

CHAPTER 1-05

VALIDATION OF EXECUTION AND FORECLOSURE SALES

1-05-01. Delayed recording - Sheriff's certificate of sale validates. Any sale of real estate made under execution or in foreclosure of a mortgage, prior to January 1, 1943, hereby is declared to be legal and valid for all purposes though the sheriff's certificate of sale issued in completion of such sale was not filed for record in the office of the recorder within sixty days after the date of such sale, but this provision does not apply to nor affect any action or proceeding pending in any court of this state upon the taking effect of this code.

1-05-02. Validation of powers of attorney. All sales of real estate made in proceedings for the foreclosure of mortgages prior to January 1, 1943, hereby are declared legal and valid for all purposes even though:

1. The power of attorney to foreclose was not recorded in the office of the recorder of the county wherein said real estate is located on or before the date of sale but was executed before the date of sale and is recorded in the office of the recorder of the county wherein said real estate is located within six months after the taking effect of this code; or
2. The power of attorney to foreclose was not executed and delivered to the attorney named therein prior to the commencement of such foreclosure proceedings but was executed and recorded in the office of the recorder of the county wherein said real estate is located prior to the time of said sale.

1-05-03. Validation of foreclosure - Assignment unrecorded. Any sale of real estate under a judgment of foreclosure entered prior to the passage and taking effect of this code hereby is declared legal and valid for all purposes, though any assignment of the mortgage foreclosed was not recorded prior to the institution of the action to foreclose, if such assignment was executed and recorded before the entry of such judgment.

1-05-04. Validation of foreclosure of mortgage by foreign executor, administrator, or guardian. If any real estate mortgage given prior to January 1, 1943, was foreclosed in any action or proceeding by a foreign executor, administrator, or guardian, such foreclosure, after six months from and after the date this code takes effect, may not be set aside by reason of the appointment of a resident executor, administrator, or guardian, or by reason of the failure of any such foreign executor, administrator, or guardian to file an authenticated copy of the person's appointment as such executor, administrator, or guardian, in the office of the clerk of the district court, or to record such copy in the office of the recorder of the county in which the action or proceeding to foreclose such mortgage was commenced, if a certified copy of such appointment heretofore has been recorded in such county, and if in the action or proceeding to foreclose such mortgage a sheriff's certificate has been issued prior to January 1, 1943.

1-05-05. Validating foreclosure when proceedings defective. From and after January 1, 1944, no action may be commenced or maintained, and no defense or counterclaim in any action shall be recognized, in the courts of this state, upon the ground that any real estate mortgage foreclosure, sale in connection with which was had prior to January 1, 1943, is defective, legally insufficient, or void, unless such action, defense, or counterclaim is upon grounds other than the following:

1. That no notice of intention to foreclose the mortgage was served upon the record owner or other person or persons in the manner required by law, or that any such notice is defective in form or substance, or in manner of service or filing;
2. That no application for permission to foreclose such mortgage was made to or granted by the district court;

3. That the printer's affidavit of publication of the notice of mortgage foreclosure sale in connection with such foreclosure was made by an employee of the newspaper printing the notice, other than the printer, publisher, foreman, clerk, or bookkeeper of such newspaper; or
4. That no power of attorney, or attorney's affidavit was filed or recorded as provided by law.

1-05-06. Action to set aside mortgage foreclosure - Time limitation. After January 1, 1944, all proceedings for and preliminary to the foreclosure of a real estate mortgage if sale was had prior to January 1, 1943, are deemed valid and sufficient notwithstanding the defects enumerated in section 1-05-05.

1-05-07. Validation of foreclosure sale without notice of intention. Any sale of real estate heretofore or hereafter made upon the foreclosure of a mortgage executed prior to July 1, 1919, is declared legal and valid for all purposes though no notice of intention to foreclose has been given or served as required by section 32-19-20.