

CHAPTER 580

MORTGAGES; FORECLOSURE BY ADVERTISEMENT

580.021	FORECLOSURE PREVENTION COUNSELING.	580.042	FORECLOSURE ADVICE NOTICE TO TENANT.
580.025	FORECLOSURE DATA.	580.07	POSTPONEMENT.
580.04	REQUISITES OF NOTICE.	580.15	PERPETUATING EVIDENCE OF SALE.
580.041	FORECLOSURE ADVICE NOTICE TO OWNERS.		

580.021 FORECLOSURE PREVENTION COUNSELING.

Subdivision 1. **Applicability.** This section applies to foreclosure of mortgages by advertisement under this chapter and foreclosure of mortgages by action under chapter 581 on property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residency when the notice of pendency under section 580.032 or the lis pendens for a foreclosure under chapter 581 is recorded.

Subd. 2. **Requirement to provide notice of opportunity for counseling.** Before the notice of pendency under section 580.032, subdivision 3, or the lis pendens for a foreclosure under chapter 581 is recorded, a party foreclosing a mortgage must provide to the mortgagor information contained in a form prescribed in section 580.022, subdivision 1, that:

- (1) foreclosure prevention counseling services provided by an authorized foreclosure prevention counseling agency are available; and
- (2) the party will transmit the homeowner's name, address, and telephone number to an approved foreclosure prevention agency.

The notices required by this subdivision may be provided concurrently with a written notice of default.

For the purposes of this section, an "authorized foreclosure prevention counseling agency" or "counseling agency" is a government agency or a nonprofit agency funded, all or in part, for foreclosure prevention services, by the Minnesota Housing Finance Agency or the United States Department of Housing and Urban Development, or otherwise approved by the United States Department of Housing and Urban Development to provide foreclosure prevention counseling services.

[For text of subds 3 and 4, see M.S.2008]

History: 2009 c 123 s 5; 2009 c 130 s 3,4

580.025 FORECLOSURE DATA.

Subdivision 1. **Applicability.** This section applies to foreclosure of mortgages under this chapter on property consisting of one to four family dwelling units.

Subd. 2. **Data required.** The notice of pendency required by section 580.032, subdivision 3; the notice of sale required by section 580.04; and the certificate of sale required by section 580.12 shall include the following information to the best of the knowledge of the party foreclosing the mortgage:

- (1) the physical street address, city, and zip code of the mortgaged premises;
- (2) the name of the transaction agent, residential mortgage servicer, and the lender or broker, as defined in section 58.02, if the person holding the mortgage is a transaction agent as defined in section 58.02, subdivision 30, or the name of the residential mortgage servicer and the lender or broker, as defined in section 58.02, if the person holding the mortgage is not a transaction agent as defined in section 58.02, subdivision 30;
- (3) the tax parcel identification number of the mortgaged premises;

(4) if stated on the mortgage, the transaction agent's mortgage identification number; and

(5) if stated on the mortgage, the name of the residential mortgage originator as defined in section 58.02.

No liability shall accrue to the party foreclosing the mortgage or the party's attorney for de minimis, good faith, or commercially reasonable errors in this information. The omission of all or some of the information required by this section from the notice shall not invalidate the foreclosure of the mortgage.

History: 2009 c 130 s 5

580.04 REQUISITES OF NOTICE.

(a) Each notice shall specify or contain:

(1) the name of the mortgagor, the mortgagee, each assignee of the mortgage, if any, and the original or maximum principal amount secured by the mortgage;

(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 on the mortgage on the date of the notice;

(4) a description of the mortgaged premises, conforming substantially to that contained in the mortgage, and the commonly used street address of the mortgaged premises;

(5) the time and place of sale;

(6) the time allowed by law for redemption by the mortgagor, the mortgagor's personal representatives or assigns; and

(7) for mortgaged premises described in section 582.032, subdivision 1, the following statement in capital letters: "THE TIME ALLOWED BY LAW FOR REDEMPTION BY THE MORTGAGOR, THE MORTGAGOR'S PERSONAL REPRESENTATIVES OR ASSIGNS, MAY BE REDUCED TO FIVE WEEKS IF A JUDICIAL ORDER IS ENTERED UNDER MINNESOTA STATUTES, SECTION 582.032, DETERMINING, AMONG OTHER THINGS, THAT THE MORTGAGED PREMISES ARE IMPROVED WITH A RESIDENTIAL DWELLING OF LESS THAN FIVE UNITS, ARE NOT PROPERTY USED IN AGRICULTURAL PRODUCTION, AND ARE ABANDONED."

(b) If the real estate is an owner-occupied, single-family dwelling, the notice must also specify the date on or before which the mortgagor must vacate the property if the mortgage is not reinstated under section 580.30 or the property redeemed under section 580.23. The notice must state that the time to vacate the property is 11:59 p.m. on the specified date.

History: 2009 c 123 s 6; 2009 c 130 s 6

580.041 FORECLOSURE ADVICE NOTICE TO OWNERS.

Subd. 1a. **Applicability.** This section applies to foreclosure of mortgages by advertisement under this chapter and foreclosure of mortgages by action under chapter 581 on property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residency when the notice of pendency under section 580.032 or the lis pendens for a foreclosure under chapter 581 is recorded.

[For text of subds 1b to 4, see M.S.2008]

History: 2009 c 123 s 7; 2009 c 130 s 7

580.042 FORECLOSURE ADVICE NOTICE TO TENANT.

Subdivision 1. **Applicability.** This section applies to foreclosure of mortgages by advertisement under this chapter and foreclosure of mortgages by action under chapter 581 on property consisting of one to four family dwelling units, one or more of which are occupied by a tenant as a residence.

[For text of subs 2 to 5, see M.S.2008]

History: 2009 c 123 s 8; 2009 c 130 s 8

580.07 POSTPONEMENT.

Subdivision 1. **Postponement by mortgagee.** (a) The sale may be postponed, from time to time, by the party conducting the foreclosure. The party requesting the postponement must, at the party's expense:

(1) publish, only once, a notice of the postponement and the rescheduled date of the sale, if known, as soon as practicable, in the newspaper in which the notice under section 580.03 was published; and

(2) send by first class mail to the occupant, postmarked within three business days of the postponed sale, notice:

(i) of the postponement; and

(ii) if known, of the rescheduled date of the sale and the date on or before which the mortgagor must vacate the property if the sheriff's sale is not further postponed, the mortgage is not reinstated under section 580.30, the property is not redeemed under section 580.23, or the redemption period is not reduced under section 582.032. The notice must state that the time to vacate the property is 11:59 p.m. on the specified date.

(b) If the rescheduled date of the sale is not known at the time of the initial publication and notice to the occupant of postponement, the foreclosing party must, at its expense if and when a new date of sale is scheduled:

(1) publish, only once, notice of the rescheduled date of the sale, as soon as practicable, in the newspaper in which the notice under section 580.03 and the notice of postponement under paragraph (a) was published; and

(2) send by first class mail to the occupant, postmarked within ten days of the rescheduled sale, notice:

(i) of the date of the rescheduled sale; and

(ii) of the date on or before which the mortgagor must vacate the property if the mortgage is not reinstated under section 580.30 or the property redeemed under section 580.23. The notice must state that the time to vacate the property is 11:59 p.m. on the specified date.

Subd. 2. **Postponement by mortgagor or owner.** (a) If all or a part of the property to be sold is classified as homestead under section 273.124 and contains one to four dwelling units, the mortgagor or owner may postpone the sale to the first date that is not a Saturday, Sunday, or legal holiday and is five months after the originally scheduled date of sale in the manner provided in this subdivision. To postpone a foreclosure sale pursuant to this subdivision, at any time after the first publication of the notice of mortgage foreclosure sale under section 580.03 but at least 15 days prior to the scheduled sale date specified in that notice, the mortgagor shall: (1) execute a sworn affidavit in the form set forth in subdivision 3, (2) record the affidavit in the office of each county recorder and registrar of titles where the mortgage was recorded, and (3) file with the sheriff conducting the sale and deliver to the attorney foreclosing the mortgage a copy of the recorded affidavit, showing the date and office in which the affidavit was recorded. Recording of the affidavit and postponement of the foreclosure sale pursuant to this subdivision shall automatically reduce the mortgagor's

redemption period under section 580.23 to five weeks. The postponement of a foreclosure sale pursuant to this subdivision does not require any change in the contents of the notice of sale, service of the notice of sale if the occupant was served with the notice of sale prior to postponement under this subdivision, or publication of the notice of sale if publication was commenced prior to postponement under this subdivision, notwithstanding the service and publication time periods specified in section 580.03, but the sheriff's certificate of sale shall indicate the actual date of the foreclosure sale and the actual length of the mortgagor's redemption period. No notice of postponement need be published. An affidavit complying with subdivision 3 shall be prima facie evidence of the facts stated therein, and shall be entitled to be recorded. The right to postpone a foreclosure sale pursuant to this subdivision may be exercised only once, regardless whether the mortgagor reinstates the mortgage prior to the postponed mortgage foreclosure sale.

(b) If the automatic stay under United States Code, title 11, section 362, applies to the mortgage foreclosure after a mortgagor or owner requests postponement of the sheriff's sale under this section, then when the automatic stay is no longer applicable, the mortgagor's or owner's election to shorten the redemption period to five weeks under this section remains applicable to the mortgage foreclosure.

Subd. 3. **Affidavit form.** The affidavit referred to in subdivision 2 shall be in substantially the following form and shall contain all of the following information.

STATE OF _____

COUNTY OF _____

_____ (whether one or more, "Owner"),
being first duly sworn on oath, states as follows:

1. (He is) (She is) (They are) the owner(s) or mortgagor(s) of the real property (the "Property") situated in _____ (Name of) County, Minnesota, legally described in the attached published Notice of Mortgage Foreclosure Sale (the "Notice"), and make this affidavit for the purpose of postponing the foreclosure sale of the Property pursuant to Minnesota Statutes, section 580.07, subdivision 2, for five months from the date scheduled in the attached Notice.

2. The Property is classified as homestead under Minnesota Statutes, section 273.124, is occupied by Owner as a homestead, and is improved with not more than four dwelling units.

3. Owner has elected to shorten Owner's redemption period from any foreclosure sale of the Property to five weeks in exchange for the postponement of the foreclosure sale for five months.

_____ (signature(s) of owner)

Signed and sworn to (or affirmed) before me on _____ (date) by _____
(name(s) of person(s) making statement).

_____ (signature of notary public)

Notary Public

History: 2009 c 78 art 8 s 21; 2009 c 130 s 9

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 the printer's 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 that person's 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;

(4) an affidavit by the person foreclosing the mortgage, or that person's attorney, or someone having knowledge of the facts, setting forth the fact of service of notice of sale upon the secretary of the Treasury of the United States or the secretary's delegate in accordance with the provisions of Section 7425 of the Internal Revenue Code of 1954 as amended by Section 109 of the Federal Tax Lien Act of 1966, and also setting forth the fact of service of notice of sale upon the commissioner of revenue of the state of Minnesota in accordance with the provisions of section 270C.63, subdivision 11. Any such affidavit recorded prior to May 16, 1967 shall be effective as prima facie evidence of the facts therein contained as though recorded subsequent to May 16, 1967;

(5) an affidavit by the person foreclosing the mortgage, or that person's attorney, or someone having knowledge of the facts, setting forth the names of the persons to whom a notice of sale was mailed as provided by section 580.032; and

(6) one or more affidavits by the person foreclosing the mortgage, or that person's attorney or a person having knowledge of the facts, stating:

(i) whether section 580.021, 580.04, 580.041, 580.042, 582.039, 582.041, or 582.042 applies to the foreclosure proceedings; and

(ii) if any or all of those sections apply, that all notices required under those sections have been provided.

Such affidavits and returns shall be recorded by the county recorder 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 recorded for the purpose of complying with the provisions of the Servicemembers Civil Relief Act, and may be made and recorded at any time subsequent to the date of the mortgage foreclosure sale.

History: 2009 c 130 s 10