

## CHAPTER 582

### MORTGAGES; FORECLOSURE, GENERAL PROVISIONS

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#### 582.01 ATTORNEY'S FEES.

Subdivision 1. **Contractual fees.** 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<br>amount secured by the<br>mortgage | Date of execution of mortgage |                                                                        |                                                                       |
|-------------------------------------------------------------|-------------------------------|------------------------------------------------------------------------|-----------------------------------------------------------------------|
|                                                             | Before June 2, 1953           | After June 1, 1953 and<br>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                                                                    | 275                                                                   |
|                                                             |                               | plus \$50 for each<br>additional \$10,000 or<br>major fraction thereof | plus \$35 for each<br>additional \$5,000 or<br>major fraction thereof |

Subd. 1a. **Foreclosure by advertisement.** Notwithstanding subdivision 1 to the contrary, the minimum fee for foreclosure by advertisement of mortgages executed after July 31, 1992, is \$500.

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

Subd. 3. **When default less than 30 days.** 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:** (9646) *RL s 4499; 1953 c 454 s 1; 1971 c 833 s 2; 1992 c 463 s 34*

## **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 or the mortgagee's 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 the mortgagor's estate in the mortgaged premises.

**History:** (9647) *RL s 4500; 1986 c 444*

## **582.03 PURCHASER MAY PAY TAXES AND OTHER EXPENSES DUE.**

Subdivision 1. **Allowable costs collectable upon redemption.** The holder of any sheriff's certificate of sale, from a foreclosure by advertisement or action of a mortgage or lien or execution, or the holder of any certificate of redemption as a junior creditor during the period of redemption, may pay and claim the following on redemption: any taxes or assessments on which any penalty would otherwise accrue, and any costs of a hazard insurance policy for the holder's interest in the mortgaged premises incurred for the period of holding the sheriff's certificate, any costs incurred when an order to reduce a mortgagor's redemption period under section 582.032 is entered, any fees paid to the county recorder, registrar of titles, or sheriff to obtain or record the certificates of sale or redemption or notices of intention to redeem, any reasonable fees paid to licensed real estate brokers for broker price opinions or to licensed appraisers for appraisals, any deed tax paid to file a certificate of redemption, reasonable attorney fees incurred after the foreclosure sale not to exceed one-half of the amount authorized by section 582.01, any costs incurred under section 582.031, and any interest or installment of principal upon any prior or superior mortgage, lien, or contract for deed in default or that becomes due during the period of redemption. In all such cases, the costs so paid and claimed due, with interest, shall be a part of

the sum required to be paid to redeem from such sale. No other costs, fees, interest, or other amount may be added to the amount necessary to redeem.

Subd. 2. **Affidavit of allowable costs.** Any payments made and claimed due under subdivision 1 shall be proved by the affidavit of the holder of the sheriff's certificate or its agent or attorney, itemizing each of the allowable costs and describing the premises. The affidavit must be filed with the sheriff of the county in which the sale was held at any time prior to expiration of the mortgagor's redemption period. Upon written request by the sheriff, the holder of the sheriff's certificate or certificate of redemption shall provide an affidavit of allowable costs to the sheriff within seven days of the date of the request by the sheriff. If the mortgagor does not redeem within seven days after the affidavit is filed, the holder of the sheriff's certificate may file a supplemental affidavit if additional allowable costs are incurred during the redemption period. If the holder of the sheriff's certificate or certificate of redemption fails to respond to the sheriff's request within seven days, the sheriff may calculate a redemption amount pursuant to section 580.23, subdivision 1, and issue a certificate of redemption for that amount. If the time allowed to redeem is less than seven days from the expiration of the redemption period, the sheriff shall make a reasonable effort to request the affidavit of allowable costs in writing from the holder of the sheriff's certificate, its agent, or attorney before issuing a certificate of redemption. If the affidavit of allowable costs is not provided more than one business day before the expiration of the redemption period, at any time one business day or less before the expiration of the redemption period, the sheriff may calculate a redemption amount pursuant to section 580.23, subdivision 1, and issue a certificate of redemption for that amount. The amount calculated by the sheriff, absent malfeasance by the sheriff, binds the holder of the sheriff's certificate even if the amount calculated by the sheriff is less than the actual amount due.

Subd. 3. **Penalty for excessive costs.** At any time within one year after the expiration of the mortgagor's redemption period, the redeeming party, heirs, or assigns may recover from the holder of the sheriff's certificate three times the amount of any sums declared as costs or disbursements on the affidavit of allowable costs but not actually paid by the holder, or three times the amount of any sums determined to exceed a reasonable cost for the declared item where the excess has been retained by the lender, unless the disputed amounts are paid to the redeeming party, heirs, or assigns prior to entry of judgment.

**History:** (9648) *RL s 4501; 1909 c 421; 1913 c 110 s 1; 1927 c 347; 1976 c 181 s 2; 1983 c 99 s 5; 1986 c 444; 1989 c 328 art 3 s 11; 2008 c 341 art 5 s 21*

## **582.031 LIMITED RIGHT OF ENTRY; DUTY TO ENTER AND PROTECT PREMISES.**

Subdivision 1. **Right of entry.** (a) If premises described in a mortgage or sheriff's certificate are vacant or unoccupied, the holder of the mortgage or sheriff's certificate or the holder's agents and contractors may enter upon the premises to protect the premises from waste and trespass, until

the holder of the mortgage or sheriff's certificate receives notice that the premises are occupied. The holder of the mortgage or sheriff's certificate does not become a mortgagee in possession by taking actions authorized or required under this section. An affidavit of the sheriff, the building or housing regulatory authority of a municipality in which the property is located, the holder of the mortgage or sheriff's certificate, or a person acting on behalf of the holder, describing the premises and stating that the same are vacant or unoccupied, is prima facie evidence of the facts stated in the affidavit and is entitled to be recorded in the office of the county recorder or the registrar of titles in the county where the premises are located, if it contains a legal description of the premises.

(b) If the holder of a sheriff's certificate knows that there is prima facie evidence of abandonment of the property, as described in section 582.032, subdivision 7, clauses (1) to (6), the holder or the holder's agents:

(1) shall enter the premises and make reasonable periodic inspections, install or change the locks on all doors, install locks on all windows that do not have locks, and ensure that any existing window locks are functioning properly; and

(2) may, to protect the premises from waste, trespass, or falling below minimum community standards for public safety and sanitation, enter the premises and board windows, doors, and other openings; install and operate an alarm system; and otherwise prevent or minimize damage to the premises from the elements, vandalism, trespass, or other illegal activity.

(c) Upon an installation or change of locks as required by this section, the holder of a sheriff's certificate must deliver a key to the premises to the mortgagor or any person lawfully claiming through the mortgagor, upon request.

Subd. 2. **Authorized actions.** The holder of the mortgage or sheriff's certificate may take the following actions to protect the premises from waste, trespass, or from falling below minimum community standards for public safety and sanitation: make reasonable periodic inspections; install or change locks on doors and windows; board windows, doors, and other openings; install and operate an alarm system; and otherwise prevent or minimize damage to the premises from the elements, vandalism, trespass, or other illegal activities. If the holder of the mortgage or sheriff's certificate installs or changes locks under this section, a key to the premises must be promptly delivered to the mortgagor or any person lawfully claiming through the mortgagor, upon request.

Subd. 3. **Costs.** All costs incurred by the holder of the mortgage or sheriff's certificate to protect the premises from waste or trespass or from falling below minimum community standards for public safety and sanitation may be added to the principal balance of the mortgage or the costs allowable upon redemption. The costs may bear interest to the extent provided in the mortgage and may be added to the redemption price if the costs are incurred after a foreclosure sale. If the costs are incurred after a foreclosure sale, the holder of any sheriff's certificate of sale or certificate of redemption must comply with the provisions of section 582.03. The provisions of this section

are in addition to, and do not limit or replace, any other rights or remedies available to holders of mortgages and sheriff's certificates, at law or under the applicable mortgage agreements.

**History:** 1989 c 328 art 3 s 12; 1996 c 286 s 2; 1996 c 367 s 2; 2008 c 341 art 5 s 22; 2009 c 123 s 9

### **582.032 FIVE-WEEK REDEMPTION PERIOD; CERTAIN ABANDONED PROPERTIES.**

Subdivision 1. **Application.** This section applies to mortgages executed after December 31, 1989, under which there has been a default in the payment of money existing for at least 60 days as of the date of the filing of the complaint or motion provided for in this section. This section applies only when the mortgaged premises are:

- (1) ten acres or less in size;
- (2) improved with a residential dwelling consisting of less than five units which is neither a model home nor a dwelling under construction; and
- (3) not property used in agricultural production.

This section applies to foreclosures by action under chapter 581 and to foreclosures by advertisement under chapter 580.

Subd. 2. **Before foreclosure sale.** Notwithstanding section 580.23 or 581.10, if at any time before the foreclosure sale but not more than 30 days before the first publication of the notice of sale, a court order is entered reducing the mortgagor's redemption period to five weeks under subdivision 7, after the mortgaged premises have been sold as provided in chapter 580 or 581, the mortgagor, and the mortgagor's personal representatives or assigns, within five weeks after the sale under chapter 580, or within five weeks after the date of the order confirming the sale under chapter 581, may redeem the mortgaged premises as provided in section 580.23, subdivision 1, or 581.10, as applicable.

Subd. 3. **After foreclosure sale.** Notwithstanding section 580.23 or 581.10, if at any time after the foreclosure sale, a court order is entered reducing the mortgagor's redemption period under subdivision 7, the period during which the mortgagor, the mortgagor's personal representatives and assigns, may redeem the mortgaged premises in accordance with the provisions of section 580.23, subdivision 1, or section 581.10, as applicable, is reduced so as to expire five weeks from the date the order is entered. Within ten days after the order is entered, a certified copy of the order must be filed with the office of the county recorder or registrar of titles for the county in which the mortgaged premises are located, and a copy of the order must be posted in a conspicuous place on the mortgaged premises. Within ten days of the order's entry, a copy of the order must be sent by certified mail to any party holding a lien or interest of record junior to the foreclosed mortgage who has filed with the county recorder or registrar of titles a certificate identifying the lienholder and the lien claimed, stating the lienholder's address and the

legal description of the property covered by the lien, and requesting notice of any postforeclosure sale reduction of the mortgagor's redemption period for any superior lien. Affidavits of posting and mailing to evidence the same are prima facie evidence of the facts stated therein and are entitled to recordation along with the certified copy of the order.

Subd. 4. **Summons and complaint.** In a foreclosure by advertisement, the party foreclosing a mortgage or holding the sheriff's certificate of sale or the political subdivision in which the mortgaged premises are located may initiate a proceeding in district court to reduce the mortgagor's redemption period under this section. The proceeding must be initiated by the filing of a complaint, naming the mortgagor, or the mortgagor's personal representatives or assigns of record, as defendant, in district court for the county in which the mortgaged premises are located. If the proceeding is initiated by a political subdivision, the party foreclosing the mortgage or holding the sheriff's certificate of sale must also be named as a defendant, and the summons and complaint shall be delivered by certified mail to the foreclosing attorney. If the proceeding is commenced after the foreclosure sale, the holders of junior liens and interests entitled to notice under subdivision 3 must also be named as defendants. The complaint must identify the mortgaged premises by legal description and must identify the mortgage by the names of the mortgagor and mortgagee, and any assignee of the mortgagee; the date of its making; and pertinent recording information. The complaint must allege that the mortgaged premises are:

- (1) ten acres or less in size;
- (2) improved with a residential dwelling consisting of less than five units, which is not a model home or a dwelling under construction;
- (3) not property used in agricultural production; and
- (4) abandoned.

The complaint must request an order reducing the mortgagor's redemption period to five weeks. When the complaint has been filed, the court shall issue a summons commanding the person or persons named in the complaint to appear before the court on a day and at a place stated in the summons. The appearance date shall be not less than 15 nor more than 25 days from the date of the issuing of the summons. A copy of the filed complaint must be attached to the summons.

Subd. 5. **Order to show cause.** In a foreclosure by action, the plaintiff or the holder of the sheriff's certificate may make a motion to reduce the mortgagor's redemption period under this section. The political subdivision in which the mortgaged premises are located may intervene in the action and make a motion to reduce the redemption period. The motion must conform generally to the pleading requirements provided in subdivision 4. For purposes of the motion, the court has continuing jurisdiction over the parties and the mortgaged premises through the expiration of the redemption period. When the motion has been filed, the court shall issue an

order to show cause commanding the parties it considers appropriate to appear before the court on a day and at a place stated in the order. The appearance date may not be less than 15 nor more than 25 days after the date of the order to show cause. A copy of the motion must be attached to the order to show cause.

Subd. 6. **Service.** The summons or order to show cause may be served by any person not named a party to the action. The summons or order to show cause must be served at least seven days before the appearance date, in the manner provided for service of a summons in a civil action in the district court. If the defendant cannot be found in the county, the summons or order to show cause may be served by sending a copy by certified mail to the defendant's last known address, if any, at least ten days before the appearance date. The summons or order to show cause must be posted in a conspicuous place on the mortgaged premises not less than seven days before the appearance date. If personal or certified mail service cannot be made on a defendant, then the plaintiff or plaintiff's attorney may file an affidavit to that effect with the court and service by posting the summons or order to show cause on the mortgaged premises is sufficient as to that defendant.

Subd. 7. **Hearing; evidence; order.** At the hearing on the summons and complaint or order to show cause, the court shall enter an order reducing the mortgagor's redemption period as provided in subdivision 2 or 3, as applicable, if evidence is presented supporting the allegations in the complaint or motion and no appearance is made to oppose the relief sought. An affidavit by the sheriff or a deputy sheriff of the county in which the mortgaged premises are located, or of a building inspector, zoning administrator, housing official, or other municipal or county official having jurisdiction over the mortgaged premises, stating that the mortgaged premises are not actually occupied and further setting forth any of the following supporting facts, is prima facie evidence of abandonment:

(1) windows or entrances to the premises are boarded up or closed off, or multiple window panes are broken and unrepaired;

(2) doors to the premises are smashed through, broken off, unhinged, or continuously unlocked;

(3) gas, electric, or water service to the premises has been terminated;

(4) rubbish, trash, or debris has accumulated on the mortgaged premises;

(5) the police or sheriff's office has received at least two reports of trespassers on the premises, or of vandalism or other illegal acts being committed on the premises; or

(6) the premises are deteriorating and are either below or are in imminent danger of falling below minimum community standards for public safety and sanitation.

An affidavit of the party foreclosing the mortgage or holding the sheriff's certificate, or one of their agents or contractors, stating any of the above supporting facts, and that the affiant has changed locks on the mortgaged premises under section 582.031 and that for a period of ten days no party having a legal possessory right has requested entrance to the premises, is also prima facie evidence of abandonment. Either affidavit described above, or an affidavit from any other person having knowledge, may state facts supporting any other allegations in the complaint or motion and is prima facie evidence of the same. Written statements of the mortgagor, the mortgagor's personal representatives or assigns, including documents of conveyance, which indicate a clear intent to abandon the premises, are conclusive evidence of abandonment. In the absence of affidavits or written statements, or if rebuttal evidence is offered by the defendant or a party lawfully claiming through the defendant, the court may consider any competent evidence, including oral testimony, concerning any allegation in the complaint or motion. A defendant's failure to appear at the hearing after service of process in compliance with subdivision 6 is conclusive evidence of abandonment by the defendant, subject to vacation under Rule 60.02 of the Minnesota Rules of Civil Procedure. An order entered under this section must contain a legal description of the mortgaged premises.

Subd. 8. **Recording.** A certified copy of an order reducing a mortgagor's redemption period entered under this section may be recorded in the office of the county recorder or registrar of titles for the county in which the mortgaged premises are located.

**History:** 1989 c 328 art 3 s 13; 1Sp1989 c 2 s 2,3; 2008 c 178 s 1; 2009 c 123 s 10-13

### **582.039 MEDIATION NOTICE FOR AGRICULTURAL PROPERTY.**

Subdivision 1. **Requirement.** A person may not begin a proceeding under this chapter or chapter 580 to foreclose a mortgage on agricultural property subject to sections 583.20 to 583.32 that has a secured debt of more than \$5,000 unless: (1) a mediation notice is served on the mortgagor after a default has occurred in the mortgage and a copy is served on the director and the mortgagor and mortgagee have completed mediation under sections 583.20 to 583.32; or (2) as otherwise allowed under sections 583.20 to 583.32.

Subd. 2. **Contents.** A mediation notice must contain the following notice with the blanks properly filled in.

"TO: ....(Name of Record Owner)....

YOU HAVE DEFAULTED ON THE MORTGAGE OF THE AGRICULTURAL  
PROPERTY DESCRIBED AS ....(Size and Reasonable Location, Not Legal Description). THE  
AMOUNT OF THE OUTSTANDING DEBT ON THIS PROPERTY IS ....(Amount of Debt)....

AS HOLDER OF THE MORTGAGE, ....(Name of Holder of Mortgage).... INTENDS TO  
FORECLOSE ON THE PROPERTY DESCRIBED ABOVE.



YOU HAVE THE RIGHT TO HAVE THE MORTGAGE DEBT REVIEWED FOR MEDIATION. IF YOU REQUEST MEDIATION, A DEBT THAT IS IN DEFAULT WILL BE MEDIATED ONLY ONCE. IF YOU DO NOT REQUEST MEDIATION, THIS DEBT WILL NOT BE SUBJECT TO FUTURE MEDIATION IF THE SECURED PARTY ENFORCES THE DEBT.

IF YOU PARTICIPATE IN MEDIATION, THE DIRECTOR OF THE AGRICULTURAL EXTENSION SERVICE WILL PROVIDE AN ORIENTATION MEETING AND A FINANCIAL ANALYST TO HELP YOU PREPARE FINANCIAL INFORMATION. IF YOU DECIDE TO PARTICIPATE IN MEDIATION, IT WILL BE TO YOUR ADVANTAGE TO ASSEMBLE YOUR FARM FINANCE AND OPERATION RECORDS AND TO CONTACT A COUNTY EXTENSION OFFICE AS SOON AS POSSIBLE. MEDIATION WILL ATTEMPT TO ARRIVE AT AN AGREEMENT FOR HANDLING FUTURE FINANCIAL RELATIONS.

TO HAVE THE MORTGAGE DEBT REVIEWED FOR MEDIATION YOU MUST FILE A MEDIATION REQUEST WITH THE DIRECTOR WITHIN 14 DAYS AFTER YOU RECEIVE THIS NOTICE. THE MEDIATION REQUEST FORM IS AVAILABLE AT ANY COUNTY RECORDER'S OR COUNTY EXTENSION OFFICE.

FROM: ....(Name and Address of Holder of Mortgage)...."

**History:** 1986 c 398 art 1 s 4,18; 1987 c 292 s 10,37,38; 1989 c 350 art 16 s 8; 1990 c 525 s 1; 1991 c 208 s 2; 1Sp1993 c 2 art 6 s 2; 1995 c 212 art 2 s 11; 1997 c 183 art 3 s 29; 1998 c 395 s 7; 1998 c 402 s 6; 1999 c 214 art 2 s 19; 2001 c 195 art 1 s 23; 1Sp2001 c 1 art 2 s 25; 1Sp2001 c 2 s 150; 2005 c 107 art 2 s 55; 2009 c 94 art 1 s 96

**NOTE:** This section expires June 30, 2009. Section 583.215, as added by Laws 2005, chapter 107, article 2, section 55.

**NOTE:** This section expires June 30, 2013. Section 583.215, as added by Laws 2005, chapter 107, article 2, section 55, as amended by Laws 2009, chapter 94, article 1, section 97.

**582.04** [Repealed, 1986 c 398 art 2 s 4]

#### **582.041 FORECLOSURE OF MORTGAGE THAT INCLUDES HOMESTEAD.**

Subdivision 1. **Notification of homestead designation.** If a mortgage on real property is foreclosed and the property contains a portion of a homestead, the person in possession of the real property must be notified by the foreclosing mortgagee that the homestead may be sold and redeemed separately from the remaining property. The notice in subdivision 2 must be served with the notice of foreclosure that is served on the person in possession of the real property with the requirements in section 580.03 or for a foreclosure by action under chapter 581, in the summons and complaint served on the person in possession of the real property.

Subd. 2. **Homestead designation notice.** (a) The following notice must be served with the foreclosure notice of property containing a homestead that is served on the person in possession of the real property under section 580.03. The notice is not to be published. The notice must be in 10-point capitalized letters.

"IF PART OF THE PROPERTY TO BE SOLD CONTAINS YOUR HOUSE, YOU MAY DESIGNATE AN AREA AS A HOMESTEAD TO BE SOLD AND REDEEMED SEPARATELY.

YOU MAY DESIGNATE THE HOUSE YOU OCCUPY AND ANY AMOUNT OF THE PROPERTY AS A HOMESTEAD. THE DESIGNATED HOMESTEAD PROPERTY MUST CONFORM TO THE LOCAL ZONING ORDINANCES AND BE COMPACT SO THAT IT DOES NOT UNREASONABLY REDUCE THE VALUE OF THE REMAINING PROPERTY.

YOU MUST PROVIDE THE PERSON FORECLOSING ON THE PROPERTY, THE SHERIFF, AND THE COUNTY RECORDER WITH A COPY OF THE LEGAL DESCRIPTION OF THE HOMESTEAD YOU HAVE DESIGNATED BY TEN BUSINESS DAYS BEFORE THE DATE THE PROPERTY IS TO BE SOLD."

(b) The following notice must be served with the summons and complaint in an action to foreclose a mortgage of property containing a homestead under chapter 581. The notice must be in 10-point capitalized letters and is not to be published with the summons if the summons is published.

"IF PART OF THE PROPERTY TO BE SOLD CONTAINS YOUR HOUSE, YOU MAY DESIGNATE AN AREA AS A HOMESTEAD TO BE SOLD AND REDEEMED SEPARATELY.

YOU MAY DESIGNATE THE HOUSE YOU OCCUPY AND ANY AMOUNT OF THE PROPERTY AS A HOMESTEAD. THE DESIGNATED HOMESTEAD PROPERTY MUST CONFORM TO THE LOCAL ZONING ORDINANCES AND BE COMPACT SO THAT IT DOES NOT UNREASONABLY REDUCE THE VALUE OF THE REMAINING PROPERTY.

YOU MUST PROVIDE THE COURT WITH A LEGAL DESCRIPTION OF THE HOMESTEAD YOU HAVE DESIGNATED."

Subd. 3. **Designation of homestead property.** The person who is homesteading the property must designate a legal description of the homestead property to be sold separately. The homestead property designated may include any amount of the property. The designation must conform to local zoning, include the dwelling occupied by the person homesteading the property, and be compact so that it does not unreasonably affect the value of the remaining property. The person homesteading the property must serve a copy of the designation on the foreclosing mortgagee, the sheriff, and the county recorder or registrar of titles by ten business days before the sale is scheduled, or for a foreclosure by action under chapter 581, a copy of the designation must be provided to the court.

Subd. 4. **Sale of property.** If the sheriff receives a homestead property designation under subdivision 3, or is ordered by the court, the sheriff must offer and sell the designated homestead property, and the remaining property, separately.

Subd. 5. **Redemption.** A party who has a right of redemption may redeem the designated homestead, the remaining property, or the entire property including the homestead. The period of redemption is the period for the entire property including the designated homestead.

**History:** 1986 c 398 art 2 s 3; 1Sp1986 c 3 art 2 s 44; 1987 c 396 art 4 s 1-4

#### **582.042 FORECLOSURE; AGRICULTURAL LAND IN SEPARATE TRACTS.**

Subdivision 1. **Notice about tracts.** If a mortgage on real property that is agricultural land is foreclosed and the property contains separate tracts, the person in possession of the real property must be notified by the foreclosing mortgagee that the separate tracts may be sold and redeemed separately. The notice in subdivision 2 must be served with the notice of foreclosure that is served on the person in possession of the property under section 580.03, or for a foreclosure by action under chapter 581, in the summons and complaint.

Subd. 2. **Designation notice.** (a) The following notice must be served with the foreclosure notice of the property that is served on the person in possession of the real property under section 580.03. The notice must be in 10-point capitalized letters and the notice is not to be published.

"IF THE PROPERTY TO BE SOLD CONTAINS SEPARATE TRACTS, YOU MAY REQUEST THAT THE TRACTS BE SOLD AND REDEEMED SEPARATELY. EACH OF THE SEPARATE TRACTS MUST CONFORM TO LOCAL ZONING ORDINANCES, MUST HAVE AN ENTRANCE BY DIRECT ACCESS TO A PUBLIC ROAD OR BY PERMANENT EASEMENT, AND MUST NOT UNREASONABLY AFFECT THE VALUE OF THE REMAINING PROPERTY.

YOU MUST PROVIDE THE PERSON FORECLOSING ON THE PROPERTY, THE SHERIFF, AND THE COUNTY RECORDER WITH A COPY OF THE LEGAL DESCRIPTIONS OF EACH OF THE TRACTS YOU HAVE DESIGNATED TO BE SOLD SEPARATELY BY TEN BUSINESS DAYS BEFORE THE DATE THE PROPERTY IS TO BE SOLD."

(b) The following notice must be served with the summons and complaint in an action to foreclose a mortgage of real property containing separate tracts under chapter 581. The notice must be in 10-point capitalized letters and is not to be published with the summons if the summons is published.

"IF THE PROPERTY TO BE SOLD CONTAINS SEPARATE TRACTS, YOU MAY REQUEST THAT THE TRACTS BE SOLD AND REDEEMED SEPARATELY. EACH OF THE SEPARATE TRACTS MUST CONFORM TO LOCAL ZONING ORDINANCES.

YOU MUST PROVIDE THE COURT WITH A COPY OF THE LEGAL DESCRIPTIONS OF EACH OF THE TRACTS YOU HAVE DESIGNATED TO BE SOLD SEPARATELY."

Subd. 3. **Designation of separate tracts.** The person being foreclosed must designate by legal description each of the tracts to be sold separately. The tracts designated must be previously recorded as separate tracts. Each of the separate tracts must conform to local zoning ordinances, must have an entrance by direct access to a public road or by permanent easement, and must not unreasonably affect the value of the remaining property. The person being foreclosed must serve a copy of the legal descriptions of the tracts to be sold separately on the foreclosing mortgagee, the sheriff, and the county recorder or registrar of titles by ten business days before the sale is scheduled, or for a foreclosure by action under chapter 581, a copy of the legal descriptions of the tracts to be sold separately must be provided to the court.

Subd. 4. **Sale of property.** If the sheriff receives a designation of separate tracts under subdivision 3, or is ordered by the court, the sheriff must offer and sell the tracts separately.

Subd. 5. **Redemption.** The designated tracts may be redeemed separately or the entire foreclosed property may be redeemed. The period of redemption is the period for the entire property including all of the designated tracts.

**History:** 1987 c 396 art 4 s 5

#### **582.05 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 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:** (9650) 1915 c 305 s 1

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

#### **582.07 RECEIVER TO FURNISH BOND.**

Before undertaking duties, the receiver so appointed shall file in court a bond for the faithful performance of such duties. 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:** (9652) 1915 c 305 s 3; 1986 c 444

#### **582.08 POSSESSION, ENTRY AFTER FILING 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 the receiver's 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:** (9653) 1915 c 305 s 4; 1986 c 444

#### **582.09 RECEIVER TO FILE ACCOUNT FOR APPROVAL.**

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

**History:** (9654) 1915 c 305 s 5; 1986 c 444

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

**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 the mortgagor's 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 the party's 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 court administrator of the district court, who shall mail a copy of the notice to each adverse party who has appeared of record.

**History:** (9655-5) 1937 c 108 s 1; 1983 c 247 s 194; 1986 c 444; 1Sp1986 c 3 art 1 s 82

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

**582.13 STATE MAY BE 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 OLD FORECLOSURE ACTIONS.**

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 OLD LIS PENDENS NOTICES.**

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 OLD ACTIONS 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

#### **582.25 MORTGAGES; VALIDATING FORECLOSURE SALES.**

Every mortgage foreclosure sale by advertisement in this state under power of sale 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, after expiration of the period specified in section 582.27, 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 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;

(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,

(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 one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns;

(6) that a holder of a mortgage was a representative appointed by a court of competent jurisdiction in another state or county in which before the foreclosure sale an authenticated copy of the representative's letters or other record of authority were 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 authority were still in force;

(7)(a) that said mortgage was assigned by a decree of a court exercising probate jurisdiction 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 court exercising probate jurisdiction to the heirs, devisees, or legatees of the deceased mortgagee, or the mortgagee's assigns, and subsequent thereto and before the representative of the estate had been discharged by order of the 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 last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns;

(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;

(10)(a) that prior to the foreclosure no registration tax was paid on the mortgage, provided such tax had been paid prior to one year after the last day of the redemption period of the mortgage, the mortgagor's personal representatives or assigns,

(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 the person's 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 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;

(22) that the notice of pendency of the foreclosure as required by section 580.032 was not filed for record before the first date of publication of the foreclosure notice, but was filed before the date of sale.

**History:** 1976 c 148 s 1; 1976 c 181 s 2; 1986 c 444; 1995 c 92 s 13; 1995 c 189 s 8; 1996 c 277 s 1

#### **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 court administrator 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; 1Sp1986 c 3 art 1 s 82

#### **582.27 APPLICATION OF CURATIVE PROVISIONS.**

Subdivision 1. **Section 582.25.** Upon expiration of the periods specified in this section, the

provisions of section 582.25 apply to a mortgage foreclosure sale subject to this section:

(A) as to all of the provisions of section 582.25, except clause (2), one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives or assigns;

(B) as to clause (2), ten years after the date of the foreclosure sale.

Subd. 2. **Section 582.26.** The date to which section 582.26 applies is one year after the date of the foreclosure sale.

Subd. 3. **Pending and newly commenced actions.** The provisions of sections 582.25 to 582.27 shall not affect any action or proceeding pending on August 1, 1989, or which shall be commenced before February 1, 1990, in any of the courts of the state, involving the validity of such foreclosure. Laws 1992, chapter 463, does not affect any proceeding pending on August 1, 1992, or commenced before February 1, 1993, in any of the courts of the state, involving the validity of the foreclosure.

The amendments to the provisions of sections 582.25 to 582.27 by Laws 1995, chapter 92, shall not affect any action pending on August 1, 1995, or which shall be commenced before February 1, 1996, in any of the courts of the state, involving the validity of a foreclosure.

**History:** 1976 c 148 s 3; 1979 c 133 s 1; 1985 c 94 s 1; 1989 c 229 s 8; 1992 c 463 s 35; 1995 c 92 s 14

### **582.30 DEFICIENCY JUDGMENTS BY MORTGAGE HOLDER.**

Subdivision 1. **Deficiency allowed.** (a) Except as provided in this section, a person holding a mortgage may obtain a deficiency judgment against the mortgagor if the amount a person holding a mortgage receives from a foreclosure sale is less than:

- (1) the amount remaining unpaid on the mortgage under chapter 580; or
- (2) the amount of the judgment entered under chapter 581.

(b) Except as provided in subdivisions 3 and 5, the judgment may not be for more than the difference between the amount received from the foreclosure sale less expenses and costs and:

- (1) for a foreclosure by advertisement, the total amount that attaches to the sale proceeds under chapter 580; or
- (2) for a foreclosure by action, the amount of the judgment entered under chapter 581.

(c) Subdivisions 3 to 9 do not apply to mortgages entered or amended on or after May 22, 1999, if the mortgaged property is used in agricultural production only by a tenant who is not the mortgagor.

Subd. 2. **Not if six-month or five-week redemption period.** A deficiency judgment is not allowed if a mortgage is foreclosed by advertisement under chapter 580, and has a redemption

period of six months under section 580.23, subdivision 1, or five weeks under section 582.032.

Subd. 3. **Ag property mortgage entered after 3/22/1986.** (a) If a mortgage entered after March 22, 1986 on property used in agricultural production is foreclosed and sold, a deficiency judgment may only be obtained by filing an action for a deficiency judgment and a determination of the fair market value of the property within 90 days after the foreclosure sale. In the action all issues of fact, including determination of the fair market value of the property, shall be tried by a jury unless a jury trial is waived as provided in Minnesota district court rules. A court may allow a deficiency judgment only if it determines that the sale of the property was conducted in a commercially reasonable manner.

(b) The amount of the deficiency judgment is limited to the difference of the fair market value of the property, and the amount remaining unpaid on the mortgage if the foreclosure is under chapter 580 or the amount of the judgment if the foreclosure is under chapter 581. The property may not be presumed to be sold for its fair market value. A party adversely affected by a deficiency judgment may submit evidence relevant to establishing the fair market value of the property. Notice of the time and place where the action for the deficiency judgment and the determination of fair market value of the property is to be heard must be given to all parties adversely affected by the judgment.

Subd. 4. **Judgment on mortgage note.** A personal judgment may not be executed against a mortgagor liable on a mortgage note entered after March 22, 1986, secured by real property used in agricultural production, unless the fair market value of the property is determined in a proceeding as provided in subdivision 3. The personal judgment on the mortgage note may not be for more than the difference of the amount due on the note and the fair market value of the property.

Subd. 5. **Ag property mortgage entered before 3/23/1986.** (a) If a mortgage entered on or before March 22, 1986, on property used in agricultural production is foreclosed and sold, a deficiency judgment may only be obtained by filing an action for a deficiency judgment and a determination of the fair market value of the property within 90 days after the foreclosure sale. In the action all issues of fact, including determination of the fair market value of the property, shall be tried by a jury unless a jury trial is waived as provided in Minnesota district court rules. A court may allow a deficiency judgment only if it determines that the sale of the property was conducted in a commercially reasonable manner.

(b) The amount of the deficiency judgment is limited to the difference of the fair market value of the property, and the amount remaining unpaid on the mortgage if the foreclosure is under chapter 580 or the amount of the judgment if the foreclosure is under chapter 581. The property may not be presumed to be sold for its fair market value. A party adversely affected by a deficiency judgment may submit evidence relevant to establishing the fair market value of the property. Notice of the time and place where the action for the deficiency judgment and the

determination of fair market value of the property is to be heard must be given to all parties adversely affected by the judgment.

Subd. 6. **Judgment on mortgage note.** A personal judgment may not be executed against a mortgagor liable on a mortgage note entered on or before March 22, 1986, secured by real property used in agricultural production, unless the fair market value of the property is determined in a proceeding as provided in subdivision 5. The personal judgment on the mortgage note may not be for more than the difference of the amount due on the note and the fair market value of the property.

Subd. 7. **Statute of limitations on executing judgment.** A deficiency judgment or personal judgment obtained to enforce a mortgage debt on property used in agricultural production may be enforced by execution, but the judgment may not be executed after three years from the date judgment was entered.

Subd. 8. **Subdivision 5 judgments; no execution till 3/22/1987.** For a mortgage on property used in agricultural production entered on or before March 22, 1986, a deficiency judgment or personal judgment to enforce the mortgage debt may not be executed on real or personal property used for agricultural production until one year after March 22, 1986.

Subd. 9. **Attachment of judgment after judgment entered.** A deficiency judgment or personal judgment obtained to enforce a mortgage debt on property used in agricultural production does not attach to real or personal property that is acquired by the mortgagor or debtor after the judgment is entered.

**History:** 1986 c 398 art 19 s 5; 1Sp1986 c 2 art 3 s 2; 1989 c 328 art 3 s 14; 1990 c 580 s 2-5; 1999 c 184 s 2

#### **582.31 ONE ACTION ALLOWED TO ENFORCE AGRICULTURAL MORTGAGE.**

(a) For a mortgage on property used in agricultural production entered into on or before March 22, 1986, the mortgagee may only proceed to:

(1) obtain a personal judgment for the debt owed on the note secured by the mortgage and execute on the judgment; or

(2) foreclose the mortgage and obtain a deficiency judgment, if allowed.

(b) An action under paragraph (a), either clause (1) or (2), bars an action under the other clause.

**History:** 1986 c 398 art 19 s 6

#### **582.32 VOLUNTARY FORECLOSURE; PROCEDURE.**

Subdivision 1. **Application.** This section applies to mortgages executed on or after August

1, 1993, under which there is a default and the mortgagor and mortgagee enter into an agreement for voluntary foreclosure of the mortgage under this section. This section applies only to mortgages on real estate no part of which is classified as a homestead under section 273.124 or in agricultural use as defined in section 40A.02, subdivision 3, as of the date of agreement.

Subd. 2. **Definitions.** (a) As used in this section, the following terms have the meanings given:

(b) "Agreement" means the agreement for voluntary foreclosure described in subdivision 3.

(c) "Date of agreement" means the effective date of the agreement which shall not be sooner than the date on which the agreement is executed and acknowledged by both the mortgagor and mortgagee.

(d) "Junior lien" means a lien subordinate to the lien of the mortgage foreclosed under this section, the holder of which has a redeemable interest in the real estate under section 580.24.

(e) "Mortgage" means a recorded mortgage on real estate no part of which is classified as a homestead under section 273.124 or is in agricultural use as defined in section 40A.02, subdivision 3, as of the date of agreement.

(f) "Mortgagee" means the record holders of the mortgage, whether one or more.

(g) "Mortgagor" means the record holders, whether one or more, of the legal and equitable interest in the real estate encumbered by the mortgage.

(h) "Real estate" means the real property encumbered by the mortgage.

Subd. 3. **Procedure.** (a) Voluntary foreclosure may occur only in accordance with this section.

(b) The mortgagor and mortgagee shall enter into a written agreement for voluntary foreclosure under this section only during the existence of a default under the mortgage. At least one of the items constituting the default must have been in existence for at least one month on the date of agreement. The agreement shall identify the mortgage by recording data and the real estate by legal description, specify the date of the agreement and provide that:

(1) The mortgagor and mortgagee have agreed that the mortgage shall be voluntarily foreclosed with the mortgagor's redemption period reduced to two months as provided in this section.

(2) The mortgagee waives any rights to a deficiency or other claim for personal liability against the mortgagor arising from the mortgage or the debt secured by the mortgage. This does not preclude an agreement between the mortgagor and mortgagee to a payment to the mortgagee as part of the voluntary foreclosure, or collection from a guarantor.



(3) The mortgagor waives its right to surplus sale proceeds, to contest foreclosure, and to rents and occupancy during the period from the date of agreement through the redemption period.

(4) The mortgagor consents to the appointment of a receiver for, or grants mortgagee possession of, the real estate and all rights of possession of the real estate, including, but not limited to operating, maintaining, and protecting the real estate, and the making of any additions or betterments to the real estate.

(5) A default exists under the mortgage and on the date of agreement at least one of the items constituting the default has been in existence for at least one month.

(c) Within seven days after the date of agreement, the mortgagee must record or file the agreement with the county recorder or registrar of titles, as appropriate, in each county where any part of the real estate is located. Filing or recording of a short form agreement signed by the mortgagor and mortgagee containing the following information satisfies this requirement:

(1) the identity and mailing address of the mortgagor and mortgagee;

(2) the legal description of the real estate;

(3) the mortgage identified by recording data;

(4) a statement that an event of default under the mortgage has existed for at least one month as of the date of agreement and foreclosure under this section has been agreed to by the parties; and

(5) the date of agreement.

(d) A certificate signed by the county or city assessor where the real estate is located, stating that, as of the date of agreement, the real estate was not in agricultural use as defined in section 40A.02, subdivision 3, and was not a homestead for property tax purposes under section 273.124, must be recorded before or with the certificate of sale in the office of the county recorder or registrar of titles where the real estate is located, and shall be prima facie evidence of the facts contained in the certificate.

(e) Within ten days of receipt of a written request for information from a holder of a junior lien, the mortgagee, without charge, shall deliver or mail by first class mail postage prepaid, to the address of the holder set forth in the request, either the agreement or a written statement of the amount of money and the value or a detailed description of any property paid or transferred, or to be paid or transferred, by the parties to the agreement under the terms of the agreement. Failure to provide this information does not invalidate the foreclosure.

Subd. 4. [Repealed, 1993 c 40 s 11]

Subd. 4a. **No right of reinstatement.** There is no right of reinstatement pursuant to section 580.30, of the mortgage after the date of agreement.

Subd. 5. **Foreclosure procedure; notice to creditors.** (a) After the date of agreement,

the mortgagee may proceed to foreclose the mortgage in accordance with the laws generally applicable to foreclosure by advertisement including this chapter and chapter 580, except as otherwise provided in this section.

(b) At least 14 days before the date of sale, the mortgagee shall:

(1) serve the persons in possession of the real estate with notice of the voluntary foreclosure sale under this section in the same manner as in a foreclosure by advertisement as provided in section 580.03; and

(2) mail notice of the voluntary foreclosure sale under this section to each holder of a junior lien who has filed or recorded a request for notice under section 580.032.

(c) The mortgagee shall publish notice of the voluntary foreclosure sale under this section in the same manner as in a foreclosure by advertisement as provided in section 580.03 for four consecutive weeks. The notice must include all information required under section 580.04, clauses (1) to (6), the date of agreement, and shall state that each holder of a junior lien may redeem in the order and manner provided in subdivision 9, beginning after the expiration of the mortgagor's redemption period under this section.

(d) The mortgagor's redemption period is two months from the date of sale, except that if the real estate is subject to a federal tax lien under which the United States is entitled to a 120-day redemption period under section 7425(d)(1) of the Internal Revenue Code, as amended, the mortgagor's redemption period is 120 days from the date of sale. The certificate of sale must indicate the redemption period applicable under this paragraph.

**Subd. 6. Sale, how and by whom made.** Except as provided in this section, the foreclosure sale must be conducted and the certificate of sale shall be made and recorded in accordance with a foreclosure by advertisement as provided in chapter 580. The certificate of sale must be filed or recorded within five days after the sale. Affidavits of service, mailing, publication, and other affidavits or certificates permitted by chapter 580, must be recorded with the certificate of sale, or within five days after the sale, in the office of the county recorder or registrar of titles where the real estate is located, and when so recorded are prima facie evidence of the facts contained in them.

**Subd. 7.** [Repealed, 1993 c 40 s 11]

**Subd. 8.** [Repealed, 1993 c 40 s 11]

**Subd. 9. Creditor redemption.** A person holding a junior lien upon the real estate or some part of the real estate may redeem in the order and manner specified in sections 580.24 and 580.25, but only if before the end of the mortgagor's redemption period under this section the creditor files with the county recorder or registrar of titles of each county where the real estate is located, a notice of intention to redeem. If a junior creditor fails to timely file a notice of intention to redeem

as provided in this subdivision, or fails to redeem, its lien on the real estate is extinguished.

**History:** *1992 c 547 s 1; 1993 c 40 s 3-9; 1999 c 11 art 4 s 5*