

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 11

REAL PROPERTY

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
02-06-82
Council Adopted
05-04-82

11-01-01 ACTIONS FOR FORECLOSURE OF REAL PROPERTY MORTGAGES

11-01-02 Venue of Foreclosure Action

Action for the foreclosures or satisfaction of mortgages of land located within the Original boundaries of the Lake Traverse Reservation where an Indian of the Tribe is the mortgagor, may be brought in Tribal Court, and in case any defendant is not a resident of the Reservation, process may be served on him in accordance with section 11-01-03, or such other manner as may be prescribed by the Court.

11-01-03 Service by Publication on Non-Resident - Absent or Unknown Defendants

If the defendant be a non-resident of the Reservation, or absent or concealed or if he is a resident of the Reservation and after due diligence, cannot be found in the Reservation, service may be made by publication in the manner prescribed in ordinary civil actions, but no additional lien on, or seizure of property other than that contained in the mortgage resulting from commencing foreclosure thereof shall be necessary to obtain jurisdiction of the persons served with process by publication. If the mortgagor or any other proper party defendant is deceased, service upon unknown heirs, devisee, legatees, administrators, executors, creditors, and unknown persons, who might have a right of redemption from the mortgage, may be made by publication. Publication shall be at least once each week, for four successive weeks in a newspaper of the Reservation or such other newspaper designated by the Court. Every publication notice must specify:

1. The names of the mortgagor and mortgagee, and the assignee, if any;
2. The date of the mortgage;
3. The amount claimed to be due thereon at the date of the notice;
4. A description of the mortgaged premises, conforming substantially to that contained in the mortgage; and
5. The time and place for answering the foreclosure action.

- 11-01-04 Joinder as Party Defendant of Person Liable on Debt Secured. Deficiency Judgement Against Person Liable
If the mortgage debt be secured by the obligation, or other evidence of debt, of any other person than the mortgagor, the plaintiff may make such other person a party to the action, and the Court may render judgement for the balance of such debt remaining unsatisfied against such other person as against the mortgagor, and may enforce such judgement as in other cases by execution or other process.
- 11-01-05 Previous Actions for Collection of Debts to be Disclosed by Complain
In an action for the foreclosure or satisfaction of a mortgage, the complaint shall state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage or any part secured by such mortgage or any part thereof; and if there has, whether any and what part thereof has been collected.
- 11-01-06 Foreclosure not Permitted After Money Judgement Unless Execution Returned Unsatisfied
If it appears that any judgement has been obtained in an action at law for the moneys demanded by such complaint, or any part thereof, no proceedings shall be had in such case unless an execution against the property of the defendant in such judgement has been issued, and the Clerk of Court shall have made return that the execution is unsatisfied in whole or in part; and that the defendant has no property whereon to satisfy such execution.
- 11-01-07 Proceedings at Law Not Had While Foreclosure Action Pending
After action for foreclosure shall be commenced, while the same is pending, no proceeding at law shall be had for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the Court.
- 11-01-08 Injunction to Restrain Injury to Property During Existence of Lien or Foreclosure
The Court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the existence of a mortgage thereon, and until the expiration of the time allowed for redemption.
- 11-01-09 Dismissal of Complaint on Payment Into Court of Installments Then Due
Whenever an action shall be commenced for the foreclosure of a mortgage upon which there shall be due any interest or any portion of installment of the principal, and there shall be other portions or installments to become due subsequently, the complaint shall be dismissed upon the defendant bringing into Court at any time before entry of judgement, the principal and interest due, with costs and disbursements.

11-01-10

Examination of Premises on Judgement for Plaintiff

If the defendant shall not bring into Court, the amount due with costs, or if, for any other cause, a judgement or decree shall be entered for the plaintiff; the Court may appoint a referee to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony.

11-01-12

Stay of Further Proceedings on Payment Before Sale of Installments Then Due. Enforcement of Judgement on Subsequent Default

If any time before sale, the defendant shall bring into Court the principal and interest due, with costs, the proceedings in the foreclosure action shall be stayed until a further default in the judgement of any of the installments, or any part thereof, of such mortgage. The Court may enforce by order or other process the collection of such subsequent installments.

11-01-13

Sale by Parcels to Pay Delinquent Installments. Subsequent Sales on Later Default

If it shall appear that the mortgaged premises can be sold in parcels without injury to the interests of the parties, the decree must direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs, and such judgement or decree shall remain as security for any subsequent default. In such cases if there shall be any default subsequent to such judgement or decree, in the payment of any portion or installment of the principal or any interest due upon such mortgage, the Court may, upon the application of the plaintiff, by a further order founded upon such first judgement or decree, direct the sale of so much of the mortgaged premises to be made, under such decree, as will be sufficient to satisfy the amount due, with costs of the application and the subsequent proceedings thereon; and the same proceedings may be had as often as a default happens.

11-01-14

Sale of Entire Tract and Payments of Installments Due. Investments and Payment of Subsequent Installments to Plaintiff. Surplus for Benefit of Defendant

If, in any of the foregoing cases, it shall appear to the Court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the judgement or decree must, in the first instance, be entered for the sale of the whole premises accordingly. In such cases, the proceeds of such sale must be applied as well to the interest or portion or installment of the principal due as toward the whole or residue of the sum secured by such mortgage and not due and payable at the time of such sale, and if such residue does not bear interest, then the Court may direct the same to be paid with a rebate of the legal interest for the time during which such residue

shall not be due and payable, or the Court may direct the balance of the proceedings of such sale, after paying sum due, with costs to be put at interest for the benefit of the plaintiff, to be paid to him as the installments or portions of the principal or interest may become due, and the surplus for the benefit of the defendant, his representative, or assignees, to be paid to them by order of the Court.

11-01-15 Judgement of Foreclosure and Sale of Premises. Sales by Parcels. Delivery of Possession Deferred During Period of Redemption

Whenever an action shall be brought for the foreclosure or satisfaction of a mortgage, the Court shall have power to render judgement against the mortgagor for the amount of the mortgage debt due at the time of the rendition of such judgement, and the costs of the action, and to order the decree a sale of the mortgaged premises, or such part thereof as may be sufficient to pay the amount adjudged to be due, and costs of sale, and shall have power to direct in what parcels the premises shall be offered, and the order in which they shall be offered further to direct that if there be no bid for any parcel or parcels offered, such parcel or parcels may be sold with any other parcel not yet sold, in one parcel; and shall have the power to order and compel the delivery of the possession of the premises to the purchaser; but in no case under this Chapter shall the possession of the premises so sold be delivered to the purchaser or person entitled thereto, until after the expiration of the period of redemption.

11-01-16 Officer by Whom Sale Made. Place and Notice of Sale. Levy on Execution Not Required.

1. All sales of mortgaged premises under an order and decree of foreclosure must be made by the Clerk of Court, who shall cause public notice thereof to be given by advertisement published in a legal newspaper, published within the Lake Traverse Reservation, once each week for four (4) consecutive weeks, prior to the date of sale. If publication is made upon at least one day in each calendar week, the same shall be sufficient, even though more or less than seven days may intervene between publications. If no newspaper is published in such country, the notice must be published in the nearest legal newspaper likely to give notice, and the designation of such newspaper by the Clerk of Courts, and subsequent confirmation of the sale by the Court, shall be conclusive as to such designated newspaper being the proper paper for such publication of such notice thereof.

2. The notice of foreclosure sale of mortgaged real property must state the title of the proceedings under which it is made. The decree, order, or execution which is authorized for the sale, must be named and referred to by the date thereof; the amount of the judgement or other lien upon which sale is to be made; the legal description of the property to be sold; that such sale will be made to the highest bidder for cash; whether there are prior liens so far as can be ascertained for the records; that the property is sold subject to redemption; and the time and place of the sale.
3. Time and Place of Real Property Sales - Judicial sales of real estate may be held on any day except Sunday and must be held between the hours of nine o'clock (9:00 a.m.) in the forenoon and four o'clock (4:00 p.m.) in the afternoon. Such sales shall be held at the Tribal Court.
4. No levy on mortgaged real estate under the execution shall be required and the Clerk of Court may proceed to advertise and sell it upon receipt of the execution without further proceedings.

11-01-17 Purchase by Mortgagee at Sale. Fair and Reasonable Bid Required

In any foreclosure of a mortgage upon real estate by action, the mortgagee, his assignees, or their legal representative, may purchase the premises, or any part thereof, at such foreclosure sale, providing he bids fairly and in good faith and bids the fair and reasonable value thereof.

11-01-18 Proof Required of Mortgagee Bidding Less Than Amount of Debt. Court Decree Permitting Bid. Execution for Deficiency

If the holder of such mortgage is not willing, at such sale, to bid the full amount of the judgement debt, it shall be the duty of such mortgage holder to establish at the time of the trial, by competent proof to the satisfaction of the Court, the fair and reasonable value of the mortgaged premises, and the Court shall determine the same in its decree; and if the Court shall find such fair and reasonable value to be less than the sum due on said mortgage, with costs and expenses of sale, it may by such decree authorize such mortgage holder to bid not less than the fair and reasonable value as thus determined, and if a deficiency remains after the foreclosure sale, such mortgagee or his assignees, shall be entitled to a general execution for such deficiency only upon application to the Court in which the judgement was rendered.

11-01-19 Foreclosure as Complete Satisfaction Debt
Except as provided by section 11-01-18, the foreclosure by action of a mortgage upon real estate shall operate as a complete extinguishment, satisfaction and payment of the debt secured by such mortgage.

11-01-20 Application of Proceeds of Sale. Investment of Unclaimed Surplus

It shall be the duty of the Clerk of Court, who conducts any such to apply the proceeds as follows:

1. To the payment of the costs and expenses of the sale;
2. To the payment of the costs and disbursements taxed in the action at which the sale is made;
3. To the discharge of the debt adjudged by the Court to be due; and
4. To pay the surplus, if any, into Court for the use of the defendant or the person entitled thereto, subject to the order of the Court.

11-01-21 If such surplus or any part thereof shall remain in Court for the term of three (3) months without being applied for, the Court may direct the same to put out at interest for the benefit of the defendant, his representative, or assignees, subject to the order of the Court.

11-01-22 Cancellation or Endorsement of Evidence of Debt on Application of Proceeds of Sale

When the proceeds of sale are sufficient to pay the costs and disbursements and the entire debt adjudged to be due, the Clerk of Court shall cancel the note, bond, mortgage, or other evidence of the debt upon which the judgement is founded, by a plain and legible notation of the fact thereof, and such note or evidence shall be attached to and filed with the return upon the execution; when the proceeds are insufficient for that purpose, the amount applied on the debt shall be endorsed on such note or other evidence with the date of the application, by the person of officer making the sale, or by the Clerk of Court, and such note or other evidence, so endorsed, shall be attached to and made a part of the return on the execution.

11-01-23 Execution For Balance Unsatisfied by Proceeds of Sale

Subject to the provisions of sections 11-01-18 to 11-01-19, inclusive of this Section, the Court may direct the issuing of an execution for the balance that may remain unsatisfied, after applying the proceeds of such sale.

11-01-24 Certificate of Sale Issued to Purchaser

Whenever any real property shall be sold under an order, decree, or judgement of foreclosure, under the provisions of this Chapter, the Clerk of Court shall give to the purchaser a certificate of sale, containing:

1. A recital of the fact of the sale, stating the time and place, and the name of the purchaser;
2. A particular description of the real property sold;
3. The price bid for each distinct lot or parcel; and
4. The whole price paid;

11-01-25 The certificate must be executed and acknowledged and shall be recorded in the office of the Bureau of Indian Affairs, Sisseton Agency, within ten (10) days from the date of sale.

11-01-26 Redemption Procedure

The redemption of real property upon foreclosure of mortgages by order, judgement, or decree of Court shall be as provided by Section 11-02-01 of this Chapter.

11-01-27 Deed Issued on Expiration of Time for Redemption. Person Barred by Deed

At the expiration of the time for the redemption of such mortgaged premises, if the same be not redeemed, the person or officer making the sale, or his successor in office, or other person appointed by the Court, must make to the purchaser(s), their heirs or assignees, or to any other person acquiring the title of such premises, by redemption or otherwise, a deed or deeds to such premises which shall vest in the purchaser or other party entitled thereto, the same estate that was vested in the mortgagor at the time of the execution and delivery of the mortgage, or at any time thereafter; and such deed shall be as valid as if executed by the mortgagor and mortgagee, and shall be a complete bar against each.

11-02-01 REDEMPTION OF REAL PROPERTY FORECLOSURE

11-02-02 Redemption Defined. Sales Subject to Redemption

Redemption is the right to repay the amount paid for real property or any interest therein, sold on foreclosure of a real estate mortgage.

11-02-03 Waste Restrained During Period of Redemption. Use of Property Not Considered Waste

Until the expiration of the time for redemption, the Court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgement creditor.

- 11-02-04 It is not waste for the person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or in the ordinary course of husbandry; or to use timber or other material on the property for the necessary repair of buildings or fences thereon or fuel for his family while he occupies the property.
- 11-02-05 Foreclosure and Execution Sales Subject to Redemption
The interests in real property sold on foreclosure of a real estate mortgage shall be sold subject to redemption.
- 11-02-06 Persons Entitled to Redeem
The owner, mortgagor, or the successors of either, or the Sisseton-Wahpeton Sioux Tribe, having any interest in the property sold, shall have the right to redeem from a sale of such property described in Section 11-02-02, in the manner hereinafter described. Such persons are denominated redemptioners.
- 11-02-07 Distinction Between Redemptioner Abolished
Except as provided in Section 11-02-08, all distinction between owners and other redemptioners is abolished.
- 11-02-08 Tribe's Right of Redemption. Time Allowed After Expiration of Other Redemption Periods
Whenever real property belonging to an individual is sold on foreclosure of a mortgage, the Sisseton-Wahpeton Sioux Tribe shall have the option to match the highest bid offered and to redeem such property.
- 11-02-09 The redemption rights of the Sisseton-Wahpeton Sioux Tribe shall be second only to those of the owner, his grantee, or successor in interest who shall at all times have the final right to redeem after any and all redemptions as hereinafter provided shall have been made; and that right may be exercised by the owner, his grantee, or his successor in interest within fifteen (15) days after the expiration of all other rights to redeem. The purpose of this Section is to provide that the owner, any person to whom he has conveyed his title during the redemption period, and in the event of his death, his successors in interest, shall possess a final right to redeem.
- 11-02-10 Action to Redeem Separate Tract Sold in Combined Sale. Determination of Amount Required for Redemption
When the property sold on foreclosure of a mortgage consists of two or more separate farms, tracts, lots, or parcels of land, which at the time of sale are owned by two or more separate owners, or are subject to separate mortgages,

giving to any person the right to redeem a separate property from the sale, and the property has not been sold separately, and the person having the right to redeem one or more of the tracts so sold, but less than the whole property sold, may bring an action in Tribal Court to have a determination of the amount properly to be paid by him to redeem the properties as to which he claims the right to redemption. Such action must be commenced within six (6) months after the date of the sale of the property. In such action there shall be named as defendant, the holder of the certificate of sale, the officer making the sale, and the record owners of all the tracts sold at such foreclosure.

11-02-11 Redemption to Redeem Entire Property

No owner or mortgage holder shall have the right under Section 11-02-10, to redeem less than the whole of the property owned by him or subject to mortgage.

11-02-12 Hearing and Determination of Amount Required to Redeem Separate Tract. Certificate of Redemption. Credit on Price Paid at Sale

The Court shall hear an action brought under Section 11-02-10, and shall have the power to extend all time of redemption pending the determination of such action, and by its decree shall determine the amount required to redeem the lands described in the plaintiff's complaint; and adjudge that upon payment of such sum, a certificate of redemption shall issue to plaintiff and the amount paid by him shall be credited upon the price paid by the purchaser at foreclosure of execution sale, and the amount required to redeem the balance of the property shall be reduced accordingly.

11-02-13 Minimum Time Allowed for Redemption

All persons entitled to redeem shall in all cases have one (1) year from the date of sale in which to redeem.

11-02-14 Methods of Extending Time of Redemption. Execution and Recording of Agreement for Extension. Redemptioner Affected by Agreement

As to any redemptioner, the right of redemption shall exist for one (1) year after the sale of the property. The period of redemption herein limited may be extended in the manner described in Section 11-02-15, and may also be extended by a written agreement between the purchaser of the property at a judicial sale of the class described in Section 11-02-02, and any redemptioner, provided such agreement is in writing, signed and acknowledged by the purchaser at such sale and recorded in the office of the Clerk of Court, where the certificate of sale was recorded, within one (1) year from the date of sale, or within such further period as may be provided by Section 11-02-15. When the time for redemption is extended by written contract as herein provided, it shall be extended in favor of all redemptioner whether they are parties to such agreement or not.

11-02-15 Extension of Redemption Period by Payment of Amounts Then Due. Certificate of Redemption. Recording

If at or prior to the expiration of one year from the date of sale, any redemptioner shall make the following payments:

1. All taxes due on the land;
2. All interest due on the mortgage or judgement at the date of sale;
3. Interest at five percent (5%) for one (1) year from the date of sale upon the total amount bid at such sale;
4. Interest upon the principal of the mortgage, or the amount of the judgement, for one (1) year in advance, at the legal rate in the case of a judgement, and at the rate originally provided for in the mortgage before maturity in case of mortgages;

11-02-16 Then the time of redemption shall be extended for two (2) years and such extension shall operate in favor of all redemptioner.

11-02-17 Such payments shall be evidenced by the certificate of the Clerk of Courts or holder of the certificate of sale, duly acknowledged, which shall be recorded in the office of the Bureau of Indian Affairs where the certificate of sale was recorded, and such certificate, or the record thereof, or a certified copy of the record, shall be conclusive proof of such payment.

11-02-18 Amounts Required for Redemption From Sale. Superior Lien of Purchaser Included

Any redemptioner may redeem from the purchaser at any date described in Section 11-02-02, by paying to the Clerk of Court, the amount of the purchase price, plus any sums paid by the purchaser to protect his interest in such property for insurance, installments of principal or interest upon a superior mortgage, with interest at the legal rate from the date of sale upon the purchase price of the property and from the date of the payment of any sum paid for insurance, or installments of principal or interest on a prior lien. If the purchase by the holder of a mortgage upon such real property other than the one under which sale was made, which is superior to the mortgage of the redemptioner, the redemptioner must likewise pay the amount of such additional mortgage, including interest to the date of payment.

11-02-19 Notice of Redemption Served on Purchaser or Clerk of Courts. Contents. Payment. Recording of Notice

A redemptioner must serve upon the purchaser from whom he seeks to redeem, or upon his successor in interest, and upon the Clerk of Court, a written notice of redemption, and a copy of the record of the mortgage certified by the Bureau

of Indian Affairs, together with a certified copy of any assignment necessary to establish his claim, and an affidavit by himself or his agent, showing the amount then actually due on the mortgage and at the same time shall pay the Clerk of Court or the purchaser direct, or their respective successor or assignee, the amount prescribed by Section 11-02-18.

- 11-02-20 A duplicate of the notice of redemption with proof of the required service shall be forthwith filed for record with the Bureau of Indian Affairs, Sisseton Agency, which Realty Officer, shall record the same.
- 11-02-21 Proof of Interest Not Required as Part of Record
No person named as a mortgagor in any mortgage need serve upon the Clerk of Court or person from whom he seeks to redeem, any proof of his interest in the real property to be redeemed.
- 11-02-22 Proof of Interest Required of Successor in Interest
The successor in interest of any person described in Section 11-02-21, must serve upon the Clerk of Court or person from whom he seeks to redeem, proof of his interest in such real property.
- 11-02-23 Amounts Payable on Partial Redemptions
If there has been a partial redemption as provide by Section 11-02-15, redemptioner are not required to pay the owner any sum paid by him on such partial redemption; but they are required to pay such sum to any other redemptioner, who shall have a partial redemption.
- 11-02-24 Effect of Sale Terminated on Final Redemption by Owner
Where there has been full and final redemption by the owner, effect of the sale is terminated, except in case of redemption by co-tenants.
- 11-02-25 Certificate of Redemption Issued by Clerk of Court. Contents of Certificate. Statement of Amount Required for Further Redemption
Upon making each redemption, the Clerk of Court shall execute to the person making the redemption, a certificate setting forth the fact of such redemption, the amount paid by the redemptioner, including the debt for which the property was sold, together with interest and insurance paid as required by this Chapter; which certificate shall include a specific statement of the whole amount required to be paid on redemption from such redemptioner.

- 11-02-26 Certificate of Final Redemption
If the debtor, his grantee, or successor in interest redeem, the Clerk of Court must execute and deliver to him a certificate of redemption duly acknowledged, reciting the facts of such redemption.
- 11-02-27 Recording of Certificates of Redemption
Any such certificate of redemption must be recorded in the Realty Office of the Bureau of Indian Affairs, Sisseton Agency.
- 11-02-28 Redemption by Co-Tenants. Other Co-Tenants Obligated to Contribute
When title to real property is subject to redemption and is held by co-tenants, one or more of such co-tenants redeem, by paying the whole sum required to effect the redemption. When redemption is made by one or more co-tenants, all other co-tenants of the property become obligated to contribute their proportionate shares of the sum paid by the redeeming co-tenants, to effect redemption.
- 11-02-29 Service of Notice and Demand by Co-Tenant Making Redemption. Notice of Foreclosure by Failure to Contribute
Co-tenants making redemption shall forthwith serve upon all other co-tenants notice of the fact of such redemption together with a statement of the whole amount paid to redeem and the proportionate amount each co-tenant is required to pay to contribute his full share of the funds required to effect redemption, which notice shall contain a demand that such co-tenant, within sixty (60) days from service of notice or within the remainder of the year of redemption, whichever is longer, pay the amount of their proportionate share of such redemption, and a further notice that if they shall fail to do so, they shall, at the expiration of sixty (60) days or the expiration period, whichever ever is longer, be foreclosed of all rights to or interest in the common property, and the co-tenant making redemption shall, as against all co-tenants failing to contribute, be entitled to deed to the common property.
- 11-02-30 Recording and Service of Notice by Co-Tenant Making Redemption. Constructive Notice
The co-tenant serving the notice required in Section 11-02-29, shall forthwith record the same, with proof of service thereof, in the Realty Office of the Bureau of Indian Affairs Sisseton Agency. Such notice shall be served in like manner as summons if a civil action is served. From the date of recording such notice, all person shall be presumed to have notice of the fact of such redemption by one more joint owners.

11-02-31 Delivery and Recording of Certificate to Co-Tenant Making Contribution

Whenever a co-tenant, pursuant to the notice mentioned in Section 11-02-29, shall have paid his proportionate share pursuant to such notice, the co-tenant receiving such payment shall deliver to the co-tenant making such payment a certificate reciting the facts of such payment and shall record a duplicate thereof in the Realty Office of the Bureau of Indian Affairs, Sisseton Agency.

11-02-32 Restoration of Estate to Co-Tenant Making Contribution

A co-tenant paying his proportionate share terminates as to his property the effect of the sale and he stands restored to his estate in the property sold.

11-03-01 **SEVERABILITY**

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

W.S.T. CODE
| Amendment
New Adoption
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