

This Document can be made available in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 953

02/16/2015 Authored by O'Driscoll, Pelowski, Hoppe, Scott and Atkins

The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

03/05/2015 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act  
1.2 relating to real property; clarifying the mortgage foreclosure by advertisement  
1.3 publication requirements; amending Minnesota Statutes 2014, sections 580.15;  
1.4 582.25; proposing coding for new law in Minnesota Statutes, chapter 580.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[580.033] WHERE NOTICE PUBLISHED.**

1.7 For purposes of this chapter, publication of the notice of sale shall be sufficient if it  
1.8 occurs in a qualified newspaper, as defined in section 331A.01, subdivision 8, having its  
1.9 known office of issue, as defined in section 331A.01, subdivision 2, located in the county  
1.10 where the mortgaged premises, or some part thereof, are situated.

1.11 Sec. 2. Minnesota Statutes 2014, section 580.15, is amended to read:

1.12 **580.15 PERPETUATING EVIDENCE OF SALE.**

1.13 Any party desiring to perpetuate the evidence of any sale made in pursuance of  
1.14 this chapter may procure:

1.15 (1) an affidavit of the publication of the notice of sale and of any notice of  
1.16 postponement to be made by the printer of the newspaper in which the same was inserted  
1.17 or by some person in the printer's employ knowing the facts, including that the newspaper  
1.18 is a qualified newspaper and that its known office of issue is located in the county in which  
1.19 the mortgaged premises, or some part thereof, is located;

1.20 (2) an affidavit or return of service of such notice upon the occupant of the mortgaged  
1.21 premises to be made by the officer or person making such service or, in case the premises  
1.22 were vacant or unoccupied at the time the service must be made, an affidavit or return  
1.23 showing that fact, to be made by the officer or person attempting to make such service;

2.1 (3) an affidavit by the person foreclosing the mortgage, or that person's attorney, or  
2.2 someone knowing the facts, setting forth the facts relating to the military service status of  
2.3 the owner of the mortgaged premises at the time of sale;

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

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

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

2.18 (i) whether section 580.021, 580.04, 580.041, 580.042, 582.039, 582.041, or  
2.19 582.042 applies to the foreclosure proceedings; and

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

2.22 Such affidavits and returns shall be recorded by the county recorder and they and the  
2.23 records thereof, and certified copies of such records, shall be prima facie evidence of the  
2.24 facts therein contained.

2.25 The affidavit provided for in clause (3) hereof may be made and recorded for the  
2.26 purpose of complying with the provisions of the Servicemembers Civil Relief Act, and may  
2.27 be made and recorded at any time subsequent to the date of the mortgage foreclosure sale.

2.28 Sec. 3. Minnesota Statutes 2014, section 582.25, is amended to read:

2.29 **582.25 MORTGAGES; VALIDATING FORECLOSURE SALES.**

2.30 Every mortgage foreclosure sale by advertisement in this state under power of sale  
2.31 contained in any mortgage duly executed and recorded in the office of the county recorder  
2.32 or registered with the registrar of titles of the proper county of this state, together with  
2.33 the record of such foreclosure sale, is, after expiration of the period specified in section  
2.34 582.27, hereby legalized and made valid and effective to all intents and purposes, as  
2.35 against any or all of the following objections:

3.1 (1) that the power of attorney, recorded or filed in the proper office provided for  
3.2 by section 580.05:

3.3 (i) did not definitely describe and identify the mortgage;

3.4 (ii) did not definitely describe and identify the mortgage, but instead described  
3.5 another mortgage between the same parties;

3.6 (iii) did not have the corporate seal affixed thereto, if executed by a corporation;

3.7 (iv) had not been executed and recorded or filed prior to sale, or had been executed  
3.8 prior to, but not recorded or filed until after such sale;

3.9 (v) was executed subsequent to the date of the printed notice of sale or subsequent to  
3.10 the date of the first publication of such notice;

3.11 (2) that no power of attorney to foreclose such mortgage as provided in section  
3.12 580.05, was ever given, or recorded, or registered;

3.13 (3) that the notice of sale:

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

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

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

3.22 (iv) correctly described the real estate but omitted the county and state in which  
3.23 said real estate is located;

3.24 (v) correctly described the land by government subdivision, township and range,  
3.25 but described it as being in a county other than that in which said mortgage foreclosure  
3.26 proceedings were pending, and other than that in which said government subdivision  
3.27 was actually located;

3.28 (vi) did not state the amount due or failed to state the correct amount due or claimed  
3.29 to be due;

3.30 (vii) incorrectly stated the municipal status of the place where the sale was to occur;

3.31 (viii) in one or more of the publications thereof, or in the notice served on the  
3.32 occupant or occupants designated either a place or a time of sale other than that stated  
3.33 in the certificate of sale;

3.34 (ix) failed to state the names of one or more of the assignees of the mortgage and  
3.35 described the subscriber thereof as mortgagee instead of assignee;

4.1 (x) failed to state or incorrectly stated the name of the mortgagor, the mortgagee,  
4.2 or assignee of mortgagee;

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

4.7 (xii) was not served upon all of the parties in possession of the mortgaged premises,  
4.8 provided it was served upon one or more of such parties;

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

4.13 (xiv) gave the correct description at length, and an incorrect description by  
4.14 abbreviation or figures set off by the parentheses, or vice versa;

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

4.17 (xvi) did not state the original principal amount secured, or failed to state the correct  
4.18 original principal amount secured;

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

4.21 (5) that no authenticated copy of the order appointing, or letters issued to a foreign  
4.22 representative of the estate of the mortgagee or assignee, was properly filed or recorded,  
4.23 provided such order or letters have been filed or recorded in the proper office prior to one  
4.24 year after the last day of the redemption period of the mortgagor, the mortgagor's personal  
4.25 representatives or assigns;

4.26 (6) that a holder of a mortgage was a representative appointed by a court of competent  
4.27 jurisdiction in another state or county in which before the foreclosure sale an authenticated  
4.28 copy of the representative's letters or other record of authority were filed for record in the  
4.29 office of the county recorder of the proper county but no certificate was filed and recorded  
4.30 therewith showing that said letters or other record of authority were still in force;

4.31 (7)(i) that said mortgage was assigned by a decree of a court exercising probate  
4.32 jurisdiction in which decree the mortgage was not specifically or sufficiently described;

4.33 (ii) that the mortgage foreclosed had been assigned by the final decree of  
4.34 the court exercising probate jurisdiction to the heirs, devisees, or legatees of the  
4.35 deceased mortgagee, or the mortgagee's assigns, and subsequent thereto and before the  
4.36 representative of the estate had been discharged by order of the court, the representative

5.1 had assigned the mortgage to one of the heirs, devisees, or legatees named in such final  
5.2 decree, and such assignment placed on record and the foreclosure proceedings conducted  
5.3 in the name of such assignee and without any assignment of the mortgage from the heirs,  
5.4 devisees, or legatees named in such final decree, and the mortgaged premises bid in at the  
5.5 sale by such assignee, and the sheriff's certificate of sale, with accompanying affidavits  
5.6 recorded in the office of the county recorder of the proper county;

5.7 (iii) that a mortgage owned by joint tenants or tenants in common was foreclosed  
5.8 by only one tenant;

5.9 (8) that the sheriff's certificate of sale or the accompanying affidavits and return of  
5.10 service were not executed, filed or recorded within 20 days after the date of sale, but have  
5.11 been executed and filed or recorded prior to the last day of the redemption period of the  
5.12 mortgagor, the mortgagor's personal representatives or assigns;

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

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

5.18 (ii) that an insufficient registration tax has been paid on the mortgage;

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

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

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

5.32 (14) that the power of attorney to foreclose or the notice of sale was signed by the  
5.33 person who was the representative of an estate, but failed to state or correctly state the  
5.34 person's representative capacity;

5.35 (15) that the complete description of the property foreclosed was not set forth in  
5.36 the sheriff's certificate of sale, if said certificate correctly refers to the mortgage by book

6.1 and page numbers or document number and date of filing and the premises are accurately  
6.2 described in the printed notice of sale annexed to said foreclosure sale record containing  
6.3 said sheriff's certificate of sale;

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

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

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

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

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

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

6.27 (22) that the notice of pendency of the foreclosure as required by section 580.032  
6.28 was not filed for record before the first date of publication of the foreclosure notice, but  
6.29 was filed before the date of sale; ~~and~~

6.30 (23) that the servicer did not comply with the requirements of section 582.043; and

6.31 (24) that the publication of the notice of sale did not comply with section 580.033.

6.32 **Sec. 4. EFFECTIVE DATE.**

6.33 Sections 1 to 3 are effective the day following final enactment and apply to  
6.34 foreclosures in which the notice of pendency under Minnesota Statutes, section 580.032,  
6.35 is recorded on or after that date.