

CHAPTER 582

REAL ESTATE MORTGAGES; FORECLOSURE, GENERAL PROVISIONS

- 582.01 Attorney's fees.
- 582.02 Attorney's fees, collection.
- 582.03 Purchaser at foreclosure, execution, or judicial sale may pay taxes, assessments, insurance premiums, or interest.
- 582.04 Homestead included in mortgage; separate sale.
- 582.05 Court to appoint receiver of rents with possession.
- 582.06 Default to be shown.
- 582.07 Receiver to furnish bond.
- 582.08 Possession, entry after filing of bond.
- 582.09 Receiver to file account for approval.
- 582.10 Certain rights and remedies not limited.
- 582.11 Powers and duties of trustees in certain cases.
- 582.12 Court's powers over trusts not limited.
- 582.13 State of Minnesota may be made defendant in certain cases.
- 582.14 Limitation on foreclosure.
- 582.15 Termination of lis pendens.
- 582.16 Presumption of identity.
- 582.17 Action pending.
- 582.18 Construction.
- 582.25 Mortgages; validating foreclosure sales.
- 582.26 Mortgage foreclosure sales by action legalized.
- 582.27 Effective dates.

582.01 ATTORNEY'S FEES.

Subdivision 1. The mortgagor may, in the mortgage, covenant to pay or authorize the mortgagee to retain an attorney's fee in case of foreclosure; but such fees in case of foreclosure by advertisement shall not exceed the following amounts, and any provision for fees in excess thereof shall be void to the extent of the excess:

The original principal amount secured by the mortgage	Date of execution of mortgage		
	Before June 2, 1953	After June 1, 1953 and before June 1, 1971	After May 31, 1971
Less than \$500	\$25	\$50	\$150
\$500-\$1,000	50	75	150
\$1,000-\$5,000	75	125	150
\$5,000-\$10,000	100	175	225
Exceeding \$10,000	200	225 plus \$50 for each additional \$10,000 or major fraction thereof	275 plus \$35 for each additional \$5,000 or major fraction thereof

Subd. 2. The court shall establish the amount of the attorney's fee in case of foreclosure by action.

Subd. 3. If at the time of the commencement of the foreclosure proceedings, all of the items constituting said default were less than 30 days past due, then upon redemption the mortgagor shall not be required to pay the attorney's fee authorized in this section. This subdivision shall apply only to mortgages executed after May 31, 1971.

History: *RL s 4499; 1953 c 454 s 1; 1971 c 833 s 2 (9646)*

582.02 ATTORNEY'S FEES, COLLECTION.

When the mortgage provides for an attorney's fee in case of foreclosure, and an attorney at law of the state is employed to conduct the same, the mortgagee, his

# MINNESOTA STATUTES 1984

9745

REAL ESTATE MORTGAGES; FORECLOSURE, GENERAL PROVISIONS 582.05

heirs, personal representatives or assigns, may, upon foreclosure, collect or retain such fee, but not in excess of the sum provided by section 582.01. When no such attorney is employed, if any sum as or for such fee be included in the amount for which the premises are sold, such sum shall be paid in money by the purchaser to the sheriff before the execution of the certificate of sale, and shall be paid by the sheriff to the mortgagor, or those having his estate in the mortgaged premises.

**History:** *RL s 4500 (9647)*

## **582.03 PURCHASER AT FORECLOSURE, EXECUTION, OR JUDICIAL SALE MAY PAY TAXES, ASSESSMENTS, INSURANCE PREMIUMS, OR INTEREST.**

The purchaser at any sale, upon foreclosure of mortgage or execution or at any judicial sale during the year of redemption, 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 or installment of principal upon any prior or superior mortgage is in default or shall become due during such year of redemption, pay the same, and, in all such cases, the sum so paid, with interest, shall be a part of the sum required to be paid to redeem from such sale. Such payments shall be proved by the affidavit of the purchaser, his agent or attorney, stating the items and describing the premises, which must be filed for record with the county recorder or registrar of titles, and a copy thereof shall be furnished to the sheriff at least ten days before the expiration of the year of redemption.

**History:** *RL s 4501; 1909 c 421; 1913 c 110 s 1; 1927 c 347; 1976 c 181 s 2; 1983 c 99 s 5 (9648)*

## **582.04 HOMESTEAD INCLUDED IN MORTGAGE; SEPARATE SALE.**

In all proceedings to foreclose any mortgage upon real property in this state, if the whole or any part of the homestead of the mortgagor, or of any one claiming under him, as such homestead is defined by the laws of this state, shall be included in the real estate described in such mortgage, the person claiming such homestead may, at any time prior to the foreclosure sale, serve or cause to be served upon the sheriff making such sale a notice of such claim which shall designate and describe with reasonable certainty the real estate so claimed and selected as such homestead, which selection shall include the site of the dwelling and its appurtenances, shall be compact in form and shall be so made as not unreasonably to affect the value of the remaining part, which notice, together with the proof of service thereof, shall be filed for record and recorded in the office of the county recorder or registrar of titles. Upon the service and filing of such notice it shall be the duty of the sheriff, at the time of the sale, to first offer for sale and sell that part of the mortgaged real estate, or so much thereof as is necessary, which is not included in such selected homestead, and thereupon, if the proper purposes of the foreclosure require, he shall offer for sale and shall sell separately that part of the mortgaged real estate included in the selected homestead; provided, that if such homestead claimant shall have, prior to such foreclosure, made a property homestead selection from his real estate, he shall be bound thereby, and cannot change the same for the purposes of such foreclosure.

**History:** *1907 c 389; 1976 c 181 s 2; 1983 c 99 s 6 (9649)*

## **582.05 COURT TO APPOINT RECEIVER OF RENTS WITH POSSESSION.**

On the commencement of proceedings to foreclose, either by action or advertisement, any mortgage on a leasehold estate of more than three years covering urban

# MINNESOTA STATUTES 1984

property, or at any time after such commencement until the expiration of the period of redemption, the owner of any such mortgage or the purchaser at the foreclosure sale, as the case may be, may apply to the district court for the appointment of a receiver to take immediate possession of the mortgaged premises and to hold, maintain, and operate the same and collect the rents and income therefrom, and apply the same in the manner hereinafter specified. The application for such receiver may be included in an action to foreclose the mortgage or may be by separate action and, if by separate action, the only necessary party defendant shall be the owner of the mortgaged leasehold at the time of the commencement of the action.

**History:** 1915 c 305 s 1 (9650)

## 582.06 DEFAULT TO BE SHOWN.

The court shall appoint the receiver on a showing that default has been made in any of the conditions of the mortgage, without any further evidence and without regard to the solvency or insolvency of the person liable for the debt secured by the mortgage. The appointment shall be made without notice on a showing to the court that the danger of termination or forfeiture of the leasehold estate covered by the mortgage is imminent or that waste of the same is being committed, or that the owner of the leasehold cannot be found within the state. The mortgagee may be appointed receiver in the discretion of the court.

**History:** 1915 c 305 s 2 (9651)

## 582.07 RECEIVER TO FURNISH BOND.

Before entering upon his duties, the receiver so appointed shall file in court a bond for the faithful performance of such duties on his part. The bond shall run to the owner of the mortgaged leasehold and shall be in such sum as the court shall determine and with such surety or sureties as shall be approved by the court.

**History:** 1915 c 305 s 3 (9652)

## 582.08 POSSESSION, ENTRY AFTER FILING OF BOND.

After filing the bond mentioned in section 582.07, the receiver shall enter into possession of the mortgaged premises and collect all the rents and income therefrom, and shall apply the same to the payment of the expenses of the receivership and to the payment of all sums of money necessary or proper to preserve and protect the leasehold estate, and to maintain and operate the mortgaged premises, and shall pay the surplus, if any, to the owner of the mortgaged leasehold at the termination of the receivership. The receiver may make any or all such payments on his own motion or may make the same in pursuance of an order of the court. Such expenses shall include reasonable attorneys' fees and receiver's fees to be fixed by the court.

**History:** 1915 c 305 s 4 (9653)

## 582.09 RECEIVER TO FILE ACCOUNT FOR APPROVAL.

At the termination of the receivership for any cause, the receiver shall file his account in such court. On the approval and confirmation of the account the receiver shall dispose of the funds in his hands in accordance with the order of the court, and shall thereupon be entitled to a discharge by order of court, freeing and releasing him from all further liability on account of such receivership.

**History:** 1915 c 305 s 5 (9654)

# MINNESOTA STATUTES 1984

9747

REAL ESTATE MORTGAGES; FORECLOSURE, GENERAL PROVISIONS 582.12

## 582.10 CERTAIN RIGHTS AND REMEDIES NOT LIMITED.

The provisions of sections 582.05 to 582.09 shall in no manner detract from or limit the rights and remedies of the mortgagor or the mortgagee provided by law.

**History:** 1915 c 305 s 6 (9655)

## 582.11 POWERS AND DUTIES OF TRUSTEES IN CERTAIN CASES.

When a mortgage made or assigned to a trustee or trust deed on any real property or any real and personal property located in this state has been heretofore or shall hereafter be foreclosed and bid in on the foreclosure by a trustee for the holders of the bonds or notes secured by the mortgage or trust deed, or for the holders of certificates or other evidences of equitable interest, in the mortgage or trust deed, or when a mortgagor after the mortgage has been executed and delivered, but not before nor as a part of the mortgage transaction, conveys directly to the mortgage trustee, thereby eliminating his title, the trustee may at any time petition the district court of the county in which the property, or any portion of it, is situated for instructions in the administration of the trust. Upon the filing of the petition, the court shall make an order fixing a time and place for hearing it, unless hearing has been waived, in writing, by the beneficiaries of the trust. Notice of the hearing shall be given by publishing a copy of the order one time in a legal newspaper of the county at least 20 days before the date of the hearing, and by mailing a copy of it to each known party in interest then in being whose address is known, at his last known address, at least ten days before the date of the hearing, or in any other manner the court orders. If the court deems further notice necessary, it shall be given as specified in the order. Upon the hearing the court shall make such order as it deems appropriate, including an order to sell, mortgage, or lease the property, or any part of it, in the manner and upon the terms as the court prescribes. In the case of a sale, the court, in its discretion, may authorize the trustee to sell at private sale or may direct the sheriff of the county to offer the property for sale at public auction and sell it to the highest bidder for cash. Any sale of property made at public auction shall be reported to the court for confirmation and be confirmed by the court before it is effective and valid. Notice of hearing on the confirmation shall be given to all parties in interest who have appeared in the proceedings. Upon confirmation, the sheriff shall make, execute, and deliver, subject to the terms and conditions the court imposes, a good and sufficient instrument of conveyance, assignment, and transfer. No confirmation of a private sale, mortgage, or lease shall be required. The order of confirmation in the case of a sale at public auction, and the order authorizing a private sale, mortgage, or lease, shall be final and conclusive as to all matters determined in it. It shall be binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal may be taken from the order by any party in interest within 30 days from its entry, by filing notice of appeal with the clerk of the district court, who shall mail a copy of the notice to each adverse party who has appeared of record.

**History:** 1937 c 108 s 1; 1983 c 247 s 194 (9655-5)

## 582.12 COURT'S POWERS OVER TRUSTS NOT LIMITED.

Nothing in section 582.11 shall be deemed to limit or abridge the power or jurisdiction of the district court over trusts and trustees, or to limit the authority conferred upon any trustee by any mortgage, trust deed, or other instrument.

**History:** 1937 c 108 s 2 (9655-6)

# MINNESOTA STATUTES 1984

## **582.13 STATE OF MINNESOTA MAY BE MADE DEFENDANT IN CERTAIN CASES.**

In all cases not otherwise provided for, the consent of the state of Minnesota is given to be named a party in any suit which is now pending or which may hereafter be brought in any State Court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real estate or personal property, for the purpose of securing an adjudication touching any mortgage, or other lien the state of Minnesota may have or claim on the real estate or personal property involved, or to determine the boundary line between any real property of the state and real property contiguous thereto, provided, that this shall not be deemed to supersede any express provision of law relating to actions to which the state may be made a party, nor to relieve any person from complying with any requirement of such laws.

*History: 1943 c 134 s 1; 1945 c 2 s 1*

## **582.14 LIMITATION ON FORECLOSURE.**

No action or proceeding to foreclose a real estate mortgage executed prior to November 1, 1909, shall be maintained after January 1, 1946, unless prior to said date the owner of said mortgage shall have filed in the office of the county recorder of the county in which is located the real estate covered thereby, a notice setting forth the name of the claimant, a description of said real estate and of said mortgage including the volume and page at which it is of record and a statement of the amount claimed to be due thereon. Such notices may be discharged in the same manner as notices of lis pendens, and, so discharged, shall, together with all information included therein, cease to constitute either actual or constructive notice.

*History: 1945 c 363 s 1; 1947 c 392 s 1; 1976 c 181 s 2*

## **582.15 TERMINATION OF LIS PENDENS.**

Notice of lis pendens recorded prior to January 1, 1936, shall cease and terminate on and after January 1, 1946.

*History: 1945 c 363 s 2*

## **582.16 PRESUMPTION OF IDENTITY.**

The presumption of identity arising from identity or substantial identity of names of a grantee and of a succeeding grantor in a chain of title, shall extend to those cases where in one instrument the party is designated by initials which correspond with the name appearing in another instrument.

*History: 1945 c 363 s 3*

## **582.17 ACTION PENDING.**

Nothing contained in sections 582.14 to 582.18 shall apply to any action or proceeding pending at the time of the passage of Laws 1945, Chapter 363, or commenced prior to January 1, 1946.

*History: 1945 c 363 s 4*

## **582.18 CONSTRUCTION.**

Sections 582.14 to 582.18 shall be liberally construed for the purpose of ascertaining marketability of title as between vendors and purchasers.

*History: 1945 c 363 s 5*

# MINNESOTA STATUTES 1984

9749

REAL ESTATE MORTGAGES; FORECLOSURE, GENERAL PROVISIONS 582.25

## 582.25 MORTGAGES; VALIDATING FORECLOSURE SALES.

Every mortgage foreclosure sale by advertisement in this state before the date specified in clause (A) of section 582.27, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the county recorder or registered with the registrar of titles of the proper county of this state, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against any or all of the following objections:

(1) That the power of attorney, recorded or filed in the proper office prior to the date specified in section 582.27 to foreclose the mortgage, provided for by section 580.05:

- (a) Did not definitely describe and identify the mortgage,
- (b) Did not definitely describe and identify the mortgage, but instead described another mortgage between the same parties,
- (c) Did not have the corporate seal affixed thereto, if executed by a corporation,
- (d) Had not been executed and recorded or filed prior to sale, or had been executed prior to, but not recorded or filed until after such sale,
- (e) Was executed subsequent to the date of the printed notice of sale or subsequent to the date of the first publication of such notice;

(2) That no power of attorney to foreclose such mortgage as provided in section 580.05, was ever given, or recorded, or registered, when sale was made in this state prior to the date specified in section 582.27;

(3) That the notice of sale:

(a) Was published only three, four or five times, or that it was published six times but not for six weeks prior to the date of sale,

(b) Properly described the property to be sold in one or more of the publications thereof but failed to do so in the other publications thereof, the correct description having been contained in the copy of said notice served on the occupant of the premises,

(c) Correctly stated the date of the month and hour and place of sale but named a day of the week which did not fall on the date given for such sale, or failed to state or state correctly the year of such sale,

(d) Correctly described the real estate but omitted the county and state in which said real estate is located,

(e) Correctly described the land by government subdivision, township and range, but described it as being in a county other than that in which said mortgage foreclosure proceedings were pending, and other than that in which said government subdivision was actually located,

(f) Did not state the amount due or failed to state the correct amount due or claimed to be due,

(g) Incorrectly stated the municipal status of the place where the sale was to occur,

(h) In one or more of the publications thereof, or in the notice served on the occupant or occupants designated either a place or a time of sale other than that stated in the certificate of sale,

(i) Failed to state the names of one or more of the assignees of the mortgage and described the subscriber thereof as mortgagee instead of assignee,

(j) Failed to state or incorrectly stated the name of the mortgagor, the mortgagee, or assignee of mortgagee,

# MINNESOTA STATUTES 1984

(k) Was not served upon persons whose possession of the mortgaged premises was otherwise than by their personal presence thereon, if a return or affidavit was recorded or filed as a part of the foreclosure record that at a date at least four weeks prior to the sale the mortgaged premises were vacant and unoccupied,

(l) Was not served upon all of the parties in possession of the mortgaged premises, provided it was served upon one or more of such parties,

(m) Was not served upon the persons in possession of the mortgaged premises, if, at least two weeks before the sale was actually made, a copy of the notice was served upon the owner in the manner provided by law for service upon the occupants, or the owner received actual notice of the proposed sale,

(n) Gave the correct description at length, and an incorrect description by abbreviation or figures set off by the parentheses, or vice versa,

(o) Was served personally upon the occupants of the premises as such, but said service was less than four weeks prior to the appointed time of sale,

(p) Did not state the original principal amount secured, or failed to state the correct original principal amount secured;

(4) That distinct and separate parcels of land were sold together as one parcel and to one bidder for one bid for the whole as one parcel;

(5) That no authenticated copy of the order appointing, or letters issued to a foreign representative of the estate of the mortgagee or assignee, was properly filed or recorded, provided such order or letters have been filed or recorded in the proper office prior to the date specified in section 582.27;

(6) That every mortgage foreclosure sale by advertisement by a representative appointed by a court of competent jurisdiction in another state or county in which before sale an authenticated copy of his letters or other record of his authority has been filed for record in the office of the county recorder of the proper county but no certificate was filed and recorded therewith showing that said letters or other record of his authority were still in force, is hereby legalized and made valid and effective to all intents and purposes notwithstanding such omission;

(7) (a) That said mortgage was assigned by a decree of a probate court in which decree the mortgage was not specifically or sufficiently described,

(b) That the mortgage foreclosed had been assigned by the final decree of the probate court to the heirs, devisees, or legatees of the deceased mortgagee, or his assigns, and subsequent thereto and before the representative of the estate had been discharged by order of the probate court, the representative had assigned the mortgage to one of the heirs, devisees, or legatees named in such final decree, and such assignment placed on record and the foreclosure proceedings conducted in the name of such assignee and without any assignment of the mortgage from the heirs, devisees, or legatees named in such final decree, and the mortgaged premises bid in at the sale by such assignee, and the sheriff's certificate of sale, with accompanying affidavits recorded in the office of the county recorder of the proper county,

(c) That a mortgage owned by joint tenants or tenants in common was foreclosed by only one tenant;

(8) That the sheriff's certificate of sale or the accompanying affidavits and return of service were not executed, filed or recorded within 20 days after the date of sale, but have been executed and filed or recorded prior to the date specified in section 582.27;

(9) That the year, or the month, or the day, or the hour of the sale is omitted or incorrectly or insufficiently stated in the notice of sale or the sheriff's certificate of sale;

# MINNESOTA STATUTES 1984

9751

REAL ESTATE MORTGAGES; FORECLOSURE, GENERAL PROVISIONS 582.25

(10) (a) That prior to the foreclosure no registration tax was paid on the mortgage, provided such tax had been paid prior to the date specified in section 582.27;

(b) That an insufficient registration tax has been paid on the mortgage;

(11) That the date of the mortgage or any assignment thereof or the date, the month, the day, hour, book, and page, or document number of the record or filing of the mortgage or any assignment thereof, in the office of the county recorder or registrar of titles is omitted or incorrectly or insufficiently stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments;

(12) That the notice of mortgage foreclosure sale or sheriff's certificate of sale designated the place of sale as the office of a county official located in the court house of the county when such office was not located in such court house;

(13) That no notice of the pendency of the proceedings to enforce or foreclose the mortgage as provided in section 508.57, was filed with the registrar of titles or no memorial thereof was entered on the register at the time of or prior to the commencement of such proceedings; or that when required by section 508.57, the notice of mortgage foreclosure sale failed to state the fact of registration;

(14) That the power of attorney to foreclose or the notice of sale was signed by the person who was the representative of an estate, but failed to state or correctly state his representative capacity;

(15) That the complete description of the property foreclosed was not set forth in the sheriff's certificate of sale, if said certificate correctly refers to the mortgage by book and page numbers or document number and date of filing and the premises are accurately described in the printed notice of sale annexed to said foreclosure sale record containing said sheriff's certificate of sale;

(16) That the date of recording of the mortgage was improperly stated in the sheriff's certificate of mortgage foreclosure sale, the mortgage being otherwise properly described in said sheriff's certificate of mortgage foreclosure sale and said certificate of mortgage foreclosure sale further referring to the printed notice of mortgage foreclosure sale attached to said sheriff's certificate of mortgage foreclosure sale in which printed notice the mortgage and its recording was properly described;

(17) That prior to the first publication of the notice of sale in foreclosure of a mortgage by advertisement, an action or proceeding had been instituted for the foreclosure of said mortgage or the recovery of the debt secured thereby and such action or proceeding had not been discontinued;

(18) That at the time and place of sale the sheriff considered and accepted a bid submitted to him prior to the date of the sale by the owner of the mortgage and sold the mortgaged premises for the amount of such bid, no other bid having been submitted, and no one representing the owner of the mortgage being present at the time and place of sale;

(19) That such sale was postponed by the sheriff to a date or time subsequent to the one specified in the notice of sale but there was no publication or posting of a notice of such postponement;

(20) That there was not recorded with letters or other record of authority issued to a representative appointed by a court of competent jurisdiction in another state or county, a certificate that said letters or other record of authority were still in force and effect;

(21) That the sheriff's affidavit of sale correctly stated in words the sum for which said premises were bid in and purchased by the mortgagee, but incorrectly stated the same in figures immediately following the correct amount in words.

**History:** 1976 c 148 s 1; 1976 c 181 s 2

# MINNESOTA STATUTES 1984

## 582.26 MORTGAGE FORECLOSURE SALES BY ACTION LEGALIZED.

In all mortgage foreclosure sales by action wherein, prior to the date specified in section 582.27, subdivision 2, the report of sale:

(1) Has been confirmed by order filed in the action and a certificate of sale was thereafter executed in proper form but not recorded or filed within 20 days thereafter such certificate and the later record thereof are hereby legalized with the same effect as if such certificate had been executed, acknowledged, and recorded or filed within such 20 days;

(2) Was made and presented to the court and the sale confirmed by an order filed in the action, but the report was not filed with the clerk until after the filing therein of the order of confirmation, and in which the certificate of sale was executed in proper form but recorded more than 20 days after such confirmation, but within one year from the date of sale, such certificate and the record thereof and the subsequently filed report of sale are hereby legalized with the same effect as if such certificate had been executed, acknowledged and recorded within such 20 days and as if such report of sale had been filed in the action at the time of filing the order of confirmation.

**History:** 1976 c 148 s 2

## 582.27 EFFECTIVE DATES.

Subdivision 1. The following schedule specifies the dates to be applied to the provisions of section 582.25:

(A) As to the general provision of section 582.25, May 1, 1978;

(B) As to clause (1), May 22, 1979;

(C) As to clause (2), January 1, 1968;

(D) As to clause (5), May 22, 1979;

(E) As to clause (8), May 22, 1979;

(F) As to clause (10) (a), May 22, 1979.

Subd. 2. The date of the report of sale to which section 582.26 applies is May 22, 1979.

Subd. 3. The provisions of sections 582.25 to 582.27 shall not affect any action or proceeding pending on August 1, 1979 or which shall be commenced before February 1, 1980, in any of the courts of the state, involving the validity of such foreclosure.

**History:** 1976 c 148 s 3; 1979 c 133 s 1