

## CHAPTER 297.

## FORECLOSURE OF MORTGAGES BY ADVERTISEMENT.

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**297.01 What mortgages.** Every mortgage of real estate containing a power of sale, upon default being made in any condition thereof, may be foreclosed by advertisement within twenty years after the maturing of such mortgage or the debt secured thereby in the cases and in the manner hereinafter specified.

**297.02 When may be had.** To entitle any party to make such foreclosure it shall be requisite:

- (1) That some default in the condition of such mortgage shall have occurred, by which power to sell became operative;
- (2) That no action shall have been commenced to recover the debt then remaining secured by such mortgage or any part thereof; or if any action has been commenced, that the same has been discontinued or that an execution upon the judgment rendered therein has been returned unsatisfied in whole or in part; and
- (3) That the mortgage containing such power of sale has been duly recorded; and if it shall have been assigned, that all of the assignments thereof shall have been recorded.

**297.03 Instalments separate mortgages.** In cases of mortgages given to secure the payment of money by instalments each of the instalments, after the first, shall be taken and be deemed to be a separate and independent mortgage for the purposes of this chapter, and such mortgage for each of such instalments may be foreclosed in the same manner and with like effect as if a separate mortgage were given for each of such subsequent instalments; and a redemption of any such sale by the mortgagor shall have the like effect as if the sale for such instalment had been made upon an independent prior mortgage.

**297.04 Mortgage foreclosure; six weeks' notice and service upon subsequent grantee.**

(1) Notice that such mortgage will be foreclosed by a sale of the mortgaged premises or some part of them shall be given as provided in section 272.31.

(2) A copy of such notice shall be served in the manner of serving a summons in a civil action, upon the mortgagor and upon any subsequent grantee or mortgagee whose conveyance shall be recorded at the time of the first publication of such notice at least six weeks before the date of sale if they shall be found within the county.

(3) If the return of the sheriff, or affidavit of the person making the service shall show that any such person cannot be found, a copy of such notice shall be posted in a conspicuous place upon the mortgaged premises and also served upon the occupant thereof, if any.

**297.05 What notice to specify.** Such notice shall specify:

- (1) The names of the mortgagor and of the mortgagee, and of the assignee of the mortgage, if any;
- (2) The date of the mortgage and when recorded;
- (3) The amount claimed to be due thereon at the date of the notice;
- (4) A description of the mortgaged premises, conforming substantially with that contained in the mortgage; and
- (5) The time and place of sale.

**297.06 Sale, where, how and by whom made.** The sale shall be at public auction, between the hour of nine o'clock in the forenoon and the setting of the sun, in the county in which the premises to be sold or some part of them are situated, and shall be made by the person appointed for that purpose in the mortgage, if any, or by the sheriff, undersheriff, or deputy sheriff of the county to the highest bidder.

**297.07 How postponed.** Such sale may be postponed from time to time by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the origi-

nal advertisement was published and continuing such publication until the time to which the sale shall be postponed, at the expense of the party requesting such postponement.

**297.08 Distinct tracts to be sold separately.** If the mortgaged premises consist of distinct farms, tracts or lots they shall be sold separately, and no more farms, tracts or lots shall be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest, and the costs and expenses allowed by law.

**297.09 Who may purchase.** The mortgagee, his assigns or his or their legal representatives may fairly and in good faith purchase the premises so advertised or any part thereof at such sale.

**297.10 Certificate of sale.** Whenever any lands shall be sold by virtue of a power of sale contained in any mortgage it shall be the duty of the officer or other person making the sale to give to the purchaser a certificate in writing, signed by him, setting forth a description of each tract or parcel of the premises sold, the sum paid therefor and the time when the purchaser will be entitled to a deed for the same, unless they shall be redeemed as provided in this chapter; and such officer shall, within ten days from the time of sale, file in the office where the mortgage is recorded a duplicate of such certificate, signed by him; and such duplicate certificate or a copy certified by the register shall be taken and deemed evidence of the facts therein contained.

**297.11 Redemption, when and by whom.** The mortgagor, his heirs, executors, administrators or assigns whose lands shall be sold in conformity with the provisions of this chapter, within one year from and after such sale, may redeem such lands or any distinct parcel or tract thereof separately sold by paying to the purchaser, his executors, administrators or assigns or to the then sheriff, undersheriff or deputy sheriff the sum of money which was bid therefor together with interest at the rate provided to be paid on the mortgage debt, which rate shall not exceed the minimum legal rate of interest, from the time of such sale; and such payment being made, said sale and certificate shall be null and void as to the parcel or tracts of lands so redeemed, and the bail of said sheriff shall be responsible for the faithful payment to the purchaser aforesaid of all moneys received by him or any of his deputies aforesaid; and in every case the mortgagor may retain full possession of all premises mortgaged by him until the title shall absolutely vest in the purchaser thereof according to the provisions of this chapter.

**297.12 Second mortgagee may redeem.** Any person to whom a subsequent mortgage may have been executed shall be entitled to the same privilege of redemption of the mortgaged premises that the mortgagor might have had, or of satisfying the prior mortgage, and shall by such satisfaction acquire all the benefits to which such prior mortgagee was or might have been entitled.

**297.13 Redemption by creditors.** If no redemption under the provisions of section 297.11 be made the senior creditor having a lien, legal or equitable, upon the mortgaged premises, subject to the mortgage, may redeem within five days after the expiration of such year, and each subsequent creditor, in succession, according to priority of lien within five days after the time allowed the prior lien holder respectively, may redeem by paying the amount provided in section 297.11, and all liens prior to his own held by the person from whom redemption is made; provided, that no creditor shall be entitled to redeem unless within such year he files notice of his intention to redeem in the office or offices of register of deeds of the county or counties in which the mortgage is of record.

**297.131 and 297.132** [*Repealed by 1935 c. 319*]

**297.14 Deed, execution of.** (1) If such mortgaged premises so sold shall not be redeemed as aforesaid the officer, or his successor in office or other person who shall have sold the same, or his executor or administrator or some person appointed by the circuit court for the purpose shall complete such sale by executing a deed of the premises so sold to the original purchaser, his assignee or personal representatives.

(2) If any person shall have redeemed the mortgaged premises, as provided in sections 297.12 or 297.13, such deed shall be executed to the redemptioner who has acquired all the rights of all prior lien holders.

**297.15 Application of surplus.** If after sale of any real estate made as herein prescribed there shall remain in the hands of the officer or other person making the sale any surplus money, after satisfying the mortgage on which such real estate was sold and all instalments thereof, and payment of the costs and expenses of such foreclosure and sale, the surplus shall be paid over by such officer or other person to the clerk of the circuit court of the county wherein the sale was made and take his receipt therefor. Money so deposited may be applied for by and distributed to the proper party in the manner provided by law or by rule of court in the case of surplus moneys realized in foreclosure by action. If any part of the moneys secured by the mortgage is not due and such surplus be more than enough to pay it the same shall be so paid, with interest, to the time of such payment.

**297.16 Perpetuation of evidence of sale.** Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter may procure:

(1) An affidavit of the publication of the notice of sale and of any notice of postponement, to be made by the printer of the newspaper in which the same was inserted or by some person in his employ knowing the facts; and

(2) An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid and the name of the purchaser; providing, that in case of the death or other disability of the person who acted as auctioneer at such sale, before making such affidavit, the same may be made by any person having knowledge of the facts, who shall state in such affidavit the fact of such death or other disability and that such affidavit is made for that reason.

**297.17 Affidavit as evidence.** Such affidavit shall be recorded at length by the register of deeds of the county in which the premises are situated in a book kept for the recording of mortgages; and such original affidavits, the record thereof and certified copies of such record shall be presumptive evidence of the facts therein contained.

**297.18 Entry in record of mortgage.** A note referring to the page and book where the evidence of any sale having been made under mortgage is recorded shall be made by the register recording such evidence in the margin of the record of such mortgage, if such record be in his office.

**297.19 Effect of record and deed.** A record of the affidavits aforesaid and of the deed executed on the sale of the premises shall be sufficient to pass the title thereto; and the said conveyance shall be an entire bar of all claim or equity of redemption of the mortgagor, his heirs and representatives and all persons claiming under him or them by virtue of any title subsequent to such mortgage; but no title accruing prior to the execution of such mortgage shall be affected thereby.

**297.20** [*Repealed by 1925 c. 223*]

**297.21 Service of copy of notice of sale.** When notice of any sale by virtue of a mortgage shall be published in any other than the county in which the premises are situated a copy of such notice shall be served in the manner first provided in section 297.04 at least four weeks before the time of such sale on the person in possession of the mortgaged premises, in all cases where the same are occupied, as well as upon the persons designated in said section, at least four weeks before the day of such sale. Proof of the service of notice required hereby and of the service required to be made, otherwise than by publication, by section 297.04 may be made, certified and recorded in the same manner and with the like effect as proof of the publication of a notice of sale under a mortgage.

**297.22 Costs of sale, how taxed.** The costs and expenses of foreclosing any mortgage pursuant to this chapter shall be taxed by some officer authorized to tax costs in a court of record, upon request of any party liable to pay the same, and on notice to the other party, on his paying the expense of such taxation.

**297.23 Certificate of sale as evidence; defects cured by time.** The sheriff's certificate of sale, made pursuant to law, or a duly certified copy thereof shall be prima facie evidence that all the requirements of this chapter concerning the sale have been complied with and of such title in the purchaser at such sale, his heirs or assigns, after the time for redeeming from the sale has expired, as was vested in the mortgagor at the time of the execution of the mortgage or at any time thereafter up to the time of the sale. No such sale shall be held invalid or be set aside because of any defect in the notice thereof or in the publication of the same, or in the proceedings of the officer conducting the sale unless the action in which the validity of such notice or sale be questioned be commenced or the defense alleging the invalidity thereof be interposed within five years after the time of making the sale; provided, that persons who are under disability when such sale is made may commence such action or interpose such defense at any time within five years after the removal of such disability.