

## CHAPTER 281.

## PROVISIONS RELATING TO LAND.

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**281.01 Action to quiet title; practice.** (1) Any person having the title to land may institute an action against any person setting up a claim thereto. The defendant may, by answer, disclaim all title to such land and give a release thereof to the plaintiff and shall recover costs unless the court shall otherwise order. The complaint shall allege the nature and extent of the plaintiff's estate in such land and that the defendant makes some claim thereto, and shall demand judgment that the plaintiff's claim be established against any claim of the defendant, and that he be forever barred against having any right or title to the land adverse to the plaintiff.

(2) The introduction in evidence of any recorded instrument or of the record thereof or of a certified copy of such record, purporting to convey to or otherwise in any way to affect in favor of the defendant, or any grantor, deviser, ancestor or assignor of the defendant said land or any interest therein adversely to the plaintiff, under or through which the plaintiff does not trace his claim of title, shall be sufficient proof of claim of title on the part of the defendant; and the court may receive any other competent evidence. The owner of any lien or incumbrance on land has the same right of action as the owner in fee to test the validity of any other claim, lien or incumbrance on such land or any part thereof. [1935 c. 541 s. 381]

**Note:** In an action to quiet its title the state is not entitled to judgment against nonappearing defendant if the state fails to substantiate its title. *State v. Gether Co.*, 203 W 311, 234 NW 331.

Liens for services and materials date from the commencement of the first work, and are prior to any other lien which originates subsequent to the commencement of construction. The mechanics' liens were prior to the lien of the mortgage which was executed subsequent to the commencement of construction, notwithstanding the lienors with notice of the fact received partial payments on account from funds obtained from the mortgage loan. *Interior W. Co. v. Buhler*, 207 W 1, 238 NW 822.

The circuit court has jurisdiction of an action to quiet title begun by the widow of the testator's son, who elected to retain land as authorized by the will on his payment of legacies to testator's other children, although no final decree in the matter of the testator's estate had been entered by the county court, but the probate thereof was inactive. *Mitchell v. Mitchell*, 230 W 461, 283 NW 448.

Closing of the testator's estate in county court was unnecessary to establish the testator's title to a farm devised to his son and to give the circuit court jurisdiction of the latter's action to quiet title thereto. *Sundermann v. Heinrich*, 230 W 538, 284 NW 532.

**281.02 Action to establish title by adverse possession.** (1) Any person who in connection with his predecessor in title has been in the uninterrupted adverse possession of any land for ten years under a conveyance recorded in the office of the register of deeds of the county where land lies, or who has been in such possession for twenty years, otherwise than under such conveyance, may commence and maintain an action to establish his title against any defects claimed to exist. He may make all persons deemed to be connected with or involved in such defects defendants by name if known, and otherwise generally all persons whom it may concern, by that specification.

(2) As to all persons not contesting, judgment may be rendered on application to the court without other proof than the complaint, duly verified, proof of service of the summons and the facts as to possession as alleged. The judgment shall establish the title according to the facts, which judgment, or a certified copy thereof, may be recorded in the office of the register of deeds in the county where the land lies, and, when so recorded shall be conclusive evidence of the status of the title to the lands according to the facts therein

adjudged. No costs shall be taxed against a defendant who does not contest the claim of the plaintiff. [1935 c. 541 s. 382]

**Revisor's Note, 1935:** Service of summons summons is made 262.02 (4). (Bill No. 50 S. is provided in chapter 262, (262.12 and s. 382) 262.13). The provision for a note to the

**281.03 Notice of pendency of action; effect; when void; discharge.** (1) In an action affecting the title to land the plaintiff, after filing the complaint, may file in the office of the register of deeds of each county where any part thereof is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and a description of the land in that county affected thereby. The defendant may file a like notice. From the time of such filing every purchaser or incumbrancer whose conveyance or incumbrance is not recorded or filed shall be deemed a subsequent purchaser or incumbrancer and shall be bound by the proceedings in the action to the same extent and in the same manner as if he were a party thereto. In any such action in which a notice of the pendency thereof has been filed and the plaintiff fails for one year after the filing to serve the summons on some defendant, said notice shall be void, and upon motion and proof the court shall order such notice struck from the files.

(2) Proceedings for acquiring land by right of eminent domain shall be held to be actions within the provisions of this section and notice of the pendency thereof may be filed at any time.

(3) The lis pendens may be discharged upon the conditions and in the manner provided by section 266.22 for discharging an attachment. [1935 c. 541 s. 383]

**281.04 Highways; parks; record of order.** (1) Every person who makes an application to any court, county board, common council, or village board for laying out, widening, vacating or extending any street, alley, water channel, park, highway or other public place shall, at or prior to the time of filing the same with the proper officer, file a notice of the pendency of such application, containing his name and a brief statement of the object thereof and a map and description of the land to be affected thereby in the office of the register of deeds of each county in which any such land is situated. Neglect to comply with these provisions shall render all proceedings based upon such application void, but no order vacating, or proceedings for the vacation of, any street, alley, water channel, park, highway or other public place, heretofore made or had, shall be void solely by reason of the failure to file such notice of the pendency of such application, map and description.

(2) No final order, judgment or decree or final resolution or order taking or affecting such land, based upon any application therefor, shall have any effect or be notice to any subsequent purchaser or incumbrancer unless a certified copy thereof, giving a full and accurate description of the land affected thereby, and accompanied with a map showing the location thereof, be recorded in the office of the register of deeds of the county in which the land is situated. A resolution or order made by any such body, whereby any land shall be taken or affected without an application having been made therefor, shall have no effect and shall not be notice to any subsequent purchaser or incumbrancer unless such resolution or order be recorded.

**Note:** Failure to file notice of pendency of application to condemn land to widen street did not render condemnation proceeding void against owners appearing and consenting thereto. The lis pendens doctrine does not apply to parties to action. *Pennefeather v. Kenosha*, 210 W 695, 247 NW 440.

**281.05** [Repealed by 1933 c. 436 s. 11]

**281.06 Land sold, where; effect of deed.** Real property adjudged to be sold must be sold in the county where the premises or some part thereof are situated by the sheriff of that county or a referee appointed by the court for that purpose, and deeds executed upon such sales shall be effectual to pass the title, rights and interest of the parties in the premises adjudged to be sold and of all purchasers or incumbrancers thereof whose conveyance or incumbrance is made, executed, recorded, perfected or obtained subsequent to the filing of the notice of the pendency of the action in which such real property is adjudged to be sold unless the judgment shall otherwise direct.

**281.07 Report of land sale and deed, who to make; second referee.** If the sheriff or referee who made the sale of land dies, departs from the state or becomes otherwise incapacitated to make the report or to execute the deed, such report may be made by the undersheriff, a deputy sheriff, the plaintiff, or any other party to the action interested in having it made, his agent or attorney, upon oath; and such deed may be made by a referee appointed for that purpose and shall have the same effect as if made by such sheriff or original referee. And where a referee appointed by the judgment to make such sale shall die, remove from the state or become incapacitated, the court may, upon petition of any interested party appoint some other referee to make such sale and carry out any other provisions of such judgment. [1935 c. 541 s. 384]

281.08 [Repealed by 1935 c. 541 s. 385]

281.09 **Remainderman; fraudulent recoveries void.** All recoveries against any tenant for life, or by the curtesy of any lands, shall be void as against all persons to whom any reversion or remainder of such lands shall appertain and as against their heirs, unless the reversioner or remainderman is a party to the action. [1935 c. 541 s. 386]

281.10 [Repealed by 1935 c. 541 s. 387]

281.11 **Survey may be ordered.** In all actions relating to real property the court may by order give any party thereto leave to make any survey of any premises affected by such action, or of any boundary line of such premises, or between the lands of any of the parties and the lands of other persons, when satisfied that such survey is necessary or expedient to enable either party to prepare his pleadings in the action. The order for such survey shall specify the premises or boundary lines to be surveyed, and a copy thereof shall be served upon the owner or occupant before any entry is made to make such survey. After such service the party obtaining such order may, with the necessary surveyors and assistants, enter the premises specified in such order and make such survey without being liable to any action therefor except for injury or damages unnecessarily caused thereby.

281.12 **Effect of conveyance.** Whenever any action for the recovery of lands or tenements or for the recovery of the possession thereof shall be commenced against any person in possession of the premises in question or in the receipt of the profits thereof such action shall not be barred or delayed by reason of any alienation or conveyance made by such person to any other, either before or after the commencement of such action.

281.13 [Renumbered section 275.33 by 1935 c. 541 s. 388]

281.14 [Renumbered section 260.21 by 1935 c. 541 s. 12]

281.15 [Renumbered section 275.02 (2) by 1935 c. 541 s. 389]

281.16 [Repealed by 1935 c. 541 s. 390]

281.17 [Renumbered section 275.02 (2) (b) by 1939 c. 513 s. 53]

281.20 **An emergency exists; emergency legislation; expiration.** It is hereby declared that a public economic emergency does, and continues to, exist in the state of Wisconsin. This economic emergency has deprived thousands of people in this state of employment, has necessitated the expenditure of many millions of public funds within this state to prevent starvation, has thrown the burden of support of thousands on the state and nation, and has caused many of the people of this state to lose their homes, their farms and their places of business, and threatens the loss of homes and lands which furnish those in possession the necessary shelter and means of subsistence, and resulting in increased burden on the state. In view of this emergency it is deemed necessary to adopt reasonable means to safeguard and preserve through this crisis the vital economic structure upon which the good of all depends. Such measures are designated "emergency legislation". All laws so designated shall expire when the emergency ceases, which shall be so proclaimed by the governor, and in any event, not later than April 1, 1943, unless another date is specifically provided. Emergency legislation shall prevail over any other provisions of the statutes with which it may conflict. [1935 c. 319; 1937 c. 15; 1939 c. 28; 1941 c. 31]

**Note:** Sections 281.20 to 281.209 do not apply to Federal Land Bank mortgages. 24 Atty. Gen. 780.

281.201 **Definitions.** As used in sections 281.20 to 281.21, unless the context or such other matters otherwise require:

(1) "Local board" means local mediation board.

(2) "Home" means:

(a) A farm, irrespective of acreage, and the dwelling house thereon and the appurtenances owned and occupied as a home by the owner of the fee and operated as one farm; or

(b) Any single or two-family house with a private garage and outbuildings located on not exceeding one-fourth of an acre in any city, village or recorded plat owned and occupied as a home by the owner of the fee.

(3) "Owner" includes a purchaser under a land contract. This section is emergency legislation. [1935 c. 319; 1941 c. 31]

281.202 **Local mediation board.** (1) There is created in each county a local mediation board, which shall consist of three members to be selected within thirty days after the passage of this section, two by a majority vote of the county board and one by the circuit court of said county. In counties in which the county board will not be in session within thirty days after the taking effect of this section, the members to be selected by the county board shall be appointed by the chairman of the county board and shall hold office until a selection is made by the board. One of the members selected by the county board or its chairman shall be a farmer, except in any county containing a city with a population of two hundred fifty thousand or more, and any member of the local board may be a member of the county board. The county board shall determine what compensation the

members of said local board shall receive for their services upon such board, the same to be paid by the county in the same manner that other employes of the county are paid. The county board shall also determine what legal, clerical and other assistants, if any, the local board shall employ and shall fix the compensation of such assistants which shall be paid in the same manner that other employes of the county are paid.

(2) In counties having a population of 250,000 or more there may be more than one local board, if the county board so determines. This section is emergency legislation. [1935 c. 319]

**Note:** County board has authority to change compensation for ensuing year of mediation board at annual or any regular meeting. 24 Atty. Gen. 283. Local mediation board is not limited to compensation specified by 59.06 (2). 24 Atty. Gen. 649.

**281.203 Powers of mediation boards.** (1) The local mediation boards shall endeavor to bring about, upon application made as hereinafter provided, between debtors and creditors, adjustments of, and mutually acceptable agreements for, the payment of obligations covered by this section. It shall inspect the premises, inquire into the obligations of the debtor, his ability to pay, either presently or in the future, and shall make just and reasonable recommendations to the parties for the meeting, adjustment, or compromise of such obligations, for the purpose of enabling the debtor to retain possession of his home and his interest therein. The local boards may make the following recommendations: (a) Extension of the time within which any obligation, or part thereof, shall be paid; (b) Reduction of the contract rate of interest provided for in the evidence of indebtedness to a just and reasonable rate, in view of the circumstances, for a period of not longer than three years, with provision for payment of the balance of the contract rate thereafter; (c) Reduction of the contract rate of interest provided for in the evidence of indebtedness to a just and reasonable rate, in view of the circumstances, for a period of not longer than three years, without provision for the payment of the balance of the contract rate thereafter; (d) A division of the annual income from the mortgaged premises into three parts, to wit: First, a sum necessary to the debtor reasonably to maintain his family and the mortgaged premises, which shall be kept by the debtor; second, a sum necessary for the payment of current taxes and insurance upon the mortgaged premises; and third, a sum, representing the balance, to be paid to the creditor and to be applied upon interest and principal; (e) A conveyance of the real estate involved to the creditor in complete satisfaction of the debt; (f) And such other recommendations as the board may deem just and reasonable.

(2) Applications may be made to the local boards by either debtors or creditors, and the local board of the county where the land is situated shall have jurisdiction. Upon the receipt of such application the board shall proceed as provided in section 281.204 upon the filing with it of the complaint or statement therein referred to.

(3) In the administration of its duties, the local board, or any member thereof, may issue subpoenas, administer oaths to witnesses, and take testimony. The witnesses and every person who subpoenas them shall be entitled to the same fees as are allowed in courts of record. Such fees shall be paid by the parties at whose request the witnesses were subpoenaed.

(4) All agreements reached between parties at the instance of the mediation board shall be reduced to writing, signed by the parties, and approved in writing by the board. Such agreements when so subscribed and approved shall be binding in all respects upon the parties, to the same extent, and with like effect, as if incorporated in and made a part of the original contract.

(5) The court, in exercising the discretion conferred upon it by sections 281.205, 281.206, 281.208 and 281.209, shall take into consideration the refusal of either party to submit or participate in mediation or his failure to accept the recommendations of the local mediation board for the voluntary adjustment of the obligation. This section is emergency legislation. [1935 c. 319]

**Note:** Local mediation boards do not secure jurisdiction for purposes of voluntary mediation until action had been started. 24 Atty. Gen. 699.

**281.204 Compulsory mediation.** (1) At the time of commencing any action to foreclose a mortgage upon a home or to foreclose or procure specific performance of a land contract upon a home and before the posting of any notice of sale of any home upon execution or foreclosure by advertisement, mediation shall be attempted in the manner provided in this section, unless there has been an unsuccessful attempt at voluntary mediation under section 281.203, in which event the provisions of this section for compulsory mediation shall be inapplicable. Upon the filing of the complaint in the office of the clerk of court in any such action of foreclosure or specific performance, such clerk shall forthwith transmit a copy (to be furnished by the plaintiff) to the local mediation board. Before

the posting of any notice of sale of real estate upon execution or foreclosure by advertisement, the creditor shall file with the local board a statement of his claim and the names of the parties in interest, together with their places of abode, as accurately as can be ascertained, and of his intention to sell the real estate upon execution or by advertisement. Upon the receipt of such complaint or statement, the board shall promptly thereafter by notice to all parties call a meeting for the purpose of attempting to compromise, extend or adjust the indebtedness, as hereinabove provided, such meeting to be held at a time designated by the board which shall be not more than fifteen days nor less than five days from the filing of such complaint or statement with the board. Notice of such meeting shall be given by mail to all parties at their places of abode, as set forth in the complaint or statement. Such meeting may be adjourned from time to time but in no event beyond sixty days from the filing of the complaint or statement with the board. In case an agreement cannot be effected within such sixty days' period, a statement shall be made and signed by the board, briefly describing the nature of the claim sought to be mediated and the parties thereto, and a statement of the fact that mediation has been attempted and was not successful and the reasons therefor. The board shall forthwith file such statement, or a copy of the mediation agreement, as the case may be, with the clerk of the circuit court of the county where the premises are situated.

(2) Upon the filing of the complaint or statement with the board, as provided for in subsection (1) hereof, all proceedings in the action, foreclosure by advertisement or execution sale shall, unless the court shall otherwise order, be automatically stayed until the board shall file its report with the clerk of the court; provided, however, that such stay shall not extend beyond the sixty-day period allowed by law for the mediation attempt and the filing of report thereof.

(3) In all actions which would be governed by this section if commenced hereafter, which have been commenced prior to the effective date of this section, but in which the period of redemption has not fully expired, any party to the action may by motion apply to the court in which such action is pending for an order requiring the plaintiff to apply for mediation pursuant to the provisions of section 281.203 (2), as a condition precedent to either the entry of judgment, order fixing time of sale or the confirmation of sale, in the case of mortgage foreclosures, or the entry of judgment or the termination of the period of redemption in land contract foreclosures. The making of such order shall stay all such proceedings until the mediation board shall file its report with the clerk, provided that such stay shall not extend beyond a period of sixty days. In proceedings for foreclosure of a mortgage by advertisement, or for a sale upon execution, which would be governed by this section if commenced hereafter, which have been commenced prior to the effective date of this section, but in which the period of redemption has not fully expired, the mortgagor or the owner may at any time prior to delivery of the sheriff's deed apply to any court having jurisdiction in mortgage foreclosure actions and located in the county in which the land is situated, for an order requiring the party or parties proceeding against the property to apply for mediation pursuant to the provisions of section 281.203 (2). The making of such order shall stay the delivery of such deed until the mediation board shall file its report with the clerk of the court, provided that such stay shall not extend beyond a period of sixty days. This section is emergency legislation. [1935 c. 319, 547]

**281.205 Foreclosures by advertisement.** In any proceedings heretofore commenced for the foreclosure of a mortgage on a home, as defined in subsection (2) of section 281.201, by advertisement, in which a sale of the property has not been had, or in any such proceedings hereafter commenced, the mortgagor, or the owner, or anyone claiming under said mortgagor, or anyone liable for the mortgage debt, at any time after the issuance of the notice of such foreclosure proceedings, may apply to the circuit court of the county wherein such foreclosure proceedings are being had, or are pending, by filing and serving a summons and verified complaint with prayer that the sale in foreclosure by advertisement shall be postponed and that the foreclosure, if any, shall proceed by action. If it appears to the court that granting of the relief as prayed would be equitable and just, then, and in that event, the foreclosure proceedings by advertisement shall be postponed by the court by an order to show cause which shall be served with the summons and complaint upon the party foreclosing or his attorney. At the time of the hearing upon such order, the court may then further postpone such sale, and require the parties seeking to foreclose such mortgage to proceed, if at all, to foreclose said mortgage by interposing a cross complaint in such action. Such service may be made as now provided for the service of a summons in a civil action, or by registered mail on the person foreclosing or his authorized agent or attorney at the last known address of such person, agent or attorney respectively. As a condition precedent to such postponement of such foreclosure sale by advertisement the party filing such verified complaint shall pay to the clerk for the person foreclosing the mortgage the expenses incurred, not including attorney's fees, to be fixed

by the court, which may have accrued prior to any postponement; provided that such payment shall not be required prior to the issuance of an order to show cause as hereinbefore provided but shall be a condition precedent to any further postponement upon the hearing of said order. The filing of such verified complaint shall be deemed a waiver of publication of notice of postponement of the foreclosure sale, and the sale at the time which may be fixed by the court shall be deemed to be a sale postponed in lieu of the time of sale specified in the published notice of mortgage foreclosure sale. This section is emergency legislation. [1935 c. 319]

**281.206 Court may order resale.** (1) When any mortgage on a home, as defined in subsection (2) of section 281.201, has been foreclosed by action, notice of a hearing thereon shall be given as provided in section 278.105. Before granting an order confirming said sale, the court shall, if it appears upon due examination that the sale price is unreasonably and unfairly inadequate, or that justice has otherwise not been done, order a resale or make such further order as may be just and equitable. Upon the hearing of the motion for an order confirming the sale of the premises involved in the foreclosure of such mortgages by action, in case the evidence is insufficient to establish a fair and reasonable market or rental value of such property, the court shall receive any competent evidence, including evidence tending to establish the actual value of the property involved in said mortgage foreclosure proceedings, for the purpose, or purposes, for which said property is or can be used. The court shall also receive any evidence tending to show to what extent, if any, the property has decreased in actual or market value by reason of the economic conditions existing at the time of or prior to such sale. This section is emergency legislation. [1935 c. 319]

**281.207 Compromises.** In case the parties to any such foreclosure action shall agree in writing upon terms or compromise settlement thereof, or of composition of the mortgage indebtedness, or both, the court shall have jurisdiction and may by its order confirm and approve such settlement or composition, or both, as the case may be. This section is emergency legislation. [1935 c. 319]

**281.208 Jurisdiction of court.** The court shall have the same jurisdiction to postpone the enforcement of judgment by execution sale or to order resale or to give other relief where such judgment is rendered in an action to collect a debt or obligation secured by a mortgage on a home, as defined by subsection (2) of section 281.201, the foreclosure of which might be affected under the terms of sections 281.201 to 281.21, as is conferred by such sections with regard to mortgages. This section is emergency legislation. [1935 c. 319]

**281.209 Period of redemption may be extended.** (1) Where any mortgage upon a home, as defined in subsection (2) of section 281.201, has been foreclosed and the period of redemption has not yet expired, or where a sale is hereafter had in the case of such real estate mortgage foreclosure proceedings, now pending, or which may hereafter be instituted prior to April 1, 1943, or upon the sale of any such home under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter and prior to April 1, 1943, the period of redemption may be extended for such additional time as the court may deem just and equitable but in no event beyond April 1, 1944; provided that the mortgagor, or the owner of said property, in the case of mortgage foreclosure proceedings, or the judgment debtor, in case of sale under judgment or execution, shall prior to the expiration of the period of redemption, apply to the court having jurisdiction of the matter, on not less than 10 days' written notice to the mortgagee or judgment creditor, or the attorney of either, as the case may be, for an order determining the reasonable value of the income on said property, or, if the property has no income, then the reasonable rental value of the property involved in such sale, and directing and requiring such mortgagor, owner or judgment debtor, to pay all or a reasonable part of such income or rental value, in or toward the payment of taxes, insurance, interest, mortgage or judgment indebtedness at such times and in such manner as shall be fixed and determined and ordered by the court; and the court shall thereupon hear said application and after such hearing shall make and file its order directing the payment by such mortgagor, owner or judgment debtor, of such an amount at such times and in such manner as to the court shall, under all the circumstances, appear just and equitable. Provided that upon the service of the notice aforesaid the running of the period of redemption shall be tolled until the court shall make its order upon such application. Provided, further, however, that if such mortgagor, owner or judgment debtor or personal representative, shall default in the payments, or any of them, in such order required, on his part to be done, or commits waste, his right to redeem from said sale shall terminate 60 days after such default, unless in the meantime such default shall have been made up, and holders of subsequent liens may redeem in the order and manner now provided by law beginning 30 days after the filing of notice of such default with the clerk of such court, unless such

default shall have been made up, and his right to possession shall cease and the party acquiring title to any such real estate shall then be entitled to the immediate possession of said premises. If default is claimed on account of waste, such 60-day period shall not begin to run until the filing of an order of the court finding such waste. Provided, further, that the time of redemption from any such real estate mortgage foreclosure or judgment or execution sale heretofore made, which otherwise would expire less than 30 days after the passage of this section, shall be and the same hereby is extended to a date 30 days after such passage, and in such case, the mortgagor, or judgment debtor, or the assigns or personal representative of either, as the case may be, or the owner of the property, may, prior to said date, apply to said court for and the court may thereupon grant the relief as hereinbefore and in this section provided. Provided, further, that no execution on any judgment entered in any action at law or equity on an evidence of indebtedness secured by a mortgage on a home, as defined in subsection (2) of section 281.201, shall be levied on such home until after the expiration of the period for the redemption of such home on foreclosure of the mortgage.

(2) Upon the application of any party prior to the expiration of the extended period of redemption as provided in this section and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may alter or revise its terms in such manner as the changed circumstances and conditions may require.

(3) In all mortgage foreclosure actions in which application for judgment of foreclosure and sale shall be made prior to April 1, 1944, the defendants against whom a deficiency judgment is demanded and the defendants in possession of the mortgaged real estate shall be entitled to notice of such application whether they shall have appeared in such action or not. Such notice shall be given personally or by registered mail direct to the last known address, posted at least 5 days prior to the date when the application is to be heard.

(4) The trial of any action, hearing or proceeding mentioned in this section shall be held within 30 days after the filing by any party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during vacation of the court, and the order of the court shall be filed within 5 days after trial or hearing. This section is emergency legislation, and the extension of the moratorium provisions of this section from April 1, 1941, to April 1, 1943, shall apply only to homes as defined in section 281.201. [1935 c. 319; 1937 c. 15; 1939 c. 28; 1941 c. 31]

**Note:** An applicant whose earnings and cash balances would enable him to discharge the mortgage obligation, and thus avoid the necessity of a sale, is not entitled to an emergency extension of the period of redemption under sec. 278.106, Stats. 1933. *Foelske v. Stockhausen*, 215 W 104, 254 NW 349.

A motion for extension of the period of redemption made more than fourteen months after entry of a judgment granting fourteen months for redemption, but made before sale thereunder, did not come too late, in view of 278.13, providing that the mortgagor may redeem the mortgaged premises at any time before the sale. Proceedings consisting of an affidavit of the mortgagor as to the value of the mortgaged property in relation to the amount of the mortgagee's claim, and as to the mortgagor's substantial equity in the premises and his inability to raise other funds than rents collected, and an order to show cause why the period of redemption should not be extended, followed on motion of the mortgagor merely by an order extending such period, did not constitute a sufficient compliance with the requirements that there be an application to determine the rental value of the mortgaged property, a hearing culminating in a finding as to such value and all facts bearing on the amount justly and equitably to be paid by the mortgagor, and an order directing the payment of such value or a reasonable part thereof. *Mutual B. & L. Ass'n v. Willing*, 221 W 563, 267 NW 297.

The trial court, which had granted two extensions of the period within which to redeem premises from a mortgage foreclosure sale, was without authority to grant a third extension on an affidavit which showed no

facts tending to establish that the terms fixed by the second extension were no longer just and reasonable, as required by 281.209, Stats. 1935, since the statute does not authorize a further extension without such showing and the court had no power to grant it in the absence of statute. *Central Wisconsin Trust Co. v. Keating*, 223 W 525, 271 NW 35.

Under the equities of this case, where a judgment of foreclosure was entered on January 6, 1933, sale pursuant thereto was had on October 30, 1935, and the court extended the period of redemption to December 1, 1936, the further order of the court on December 28, 1936 granting an additional extension for redemption to December 1, 1937, and denying the mortgagee's motion for confirmation of sale was an abuse of discretion. *Foelske v. Tegtmeyer*, 225 W 574, 275 NW 522.

Where a judgment of foreclosure on business property, fixing the period of redemption at one year, was entered April 27, 1936, and was merely corrected on December 7, 1937, on stipulation of the parties, as to the amount due as of March 19, 1936, there was no resulting change in the effective date of the judgment or in the period of redemption, or in the date from which interest should be required to be paid as a condition of extension of the period of redemption, and an order of March 22, 1938, extending the period to December 7, 1938, and an order of March 10, 1939, extending the period to December 7, 1939, without requiring the mortgagors to pay the interest accrued between March 19, 1936, and December 7, 1937, failed to comply with 281.22 (2), Stats. 1935, 1937, and were void. *Prudential Ins. Co. v. Byrne Realty Co.*, 233 W 75, 288 NW 739.

**281.21 Application of law, severability.** (2) Sections 281.20 to 281.209 shall apply only to mortgages and contracts made prior to July 1, 1933. This section is emergency legislation.

(3) The provisions of sections 281.20 to 281.21 are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of said sections. [1935 c. 6, 319 s. 1, 3; 1935 c. 520 s. 13; Spl. S. 1937 c. 5; 1941 c. 31]

**Note:** The repeal of a statute which expressly exempted loans from the effect of moratorium and mediation provisions did not affect loans which were made during the existence of such exemption. *Home Owners' Loan Corporation v. Robinson*, 231 W 248, 285 NW 768.

281.22 [Repealed by 1941 c. 31]

281.23 and 281.24 [Repealed by 1935 c. 319]

**281.25 Land contracts; redemption period, conditions.** (1) In any action for the foreclosure of a land contract, or for the performance of such land contract, in which judgment shall be entered prior to April 1, 1943, the court in its discretion may fix a period of redemption not to exceed 3 years conditioned that during such period the defendant pay the current interest or taxes, or both, in the discretion of the court. This subsection shall not apply to land contracts entered into after July 1, 1933. This is emergency legislation, and the extension of the moratorium provisions of this section from April 1, 1941 to April 1, 1943, shall apply only to homes as defined in section 281.201.

(2) In all actions where judgment has not been made absolute at the time that this section goes into effect the defendant may apply to the court for the relief provided herein.

(3) The defendant in default under a land contract shall have the right at any time before judgment to tender to the plaintiff the delinquent instalments thereunder, plus the costs of the action and shall thereupon be entitled to a dismissal of the action. This section is emergency legislation. [1933 c. 301; 1935 c. 319, 362; 1937 c. 15, 367; 1939 c. 28; 1941 c. 31]

**Note:** An order of the trial court extending the period of redemption for two years from the expiration of a six-month period previously fixed in a judgment of strict foreclosure of a land contract, whether considered in the light of the equitable powers of the court or in the light of 281.25 (1), Stats. 1935, constituted an abuse of discretion, where the evidence disclosed that the purchaser was hopelessly insolvent, that the property was worth substantially less than the unpaid purchase price due, and that the purchaser had no equity or prospect of acquiring one in the property. *Benkert v. Gruenewald*, 223 W 44, 269 NW 672.

Intent originally expressed in statute providing for one year period of redemption in actions for foreclosure of land contracts, making statute applicable to judgments

which had not become absolute at time statute went into effect, held to inhere in amending statute granting redemption period of three years instead of one year, so that amending statute would apply to judgments which had not become absolute, where only change was substitution of words "three years" for words "one year." *St. Joseph's Hospital v. Maternity H. & D. Ass'n*, 224 W 422, 272 NW 669.

In an action to foreclose a land contract the court did not abuse its discretion in limiting the period to four months, where the purchaser was insolvent, had no substantial equity in the property, and had made no payment on the purchase price, and had defaulted as to interest, taxes and insurance. *Binzel v. Oconomowoc Brewing Co.*, 226 W 498, 277 NW 98.

281.26 [Repealed by 1941 c. 31]