

PROCEEDINGS TO REDUCE TAX JUDGMENT SALE REDEMPTION PERIOD TO FIVE WEEKS

For Property in Hennepin County

A lien attaches to real property every year on January 2 for the amount of property taxes due. If property taxes are not paid when due, they become delinquent and the county obtains a judgment against the property. On the second Monday in May, properties with tax judgments are “sold” to the State of Minnesota and the statutory redemption period begins to run. The redemption period is either 1 or 3 years, and may be reduced following the tax judgment sale to 5 weeks, for certain abandoned properties. Minn.Stat. §§ 281.173 and 281.174.

These instructions focus on §281.173. §281.174 is limited to properties that are part of a statutorily-defined “targeted neighborhood revitalization program”, that had a residential structure on the property in the last five years, but have no structure currently.

Instructions and Forms are provided by:

Hennepin County Examiner of Titles

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Website: www.hennepin.us (Search: Examiner of Titles).

Standing Order: Pursuant to District Court Standing Order, the initial hearing is before the Examiner of Titles. The Standing Order includes procedural matters that are referenced in the following instructions. The Standing Order is available at the Examiner of Titles website and the 4th Judicial District Court website.

I. Determine if the action is appropriate

§281.173 Subd. 1

The District Court may shorten the statutory redemption period to 5 weeks after tax judgment sale for delinquent property taxes if:

1. The tax sale as provided in section 290.01 has occurred; and
2. The notice of expiration of time for redemption has not been given; and
3. The property is not lawfully occupied and is abandoned as defined in §281.173 Subd. 4.

II. Draft the Complaint

§281.173 Subd. 2

§281.173 Subd. 2 requires that the Complaint address 1-4 below:

1. Identify the premises by legal description;
2. Allege that the premises are abandoned, that the tax judgment sale pursuant to section 280.01 has been made, and that notice of expiration of the time for redemption has not been given;
3. Identify the defendants;
4. Request an order reducing the redemption period to 5 week.

In addition, the Complaint should state whether any defendant is on active duty military service and protected by 50 U.S.C. §501 *et seq.*

If a defendant has filed bankruptcy, the Complaint should state the reason the requested order does not violate the automatic stay.

If there is an IRS lien, the United States is a required defendant and the Complaint must identify the interest of the US with specificity. Include the “name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed.” 28 U.S.C. § 2410(b).

Issues in drafting the complaint:

Who is the Plaintiff? §281.173 Subd. 2

The Plaintiff must be the city, county, housing and redevelopment authority, port authority, or economic development authority in which the premises are located.

Who are the Defendants? §281.173 Subd. 2

- The record fee owners or the deceased owner’s personal representative, or the deceased owner’s heirs as determined by a court of competent jurisdiction
- Contract for Deed purchasers or assigns
- Mortgagees or assigns
- The taxpayers, as shown in the records of the county auditor (this information is available at www.hennepin.us (Property Information Search))
- The Internal Revenue Service of the United States, if tax liens against the owners or contract for deed purchasers have been recorded or filed
- Revenue Department of the State of Minnesota, if tax liens against the owners or contract for deed purchasers have been recorded or filed
- Any other persons the Plaintiff determines should be a defendant

What if an owner or other necessary defendant is deceased?

Do not list a deceased person as a defendant. For a 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 property was sold by the personal representative or distributed by deed or decree and the deed or decree was recorded or filed in the real estate records, the grantee/distributee is the record fee owner and should be a defendant.

If there is no personal representative, the heirs as determined by the court should be defendants. If there has been no probate, it may be necessary to commence a proceeding in probate court to obtain a determination of heirs before filing the Complaint to reduce the redemption period. It is not acceptable to substitute heirs of the decedent unless there is a court order determining the heirs.

The Examiner will not determine “heirs” as part of the 5 week action. There is no provision in §281.173 for publication as to “unknown heirs” and no authority in §281.173 to determine heirs.

Who is an assign?

This phrase is not defined in §281.173. Recommendation: Name anyone to whom a record fee owner, mortgagee, or contract for deed purchaser conveyed an interest in the property by deed, contract for deed, lease or other voluntary instrument of record. If a grantor retains no interest of record, that grantor is probably not a necessary party.

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.

IV. Obtain the summons

§281.173 Subd. 2

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. Always review the summons for accuracy prior to service of process, and request an Amended Summons if necessary.

§281.173 Subd. 2 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 when the United States is a defendant, and when a business entity must be served via the Secretary of State under Minn. Stat. §5.25. Under Federal law (28 U.S.C. § 2410) the United States may appear within 60 days after service of the summons and complaint. An entity served pursuant to §5.25 Subd. 4 has 30 days from the date of mailing by the secretary of state in which to answer the complaint. The Plaintiff's attorney may wish to contact the Examiner of Titles before filing the Complaint.

§281.174 Subd. 3 (for property with no structure and in a targeted neighborhood revitalization program) specifically addresses the issue of the hearing date when the US is a party, by stating "except that, when the United State of America is a party, the (summons) date shall be set in accordance with applicable federal law." §281.173 Subd. 2 lacks that language, but Subd. 3 says "service upon the United States of America shall be made in accordance with applicable federal law."

V. Serve the summons and complaint

§281.173 Subd. 3

A copy of the filed Complaint must be attached to the Summons. Subd. 2. 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 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 §281.173 Subd. 3.

- Personal service is required on defendants who can be found in the State of 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 "John Jones, 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 §281.173 Subd. 2 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.
- Service on the United States: §281.173 Subd. 3 states “[s]ervice upon the United States of America shall be made in accordance with applicable federal law.” 28 U.S.C. §2410(b) requires that the summons and complaint be personally served on the United States Attorney for the district in which the action is brought, and served by registered or certified mail on the Attorney General for the United States in the District of Columbia.

Addresses for service as of the date of these instructions are as follows:

Internal Revenue Service [*personal service*]
 c/o United States Attorney for the District of Minnesota
 U.S. Courthouse
 300 S. Fourth Street, Suite 600
 Minneapolis, MN 55415

Internal Revenue Service [*registered or certified mail*]
 c/o Attorney General of the United States, Department of Justice
 Room B-103, 950 Pennsylvania Avenue N.W.
 Washington D.C. 20530-0001

Certified Mail to Defendants who **cannot be found** in Minnesota

If a defendant cannot be found in Minnesota the Summons and Complaint may be served by certified mail at least ten days before the appearance date in the summons.

- File an Affidavit of Not Found setting out what was done to attempt to locate the defendant in Minnesota for personal service.
- 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.
- 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

Under Minn. Stat. §281.173 Subd. 3, 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 premises previously and a new address cannot be found for service, sending the summons and complaint by certified mail “forwarding requested” to the premises as the “last known address” may be appropriate, in case the post office has a forwarding address.
- A deceased defendant is not a person who cannot be found. The statute specifically provides for service on the personal representative or heirs as determined by a court of competent jurisdiction. (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. The attorney should also investigate whether a defendant (individual or business) has a new name due to merger, a court-ordered name change in a civil action, or divorce case, etc.

VI. Before the Hearing: File Affidavits and Proposed Order

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

1. Proposed Order
The Order should contain specific findings of abandonment and findings regarding other matters alleged in the Complaint and must contain a legal description of the premises.
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 §281.173 Subd. 4, are prima facie evidence of abandonment.

Written statements of the owner, personal representative or assigns indicating a clear intent to abandon the premises are conclusive evidence of abandonment. §281.173 Subd. 4.

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” may 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.

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 §281.173 and whether any party has contacted the attorney.

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. Pursuant to Standing Order, the Defendant will be given time (generally one week) to file an Answer and 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 to take to the signing judge.

If the evidence or service is insufficient, the Examiner will file an adverse Report stating the reasons entry of the Order is not recommended, and court administration will serve the report on the parties. Plaintiff may file a Request for

Review and Judge Assignment no later than 10 days after service of the adverse Report, pursuant to Standing Order.

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

Recording of the Order

Within 10 days after the order is entered, a certified copy of the order must be filed by the moving party with the county recorder (if abstract property) or registrar of titles (if torrens property) and with the county auditor. §281.173 Subd.5.