

PROCEEDINGS TO REDUCE MORTGAGE FORECLOSURE REDEMPTION PERIOD TO FIVE WEEKS

For Property in Hennepin County Foreclosed by Advertisement

The redemption period following a mortgage foreclosure by advertisement or action can be reduced to 5 weeks for certain abandoned properties. Minn.Stat. §582.032.

Foreclosure by advertisement: E-File the Complaint with District Court as a civil matter. (Do not file it as a torrens matter.) Pursuant to standing order, the hearing is before the Hennepin County Examiner of Titles for abstract and torrens properties. The standing order includes procedural requirements, and is available with the Instructions and Forms on the Examiner of Titles website.

Foreclosure by action: E-File a Motion in the foreclosure by action case, instead of starting a new case. The hearing is before the judge assigned to the foreclosure by action case. The Examiner of Titles has not created forms or instructions for shortening the redemption period when the mortgage is foreclosed by action.

Instructions and Forms are provided by:

Hennepin County Examiner of Titles
A-701 Government Center, 300 S. 6th St. Minneapolis, MN 55487-071
Phone: 612 348-3191 (press 1)
Email: ex.titles@hennepin.us

Instructions, a Complaint Form, Order Form, and Standing Order (referring these cases to the Examiner of Titles for hearing) are posted on the Examiner of Titles website at: www.hennepin.us (Search: Examiner of Titles).

I. Determine if the action is appropriate §582.032 Subd. 1 and 4

The District Court may shorten the statutory redemption period after mortgage foreclosure to 5 weeks if:

1. The mortgage was executed after December 31, 1989; and
2. There has been a default in payment of money for at least 60 days before the Complaint to shorten the period is filed; and
3. The property is:
 - a. 10 acres or less in size;
 - b. improved with a residential dwelling of less than 5 units which is not a model home or a dwelling under construction;
 - c. not used in agricultural production; and

- d. abandoned. See §582.032 Subd. 7 for supporting facts which constitute prima facie evidence of abandonment.
4. If the Order will be entered after the first date of publication of the foreclosure Notice of Sale, the Notice must contain the statement at Minn. Stat. §580.04 (a)(7) that the redemption period may be reduced to 5 weeks.

II. Draft the Complaint

§582.032 Subd. 4

A **Complaint Form** is available on the Examiner of Titles website.

www.hennepin.us Search for Examiner of Titles

The Complaint Form includes the allegations required by §582.032, Subd. 4.

The Complaint, or a subsequent Affidavit, should provide specific information sufficient to demonstrate that the property is abandoned, as defined in the statute, and not merely unoccupied.

Issues in drafting the complaint:

Who is the Plaintiff? §582.032 Subd. 4

- the party foreclosing the mortgage or holding the sheriff's certificate, or
- the political subdivision in which the property is located.

Who are the Defendants? §582.032 Subd. 4

- the mortgagor, or the mortgagor's personal representatives or assigns of record; and
- the party foreclosing the mortgage or holding the sheriff's certificate of sale, if the political subdivision is the plaintiff; and
- Any party holding a lien or interest of record junior to the foreclosed mortgage, but only if:
 - The action is brought after the foreclosure sale AND
 - The party filed a certificate requesting notice of any post-foreclosure sale reduction. §582.032 Subd. 3

What if a Mortgagor is deceased?

Do not list a deceased person as a defendant. The proper defendant is the court-appointed personal representative with Letters in full force and effect. Use this format: John Smith as Personal Representative of the Estate of Jane Smith, deceased.

If the probate is closed, and the property was sold or distributed, the grantees or distributees are the "assigns of record" and the proper defendants. If there is no personal representative but a Decree of Descent or other court order determined heirs, those heirs are the proper defendants.

If there is no personal representative or court order determining heirs, the Examiner will file a Report stating that the Examiner is not recommending entry of the Order reducing the redemption period to 5 weeks. The Examiner will not determine “heirs” as part of the 5 week action, as there is no provision in §582.032 for publication as to “unknown heirs” nor authority to determine heirs, or to proceed by serving only the “known heirs.”

Who is an assign of record?

This phrase is not defined in §582.032. Recommendation: Name anyone to whom a mortgagor conveyed an interest in the property by deed, contract for deed, lease or other voluntary instrument of record. If a mortgagor retains no interest of record, that mortgagor is probably not a necessary party.

Who is a Mortgagor?

Recommendation: Name all parties identified as mortgagor in the Mortgage, and anyone else who *signed* the mortgage.

III. E-File the complaint as a civil matter and pay the filing fee

To e-file the complaint, select Hennepin Civil, Case type: Civil-Other.

If plaintiff does not have an attorney, e-filing is not required. To file in person, go to:
District Court, Civil Division, C-3, Government Center, 300 S. 6th St.
Minneapolis, MN 55487

IV. Obtain the summons

§582.032 Subd. 4

The court generates the summons. Do not e-file a proposed Summons. When the complaint is e-filed, court administration in Civil Division issues a summons. The summons is available to plaintiff’s attorney in the eFile and Serve system.

§582.032 Subd. 4 states that the “appearance date shall be not less than 15 nor more than 25 days from the date of the issuing of the summons.” Court administration will set an appearance date within the 15-25 day window, on a Thursday.

The 15-25 day requirement is problematic if the United States is a defendant, or if a business entity must be served via the Secretary of State under Minn. Stat. §5.25. Federal law (28 U.S.C. § 2410) and §5.25 require a longer period of time to answer. In such a case, the Plaintiff’s attorney may wish to contact the Examiner of Titles before filing a Complaint.

V. Serve the summons and complaint

§582.032 Subd. 4 and 6

A copy of the filed Complaint must be attached to the Summons. Subd. 6
Service requirements are set out in the statute. Posting is required in all situations.

Post the Premises

Post the Summons and Complaint in a “conspicuous place” on the mortgaged premises not less than 7 days before the appearance date in the summons.

- If the premises has more than one unit, post a copy at each unit.
- The Affidavit of Posting should identify where the Summons was posted by property address and specific location (e.g. front door, rather than “in a conspicuous place”).

Personal Service

Personally serve the Summons and Complaint at least 7 days before the appearance date in the manner provided for service of a Summons in a civil action in District Court. See Minn. R. Civ. P. Rule 4 and §582.032 Subd. 6

- Personal service is required on defendants who can be found in Hennepin County.
- Personal service is an option for defendants found in any other county in Minnesota.
- If defendant is an entity, the Affidavit of Service must state the name and capacity of the person served (e.g. John Jones, President of ABC Corporation). A general statement, such as “agent authorized to receive service” will usually not be acceptable without proof of authority to accept service of process, from the entity itself.
- Service on a business entity by serving the Secretary of State pursuant to Minn. Stat. §5.25: The business entity has 30 days from the date of mailing by the secretary of state in which to answer the complaint; Minn. Stat. §5.25, Subd. 7. This time period, however, is not consistent with the requirement in §582.032 Subd. 4 that the Summons “appearance date shall be not less than 15 nor more than 25 days from the date of the issuing of the summons.” Plaintiff may consult the Examiner of Titles if service via the Secretary of State is necessary.

Certified Mail to Defendants who **cannot be found** in Hennepin County

If a defendant cannot be found in Hennepin County for personal service, the Summons and Complaint may be served at least ten days before the appearance date by sending a copy by certified mail, to the defendant’s last known address.

- File an Affidavit of Not Found setting out what was done to attempt to locate the defendant in Hennepin County.

- File an Affidavit of Service by certified mail with the name and address of the person served by certified mail and a statement that the address is the “last known” address of the defendant.
- A certified mail return receipt is not required by statute.
- If multiple defendants are being served by mail, each defendant must be served by separate mailing (and only one defendant’s name should appear on each envelope), even if two defendants are married to each other or have the same last known address.
- The best practice is to have a separate affidavit of service for each defendant. If one affidavit is used to prove service on multiple defendants by mail, make sure the affidavit states that a copy of the summons and complaint was mailed to each person, in separate envelopes.

When Posting is Sufficient

Minn. Stat. §582.032 Subd.6 states that if personal service or certified mail service cannot be made on a defendant, then the plaintiff or plaintiff’s attorney may file an affidavit to that effect and service by posting is sufficient as to that defendant.

- If a defendant resided at the foreclosed property previously and a new address cannot be found for service, sending the summons and complaint by certified mail to the foreclosed property address as the “last known address” may be appropriate in case the post office has a forwarding address.
- A deceased mortgagor is not a person who cannot be found. The statute specifically provides for service on the personal representative. (See Section II of these Instructions.)
- If relying on posting alone, an Affidavit of Not Found is required and should state what was done to try to locate the defendant. If addresses are available in public records (such as in a recent eviction or divorce action, or on a recorded deed or certificate of title) those should be investigated and specifically addressed in the Affidavit of Not Found.

Service on the Foreclosing Attorney

If Plaintiff is a political subdivision, a copy of the summons and complaint must be delivered by certified mail to the foreclosing attorney.

VI. Before the Hearing: File Affidavits and Proposed Order

Pursuant to Standing Order dated February 17, 2016, E-file the following documents **at least 3 working days** before the hearing:

1. Proposed Order
An **Order form** is on the Examiner of Titles website.

The Order should contain findings regarding the matters alleged in the Complaint and must contain a legal description of the premises.

Relief: If the Order is to be entered before the foreclosure sale, it must state that the time for redemption is reduced to 5 weeks from the date of the sale.

If the Order is to be entered after the foreclosure sale, it must state that the time for redemption is reduced to 5 weeks from the date the Order is entered.

2. Affidavits of Service, Not Found, and Posting
See Section V for affidavit requirements.

3. Affidavits of Abandonment or Written Statement of Abandonment
Affidavits of Abandonment meeting the requirements of §582.032, Subd. 7 are prima facie evidence of abandonment.

Written statements of the mortgagor in lieu of an Affidavit of Abandonment will be acceptable if they indicate a clear intent to abandon the premises; §582.032, Subd. 7.

Failure to appear after appropriate service is conclusive evidence of abandonment by a defendant, subject to vacation under Rule 60.02 of the Minnesota Rules of Civil Procedure; §582.032, Subd. 7.¹

4. Affidavit of Attorney regarding Military Status
Military Status: Submit an affidavit to support the allegation in the complaint that the mortgagors (or the assigns of record) are not in the military. To obtain a default judgment, a plaintiff must file an affidavit stating whether or not the defendant is in the military service **and showing facts supporting the affidavit.** 50 USC App. §521(b)(1)(A). The requirement to “show facts” can be met by attaching a Department of Defense Manpower Data Center Status Report regarding a defendant. <https://www.dmdc.osd.mil/appj/scra/welcome.xhtml> to the affidavit stating that the search was conducted using the defendant’s social security number.

¹ See also *Palladium Holdings, LLC v. Zuni Mortgage Loan Trust 2006-OA1*, 775 N.W.2d 168, 174-5 (Minn.Ct.App. 2009).

VII. Hearing

Time and Place

Hearings conducted by the Examiner of Titles or a Deputy Examiner are held on Thursdays at 11:00 a.m. in the Examiner of Titles courtroom at A-702, Hennepin County Government Center, 300 S. 6th St., Minneapolis, MN 55487. The hearing date is stated on the Summons.

Plaintiff's Appearance

The Plaintiff's attorney may appear at the hearing with or without the plaintiff.

Presentation of the Case

The Plaintiff's attorney should be prepared to advise the court whether the property remains abandoned within the meaning of §582.032 and whether any party has contacted the attorney to request entry to the premises, if the locks were changed, or to object to the reduction of the redemption period. Pursuant to the Standing Order dated February 17, 2016, no oral testimony is permitted at the hearing noticed in the Summons. Affidavits of service and evidentiary affidavits must be filed at least 3 days before the hearing.

Defendant's Appearance

If a defendant files an Answer or appears at the hearing and objects to the reduction of the redemption period, the Examiner will not recommend entry of the Order. The case will be assigned to a judge for all further proceedings.

Approval of the Order

If the Examiner of Titles is satisfied that the Order is in proper form and the evidence submitted is sufficient, the Examiner will recommend entry of the Order, by approval stamp, and give the order to Plaintiff's attorney at the hearing.

If the evidence or service is insufficient, the Examiner will file a Report stating the reasons entry of the Order is not recommended. Plaintiff may file a Request for Review and Judge Assignment no later than 10 days after service of the adverse Report, pursuant to the Standing Order dated February 17, 2016.

VIII. Activities after the hearing

Signing of Order by Judge

The plaintiff's attorney should take the recommended Order to the "signing judge" for signing.

Filing

The attorney should take the signed Order to the District Court civil division (C-3, Hennepin County Government Center) for filing. The attorney should purchase one or more certified copies of the Order.

IX. Activities after the order is entered

Order entered before Foreclosure Sale

1. If publication of the notice of foreclosure sale has not yet started, the first publication of the notice of sale must occur within 30 days of the Order reducing the redemption period. §582.032 Subd. 2.
2. The Sheriff's Certificate of Sale should state that the redemption period is 5 weeks and must be recorded within ten days after the sale. §580.12
3. If the published notice of foreclosure sale stated a longer redemption period, a certified copy of the Order shortening the redemption period to 5 weeks must be attached to the Sheriff's Certificate of Sale. §580.12
4. A certified copy of the order reducing the redemption period may be recorded with the county recorder for abstract property, or the registrar of titles for Torrens property, pursuant to §582.032 Subd. 8. If the order is not required to be attached to the Sheriff's Certificate of Sale, it should still be recorded or filed in the real estate records.

Order entered after Foreclosure Sale §582.032 Subd. 3

Within 10 days of entry of the order:

1. A certified copy of the Order must be sent by certified mail to each of the holders of junior liens and interests who have filed with the county recorder or registrar of titles a certificate requesting notice of any post-foreclosure sale reduction of the mortgagor's redemption period.
2. A copy of the Order must be posted in a conspicuous place on the mortgaged premises.
3. A certified copy of the Order must be recorded with the County Recorder if the property is abstract or filed with the Registrar of Titles if the property is registered (Torrens). An Affidavit of posting of the Order and any Affidavits of mailing of the Order are entitled to recordation along with the certified copy of the order, and are prima facie evidence of the facts stated therein.