

CHAPTER 580

FORECLOSURE OF REAL ESTATE MORTGAGES BY ADVERTISEMENT

580.01 LIMITATION.

The grantee of a mortgagor stands in no better position than the mortgagor in so far as his ability to acquire a tax title valid against the mortgagee is concerned, but where property was forfeited to the state for delinquent taxes after foreclosure sale at which the mortgagee bid in the premises for full amount of the mortgage debt, the mortgagor's grantee could purchase the state's title because duty to pay delinquent taxes terminated with the foreclosure. *Pulsifer v Paxton*, 212 M 68, 2 NW(2d) 427.

Statute of limitations, payments as tolling. 9 MLR 166.

Under the lien theory of mortgages is the mortgage only a power of sale. 15 MLR 147.

Foreclosure, effect upon subsequent lease or lessee. 21 MLR 610.

580.02 REQUISITES FOR FORECLOSURE.

In the absence of a specific appropriation of payments by the parties, the court will apply them to the unsecured or least secured debts in preference to those secured or more adequately secured. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

Where neither the creditor, nor the debtor, has seasonably exercised his power to apply a payment to one of several debts and where one of the debts that has matured is secured by a mortgage on the homestead, the court, as an exception to the general rule, will apply the payment to such mortgage debt on homestead in preference to an unsecured debt. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

A note taken in renewal of a prior note secured by a mortgage is presumed to have been accepted as conditional payment only, and the burden is upon one who claims that it discharged and extinguished the original note to prove an expressed or implied agreement to that effect. The mere acceptance of a renewal note, even though it recites a settlement or payment, is only conditional, and does not effect an absolute discharge. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

Widow was advised by her attorneys to permit a \$7,000 mortgage to be foreclosed and to acquire the property through the mortgagor rather than to probate the estate. The day before the period of redemption expired an assignee of a mechanic's lien being foreclosed redeemed from the foreclosure and claims title. The widow's attorney had died, and she was absent from the state at the time of redemption. The party making the redemption knew of the widow's mistake. She had not been negligent or careless and had relied on her attorneys to protect. The demurrer to the complaint of the plaintiff is rightfully overruled. The court will not permit unjust enrichment of defendants. *Lee v Construction Service*, 224 M 149, 28 NW(2d) 69.

Covenants of title in mortgages. 12 MLR 34, 56.

Double hazard of a note and mortgage. 16 MLR 123, 134.

Measure of mortgagor's damages for premature foreclosure. 16 MLR 716.

580.03 NOTICE OF SALE; SERVICE ON OCCUPANT.

Sufficiency of notice of mortgage foreclosure. 2 MLR 157.

Length of notice on foreclosure of mortgages. 5 MLR 325.

Double hazard of note and mortgage. 16 MLR 134.

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580.04 REQUISITES OF NOTICE.

Foreclosure, sufficiency of notice. 2 MLR 157.

Double hazard of note and mortgage. 16 MLR 123, 134.

580.06 SALE, HOW AND BY WHOM MADE.

The mortgagee is presumed to know of any unpaid taxes and in her purchase of the property at foreclosure of sale is presumed to adjust the amount of her bid with full knowledge of the tax and other liens. *Pulsifer v Paxton*, 212 M 68, 2 NW(2d) 427.

Power of trustee for bondholders to bid at foreclosure sale. 26 MLR 565.

580.07 POSTPONEMENT.

Minnesota mortgage moratorium. Laws 1933, Chapter 339, and biennial renewals. 20 MLR 73.

580.08 SEPARATE TRACTS.

A sale in one parcel is valid where the property consists of contiguous lots occupied by two buildings and no request is made to sell them separately on foreclosure. *Kleinman v Neubert*, 142 M 424, 172 NW 315.

580.09 FORECLOSURE FOR INSTALMENTS; BY ADVERTISEMENT OR BY ACTION; SALES; DISPOSITION OF PROCEEDS; REDEMPTION.

A receiver appointed under state practice has a lien on the assets of the estate as against any agent of the bankruptcy court in those cases where the receiver's appointment was made more than four months prior to the institution of the bankruptcy proceedings. The state receiver may continue to administer and may close the estate without accounting to the trustee in bankruptcy unless there be a surplus. *Schwartz Bros.* 58 F. Supp. 761.

Statute rendering enforceable a contract provision which was unenforceable when made as impairing the contract obligation. 14 MLR 177.

580.10 SURPLUS.

Where land subject to two mortgages is sold on the first, the lien of the second is transferred from the land to the surplus. The second mortgagee is entitled to the surplus to the extent necessary to satisfy his mortgage. This applies where the state of Minnesota is a junior lienholder under an old age lien. See *Fagan v Peoples Assn.* 55 M 437, 57 NW 142. 1944 OAG 314, April 28, 1943 (521-P-4).

580.11 MORTGAGEE OR ASSIGNEES MAY PURCHASE.

Bad faith in foreclosure and redemption. 1 MLR 458.

580.12 CERTIFICATE OF SALE; RECORD; EFFECT.

Where pursuant to mortgage foreclosure, a sheriff's certificate of sale was filed on May 12, 1941, the period for redemption under Minnesota law expired long before October, 1945, and so far as Minnesota law was concerned title passed to purchaser on date of such expiration. *In re Wagner*, 64 F. Supp. 483.

Failure to record certificate of sale within time designated by statute. 10 MLR 355.

Right of purchaser to crops growing on mortgaged land at time of foreclosure and sale. 15 MLR 717.

Effect of foreclosure upon subsequent lease and lessee. 21 MLR 610.

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580.15 PERPETUATING EVIDENCE OF SALE.

Mortgages, foreclosure, soldiers and sailors civil relief act. 5 MLR 560.

Rights of guarantor holding second mortgage on redeeming from the purchaser at a foreclosure sale under the first mortgage. 9 MLR 164.

Double hazard of note and mortgage. 16 MLR 134.

580.22 INTEREST OF PURCHASER; ATTACHMENT OR JUDGMENT.

A statutory mortgage foreclosure sale of record and fair on its face is not open to attack upon any ground after the statutory limitation has run, and one who has acquired the rights of a mortgagee in possession does not lose those rights by being temporarily or involuntarily dispossessed. *Finley v Erickson*, 122 M 235, 142 NW 198.

580.23 REDEMPTION BY MORTGAGOR.

Notwithstanding the provisions of section 541.17 that no promise not in writing signed by the party to be charged thereby shall be evidence of a new or continuing contract to take a claim out of the operation of the statute of limitations, a defendant may be estopped to set up the statute as a defense by his oral promise before the statute has run that, if plaintiff would wait until after the statute had run, he would make a new arrangement or settlement of plaintiff's claim and that plaintiff would not lose anything by waiting, upon which plaintiff relied and as a consequence waited until after the statute had run before again asserting his claim and bringing suit. *Albachten v Bradley*, 212 M 359, 3 NW(2d) 783.

The period of redemption of land from mortgage foreclosure was not tolled in strict sense by farmer-debtor proceedings for composition and extension of time to pay debts under the bankruptcy act which were instituted before the expiration of the time for redemption, but the time was extended for a period necessary for the purposes of the act. *In re Wagner*, 64 F. Supp. 483.

Purchase of \$3,900 property by mortgagee for \$300. Redemption after period expired. 1 MLR 458.

Redemption after time therefor expires where mortgagee bids in premises for inadequate consideration. 2 MLR 65.

Effect of foreclosure upon subsequent lease and lessee. 21 MLR 611.

Strict foreclosure. 23 MLR 388.

580.24 REDEMPTION BY CREDITOR.

The right of redemption from a real estate mortgage foreclosure sale is given by statute and must be exercised in strict compliance therewith, and this mandate of strict compliance applies to foreclosure by a junior lien holder. *Krahmer v Koch*, 216 M 421, 13 NW(2d) 370.

Constructive trust upon redemption by creditor. 17 MLR 344.

580.25 REDEMPTION, HOW MADE.

See, *Krahmer v Koch*, 216 M 421, 13 NW(2d) 370, noted under section 580.24.

Right to subrogation; separate sureties or joint wrongdoers. 31 MLR 295.

580.26 CERTIFICATE OF REDEMPTION; RECORD.

Protection of an interest in real property acquired by a purchaser in good faith at an execution sale; defects in the title of the judgment debtor. 24 MLR 807.

580.27 EFFECT OF REDEMPTION.

Rights of guarantor holding a second mortgage on redeeming from the purchaser at a foreclosure sale under the first mortgage. 9 MLR 164.

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580.29 MORTGAGE FORECLOSURE BY ADVERTISEMENT

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Covenants of title in mortgages. 12 MLR 55.

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

Liability of senior mortgagee to account to junior mortgagee for rents released to mortgagor. 26 MLR 880.

580.30 MORTGAGES TO BE REINSTATED IN CERTAIN CASES.

Upon a showing that a subsequent encumbrancer has tendered to a prior encumbrancer the entire amount due on a mortgage, together with the costs, disbursements, and attorney's fees required by statute, the court may enjoin foreclosure of the mortgage until the disputed issues in the case are determined. Defendant was the owner of a mortgage covering three tracts of land. One constituted mortgagor's homestead. Plaintiff was the owner of one of the tracts and had an interest in another as a purchaser upon execution sale. It had no interest in the tract constituting the homestead. When upon request by plaintiff for a statement of the amount due on the prior encumbrance defendant demanded payment of the full amount of the mortgage and interest plus costs, disbursements, and attorney's fees and plaintiff tendered the amount so demanded, it became subrogated to all of the rights of defendant in the prior encumbrance, and the trial court was justified in ordering an assignment of the mortgage to the plaintiff upon payment of the amount so tendered. *First Nat'l Bank v Schunk*, 201 M 359, 276 NW 290.