

IN THE DISTRICT COURT OF _____ COUNTY, NEBRASKA

)	DOC.	NO.
)		
Plaintiff,)		
)		
vs.)		
)		
)		
Defendant.)		
)		
)		

REQUEST FOR STAY OF FORECLOSURE

COMES NOW the Defendant, whether one or more, and hereby petitions the Court to stay the sale of their residence pursuant to Nebraska Revised Statute §25-1506(a). In support of said request, the defendants state that the maturity date of the mortgage loan is:

____ Less than 10 years (9-month stay)

____ More than 10 years but less than 20 years (6 month stay)

____ More than 20 years (3 month stay).

Dated: _____

Defendant

Defendant

§ 25-1506. Order of sale of mortgaged premises; how stayed; length of stay.

Nebraska Revised Statutes

Chapter 25. Courts; Civil Procedure

Request for Stay of Foreclosure
3, 6 or 9 months

Article 15. Executions and Exemptions

(a). Executions

Current through acts approved April 22, 2014

§ 25-1506. Order of sale of mortgaged premises; how stayed; length of stay

The order of sale on all decrees for the sale of mortgaged premises shall be stayed for the period of **nine months** after the entry of such decree, whenever the defendant shall, **within twenty days after the entry of such decree, file with the clerk of the court a written request for the same.** If the defendant makes no such request within twenty days, the order of sale may issue immediately after the expiration thereof. As to any mortgage executed after September 28, 1959, if the original maturity of indebtedness secured by the mortgage is **more than twenty years** after the date of the filing of the complaint to foreclose the mortgage and the mortgage covered a lot or lots, or any part thereof, in a regularly platted subdivision, or parcel of residential property not exceeding three acres in area, the stay period shall be **three months**, and, as to such a mortgage executed after October 9, 1961, if such original maturity is **more than ten years** but not more than twenty years from and after the date of the filing of the foreclosure complaint, the stay period shall be **six months.**

Cite as Neb. Rev. Stat. § 25-1506

Source: Laws 1875, § 2, p. 49; R.S.1913, § 8047; C.S.1922, § 8988; C.S.1929, § 20-1506; R.S.1943, § 25-1506; Laws 1959, c. 105, § 1, p. 432; Laws 1961, c. 112, § 1, p. 351; Laws 1999, LB 43, § 6; Laws 2002, LB 876, § 26.

Case Notes:

1. Time for filing
2. Who may file
3. Effect on appeal
4. Miscellaneous

1. Time for filing

Request for stay must be filed within twenty days after rendition of decree. *Alexander v. Oman*, 137 Neb. 495, 289 N.W. 847 (1940).

District court is without power to extend time for filing request for stay of order of sale beyond 20 days as provided herein. *Columbus Land, Loan & Bldg. Assn. v. Phillips*, 124 Neb. 672, 247 N.W. 600 (1933).

Request for stay, filed before entry of decree, is continuing. May be filed by owner of equity of redemption after sale of his interest in mortgaged premises. *Jenkins Land & Live Stock Co. v. Attwood*, 80 Neb. 806, 115 N.W. 305 (1908).

Court cannot extend time; filing supersedeas bond does not suspend order. *State ex rel. Harris v. Laflin*, 40 Neb. 441, 58 N.W. 936 (1894).

2. Who may file

Word "defendant" in statute means the mortgagor or one in privity with him. *Welty v. Schmutte*, 128 Neb. 415, 258 N.W. 873 (1935).

Defendants in foreclosure are not entitled to a second stay because of filing of supplemental decree touching personal liability and not affecting foreclosure. *Prudential Ins. Co. v. Nethaway*, 127 Neb. 330, 255 N.W. 26 (1934).

When vendor fails to convey, and purchaser sues in equity on the contract and accepts decree granting him a lien for the money paid as if it were a mortgage, vendor is entitled to a stay upon filing request therefor. *Hawkins v. Mullen*, 119 Neb. 567, 230 N.W. 252 (1930).

Word "defendant" applies to mortgagor, not cross-petitioners. *Clark v. Pahl*, 75 Neb. 161, 106 N.W. 420 (1905).

Stay cannot be taken in strict foreclosure. *Harrington v. Birdsall*, 38 Neb. 176, 56 N.W. 961 (1893).

Mortgagee's right to determine time of foreclosure sale is absolute, except for nine month's stay which must be granted on mortgagor's request. *United States Nat. Bank of Omaha v. Pamp*, 83 F.2d 493 (8th Cir. 1936).

Where, after decree of foreclosure of real estate mortgage, the mortgagor files petition in bankruptcy and to effect a composition with creditors, bankruptcy court has power to restrain mortgagee from further proceedings in foreclosure case. *United States Nat. Bank of Omaha v. Pamp*, 77 F.2d 9 (8th Cir. 1935).

3. Effect on appeal

When a defendant requests a stay of sale pursuant to this section, the defendant is precluded from appealing from the foreclosure decree. *Deutsche Bank Nat. Trust Co. v. Siegel*, 279 Neb. 174, 777 N.W.2d 259 (2010).

When a defendant requests a stay of sale pursuant to this section, that request precludes that defendant from

appealing from the foreclosure decree. *Production Credit Assn. of the Midlands v. Schmer*, 233 Neb. 785, 448 N.W.2d 141 (1989).

Filing request for stay precludes taking an appeal. *Carley v. Morgan*, 123 Neb. 498, 243 N.W. 631 (1932).

Request for stay inadvertently filed before decree is entered of record in foreclosure action will not defeat appeal. *Theisen v. Peterson*, 114 Neb. 154, 211 N.W. 19 (1926).

4. Miscellaneous

The original maturity of indebtedness, referred to herein, is the date on which the final payment is due without acceleration. *Central Savings Bank of New York v. First Cadco Corp.*, 186 Neb. 112, 181 N.W.2d 261 (1970).