

CHAPTER 580**REAL ESTATE MORTGAGES; FORECLOSURES; ADVERTISEMENT****580.01 LIMITATION**

HISTORY. RS 1851 c 85 s 1; PS 1858 c 75 s 1; GS 1866 c 81 s 1; 1871 c 52; 1873 c 51; 1878 c 53 s 1; GS 1878 c 81 s 1; 1879 c 21 s 1; GS 1894 s 6028; 1903 c 15; RL 1905 s 4457; GS 1913 s 8107; 1953 c 277 s 1.

580.02 REQUISITES FOR FORECLOSURE

HISTORY. RS 1851 c 85 s 2; PS 1858 c 75 s 2; GS 1866 c 81 s 2; 1878 c 53 s 2; GS 1878 c 81 s 2; GS 1894 s 6029; 1903 c 87 s 1; 1905 c 136; RL 1905 s 4458; GS 1913 s 8108.

No one is privy to a judgment whose succession to rights of property affected thereby occurred prior to the commencement of the action in which the judgment was rendered. One is not a bona fide purchaser and entitled to the protection of the recording act, though he paid a valuable consideration and did not have actual notice of a prior unrecorded conveyance from the same grantor, if he had knowledge of facts which ought to have put him on an inquiry that would have led to a knowledge of such conveyance. Where the mortgagor's title is free of outstanding claims and equities, the mortgagee's rights under the mortgage also are free of them. *Henschke v Christian*, 228 M 142, 36 NW(2d) 547.

Where the owner of land omitted the claim of the holder of an unrecorded mortgage from registration proceedings with intent to defraud the mortgagee of his mortgage lien, action by the mortgagee against the owner requesting immediate possession of the note and mortgage or a judgment for their value, that the decree of registration and certificate of title be annulled and canceled insofar as it impaired the lien on the land by virtue of the mortgage, and that the mortgaged land be sold and the proceeds applied to the payment adjudged to be due, constitutes a "direct attack" against the decree of registration and may be maintained. *Burman v Burman*, 230 M 75, 40 NW(2d) 902.

580.03 NOTICE OF SALE; SERVICE ON OCCUPANT

HISTORY. PS 1851 c 85 s 4; PS 1858 c 75 s 4; 1858 c 96 s 1; GS 1866 c 81 s 5; 1867 c 74; 1878 c 53 s 5; GS 1878 c 81 s 5; GS 1894 s 6032; 1897 c 334 s 1; RL 1905 s 4459; GS 1913 s 8111.

When land lying in two or more counties is being foreclosed upon, the mortgage foreclosure advertisement of sale need only be published in the county where part of the land lies and where the sale is to take place. OAG June 26, 1950 (301-C-1).

580.04 REQUISITES OF NOTICE

HISTORY. RS 1851 c 85 s 5; PS 1858 c 75 s 5; GS 1866 c 81 s 6; 1878 c 53 s 6; GS 1878 c 81 s 6; 1883 c 24 s 1; GS 1894 s 6033; 1903 c 87; 1905 c 136; RL 1905 s 4460; GS 1913 s 8112.

580.05 ATTORNEY TO FORECLOSE, RECORD OF POWER

In foreclosure mortgages running to the state a power of attorney is not required. OAG Dec. 26, 1951 (301-C-1).

580.06 SALE, HOW AND BY WHOM MADE

HISTORY. RS 1851 c 85 s 6; PS 1858 c 75 s 6; GS 1866 c 81 s 7; 1878 c 53 s 7; GS 1878 c 81 s 7; GS 1894 s 6034; 1897 c 262; RL 1905 s 4462; GS 1913 s 8127.

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580.07 POSTPONEMENT

HISTORY. RS 1851 c 85 s 7; PS 1858 c 75 s 3; GS 1866 c 81 s 8; 1878 c 53 s 8; GS 1878 c 81 s 8; GS 1894 s 6035; RL 1905 s 4463; GS 1913 s 8128.

580.08 SEPARATE TRACTS

HISTORY. RS 1851 c 58; PS 1858 c 75 s 8; GS 1866 c 81 s 9; 1878 c 53 s 9; GS 1878 c 81 s 9; GS 1894 s 6036; RL 1905 s 4464; GS 1913 s 8129.

580.09 FORECLOSURE FOR INSTALLMENTS; SALES; DISPOSITION OF PROCEEDS; REDEMPTION

HISTORY. RS 1851 c 85 s 3; PS 1858 c 75 s 3; GS 1866 c 81 s 3; 1878 c 53 s 3, 4; GS 1878 c 81 s 3, 4; GS 1894 s 6030, 6031; RL 1905 s 4465; GS 1913 s 8130; 1925 c 280 s 1.

Where a widow under advice of counsel permitted \$40,000 property to be taken over by foreclosure of a \$6,500 mortgage on a promise that the mortgagee would transfer the property to the widow and children after the time for redemption expired and where this was done to by-pass the probaton of the estate and where the owner of a mechanic's lien redeemed from the mortgage by paying the sheriff the amount the property was bid in for, and where the assignee knew of the widow's mistake and attempted to enrich himself unjustly at the widow's expense, she had a right of action against the defendant and the lower court properly overruled defendant's demurrer. *Lee v Construction Service, Inc.*, 224 M 149, 28 NW(2d) 69.

Old age assistance lien when subject to mortgage, which mortgage is foreclosed, will be paid from surplus remaining after payment of debt secured by mortgage and costs of foreclosure if by advertisement. If the foreclosure is by action, the surplus will be paid into court under the provisions of section 561.06, subject to the order of the court. OAG Feb. 4, 1948 (521-P-4).

Mortgages senior to old age assistance liens, together with costs of foreclosure by advertisement, are first to be paid upon foreclosure of the lien. The surplus only is to be paid on the lien. OAG Feb. 4, 1948 (521-P-4).

580.11 MORTGAGEE, ASSIGNEE; PURCHASE

HISTORY. RS 1851 c 85 s 9; PS 1858 c 75 s 9; GS 1866 c 81 s 10; 1878 c 53 s 10; GS 1878 c 81 s 10; GS 1894 s 6037; RL 1905 s 4467; GS 1913 s 8132.

580.12 CERTIFICATE OF SALE; RECORD; EFFECT

HISTORY. 1862 c 19 s 3; GS 1866 c 81 s 11; 1878 c 53 s 11, 12; GS 1878 c 81 s 11, 12; GS 1894 s 6038, 6039; RL 1905 s 4468; GS 1913 s 8133.

580.15 PERPETUATING EVIDENCE OF SALE

HISTORY. RS 1851 c 85 s 14, 15; PS 1858 c 75 s 14, 15; GS 1866 c 81 s 19, 20; 1869 c 67; 1878 c 53 s 19, 20; GS 1878 c 81 s 19, 20; GS 1894 s 6047, 6048; 1895 c 216; RL 1905 s 4472; GS 1913 s 8138; 1941 c 477.

580.16 ENTRY IN RECORD

HISTORY. RS 1851 c 85 s 16; PS 1858 c 75 s 16; GS 1866 c 81 s 13; 1878 c 53 s 21; GS 1878 c 81 s 21; GS 1894 s 6049; RL 1905 s 4473; GS 1913 s 8139.

580.19 CERTIFICATE AS EVIDENCE

HISTORY. 1862 c 19 s 4; GS 1866 c 81 s 12; 1883 c 112 s 1; GS 1878 Vol 2 (1888 Supp) c 81 s 26a; GS 1894 s 6054; 1901 c 374; RL 1905 s 4476; GS 1913 s 8142.

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580.23 REDEMPTION BY MORTGAGOR

HISTORY. RS 1851 c 85 s 11; PS 1858 c 75 s 11; GS 1866 c 81 s 13; 1878 c 53 s 13; GS 1878 c 81 s 13; GS 1894 s 6041; 1899 c 37; RL 1905 s 4480; GS 1913 s 8146.

Where a widow was advised to permit a mortgage to be foreclosed rather than probate her husband's estate, under an agreement that the mortgagee transfer the property to her when the year for redemption expired, and the day before the expiration of the period for redemption an assignee of a mechanic's lien redeemed from the foreclosure, the widow being out of the state, and her attorney having died, the complaint by the widow asking relief, and alleging unjust enrichment of defendant, stated a cause of action. *Lee v Construction Service*, 224 M 149, 28 NW(2d) 69.

580.24 REDEMPTION BY CREDITOR

HISTORY. GS 1866 c 81 s 16; 1878 c 53 s 16; GS 1878 c 81 s 16; GS 1894 s 6044; RL 1905 s 4481; 1909 c 243 s 1; GS 1913 s 8147.

580.26 CERTIFICATE OF REDEMPTION; RECORD

HISTORY. 1862 c 19 s 6; GS 1866 c 81 s 15; 1878 c 53 s 15; GS 1878 c 81 s 15; GS 1894 s 6043; 1901 c 38; RL 1905 s 4483; GS 1913 s 8149.

CHAPTER 581

REAL ESTATE MORTGAGES; FORECLOSURE, ACTION

581.02 APPLICATION, CERTAIN SECTIONS

HISTORY. GS 1866 c 81 s 32; 1876 c 39 s 2; GS 1878 c 81 s 35; GS 1889 c 31 s 1; GS 1894 s 6065; 1897 c 253 s 1; RL 1905 s 4487; GS 1913 s 8153.

581.03 JUDGMENT, TRANSCRIPT

Purchaser of land at mortgage foreclosure sale is charged with rights of parties in possession of the mortgaged land where such rights are plainly visible. *Dozier v Krmpotich*, 227 M 503, 35 NW(2d) 696.

581.05 PURCHASE BY MORTGAGEE

HISTORY. RS 1851 c 85 s 9; PS 1858 c 75 s 9; GS 1866 c 81 s 28; GS 1878 c 81 s 31; GS 1894 s 6061; RL 1905 s 4490; GS 1913 s 8156.

581.06 SURPLUS

Upon foreclosure of a mortgage on land against which there is an old age assistance lien, any surplus remaining after the satisfaction of the mortgage deed must be paid into court to satisfy the order of the court in accordance with section 581.06. OAG Feb. 4, 1948 (521-P-4).

Old age assistance lien when subject to mortgage, which mortgage is foreclosed, will be paid from surplus remaining after payment of debt secured by mortgage and costs of foreclosure if by advertisement. If the foreclosure is by action, the surplus will be paid into court under the provisions of section 561.06, subject to the order of the court. OAG Feb. 4, 1948 (521-P-4).

581.12 STRICT FORECLOSURE

In June 1941, the state, through the department of rural credit, sold certain land on which the initial payment and two instalments were paid. The purchaser failed