagor's period of redemption. An action for damages resulting from failure to mail notice must be brought within two years of the date of the sheriff's sale.

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Subd. 7. **Exception to damage claim.** Notwithstanding subdivision 6, if notice was not mailed in accordance with subdivision 4 to a person requesting notice, the requester has no cause of action against the person foreclosing the mortgage if at least 60 days before the mortgagor's period of redemption expires, a copy of the sheriff's certificate of sale is mailed in the manner provided in this section to the person requesting notice.

Subd. 8. **No color of title.** The recording of a request for notice by itself does not give the person requesting notice any interest in the mortgaged premises for any purpose. A recorded request for notice does not constitute actual or constructive notice of any interest in the real property.

Subd. 9. **Effective date.** This section is effective August 1, 1992. This section applies only to mortgages foreclosed by advertisement when the first date of publication is after January 1, 1993.

**History:** 1992 c 463 s 32; 1993 c 6 s 3; 1993 c 40 s 1; 2005 c 4 s 144,145

## 580.04 REQUISITES OF NOTICE.

Each notice shall specify:

(1) the name of the mortgagor, the mortgagee, each assignee of the mortgage, if any, and the original or maximum principal amount secured by the mortgage;

(2) the date of the mortgage, and when and where recorded, except where the mortgage is upon registered land, in which case the notice shall state that fact, and when and where registered;

(3) the amount claimed to be due on the mortgage on the date of the notice;

(4) a description of the mortgaged premises, conforming substantially to that contained in the mortgage;

(5) the time and place of sale;

(6) the time allowed by law for redemption by the mortgagor, the mortgagor's personal representatives or assigns; and

(7) if the party foreclosing the mortgage desires to preserve the right to reduce the redemption period under section 582.032 after the first publication of the notice, the notice must also state in capital letters: "THE TIME ALLOWED BY LAW FOR REDEMPTION BY THE MORTGAGOR, THE MORTGAGOR'S PERSONAL REPRESENTATIVES OR ASSIGNS, MAY BE REDUCED TO FIVE WEEKS IF A JUDICIAL ORDER IS ENTERED UNDER MINNESOTA STATUTES, SECTION 582.032, DETERMINING, AMONG OTHER THINGS, THAT THE MORTGAGED PREMISES ARE IMPROVED WITH A RESIDENTIAL DWELLING OF LESS THAN FIVE UNITS, ARE NOT PROPERTY USED IN AGRICULTURAL PRODUCTION, AND ARE ABANDONED."

**History:** (9605) RL s 4460; 1967 c 248 s 1; 1986 c 444; 1989 c 328 art 3 s 6; 1Sp1989 c 2 s 6; 2004 c 234 s 3

## 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:** 2004 c 263 s 23; 2005 c 10 art 1 s 76; 2005 c 119 s 5–7,9

NOTE: This section, as added by Laws 2004, chapter 263, section 23, expires December 31, 2009. Laws 2004, chapter 263, section 26.

### 580.045 RECORD OWNER WITH NO FINANCIAL INTEREST.

A notice of foreclosure required under section 580.04 must include the name of each mortgagor who, at the time of first publication of the notice, has been released from financial obligation on the mortgage and a statement that the named mortgagor has been released from financial obligation on the mortgage.

**History:** 1988 c 421 s 1

### 580.05 ATTORNEY TO FORECLOSE; RECORD OF POWER.

When an attorney at law is employed to conduct such foreclosure, the authority of the attorney at law shall appear by power of attorney executed and acknowledged by the mort-

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gagee or assignee of the mortgage in the same manner as a conveyance, and recorded prior to the sale in the county where the foreclosure proceedings are had. If such attorney be employed on behalf of such mortgagee or assignee by an attorney in fact, the attorney's authority shall likewise be evidenced by recorded power.

**History:** (9606) *RL s 4461; 1986 c 444*

## 580.06 SALE, HOW AND BY WHOM MADE.

The sale shall be made by the sheriff or the sheriff's deputy at public vendue to the highest bidder, in the county in which the premises to be sold, or some part thereof, are situated, between 9:00 a.m. and the setting of the sun.

**History:** (9607) *RL s 4462; 1986 c 444*

## 580.07 POSTPONEMENT.

The sale may be postponed, from time to time, by the party conducting the foreclosure, by inserting a notice of the postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing the publication until the time to which the sale is postponed, at the expense of the party requesting the postponement.

**History:** (9608) *RL s 4463; 1993 c 6 s 4*

## 580.08 SEPARATE TRACTS.

If the mortgaged premises consist of separate and distinct farms or tracts, they shall be sold separately, and no more farms or tracts shall be sold than are necessary to satisfy the amount due on such mortgage at the date of notice of such sale, with interest, taxes paid, and costs of sale.

**History:** (9609) *RL s 4464*

## 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:** (9610) *RL s 4465; 1925 c 280 s 1; 1986 c 444; 2005 c 4 s 146*

#### **580.10 SURPLUS.**

In all cases not provided for in section 580.09, if, after sale of any real estate, made as herein prescribed, there remains in the hands of the officer making the sale any surplus money, after satisfying the mortgage, with interest, taxes paid, and costs of sale, the surplus shall be paid over by such officer, on demand, to the mortgagor, the mortgagor's legal representatives or assigns.

**History:** (9611) *RL s 4466; 1986 c 444*

#### **580.11 MORTGAGEE OR ASSIGNEE MAY PURCHASE.**

The mortgagee, the mortgagee's assignee, or the legal representative of either or both, may fairly and in good faith purchase the premises so advertised, or any part thereof, at such sale.

**History:** (9612) *RL s 4467; 1986 c 444*

#### **580.12 CERTIFICATE OF SALE; RECORD; EFFECT.**

When any sale of real property is made under a power of sale contained in any mortgage, the officer shall make and deliver to the purchaser a certificate, executed in the same manner as a conveyance, containing:

- (1) a description of the mortgage;
- (2) a description of the property sold;
- (3) the price paid for each parcel sold;
- (4) the time and place of the sale, and the name of the purchaser; and
- (5) the time allowed by law for redemption, provided that if the redemption period stated in the certificate is five weeks and a longer redemption period was stated in the published notice of foreclosure sale, a certified copy of the court order entered under section 582.032, authorizing reduction of the redemption period to five weeks, must be attached to the certificate.

A certificate which states a five-week redemption period must be recorded within ten days after the sale; any other certificate must be recorded within 20 days after the sale. When so recorded, upon expiration of the time for redemption, the certificate shall operate as a conveyance to the purchaser or the purchaser's assignee of all the right, title, and interest of the mortgagor in and to the premises named therein at the date of such mortgage, without any other conveyance. A certificate must not contain a time allowed for redemption that is less than the time specified by section 580.23, 582.032, or 582.32, whichever applies.

**History:** (9613) *RL s 4468; 1986 c 444; 1989 c 328 art 3 s 7; 1994 c 388 art 1 s 6*

#### **580.13 PREMISES IN MORE THAN ONE COUNTY; RECORD.**

If any mortgage covering real estate in more than one county be foreclosed by proceedings had in one county, and the mortgage debt be thereby paid, in whole or in part, there may

be recorded by the county recorder of the other county a certified copy of the certificate of sale and other foreclosure proceedings of record in the county in which the foreclosure proceedings were had.

**History:** (9616) *RL s 4470; 1976 c 181 s 2*

#### **580.14 EXECUTION AFTER EXPIRATION OF TERM.**

Where the term of office of the sheriff or deputy who made the sale expires within 20 days thereafter, and before executing the certificate required by law, that sheriff or deputy may execute and acknowledge the same in like manner and with like effect as if the term had not expired.

**History:** (9617) *RL s 4471; 1986 c 444*

#### **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:** (9618) *RL s 4472; 1941 c 477 s 1; 1967 c 428 s 1; 1976 c 181 s 2; 1982 c 523 art 2 s 48; 1986 c 444; 1992 c 463 s 33; 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:** (9620) *RL s 4474; 1976 c 181 s 2; 1983 c 93 s 2; 1986 c 444; 2005 c 4 s 148*

#### **580.18 EXCESSIVE COSTS OR INTEREST.**

At any time within one year after the sale, the mortgagor, the mortgagor's heirs or assigns, may recover from the owner of the mortgage at the time of foreclosure three times the amount of any sums charged as costs or disbursements on such foreclosure but not absolutely paid, unless such amounts have been paid to the mortgagor or the mortgagor's assigns.

**History:** (9621) *RL s 4475; 1986 c 444*

#### **580.19 CERTIFICATE AS EVIDENCE.**

Every sheriff's certificate of sale made under a power to sell contained in a mortgage shall be prima facie evidence that all the requirements of law in that behalf have been complied with, and prima facie evidence of title in fee thereunder in the purchaser at such sale, the purchaser's heirs or assigns, after the time for redemption therefrom has expired.

**History:** (9622) *RL s 4476; 1986 c 444*

#### **580.20 ACTION TO SET ASIDE FOR CERTAIN DEFECTS.**

No such sale shall be held invalid or be set aside by reason of any defect in the notice thereof, or in the publication or service of such notice, or in the proceedings of the officer making the sale, unless the action in which the validity of such sale is called in question be commenced, or the defense alleging its invalidity be interposed, with reasonable diligence, and not later than five years after the date of such sale; provided that persons under disability to sue when such sale was made by reason of being minors, insane persons, persons developmentally disabled, or persons in captivity or in any country with which the United States is at war, may commence such action or interpose such defense at any time within five years after the removal of such disability.

**History:** (9623) *RL s 4477; 2005 c 56 s 1*

#### **580.21 ACTION TO SET ASIDE SALE; LIMITATION.**

No such sale shall be held invalid or set aside unless the action in which its validity is called in question be commenced, or the defense alleging its invalidity be interposed, within 15 years after the date of such sale; provided that persons under disability, as provided in section 580.20, may commence such action or interpose such defense within the time therein provided. This section shall not affect or prejudice the rights of any bona fide purchaser.

**History:** (9624) *RL s 4478*

#### **580.22 INTEREST OF PURCHASER; ATTACHMENT OR JUDGMENT.**

The interest acquired upon such sale is subject to the lien of any attachment or judgment duly made or docketed against the person holding the same, as in case of real property, and may be attached and sold on execution in the same manner.

**History:** (9625) *RL s 4479*

#### **580.225 SATISFACTION OF JUDGMENT.**

The amount received from foreclosure sale under this chapter is full satisfaction of the mortgage debt, except as provided in section 582.30.

**History:** 1986 c 398 art 19 s 2

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

Subdivision 1. **Six-month redemption period.** When lands have been sold in conformity with the preceding sections of this chapter, the mortgagor, the mortgagor's personal



representatives or assigns, within six months after such sale, except as otherwise provided in subdivision 2 or section 582.032 or 582.32, may redeem such lands, as hereinafter provided, by paying the sum of money for which the same were sold, with interest from the time of sale at the rate provided to be paid on the mortgage debt and, if no rate be provided in the mortgage note, at the rate of six percent per annum, together with any further sums which may be payable as provided in sections 582.03 and 582.031.

**Subd. 2. 12-month redemption period.** Notwithstanding the provisions of subdivision 1 hereof, when lands have been sold in conformity with the preceding sections of this chapter, the mortgagor, the mortgagor's personal representatives or assigns, within 12 months after such sale, may redeem such lands in accordance with the provisions of payment of subdivision 1 thereof, if:

- (1) the mortgage was executed prior to July 1, 1967;
- (2) the amount claimed to be due and owing as of the date of the notice of foreclosure sale is less than 66-2/3 percent of the original principal amount secured by the mortgage;
- (3) the mortgage was executed prior to July 1, 1987, and the mortgaged premises, as of the date of the execution of the mortgage, exceeded ten acres in size;
- (4) the mortgage was executed prior to August 1, 1994, and the mortgaged premises, as of the date of the execution of the mortgage, exceeded ten acres but did not exceed 40 acres in size and was in agricultural use as defined in section 40A.02, subdivision 3;
- (5) the mortgaged premises, as of the date of the execution of the mortgage, exceeded 40 acres in size; or
- (6) the mortgage was executed on or after August 1, 1994, and the mortgaged premises, as of the date of the execution of the mortgage, exceeded ten acres but did not exceed 40 acres in size and was in agricultural use. For purposes of this clause, "in agricultural use" means that at least a portion of the mortgaged premises was classified for ad valorem tax purposes as:
  - (i) class 2a agricultural homestead property under section 273.13, subdivision 23;
  - (ii) class 2b rural or agricultural nonhomestead property under section 273.13, subdivision 23;
  - (iii) class 1b agricultural homestead property under section 273.13, subdivision 22; or
  - (iv) exempt wetlands under section 272.02, subdivision 11.

**Subd. 3. Affidavit of nonagricultural use.** (a) With respect to mortgages executed prior to August 1, 1994, an affidavit signed by the mortgagor and a certificate signed by the county assessor where the land is located stating that the mortgaged premises as legally described in the affidavit and certificate are not in agricultural use as defined in section 40A.02, subdivision 3, may be recorded in the office of the county recorder or registrar of titles where the property is located and are prima facie evidence of the facts contained in the affidavit and certificate.

(b) With respect to mortgages executed on or after August 1, 1994, an affidavit signed by the mortgagor and a certificate signed by the county assessor where the land is located, stating that the mortgaged premises as legally described in the affidavit and certificate are not in agricultural use, may be recorded in the office of the county recorder or registrar of titles where the property is located and are prima facie evidence of the facts contained in the affidavit and certificate. For purposes of this paragraph, "not in agricultural use" means that no portion of the mortgaged premises, as legally described in the affidavit or certificate, is currently classified for ad valorem tax purposes in any classification listed in subdivision 2, clause (6), item (i), (ii), (iii), or (iv).

**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:** (9626) *RL s 4480; 1967 c 248 s 2; 1982 c 473 s 29; 1986 c 398 art 19 s 3; 1986 c 444; 1987 c 230 s 1,2; 1989 c 328 art 3 s 8; 1993 c 40 s 2; 1994 c 587 art 5 s 26; 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:** (9627) *RL s 4481; 1967 c 248 s 3; 1976 c 181 s 2; 1983 c 99 s 3; 1986 c 444; 1989 c 328 art 3 s 9; 1998 c 262 s 10; 2000 c 320 s 6; 2004 c 234 s 4; 2005 c 4 s 150*

#### 580.25 REDEMPTION, HOW MADE.

Redemption shall be made as provided in this section.

The person desiring to redeem shall pay the amount required by law for the redemption, and shall produce to the person or officer receiving the redemption payment:

(1) a copy of the docket of the judgment, or of the deed or mortgage, or of the record or files evidencing any other lien under which the person claims a right to redeem, certified by the officer with custody of the docket, record, or files, or the original deed or mortgage with the certificate of record endorsed on it;

(2) a copy of any assignment necessary to evidence the person's ownership of the lien, certified by the officer with custody of the assignment, or the original of each instrument of assignment with the certificate of record endorsed on it. If the redemption is under an assignment of a judgment, the assignment shall be filed in the court entering the judgment, as provided by law, and the person so redeeming shall produce a certified copy of it and of the record of its filing, and the copy of the docket shall show that the proper entry was made upon the docket. No further evidence of the assignment of the judgment is required unless the mortgaged premises or part of it is registered property, in which case the judgment and all assignments of the judgment must be entered as a memorial upon the certificate of title to the mortgaged premises and the original judgment and each assignment with the certificate of record endorsed on it, or a copy certified by the registrar of titles, must be produced; and

(3) an affidavit of the person or the person's agent, showing the amount then actually claimed due on the person's lien and required to be paid on the lien in order to redeem from the person.

If redemption is made to the sheriff, the sheriff may charge a fee of \$250 for issuing the certificate of redemption and any related service. No other fee may be charged by the sheriff for a redemption.

Within 24 hours after a redemption is made, the person redeeming shall cause the documents so required to be produced to be filed with the county recorder, or registrar of titles, who may receive fees as prescribed in section 357.18 or 508.82. If the redemption is made at any place other than the county seat, it is sufficient forthwith to deposit the documents in the nearest post office, addressed to the recorder or registrar of titles, with the postage prepaid. A person recording documents produced for redemption shall, on the same day, deliver copies of the documents to the sheriff for public inspection. The sheriff may receive a fee of \$20 for the documents delivered following a redemption. The sheriff shall note the date of delivery on the documents and shall maintain for public inspection all documents delivered to the sheriff for a period of six months after the end of the mortgagor's redemption period.

**History:** (9628) *RL s 4482; 1976 c 181 s 2; 1983 c 99 s 4; 1986 c 444; 2004 c 234 s 5*

### **580.26 CERTIFICATE OF REDEMPTION; RECORD.**

The person or officer from whom such redemption is made shall make and deliver to the person redeeming a certificate executed and acknowledged in the same manner as a conveyance, containing:

(1) the name of the person redeeming, and the amount paid by the person on such redemption;

(2) a description of the sale for which such redemption is made, and of the property redeemed;

(3) a statement of the claim upon which such redemption is made and, if upon a lien, the amount claimed to be due thereon at the date of redemption.

If redemption is made by the owner of the property sold, the owner's heirs, personal representatives, or assigns, such certificate shall be recorded within four days after the expiration of the year allowed the owner for redemption and, if made by a creditor holding a lien, the certificate shall be recorded within four days after such redemption. Unless so recorded, the certificate shall be void as against any person in good faith redeeming from the same person or lien.

**History:** (9629) *RL s 4483; 1986 c 444*

**580.27 EFFECT OF REDEMPTION.**

If redemption is made by the owner of the property sold, the owner's heirs, personal representatives or assigns, such redemption annuls the sale; if by a creditor holding a lien on the property, or some part thereof, the certificate of redemption, executed, acknowledged, and recorded as provided in section 580.26, operates as an assignment to the creditor of the right acquired under such sale, subject to such right of any other person to redeem as provided by law.

**History:** (9630) *RL s 4484; 1986 c 444*

**580.28 ACTION TO SET ASIDE MORTGAGE; FORECLOSURE; REDEMPTION.**

When an action is brought wherein it is claimed that any mortgage as to the plaintiff or person for whose benefit the action is brought is fraudulent or void, or has been paid or discharged, in whole or in part, if such mortgage has been foreclosed by advertisement, and the time for redemption from the foreclosure sale will expire before final judgment in such action, the plaintiff or beneficiary having the right to redeem, for the purpose of saving such right in case the action fails, may deposit with the sheriff before the time of redemption expires the amount for which the mortgaged premises were sold, with interest thereon to the time of deposit, together with a bond to the holder of the sheriff's certificate of sale, in an amount and with sureties to be approved by the sheriff, conditioned to pay all interest that may accrue or be allowed on such deposit if the action fail. The person shall, in writing, notify such sheriff that the person claims the mortgage to be fraudulent or void, or to have been paid or discharged, in whole or in part, as the case may be, and that such action is pending, and direct the sheriff to retain such money and bond until final judgment. In case such action fails, such deposit shall operate as a redemption of the premises from such foreclosure sale, and entitle the plaintiff to a certificate thereof. Such foreclosure, deposit, bond, and notice shall be brought to the attention of the court by supplemental complaint in the action, and the judgment shall determine the validity of the foreclosure sale, and the rights of the parties to the moneys and bond so deposited, which shall be paid and delivered by the sheriff as directed by such judgment upon delivery to the sheriff of a certified copy thereof. The remedy herein provided shall be in addition to other remedies now existing.

**History:** (9631) *RL s 4485; 1986 c 444*

**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:** (9632) *1923 c 355 s 1; 1927 c 413; 1943 c 395 s 1; 1976 c 181 s 2; 1986 c 444; 2005 c 4 s 151*

**580.30 MORTGAGES, WHEN REINSTATED.**

In any proceedings for the foreclosure of a real estate mortgage, whether by action or by advertisement, if at any time before the sale of the premises under such foreclosure the mortgagor, the owner, or any holder of any subsequent encumbrance or lien, or any one for them,

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shall pay or cause to be paid to the holder of the mortgage so being foreclosed, or to the attorney foreclosing the same, or to the sheriff of the county, the amount actually due thereon and constituting the default actually existing in the conditions of the mortgage at the time of the commencement of the foreclosure proceedings, including insurance, delinquent taxes, if any, upon the premises, interest to date of payment, cost of publication and services of process or notices, attorney's fees not exceeding \$150 or one-half of the attorney's fees authorized by section 582.01, whichever is greater, together with other lawful disbursements necessarily incurred in connection with the proceedings by the party foreclosing, then, and in that event, the mortgage shall be fully reinstated and further proceedings in such foreclosure shall be thereupon abandoned.

**History:** (9633) 1923 c 327 s 1; 1957 c 182 s 1; 1971 c 833 s 1