

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 525.013, is amended by adding a subdivision to read:

Subd. 2a. PROBATE COURT; PETIT JURORS; SELECTION. Petit jurors for the trial of all types of action shall be selected in the same manner as petit jurors are selected in district court.

Sec. 2. **REPEALER.** Minnesota Statutes 1976, Section 525.013, Subdivisions 2 and 3, are repealed.

Approved May 20, 1977.

CHAPTER 202—S.F.No.767

An act relating to mortgages; authorizing appointment of a receiver upon foreclosure and upon a showing that a mortgagor has breached certain covenants in the mortgage; amending Minnesota Statutes 1976, Sections 559.17; and 576.01.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 576.01, is amended to read:

576.01 MORTGAGES; FORECLOSURE; 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:

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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

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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.

Sec. 2. Minnesota Statutes 1976, Section 559.17, is amended to read:

559.17 MORTGAGEE NOT ENTITLED TO POSSESSION. Subdivision 1. A mortgage of real property is not to be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure. Nothing contained herein shall be construed to prevent a mortgagor from assigning, as additional security for the debt secured by the mortgage, the rents and profits from the mortgaged real property, and such an assignment shall be valid whether contained in the mortgage instrument itself or in a separate instrument, except as permitted in subdivision 2. The enforcement of an assignment of rents of the type described in subdivision 2 shall not be deemed prohibited by this subdivision, nor because a foreclosure sale under the mortgage has extinguished all or part of the mortgage debt.

Subd. 2. A mortgagor may assign, as additional security for the debt secured by the mortgage, the rents and profits from the mortgaged real property, if the mortgage:

- (1) Was executed, modified or amended subsequent to August 1, 1977;
- (2) Secured an original principal amount of \$500,000 or more; and

(3) Is not a lien upon property which was entirely homesteaded as agricultural property. The assignment may be enforced as follows:

(a) If, by the terms of an assignment, a receiver is to be appointed upon the occurrence of some specified event, and a showing is made that the event has occurred, the court shall, without regard to waste, adequacy of the security, or solvency of the mortgagor, appoint a receiver who shall, with respect to the excess cash remaining after application as provided in section 576.01, subdivision 2, apply it as prescribed by the

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assignment. If the assignment so provides, the receiver shall apply the excess cash in the manner set out herein from the date of his appointment through the entire redemption period from any foreclosure sale. Subject to the terms of the assignment, the receiver shall have the powers and duties as set forth in section 576.01, subdivision 2.

(b) If no provision is made for the appointment of a receiver in the assignment, the assignment shall be binding upon the assignor without regard to waste, adequacy of the security or solvency of the mortgagor, but only in the event of default in the terms and conditions of the mortgage, and only in the event the assignment requires the holder thereof to first apply the rents and profits received as provided in section 576.01, subdivision 2, in which case the same shall operate against and be binding upon the occupiers of the premises from the date of filing by the holder of the assignment in the office of the county recorder or the office of the registrar of titles for the county in which the property is located of a notice of default in the terms and conditions of the mortgage and service of a copy of the notice upon the occupiers of the premises. The holder of the assignment shall apply the rents and profits received in accordance with the terms of the assignment, and, if the assignment so provides, for the entire redemption period from any foreclosure sale. A holder of an assignment who enforces it in accordance with this clause shall not be deemed to be a mortgagee in possession with attendant liability.

Nothing contained herein shall prohibit the right to reinstate the mortgage debt granted pursuant to section 580.30, nor the right to redeem granted pursuant to sections 580.23 and 581.10, and any excess cash, as that term is used herein, collected by the receiver under clause (a), or any rents and profits taken by the holder of the assignment under clause (b), shall be credited to the amount required to be paid to effect a reinstatement or redemption.

Approved May 20, 1977.

CHAPTER 203—S.F.No.816

[Coded in Part]

An act relating to taxation; exempting the department of revenue from certain administrative procedure act requirements in certain inheritance, iron ore, and occupation tax proceedings; authorizing the commissioner of revenue to enter into administrative agreements with the secretary of the treasury and the governing bodies of certain Indian reservations; changing requirements for orders of the commissioner; allowing commissioner to dismiss certain confiscation procedures; providing penalties for cigarette tax violations; appropriating money; amending Minnesota Statutes 1976, Sections 270.06; 270.10, Subdivision 1; 273.1104; 291.09, Subdivisions 1 and 2; 297.08, Subdivision 4; 297.12, Subdivision 1; 298.09, Subdivision 2; and Chapter 270, by adding a section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 291.09, Subdivision 1, is amended to read:

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