

CHAPTER 628

REDEMPTION

Referred to in §654.16, 654.25

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628.1 Place of redemption.

All redemptions made under the provisions of this chapter shall be made in the county where the sale is had.

[S13, §4051; C24, 27, 31, 35, 39, §11772; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.1]

628.1A Application of this chapter.

This chapter does not apply in an action to foreclose a real estate mortgage if the plaintiff has elected foreclosure without redemption under section 654.20.

87 Acts, ch 142, §16

628.2 When sale absolute.

When real property has been levied upon, if the estate is less than a leasehold having two years of an unexpired term, the sale is absolute, but if of a larger amount, it is redeemable as hereinafter prescribed.

[C51, §1924; R60, §3329, 3330; C73, §3098, 3099; C97, §4043; C24, 27, 31, 35, 39, §11773; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.2]

628.3 Redemption by debtor.

The debtor may redeem real property at any time within one year from the day of sale, and will, in the meantime, be entitled to the possession thereof; and for the first six months thereafter such right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which said real property was sold.

[C51, §1926, 1927; R60, §3332, 3333; C73, §3102, 3103; C97, §4045; C24, 27, 31, 35, 39, §11774; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.3]

Referred to in §535.8, 628.26, 628.26A

[P] See §628.28 on redemption period and right

628.4 Redemption prohibited.

A party who has stayed execution on the judgment is not entitled to redeem.

[C73, §3102; C97, §4045; C24, 27, 31, 35, 39, §11775; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.4]

83 Acts, ch 186, §10115, 10201; 87 Acts, ch 142, §1

628.5 Redemption by creditors.

If no redemption is made by the debtor as above provided, thereafter, and at any time within nine months from the day of sale, said redemption may be made by a mortgagee before or after the debt secured by the mortgage falls due, or by any creditor whose claim becomes a lien prior to the expiration of the time allowed for such redemption.

[C51, §1927, 1928; R60, §3333, 3334; C73, §3103, 3104; C97, §4046; C24, 27, 31, 35, 39, §11776; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.5]

Referred to in §535.8, 628.26, 628.27, 628.28

[P] See §628.28 on redemption period and right

628.6 Mechanic's lien before judgment.

A mechanic's lien before judgment thereon is not of such character as to entitle the holder to redeem.

[C51, §1927; R60, §3333; C73, §3103; C97, §4046; C24, 27, 31, 35, 39, §11777; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.6]

628.7 Probate creditor.

The owner of a claim which has been allowed and established against the estate of a decedent may redeem as in this chapter provided, by making application to the district court of the district where the real estate to be redeemed is situated. Such application shall be heard after notice to such parties as said court may direct, and shall be determined with due regard to rights of all persons interested.

[C97, §4046; C24, 27, 31, 35, 39, §11778; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.7]

628.8 Redemption by creditors from each other.

Creditors having the right of redemption may redeem from each other within the time above limited, and in the manner herein provided.

[C51, §1929; R60, §3335; C73, §3105; C97, §4047; C24, 27, 31, 35, 39, §11779; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.8]

628.9 Senior creditor.

When a senior creditor thus redeems from the senior creditor's junior, the senior creditor is required to pay off only the amount of those liens which are paramount to the senior creditor's own, with the interest and costs appertaining to those liens.

[C51, §1931; R60, §3337; C73, §3107; C97, §4048; C24, 27, 31, 35, 39, §11780; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.9]

628.10 Junior may prevent.

The junior creditor may in all such cases prevent a redemption by the holder of the paramount lien by paying off the lien, or by leaving with the clerk beforehand the amount necessary therefor, and a junior judgment creditor may redeem from a senior judgment creditor.

[C51, §1932; R60, §3338, 3339; C73, §3108, 3109; C97, §4049; C24, 27, 31, 35, 39, §11781; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.10]

628.11 Terms.

The terms of redemption, when made by a creditor, in all cases shall be the reimbursement of the amount bid or paid by the holder of the certificate, including all costs, with interest the same as the lien redeemed from bears on the amount of such bid or payment, from the time thereof.

[C51, §1930; R60, §3336; C73, §3106; C97, §4050; C24, 27, 31, 35, 39, §11782; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.11]

[P] Advancements to protect lien, §629.2

628.12 Mortgage not matured — interest.

Where a mortgagee whose claim is not yet due is the person from whom the redemption is thus to be made, the mortgagee shall receive on such mortgage only the amount of the principal thereby secured, with unpaid interest thereon to the time of such redemption.

[C51, §1930; R60, §3336; C73, §3106; C97, §4050; C24, 27, 31, 35, 39, §11783; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.12]

628.13 By holder of title.

The terms of redemption, when made by the titleholder, shall be the payment into the clerk's office of the amount of the certificate, and all sums paid by the holder thereof in effecting redemptions, added to the amount of the holder's own lien, or the amount the holder has credited thereon, if less than the whole, with interest at contract rate on the certificate of sale from its date, and upon sums so paid by way of redemption from date of payment, and upon the amount credited on the holder's own judgment from the time of said credit, in each case including costs.

Redemption may also be made by the titleholder presenting to the clerk of the district court the sheriff's certificate of sale properly assigned to the titleholder, whereupon the clerk of the district court shall cancel the certificate.

[C51, §1930; R60, §3336; C73, §3106; C97, §4051; S13, §4051; C24, 27, 31, 35, 39, §11784; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.13]

95 Acts, ch 91, §6

Referred to in §602.8102(102)

628.14 By junior from senior creditor.

When a senior redeems from a junior creditor, the latter may, in return, redeem from the former, and so on, as often as the land is taken from the creditor by virtue of a paramount lien.

[C51, §1933; R60, §3341; C73, §3111; C97, §4052; C24, 27, 31, 35, 39, §11785; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.14]

628.15 After nine months.

After the expiration of nine months from the day of sale, the creditors can no longer redeem from each other, except as hereinafter provided.

[C51, §1934; R60, §3342; C73, §3112; C97, §4053; C24, 27, 31, 35, 39, §11786; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.15]

Referred to in §535.8, 628.26, 628.27, 628.28

[P] See §628.28 on redemption period and right

628.16 Who gets property.

Unless the defendant redeems, the purchaser, or the creditor who has last redeemed prior to the expiration of the nine months aforesaid, will hold the property absolutely.

[C51, §1935; R60, §3343; C73, §3113; C97, §4054; C24, 27, 31, 35, 39, §11787; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.16]

Referred to in §535.8, 628.26, 628.27, 628.28

[P] See §628.28 on redemption period and right

628.17 Claim extinguished.

In case it is thus held by a redeeming creditor, the redeeming creditor's lien, and the claim out of which it arose, will be held to be extinguished, unless the redeeming creditor pursues the course pointed out in sections 628.18 to 628.20, inclusive.

[C51, §1936; R60, §3344; C73, §3114; C97, §4055; C24, 27, 31, 35, 39, §11788; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.17]

628.18 Mode of redemption.

The mode of redemption by a lienholder shall be by paying into the clerk's office the amount necessary to effect the same, computed as above provided, and filing therein the lienholder's

affidavit, or that of the lienholder's agent or attorney, stating as nearly as practicable the nature of the lien and the amount still due and unpaid thereon.

[C51, §1938, 1940; R60, §3346, 3348; C73, §3116, 3118; C97, §4056; C24, 27, 31, 35, 39, §11789; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.18]

Referred to in §602.8102(102), 628.17

628.19 Credit on lien.

If the lienholder is unwilling to hold the property and credit the debtor thereon the full amount of the lienholder's lien, the lienholder must state the utmost amount the lienholder is willing to credit the debtor with.

[R60, §3345; C73, §3115; C97, §4056; C24, 27, 31, 35, 39, §11790; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.19]

Referred to in §628.17

628.20 Excess payment — credit.

If the amount paid to the clerk is in excess of the prior bid and liens, the clerk shall refund the excess to the party paying the amount. If the clerk is the clerk of the district court where the judgment giving rise to the lien was entered, the clerk shall credit upon the lien the full amount thereof, including interest and costs, or such less amount as the lienholder is willing to credit therein, as shown by the affidavit filed.

[C51, §1937, 1939, 1941; R60, §3340, 3347, 3349; C73, §3110, 3117, 3119; C97, §4056; C24, 27, 31, 35, 39, §11791; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.20]

95 Acts, ch 91, §7

Referred to in §602.8102(102), 628.17

628.21 Contest determined.

In case any question arises as to the right to redeem, or the amount of any lien, the person claiming such right may deposit the necessary amount therefor with the clerk, accompanied with the affidavit above required, and also stating therein the nature of such question or objection, which question or objection shall be submitted to the court as soon as practicable thereafter, upon such notice as it shall prescribe of the time and place of the hearing of the controversy, at which time and place the matter shall be tried upon such evidence and in such manner as may be prescribed, and the proper order made and entered of record in the cause in which execution issued, and the money so paid in shall be held by the clerk subject to the order made.

[C97, §4057; C24, 27, 31, 35, 39, §11792; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.21]

628.22 Assignment of certificate.

A creditor redeeming as above contemplated is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser as hereinbefore directed.

[C51, §1942; R60, §3350; C73, §3120; C97, §4058; C24, 27, 31, 35, 39, §11793; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.22]

628.23 Redemption of part of property.

When the property has been sold in parcels, any distinct portion may be redeemed by itself.

[C51, §1943; R60, §3351; C73, §3121; C97, §4059; C24, 27, 31, 35, 39, §11794; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.23]

628.24 Interest of tenant in common.

When the interests of several tenants in common have been sold on execution, the undivided portion of any or either of them may be redeemed separately.

[C51, §1944; R60, §3352; C73, §3122; C97, §4060; C24, 27, 31, 35, 39, §11795; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.24]

628.25 Transfer of debtor's right.

The rights of a debtor in relation to redemption are transferable, and the assignee has the like power to redeem.

[C51, §1945; R60, §3353; C73, §3123; C97, §4061; C24, 27, 31, 35, 39, §11796; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.25]

628.26 Agreement to reduce period of redemption.

The mortgagor and the mortgagee of real property consisting of less than ten acres in size may agree and provide in the mortgage instrument that the period of redemption after sale on foreclosure of said mortgage as set forth in section 628.3 be reduced to six months, provided the mortgagee waives in the foreclosure action any rights to a deficiency judgment against the mortgagor which might arise out of the foreclosure proceedings. In such event the debtor will, in the meantime, be entitled to the possession of said real property; and if such redemption period is so reduced, for the first three months after sale such right of redemption shall be exclusive to the debtor, and the time periods in sections 628.5, 628.15, and 628.16, shall be reduced to four months.

[C62, 66, 71, 73, 75, 77, 79, 81, §628.26]

Referred to in §654.25

628.26A Agreement to extend period of redemption — agricultural land.

Notwithstanding section 628.3, the debtor and the mortgagee of agricultural land after the filing of the foreclosure petition, may enter into a written agreement to extend the debtor's period of redemption up to five years, and may set forth other terms and conditions of the extended redemption as agreed upon by the parties, including allowing the debtor to lease the property. However, the rights of the debtor and other parties who have a secured interest in the agricultural land shall not be reduced beyond those set forth in this chapter. The agreement entered into by the debtor and the mortgagee pursuant to this section must be approved by the court and shall be filed in the foreclosure proceedings. An agreement pursuant to this section does not constitute an equitable mortgage.

85 Acts, ch 252, §43

Referred to in §615.4

628.27 Redemption where property abandoned.

The mortgagor and the mortgagee of any tract of real property consisting of less than ten acres in size may also agree and provide in the mortgage instrument that the court in a decree of foreclosure may find affirmatively that the tract has been abandoned by the owners and those persons personally liable under the mortgage at the time of such foreclosure, and that should the court so find, and if the mortgagee shall waive any rights to a deficiency judgment against the mortgagor or the mortgagor's successors in interest in the foreclosure action, then the period of redemption after foreclosure shall be reduced to sixty days. If the redemption period is so reduced, the mortgagor or the mortgagor's successors in interest or the owner shall have the exclusive right to redeem for the first thirty days after such sale and the times of redemption by creditors provided in sections 628.5, 628.15 and 628.16 shall be reduced to forty days. Entry of appearance by pleading or docket entry by or on behalf of the mortgagor shall be a presumption that the property is not abandoned.

[C71, 73, 75, 77, 79, 81, §628.27]

Referred to in §654.25

628.28 Redemption of property not used for agricultural or certain residential purposes.

1. If real property is not used for agricultural purposes, as defined in section 535.13, and is not the residence of the debtor, or if it is the residence of the debtor but not a single-family or two-family dwelling, then the period of redemption after foreclosure is one hundred eighty days. For the first ninety days after the sale the right of redemption is exclusive to the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to one hundred thirty-five days. If a deficiency judgment has been waived the period of redemption is reduced to ninety days. For the first thirty days after the sale the redemption is exclusively the right

of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to sixty days.

2. If real property is not used for agricultural purposes, as defined in section 535.13, and is a single-family or two-family dwelling which is the residence of the debtor at the time of foreclosure but the court finds that after foreclosure the dwelling has ceased to be the residence of the debtor and if there are no junior creditors, the court shall order the period of redemption reduced to thirty days from the date of the court order. If there is a junior creditor, the court shall order the redemption period reduced to sixty days. For the first thirty days redemption is the exclusive right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to forty-five days.

84 Acts, ch 1116, §1; 85 Acts, ch 195, §58; 87 Acts, ch 98, §3

Referred to in §654.1A

[P] See also §654.1A

628.29 Redemption by creditor pursuant to alternative foreclosure.

A lienholder of record may redeem real property which has been foreclosed by a mortgagee pursuant to the alternative voluntary foreclosure procedure provided in section 654.18. The junior lienholders' redemption period shall be thirty days commencing the day the notice required by section 654.18, subsection 1, paragraph "e" is sent. The redemption shall be made by payment to the mortgagee of the amount of the debt secured by the mortgage including any protective advances made pursuant to chapter 629. Upon payment, the mortgagee shall convey the property by special warranty deed to the redeeming junior lienholder.

85 Acts, ch 252, §44

Referred to in §654.18