

PROCEEDING TO REDUCE THE REDEMPTION PERIOD TO 5 WEEKS

(Minn. Stat. §582.032)

A person whose land is sold at a Sheriff's Sale has the right to redeem the land by paying the amount bid at the Sheriff's Sale plus expenses. The time for the landowner to redeem varies by statute but can be shortened to 5 weeks in some cases.

FORECLOSURE BY ADVERTISEMENT - APPLICABILITY

Foreclosure by Advertisement is governed by Minn. Stat. Chapter 580 but 5-week redemption reduction procedures are found in Minn. Stat. §582.032. The Court may reduce a redemption period to 5 weeks only when all the following are true:

1. Mortgage executed after December 31, 1989.
2. 60 days of default in the payment of money, as of date of the Complaint.
3. Mortgaged lands must be:
 - a. ten acres or less in size;
 - b. improved with a residential dwelling consisting of less than 5 units which is neither a model home nor a dwelling under construction.
 - c. not used in agricultural production; and
 - d. abandoned.
4. If the Order is to be entered after the first publication of the Notice of Sale, reduction to 5-weeks is available only if the Notice of Sale contains the warning language required by Minn. Stat. §580.04.

FORECLOSURE BY ADVERTISEMENT - PROCEDURE

Draft Summons and Complaint. The Complaint must plead the elements listed in Minn. Stat. §582.032, subd. 4. Forms are available on the Ramsey County Examiner of Titles website.

In all proceedings, the mortgagor, or the mortgagor's personal representatives or assigns of record must be named as defendants. An attorney-at-law can sign the Complaint. The Complaint need not be verified. If the 5-week proceeding is commenced after the Sheriff's Sale, everyone who recorded a Request for Notice of Redemption Period Reduction under Minn. Stat. 582.032, Subd 3 must be named as a Defendant in the 5-week action.

Do not knowingly name a dead person as a Defendant; instead, name the Personal Representative of the deceased, if one has been appointed by the Probate Court; or if no Personal Representative has been appointed, name “The unknown heirs of [deceased person’s name], deceased.”

The appearance date set in the Summons cannot be fewer than 15 nor more than 25 days from the date the Summons is issued. The hearing date must be on a Wednesday at 2:00 p.m., in Room 170 of the Ramsey County Courthouse, 15 West Kellogg Blvd., St. Paul, Minnesota 55102.

If the 5-week proceeding is commenced before the Sheriff’s Sale, the Order reducing the redemption period cannot be entered more than 30 days before the first publication of the notice of sale. Schedule your hearing date accordingly.

Bring the original Summons and Complaint to the Examiner of Titles Office for approval before opening the file in District Court or serving the Defendants. There is no fee for Examiner approval and it usually can be done while you wait. After obtaining approval by the Examiner or a Deputy Examiner of Titles, take the Summons and Complaint to the District Court, Civil Filing - Torrens Clerk, located on the 6th Floor of the Ramsey County Courthouse, and open the court file. There will be a filing fee.

FORECLOSURE BY ADVERTISEMENT - SERVICE OF PROCESS

Unlike an ordinary civil action, the 5-week Summons and Complaint are served **after** filing with the Court and both documents must be served, not just the Summons. A copy of the Complaint must be attached to the Summons for service.

One copy of the Summons with attached Complaint must be posted in a conspicuous place on the mortgaged premises not less than 7 days before the hearing.

One copy of the Summons with attached Complaint also shall be served:

As to Defendants who CAN be found in Ramsey County: by **personal service** in the manner provided for the service of a summons in a civil action at least 7 days before the hearing date;

As to Defendants who CANNOT be found in Ramsey County: by **certified mail** to the party’s last known address at least 10 days before the hearing date;

For unusual situations, use the rules and statutes for service of process of a Summons in a civil action (e.g., service on a dissolved corporation under Minn. Stat. 5.25; on government entities under Rule 4.03(e) of the Minnesota Rules of Civil Procedure, etc).

If neither personal nor certified mail service can be made and no other rule or statute governs service, then an Affidavit by either the plaintiff or the attorney confirming that fact, together with the Affidavit of Posting, is sufficient as to that particular un-served party. Publication as to parties not found is not required.

FORECLOSURE BY ADVERTISEMENT - PREPARING FOR THE HEARING

The Torrens clerk in District Court will place the matter on the Examiner of Titles court calendar for hearing on the date in the Summons; no additional Notice of Motion need be filed.

The initial Summons and Complaint are filed in District Court, but all subsequent filings are made with the Examiner of Titles located at 90 West Plato Blvd, Suite 170, Saint Paul, Minn 55107.

The following documents must be filed with the Examiner of Titles not less than **one week before the hearing**:

The proposed Order (to include appropriate findings, the legal description of the mortgaged premises, conclusions of law and an appropriate ordering clause); and,

Affidavits of Abandonment, Service, Not Found, Posting and any other documentary evidence needed to support the requested relief.

Failure to timely file supporting documents without prior leave of the Examiner may result in dismissal without prejudice.

FORECLOSURE BY ADVERTISEMENT - DRAFTING THE ORDER

If the mortgage was foreclosed by advertisement and the redemption period is reduced to 5 weeks, a deficiency judgment is not allowed and may not be included in the Order. [Minn. Stat. §582.30, Subd. 2]. This prohibition only applies to foreclosures by advertisement, not to foreclosures by action or to 5-week reductions on other judgment execution sales.

The redemption period is shortened to 5 weeks from the date stated in the Order. If the hearing on the 5-week request is held before the Sheriff's Sale, the Order must provide that the effective date of the reduction is the date of the Sheriff's Sale. If the hearing on the Order is held after the Sheriff's Sale, then the Order must provide that the effective date of the reduction is the date of Entry of the Order by the Court Administrator.

FORECLOSURE BY ADVERTISEMENT – THE HEARING ITSELF

Pursuant to an Order of the Chief Judge of Ramsey County District Court, File No. 62-CV-07-413 filed April 14, 2009, all actions for an Order reducing a mortgage redemption period to 5 weeks pursuant to Minn. Stat. §582.032, are referred to the Examiner of Titles for approval of the Summons (Orders to Show Cause) and for hearing. That referral Order applies to all 5-week actions, not limited to those actions involving Torrens lands.

5-week cases referred to the Examiner are heard on the regular Wednesday Torrens calendar which starts promptly at 2:00 p.m. Plaintiff's attorney is required to attend the hearing in person, unless other arrangements have been made with the Examiner of Titles prior to the hearing. Plaintiffs are not required to attend. The holding in *World Championship Fighting v. Janos*, 609 N.W.2d 263

(Minn. Ct. App. 2000) relating to representation of juridical entities by attorneys-at-law is enforced. Failure to timely appear without leave of the court may result in dismissal of the action without prejudice.

At the hearing, the Examiner of Titles serves as presiding judicial officer to swear witnesses, accept evidence, take testimony and hear oral argument. The same rules of decorum and procedure apply as in a civil bench trial before a Judge of District Court.

FORECLOSURE BY ADVERTISEMENT - EVIDENTIARY MATTERS

1. The following constitutes prima facie evidence of abandonment:
 - a. An affidavit;
 - i. By the:
 - sheriff or deputy sheriff of the county in which the mortgaged premises are located; or
 - a building inspector, zoning administrator, housing official, or other municipal or county official having jurisdiction over the mortgaged premises,
 - ii. Stating that the mortgaged premises are not actually occupied and further setting forth any one of the following:
 - windows or entrances to the premises are boarded up or closed off, or multiple window panes are broken and unrepaired;
 - doors to the premises are smashed through, broken off, unhinged, or continuously unlocked;
 - gas, electric, or water service to the premises has been terminated;
 - rubbish, trash, or debris has accumulated on the mortgaged premises;
 - 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
 - the premises are deteriorating and are either below or are in imminent danger of falling below minimum community standards for public safety and sanitation.
 - b. The following also constitutes prima facie evidence of abandonment:

- An affidavit by the foreclosing party or the holder of the sheriff's certificate, or one of their agents or contractors, stating any of the above facts, and that
 - the affiant has changed the locks on the mortgaged premises, under Minn. Stat. §582.031; and
 - for a period of ten days no party having a legal possessory right has requested entrance to the premises,
2. The following constitutes Conclusive Evidence of Abandonment:
- a. Written statements by the mortgagor, the mortgagor's personal representative or assigns, including instruments of conveyance, which indicate a clear intent to abandon the premises.
 - b. Failure of the Defendant to appear and object after being properly served.

At the hearing, the Examiner of Titles will administer an oath and require oral testimony to support findings of fact that neither Plaintiff nor its attorney have been in contact with anyone seeking entry to the property or objecting to the entry of this Order; have any information tending to contradict the assertions made in the Pleadings or Affidavits on file in this matter; and that to the best of the witness's knowledge, the property is abandoned within the meaning of the statutes. Plaintiff's representative or attorney should be prepared to offer this testimony.

If a Defendant appears and asserts that the property has not been abandoned, or files an Answer raising that defense, the Examiner may recommend that the Court deny entry of the Order or dismiss the action.

FORECLOSURE BY ADVERTISEMENT - POST HEARING MATTERS

After the hearing, the Examiner of Titles will recommend to the Judge whether to sign the proposed Order and the Examiner of Titles will hand-deliver recommended Orders to the Signing Judge for signature, then to the Court Administrator for filing. The Order will not take effect until it is entered by the District Court Administrator, which may not be until a day or two after the hearing. Obtain your certified copy of the Order from District Court Administration.

If the Order is entered AFTER the foreclosure sale, then within 10 DAYS AFTER the Order is entered:

Plaintiff must record a certified copy of the Order with the Registrar of Titles if the land is Torrens or with the County Recorder for all other lands. Filing in the wrong office constitutes failure to file and invalidates the reduction.

Plaintiff must post a copy of the Order in a conspicuous place on the mortgaged premises (and an affidavit of posting should be recorded but is not required); and

Plaintiff must serve a copy of the Order by **certified mail** on everyone who recorded a Request for Notice of Redemption Period Reduction under Minn. Stat. 582.032, Subd 3 (these people also must have been named as Defendants in the action).

If the Order is entered BEFORE the sale, then the Sheriff's Certificate must state a 5-week redemption period.

If a redemption period longer than 5 weeks was stated in the published Notice of Foreclosure Sale, and the Sheriff's Certificate states a 5-week redemption, then a certified copy of the Order reducing the redemption period must be attached to the Sheriff's Certificate of Sale when it is recorded.

When the Sheriff's Certificate includes a 5-week redemption period, then it must be recorded within 10 days of the date of sale, not 20 days as is usually the case in foreclosure by advertisement

FORECLOSURES BY ACTION

The redemption period following foreclosure by action may be reduced to 5 weeks pursuant to Minn. Stat. 581.10. The procedures are similar but not identical to foreclosure by advertisement. We recommend you study the description of the foreclosure by advertisement process before continuing, as what follows describes only the differences in procedure.

First, obtain an Order for Entry of Judgment and Directing Sale of Property under Minn. Stat. 581.03 (instructions on how to win your foreclosure case are beyond the scope of this Guide).

The request to reduce the redemption period is brought as a motion within the existing court file, not as a separate 5-week redemption reduction action. The motion must cover all the pleading elements of Minn. Stat. §582.032, subd. 4 for a Complaint but must be captioned as a motion in the existing court file with the same named defendants.

Instead of a Summons or Notice of Motion, draft an Order to Show Cause to be served with your Motion. Wherever the foreclosure-by-advertisement instructions say "Summons and Complaint," substitute "Order to Show Cause and Motion."

Bring your original Motion and Order to Show Cause to the Examiner of Titles Office for approval as to form before filing them with District Court. Examiner approval is free and usually can be done while you wait. Then obtain a Judge's signature and file the original documents with the District Court Administrator's office.

As noted above, the District Court has Ordered that 5-week reduction cases are to be heard by the Examiner of Titles on our normal weekly Torrens calendar. There is one exception to that procedure:

In a foreclosure by action, a 5-week request filed before entry of the Order Confirming Sale is made by motion in the foreclosure action, filed with the District Court Administrator Civil

Filing Clerk for hearing before the Judge assigned to hear the foreclosure-by-action case, and the reduction is effective on the date of entry of the Order Confirming Sale; but

A 5-week request filed after entry of the Order Confirming Sale is made by motion in the foreclosure action but filed with the District Court Administrator's Torrens Clerk for hearing by the Examiner of Titles on the Torrens calendar, and the reduction is effective on the date of Entry of the Order Reducing Redemption Period to 5-Weeks.

The Court Administrator will issue copy of the Order to Show Cause for service. A copy of the Motion must be attached to the Order to Show Cause when served. The copy of the Order to Show Cause with attached Motion is served in the same "handing to and leaving with" manner as a Summons with attached Complaint in the foreclosure-by-advertisement 5-week case. Do not use the "show original and serve copy" method of serving this Order to Show Cause.

APPLICABILITY TO OTHER REDEMPTION PERIODS

Minn. Stat. 582.031 applies to foreclosures by action under chapter 581 and foreclosures by advertisement under 580. It does NOT apply to voluntary foreclosures under 582.32, Subd 5 (d) nor to postponed foreclosure sales under 580.07, Subd 2.

You can reduce a 12-month redemption to 5-weeks if the other criteria are met.

The redemption period under Sheriff's Sale on writ of execution on a civil judgment can be reduced to 5 weeks by authority of Minn. Stat. 550.24 (d). Use the Order to Show Cause and Motion procedure set forth above in Foreclosure by Action. The pleadings are captioned in the civil judgment action but must be modified because there is no mortgage; instead, briefly recite the facts and procedural history that resulted in the Judgment and Order Directing Sale. As with foreclosure by action, the pre-sale-or-post-sale decision must be made to determine whether the Court or the Examiner will hear the motion.

You can reduce the redemption period on foreclosure of an association lien to 5-weeks. Minn. Stat. 515B.3-116 (H) (4) provides for six months redemption period or a lesser period authorized by law for an MCIOA association; and Minn. Stat. 515B.1.102 (B) (1) applies MCIOA to non-MCIOA associations for acts occurring after 1994.