

HENNEPIN COUNTY

MINNESOTA

INSTRUCTIONS TO REDUCE MORTGAGE FORECLOSURE REDEMPTION PERIOD TO FIVE WEEKS

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SECTION 1: OVERVIEW

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 the [Standing Order](#), the hearing is before the Hennepin County Examiner of Titles for abstract and Torrens properties. The Standing Order includes procedural matters that are mentioned in the following instructions.

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.

SECTION 2: DETERMINE IF THE ACTION IS APPROPRIATE

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 Minn. Stat. § 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.

SECTION 3: DRAFT THE COMPLAINT

A Complaint Form is available on the Examiner of Titles [webpage](#).

The Complaint Form includes the allegations required by Minn. Stat. § 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; mere vacancy is not sufficient evidence.

Issues in drafting the complaint:

Who is the Plaintiff? § 582.032, Subd. 4

- the party foreclosing the mortgage (if before Sheriff's sale);
- the party holding the Sheriff's certificate (if after Sheriff's sale); 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
- if the political subdivision is the plaintiff, then the party foreclosing the mortgage or holding the Sheriff's certificate of sale; and
- if the action is brought after the foreclosure sale, any party holding a lien or interest of record junior to the foreclosed mortgage that filed a certificate requesting notice of any post-foreclosure sale reduction. Minn. Stat. § 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 Minn. Stat. § 582.032 for publication as to "unknown heirs" nor authority to determine heirs, or to proceed by serving only the "known heirs." If plaintiff wishes to have the decision reviewed, plaintiff may file a Request for Review and Judge Assignment no later than 10 days after service of the Report on the parties.

Who is an assign of record?

This phrase is not defined in Minn. Stat. § 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.

SECTION 4: e-FILE THE COMPLAINT

Attorneys:

e-file the Complaint and pay the District Court civil case filing fee. To e-file, select “Hennepin Civil” as the location and “Civil-Other” as the case type. All attorneys must use e-filing. The attorney must also add themselves to the Service Contacts list. This allows the court administrator to send documents to Plaintiff’s attorney by e-service.

Self-Represented Plaintiff:

If Plaintiff is not represented by an attorney, the Complaint and District Court civil case filing fee may be mailed to:

Civil Filing
C-3, Hennepin County Government Center
300 South 6th St., Minneapolis, MN 55487-0071

The check for the District Court civil case filing fee should be payable to District Court Administrator. If Plaintiff is unable to pay the District Court civil case filing fee, Plaintiff should obtain an order waiving the fee and submit the order with the Complaint.

A pro se party can also add themselves to the service list in the eFile and eServe (eFS) System, allowing the court administrator to serve them electronically.

Important Notice: If you are representing yourself and your address changes, send your new address to the Examiner of Titles Office (referencing the court file number). The court mails notices and orders to the address you provide.

SECTION 5: OBTAIN THE SUMMONS

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 eServe (eFS) System. Always

review the summons for accuracy prior to service of process and request an amended summons if necessary.

Minn. Stat. § 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 on a Thursday within the 15–25-day window.

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 if the United States is a defendant, and when a business entity must be served via the Secretary of State.

SECTION 6: SERVE THE SUMMONS AND COMPLAINT

A copy of the filed complaint must be attached to the summons. Minn. Stat. § 582.032, Subd. 4. 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. Minn. R. Civ. P. Rule 4 and Minn. Stat. § 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 “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 period, however, is not consistent with the requirement in Minn. Stat. § 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 10 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 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 by statute.
- If multiple defendants are being served by certified 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. § 582.032, Subd. 6, 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 “forwarding requested” to the foreclosed property 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. (See [Section 3](#))

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.

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.

SECTION 7: 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

A [proposed order](#) is available on the Examiner of Titles [webpage](#).

The proposed 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.

Request for 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 6](#) for affidavit requirements.

3. Affidavits of Abandonment or Written Statement of Abandonment

Affidavits of Abandonment meeting the requirements of Minn. Stat. § 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. Minn. Stat. § 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; Minn. Stat. § 582.032, Subd. 7.¹

4. Affidavit of Attorney regarding 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 the defendant is in the military service **and showing facts supporting the affidavit.** 50 U.S.C. 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 to the affidavit stating that the search was conducted using the defendant’s social security number.

SECTION 8: HEARING

Time and Place

Hearings conducted by the Examiner of Titles or a Deputy Examiner are held on Thursdays at 11:00 a.m. The hearing date and time is stated on the summons. Carefully review the summons for the location of the hearing—currently hearings are held remotely through Zoom.²

Plaintiff’s Appearance

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

Presentation of the Case

Plaintiff’s attorney, or the plaintiff is not represented, should be prepared to advise the court whether the property remains abandoned within the meaning of Minn. Stat. § 582.032 and whether any party has contacted the plaintiff or 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, 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. Pursuant to the Standing Order, the Defendant will be given time (generally 7 days) to file an Answer and the case will be assigned to a judge for all further proceedings.

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

² If you require assistance accessing Zoom, see the [Legal Kiosk Project](#), or contact the [Self-Help Center](#) at Hennepin County Government Center, 300 South 6th Street, Skyway level – just behind A-Tower weapon screening, Minneapolis, MN 55487-0421 or by phone at (651) 478-8757, option 2.

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, and will send the recommended Order to the Signing Judge. District Court Civil Filing will e-file the Order in the Court file.

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 the Standing Order.

SECTION 9: POST-HEARING

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. Minn. Stat. § 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 10 days after the sale. Minn. Stat. § 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. Minn. Stat. § 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 Minn. Stat. § 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 (Minn. Stat. § 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 for abstract property, or the registrar of titles for Torrens property. 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.