

CHAPTER 580

FORECLOSURE OF REAL ESTATE MORTGAGES BY ADVERTISEMENT

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**580.01 LIMITATION.** Every mortgage of real estate heretofore or hereafter executed, containing a power of sale, upon default being made in any condition thereof, may be foreclosed by advertisement within 15 years after the maturing of such mortgage or the debt secured thereby, in the cases and in the manner herein-after specified. These 15 years shall not be extended by reason of any non-residence, or of any payment made or applied upon such debt after its maturity.

[R. L. s. 4457] (9602)

**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.

[R. L. s. 4458] (9603)

**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.

[R. L. s. 4459] (9604)

**580.04 REQUISITES OF NOTICE.** Each notice shall specify:

(1) The name of the mortgagor and of the mortgagee, and of the assignee of the mortgage, if any;

(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 thereon, and taxes, if any, paid by the mortgagee at the date of the notice;

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

(5) The time and place of sale.

[R. L. s. 4460] (9605)

**580.05 ATTORNEY TO FORECLOSE; RECORD OF POWER.** When an attorney at law is employed to conduct such foreclosure, his authority shall appear by power of attorney executed and acknowledged by the mortgagee 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, his authority shall likewise be evidenced by recorded power.

[R. L. s. 4461] (9606)

**580.06 SALE, HOW AND BY WHOM MADE.** The sale shall be made by the sheriff or his 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 nine o'clock a. m. and the setting of the sun.

[R. L. s. 4462] (9607)

**580.07 POSTPONEMENT.** Such sale may be postponed, from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale is postponed, at the expense of the party requesting the same.

[R. L. s. 4463] (9608)

**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.

[R. L. s. 4464] (9609)

**580.09 FORECLOSURE FOR INSTALMENTS; BY ADVERTISEMENT OR BY ACTION; SALES; DISPOSITION OF PROCEEDS; REDEMPTION.** Where a mortgage is given to secure the payment of money by instalments, each instalment, 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 instalment 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 instalments, and such foreclosure may be made and sale had subject to the instalments 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 instalment 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 instalment 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, his 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

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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 filed for record, and a copy furnished the sheriff, in accordance with the provisions of section 582.03, and the provisions of that section shall apply thereto.

[R. L. s. 4465; 1925 c. 280 s. 1] (9610)

**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, his legal representatives or assigns.

[R. L. s. 4466] (9611)

**580.11 MORTGAGEE OR ASSIGNEES MAY PURCHASE.** The mortgagee, his assignees, or his or their legal representatives, may fairly and in good faith purchase the premises so advertised, or any part thereof, at such sale.

[R. L. s. 4467] (9612)

**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;
- (5) The time allowed by law for redemption.

The certificate shall be recorded within 20 days after such sale, and when so recorded, upon expiration of the time for redemption, shall operate as a conveyance to the purchaser or his 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.

[R. L. s. 4468] (9613)

**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 register of deeds 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.

[R. L. s. 4470] (9616)

**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 he has executed the certificate required by law, he may execute and acknowledge the same in like manner and with like effect as if his term had not expired.

[R. L. s. 4471] (9617)

**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 his 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 his 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.

Such affidavits and returns shall be recorded by the register of deeds 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 filed for record 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 filed for record at any time subsequent to the date of the mortgage foreclosure sale.

[R. L. s. 4472; 1941 c. 477 s. 1] (9618)

**580.16 ENTRY IN RECORD.** A note referring to the page and book where the evidence of any such sale is recorded shall be made by the register in the margin of the record of the mortgage.

[R. L. s. 4473] (9619)

**580.17 AFFIDAVIT OF COSTS.** Within ten days after the filing for record of the certificate of sale, the party foreclosing, or his attorney, shall make and file for record with the register of deeds 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.

[R. L. s. 4474] (9620)

**580.18 EXCESSIVE COSTS OR INTEREST.** At any time within one year after the sale, the mortgagor, his 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 his assigns.

[R. L. s. 4475] (9621)

**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, his heirs or assigns, after the time for redemption therefrom has expired.

[R. L. s. 4476] (9622)

**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, idiots, 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.

[R. L. s. 4477] (9623)

**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.

[R. L. s. 4478] (9624)

**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.

[R. L. s. 4479] (9625)

**580.23 REDEMPTION BY MORTGAGOR.** When lands have been sold in conformity with the preceding sections of this chapter the mortgagor, his personal representatives or assigns, within 12 months after such sale, 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, not to exceed ten per cent per annum, and, if no rate be provided in the mortgage, at the rate of six per cent, together with any further sums which may be payable pursuant to section 582.03.

[R. L. s. 4480] (9626)

**580.24 REDEMPTION BY CREDITOR.** If no such redemption be made by the mortgagor, his personal representatives or assigns, the senior creditor having a lien, legal or equitable, upon the mortgaged premises, or some part thereof, subsequent to the mortgage, may redeem within five days after the expiration of this 12 months; and each subsequent creditor having a lien in succession, according

to priority of liens, within five days after the time allowed the prior lienholder, respectively, may redeem by paying the amount aforesaid and all liens prior to his own held by the person from whom redemption is made; provided that no creditor shall be entitled to redeem unless within this 12 months he file for record notice of his intention to redeem with the register of deeds of each county where the mortgage is recorded.

[R. L. s. 4481] (9627)

**580.25 REDEMPTION, HOW MADE.** Redemption shall be made as follows.

The person desiring to redeem shall pay to the person holding the right acquired under such sale, or for him to the sheriff who made the sale, or his successor in office, the amount required by law for such redemption, and shall produce to such person or officer:

(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 he claims a right to redeem, certified by the officer in whose custody such docket, record, or files shall be, or the original deed or mortgage, with the certificate of record endorsed thereon;

(2) Any assignment necessary to establish his claim, verified by the affidavit of himself or a subscribing witness thereto, or some person acquainted with the signature of the assignor. If the redemption is under an assignment of a judgment, the assignment shall be filed in the court rendering the judgment, as provided by law, and the person so redeeming shall produce a certified copy thereof and of the record of its filing, and the copy of the docket shall show that the proper entry was made upon the docket;

(3) An affidavit of himself or his agent, showing the amount then actually due on his lien.

Within 24 hours after such redemption is made, the person redeeming shall cause the documents so required to be produced to be filed with the register of deeds, who shall endorse thereon the date and hour of filing, and shall preserve the same in his office for one year thereafter, for which service he shall be entitled to receive \$1.00. If such redemption shall be made at any place other than the county-seat, it shall be sufficient forthwith to deposit such documents in the nearest post-office, addressed to such register, with the postage prepaid.

[R. L. s. 4482] (9628)

**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 him 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, his heirs, personal representatives, or assigns, such certificate shall be recorded within four days after the expiration of the year allowed him 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.

[R. L. s. 4483] (9629)

**580.27 EFFECT OF REDEMPTION.** If redemption is made by the owner of the property sold, his 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 him of the right acquired under such sale, subject to such right of any other person to redeem as provided by law.

[R. L. s. 4484] (9630)

**580.28 FORECLOSURE PENDING ACTION TO SET ASIDE MORTGAGE; 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 fore-

closure 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. He shall, in writing, notify such sheriff that he 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 him 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 him of a certified copy thereof. The remedy herein provided shall be in addition to other remedies now existing.

[R. L. s. 4485] (9631)

**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 policies of insurance procured in renewal of any expiring policy upon mortgaged premises, and may, in case any interest upon any prior or superior mortgage is in default, or any part of the principal shall become due, or amortized instalment which may be in default upon any such prior mortgage, 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 mortgage, 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, his agent or attorney, stating the items and describing the premises, and a copy must be filed for record with the register of deeds.

[1923 c. 355 s. 1; 1927 c. 413] (9632)

**580.30 MORTGAGES TO BE REINSTATED IN CERTAIN CASES.** In any proceeding 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, 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 \$50.00, 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.

[1923 c. 327 s. 1] (9633)