Property Law—The Equity of Redemption: Who Decides When it Ends?

Thomas W. Bigley
PROPERTY LAW—THE EQUITY OF REDEMPTION: WHO DECIDES WHEN IT ENDS?

State v. Zacher, 504 N.W.2d 468 (Minn. 1993).

I. INTRODUCTION ........................................ 315

II. BACKGROUND ........................................ 317
   A. The Equity of Redemption ............................. 318
   B. Statutory Redemption .................................. 321
   C. Confusing the Terms .................................. 324

III. THE ZACHER DECISION ................................. 328
   A. The Facts ............................................... 328
   B. The Court’s Analysis .................................. 329

IV. ANALYSIS OF THE ZACHER DECISION ..................... 329

V. CONCLUSION .............................................. 332

I. INTRODUCTION

In Minnesota, an apparent confusion between equitable and statutory redemption rights has evolved from numerous court decisions and ineffective statutory language. This confusion may arise whenever title to property is transferred. In situations after foreclosure, where the mortgagee is the purchaser, the bank buys for the amount of debt and the debtor loses both the property and any equity established over time. State v. Zacher is a classic example.

John Zacher defaulted on his mortgage loan and Staples State Bank foreclosed. The bank purchased Zacher’s property at the foreclosure sale. A single day before the mortgage redemption period expired, Zacher removed a new furnace and air conditioner, lighting fixtures, doors, and paving blocks from the driveway; he even cut the sewer line.

In Zacher, the Minnesota Supreme Court ruled that the bank had a security interest in Zacher’s property that continued after the foreclosure sale to the end of the statutory redemption period. The

1. The primary reason for the present confusion is the functional similarity of these terms. See discussion infra part II.C, and note 58 and accompanying text.
2. State v. Zacher, 504 N.W.2d 468 (Minn. 1993).
3. Id. at 469.
4. Id. The bank held a foreclosure sale by advertisement. Id.
5. Id.
6. Id. at 473. The statutory right to redeem one’s property against a foreclosure action begins immediately upon the completion of a foreclosure sale. 59 C.J.S. Mortgages § 819 (1993). The length of this redemption period is determined by statute.

315
Zacher court considered Minnesota case law, legislative intent, and social policy issues in applying its equitable power. The court, however, failed to clarify the difference between equitable and statutory redemption rights to support this decision.

This Case Note will analyze equitable and statutory redemption and evaluate the Zacher decision in light of these principles. In Part II, the Note will review the development of both equitable and statutory redemption and discuss why Minnesota has confused these two terms. Part III will discuss the facts of the Zacher case and the court's analysis. In Part IV, this Note will criticize the Zacher decision for failing to distinguish the redemption principles. Part IV will also discuss ways to resolve the present confusion.

Finally, this Note will conclude that despite the lack of clarity available, the Minnesota Judiciary or Legislature could eliminate this confusion by better defining these terms. A clarification of redemption principles may provide a legal mechanism to arrive at a fair-

in each state. *Id.* See *infra* note 8 for a discussion of statutory redemption.

Redemption rights developed in response to unjust mortgage agreements. *See infra* note 18. The mortgage instrument developed early in history and originated as far back in time as the Roman Empire. *See infra* note 11. In the late 19th century, a mortgage was defined as "[a] conditional conveyance of land, designed as security for the payment of money, the fulfillment of some contract, or performance of some other act, and to be void upon such payment or performance." 1 FRANCIS HILLIARD, THE LAW OF MORTGAGES OF REAL AND PERSONAL PROPERTY, § 2, at 4 (Boston, Little Brown & Co., 1872). This definition is valid today. *See BLACK'S LAW DICTIONARY 1009-10 (6th ed. 1990).

8. Equity of redemption is defined as "[t]he right of the mortgagor of property to redeem [his or her property] after it has been forfeited, at law, by a breach of the condition of the mortgage (i.e., default in mortgage payments), upon paying the amount of debt, interest, and costs [due]." *BLACK'S LAW DICTIONARY 541 (6th ed. 1990).

The equitable right to redeem is often exercised. 1 GEORGE OSBORNE, HANDBOOK ON THE LAW OF MORTGAGES § 302, at 625 (2d ed. 1970). It arises only upon breach of the mortgage agreement and lasts until the foreclosure sale is completed. 1 id. at 624-25; *see also* 1 GARRARD GLENN, MORTGAGES, DEEDS OF TRUST AND OTHER SECURITY DEVICES AS TO LAND, §§ 3-5, at 11-18 (1943) (discussing redemption after default, its origin in Roman code, and its further development in English Courts of Equity).

Statutory redemption is defined as "[a] time period during which a defaulted mortgage, land contract, deed of trust, etc., can be redeemed. Such period is commonly provided for by state statute." *BLACK'S LAW DICTIONARY 1278 (6th ed. 1990); see 2 GLENN, *infra*, §§ 227-228, at 1091-99.

The statutory right to redeem is rarely exercised. 1 OSBORNE, *infra*, § 8, at 18. Statutory redemption is separate from the mortgagor's equity of redemption. 1 id. at 17. Statutory redemption arises only after the equitable redemption period has ended, meaning that the property has been foreclosed by sale. 1 id. To redeem the foreclosed property, the entire mortgage must be paid in cash. 1 id. at 18.
market price in foreclosure sale proceedings. It also could avoid the acquisition of property through economic hardship.

II. BACKGROUND

Mortgage law evolved at glacial speed, as history reveals a pattern of remedial measure after remedial measure. Anglo-American mortgage law developed almost completely in English Courts of Equity and its origin pre-dates the Norman Conquest. In fact, the equity of redemption principle found in English mortgage law originated under Roman civil law.

9. See 1 GLENN, supra note 8, §§ 1-2, at 1-10.

The term "mortgagor" refers to a person who pledges his or her property for some particular purpose, such as security for a loan. BLACK'S LAW DICTIONARY, 1012 (6th ed. 1990). Likewise, the term "mortgagee" refers to the individual that lends money for the property pledged by the mortgagor. Id.

11. See WILLIAM L. BURDICK, THE PRINCIPLES OF ROMAN LAW AND THEIR RELATION TO MODERN LAW, 381-82 (1989). Equitable redemption rights arose from English Courts of Equity and reflect the court's desire to balance power between the mortgagor and mortgagee. see infra notes 31-34. This balancing of powers concept, so prevalent in English common law, actually began under Roman law. 1 GLENN, supra note 8, § 57, at 382-383.

Roman civil law was not cruel to the debtor for a debtor was allowed two years to redeem his land if he paid all past due debt caused by his default. W. W. BUCKLAND, A TEXT BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN, 477 (3d ed. 1966); see BURDICK, supra, at 381-82 (1989). Roman civil law also provided a right of foreclosure to the creditor. 2 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA, § 1005, at 203 (9th ed. 1984). Under the Roman law hypotheca mortgage, the land remained in the debtor's possession, but under debtor default, the creditor was entitled to an actio-hypothecaria, an action in rem to obtain possession of the encumbered property. 2 id. § 1007, at 205.

Early English mortgage law treated the debtor differently. The Glanvillian gage was the earliest mortgage agreement, arising before Medieval England. 1 OSBORNE, supra note 8, § 1, at 2. Under the late Glanvillian gage, the gagee (the creditor) was allowed possession of the land under two distinctly different mortgage agreements: the vif-gage (living gage) and the mort-gage (dead gage). 1 id. at 3. Under a mort-gage, the gagee kept all profits and rents and held the debtor liable for repayment of the loan. 1 id. The parties agreed to end all debtor rights to the secured land upon default by the debtor. 1 id. at 3-4.

By the 15th century, these rules gave way to a grant of fee simple subject to debtor performance of all mortgage covenants. See WILLIAM F. WALSH, A TREATISE ON MORTGAGES, § 2, at 4 (1934). Most mortgage agreements required the debtor to pay rent by a certain date. Id. If rent was not performed in a timely manner, the gagee's fee simple interest would end and the estate would revert to the creditor. Id. This imbalance of power between the gagee and debtor gave rise to the term "Doomsday," the very day rent was paid or the land was forever lost. See FREDERIC W. MAITLAND,
On the other hand, the statutory right of redemption developed in Colonial American courts and evolved to address various inadequacies of equitable redemption. Historically, the mortgagor's common law right to redeem his land had terminated upon foreclosure. The mortgagor's statutory privilege to redeem, however, began at foreclosure. In Minnesota, this distinction became confused over time.

A. The Equity of Redemption

English mortgage law presented a cruel reality to the mortgagor. Under the common law, any land securing a debt vested completely in the mortgagee. The equitable right of redemption developed in this context to mitigate this imbalance of power. The equitable right of redemption allowed a mortgagor to redeem his property up to the date of foreclosure. Upon foreclosure, the mortgagor lost all claims to his property. The rule under English common law was that possession of the mortgaged land was given to the mortgagee. The term "mortgagee" arose from English common law and refers to any person that provides a mortgage loan and receives land as security for the loan.

DOMESDAY BOOK AND BEYOND, § 4, at 211 (1921) (referring to Doomsmen and the Domesday Book used in Medieval English boroughs to enforce land rents). The equity of redemption developed in this context to mitigate this imbalance of power. Id.

12. See Patrick B. Bauer, Judicial Foreclosure and Statutory Redemption: The Soundness of Iowa's Traditional Preference For Protection Over Credit, 71 IOWA L. REV. 1, 15-21 (1985) (discussing the development of statutory redemption in the early territorial American courts). The earliest legislative grants for statutory redemption occurred in the first several decades after 1800. Id.


14. 1 OSBORNE, supra note 8, § 8, at 17. The equitable right of redemption allowed a mortgagee to redeem his property up to the date of foreclosure. Upon foreclosure, the mortgagor lost all claims to his property. 1 LEONARD A. JONES, A TREATISE ON THE LAW OF MORTGAGES OF REAL PROPERTY, § 7, at 9 (1928) (citing Casborne v. Scarfe, 26 Eng. Rep. 377 (1737) which affirmed the right of equitable redemption to the English Courts of Equity). The phrase "equity of redemption" became common by 1700, but the case which introduced this concept was decided in 1654 and published in 1693. 1 OSBORNE, supra note 8, § 6, at 13 (citing Duchess of Hamilton v. Countess of Dirlton, 1 Ch.R. 165 (1693)).

15. Although statutory redemption is similar in function to the equity of redemption, it is very different in application. See infra part II.B.

16. See 1 OSBORNE, supra note 8, § 5, at 8-12. Under English common law, the mortgagor was subject to great hardships if he did not comply with the conditions of the mortgage. The mortgagor would forfeit possession of the land no matter how great his inherent value was with respect to the debt by which it was mortgaged. 2 STORY, supra note 11, § 1012, at 207.

17. See 1 OSBORNE, supra note 8, § 5, at 10. The rule under English common law was that possession of the mortgaged land was given to the mortgagee. 1 id. This conveyance of a fee estate with conditions (e.g., monthly rent due) was performed through a seizin ceremony, and thus, required the transfer of possession rights to the mortgagee. 1 id. The term "mortgagee" arose from English common law and refers to any person that provides a mortgage loan and receives land as security for the loan.

nate immediately upon default. In response, English courts developed the principle of equitable redemption to end property forfeitures caused by simple defaults of mortgage agreements. Equity intervened to ensure that a mortgagee did not use the secured transaction as a means to acquire the mortgagor’s property.

Thus, English courts created the equity of redemption to preserve the mortgage as a security device. The doctrine of equitable redemption improved the mortgagor’s status. English courts allowed the mortgagor to avoid forfeiture and redeem his property when he paid off the debt that secured his land. Moreover, the mortgagor could prevent a windfall to the

18. 1 OSBORNE, supra note 8, § 1, at 4-5. The mortgage was considered a usurious instrument in English common law. 1 id. at 4. When a debtor failed to pay by a specified time, the mortgagee could do whatever he chose to do with the debtor’s property. 1 id. By the time of Edward the First, the English Courts of Law concluded that a mortgagor who missed payment had no recourse to his land. 1 id. Such a mortgage was unsatisfactory to the mortgagor because the mortgagor lost possession of his property. 1 id. at 5.

19. 1 OSBORNE, supra note 8, § 1, at 5. After Edward the First, the English Courts of Equity introduced equitable redemption to weaken the mortgagee’s usurious control over the debtor. 1 id. This balancing of power between the mortgagee and the debtor gave the debtor the ability to redeem his property despite a payment default. 1 id. § 6, at 12; see 1 JONES, supra note 14, §§ 7-8, at 8-11; 1 GLENN, supra note 8, §§ 3-4, at 12-17.

20. See 1 OSBORNE, supra note 8, § 6, at 13-14. Because the value of the property often exceeded the value of the debt encumbering it, debtor default often resulted in a forfeiture, which the English courts of law and equity abhorred. 1 id. at 14; see also 1 JONES, supra note 14, § 8, at 10-11. See generally 1 GLENN, supra note 8, § 3 (noting the triumph of equitable principles over technical rules in English mortgage law).

21. See 1 OSBORNE, supra note 8, § 6, at 13. The practice of leaving the mortgagor in possession, however, outweighed the creditor’s security interest in the property. 1 id. at 8. By the 14th century, the conveyance of fee upon condition subsequent emerged as the dominant mortgage form and has lasted to the present. 1 id.; see 1 BISPHAM, supra note 10, § 151, at 254-57; see also Emanuel College v. Evans, 21 Eng. Rep. 494 (1625) (noting that redemption assured that the mortgagee received payment of the debt by allowing the mortgagor to possess the secured land until payment was made).

22. See 1 OSBORNE, supra note 8, § 6, at 12. The equity of redemption relieved the debtor of unjust property acquisitions by his mortgagee, provided legal certainty to a transaction plagued with usurious conditions, and balanced the mortgagee’s power to seize property against the debtor’s right to remain in possession. 1 id. at 12-14.

23. 1 OSBORNE, supra note 8, § 6, at 13. The mortgagor had to pay all past due principal and interest within a reasonable time after forfeiture, and the mortgagee now had to go to court and obtain a decree to order the debtor to pay on a fixed day. 1 id. at 12-13. This day became known as “Law Day.” See BURDICK, supra note 11, at 382.

An important maxim developed in mortgage law. The phrase “once a mortgage, always a mortgage” meant that parties to a mortgage could not declare that upon a particular event, the mortgage would cease to be a mortgage and become an absolute conveyance. 1 JONES, supra note 14, § 8, at 10. An agreement to cut off the right of redemption was always held to be void, and thus, the mortgagor could prevent an
mortgagee that would arise if the land sold at a greater value than the underlying debt.24

Equitable redemption was originally a personal right and later became an equitable estate in land.25 Colonial American courts adopted this principle,26 and the State of Minnesota first recognized the equity of redemption in 1865.27 Today this right remains an inherent part of every mortgage agreement.28

Unfortunately, the principle of equitable redemption was not fair to the mortgagee.29 The mortgagee held a high risk position as legal title to the property was subject to the mortgagor's possession, which unjust transfer of his property to the mortgagee. 1 id.

To accomplish this, English courts required the mortgagee to submit a bill for the debt owed on the land provided as a security. See 1 GLENN, supra note 8, § 59.1, at 397-400. Thereafter, the chancery was asked to set a date for payment. 1 id. If the debt still remained after that date, the mortgagor was barred from redeeming his land; at that time, both legal and equitable title vested in the mortgagee. 1 id. at 398-99.

24. See 1 OSBORNE, supra note 8, § 6, at 14.

25. 1 JONES, supra note 14, § 7, at 8-9 (citing Casborne v. Scarfe, 26 Eng. Rep. 377 (1737), where the English Court of Chancery held that mortgaged land is only a pledge or security for money and does not alter the mortgagor's personal right of possession).

The equity of redemption was separated from possession and became transferable as an equitable estate under common law. 1 OSBORNE, supra note 7, § 8, at 16. Moreover, the estate in land could be conveyed to heirs, devised, and even mortgaged. 1 id. Eventually, the redemption interest became an asset that could be reached by third party creditors. 1 id. at 17; see also Casborne v. Scarfe, 26 Eng. Rep. 377, 380 (1737) (presenting various claims by heirs for an equitable division of the estate).

26. 1 OSBORNE, supra note 8, § 13, at 23. America inherited the English law of mortgages. Much of mortgage law arose from the English dual system of law and equity. 1 id.

American colonies accepted this dual system of law and equity. 1 id. For example, in 1970, strict foreclosure (foreclosure without statutory redemption) was in common use in Connecticut. 1 id. § 312, at 651. The majority of states, however, do not permit strict foreclosure remedies and have shaped equitable foreclosure remedies through statutory provisions. 1 id. § 312, at 650; see Sheldon Tefft, The Myth of Strict Foreclosure, 4 U. CHI. L. REV. 575, 588 (1936) (comparing American foreclosure to the English versions of strict and equitable foreclosure).

27. Hill v. Edwards, 11 Minn. 22, __ 11 Gil. 5, 10 (1865). The court ruled that after a mortgage condition is broken, and until foreclosure, a mortgagee of real estate has no conveyable interest in the property. Id.

28. Borgerding Inv. Co. v. Larson, 284 Minn. 371, 374, 170 N.W.2d 322, 325 (1969); see O'Connor v. Schwan, 190 Minn. 177, 179, 251 N.W. 180, 182 (1933) (ruling that equity will protect a mortgage transaction because the mortgage relationship continues to exist until foreclosure, and thus, is a form of security).

29. The threat of redemption by the mortgagor (debtor) vested a right in the mortgagor that could not be countered, or balanced, by the mortgagee. See 1 OSBORNE, supra note 8, § 10, at 20; see also GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW, § 1.2, at 7 (2d ed. 1985) (discussing disadvantages to the mortgagee under English law).
could go on forever. The creation of equitable redemption required a means for ending the mortgagor's infinite right to possess. The English courts responded with foreclosure as a way to limit the mortgagor's power. Foreclosure and redemption are essentially correlative rights under common law. Foreclosure, however, did nothing to address the windfall given to the mortgagee when the mortgagor was unable to redeem the land.

B. Statutory Redemption

Statutory redemption rights were created in the United States in the early 1800s to solve the problem of price inadequacy that often arose through foreclosure actions. These rights were not enacted to empower the mortgagor. Rather, statutory rights were passed to

---

30. See 1 GLENN, supra note 8, § 57, at 381-82.
31. 1 id. at 381. English courts recognized that if the equity of redemption was not limited in some way, the mortgagor's title could effectively go on forever. 1 id. at 384. This imbalance of power between the mortgagor and mortgagee would destroy the mortgage as a security device. 1 id. at 382-83.
32. See 1 GLENN, supra note 8, § 59, at 396-97. From the mortgagee's perspective, strict foreclosure provided a court decree to end the mortgagor's equity of redemption unless the mortgagor could redeem the land within the time set by the court. 1 id., § 59.1, at 397-99.
33. 2 HILLIARD, supra note 6, ch. 26, §§ 1-2, at 30-31.
34. The mortgagor was often unable to redeem his land due to economic hardship. 1 OSBORNE, supra note 8, § 311, 648-50. Because strict foreclosure ended the mortgagor's equity of redemption, it often created a great injustice to the mortgagor. 1 id. at 650. The mortgagee's act of foreclosure had the effect of final and absolute ejectment upon the mortgagor. 1 id. at 648. If the mortgaged land was worth more than the debt owed, the mortgagee would receive a windfall at the mortgagor's expense. 1 id. at 650. Essentially, the mortgagee could acquire the land through the mortgagor's economic hardship. 1 id. See generally Note, Strict Foreclosure: A Neglected Remedy, 25 VA. L. REV. 947 (1939) (referring to the English common law method of foreclosure as the American equivalent of strict foreclosure).
35. 1 OSBORNE, supra note 8, § 8, at 18 n.50. The statutory right to redeem is separate and distinct from the mortgagor's equity of redemption; it arises only after the land has been foreclosed by sale. 1 id. at 17. This type of legislation can be traced back to 1820, when international economic disturbance caused the United States to experience a land boom collapse following the Napoleonic Wars. 1 id. at 18 n.50. The development of statutory redemption rights occurred in Minnesota in 1866. See MINN. GEN. STAT., ch. 81, § 15 (1866).
36. 1 OSBORNE, supra note 8, § 8, at 18. The statutory redemption period addresses price inadequacy in four ways: (1) it protects debtors from high personal obligations that arise from deficient foreclosures; (2) it allows defaulting debtors to regain their land; (3) it protects unsecured creditors from having to share unencumbered assets with the holders of a deficiency judgment; and (4) it allows creditors to take advantage of an increase in value of the foreclosed property. 1 id. at 18 n.50.
37. See 2 GLENN, supra note 8, § 228, at 1098 (pointing out that a mortgagor's last chance to save the farm was not the primary reason for many American redemption statutes). The statutory right of redemption was created in part to give the mortgagor
enhance the purpose of mortgage transactions: to provide land as security for debt at a fair market value. 38

Statutory redemption had an indirect effect upon the foreclosure sale. The redemption privilege allowed the mortgagor additional time to repurchase his property if the foreclosure sale price was inadequate. 39 This right to redeem put pressure on bidders to pledge the fair market value of the property 40 and prevented the mortgagee from purchasing the property for a nominal amount. 41 In this manner, like the equity of redemption created by English courts, statutory redemption helped to ensure that foreclosure sales resulted in satisfaction of the debt and not the unjust acquisition of the mortgagor's property. 42

Unfortunately, statutory redemption did not completely solve the problem of price inadequacy. 43 The foreclosure sale purchaser

additional time to refinance and save his or her property. 1 OSBORNE, supra note 8, § 8, at 17-18. It was mainly created to put pressure on the mortgagee (or other foreclosure sale attendees) to bid for the land at its highest market value. 1 id. at 18. A subsidiary purpose was to allow an additional period of occupancy for the hard-pressed mortgagor. 1 id.

38. See 1 OSBORNE, supra note 8, § 8, at 18.
39. 1 OSBORNE, supra note 8, § 8, at 17-18. Statutory redemption price inadequacy is a function of the foreclosure sale event. 1 id. For example, assume a debtor's land is worth $15,000 and is encumbered by a creditor lien in the amount of $10,000. At the foreclosure sale, the land is sold for $10,000, which satisfies the creditor's lien. Without redemption the debtor would suffer a loss of $5000, and the purchaser would realize the $5000 as a gain. The debtor can resolve his loss and the purchaser's gain by redeeming the property from the purchaser at any time within the statutory redemption period. If the debtor does not have $10,000, he cannot exercise his right of redemption, despite the price inadequacy of the sale. See Bauer, supra note 13, at 365 (noting analogous example).

40. See supra note 37. Market value is achieved for the protection of the mortgagor and all bidders present at the foreclosure sale. United States v. Stadium Apartments, Inc., 425 F.2d 358, 366 (9th Cir. 1970) (asserting that the objective of foreclosure is to receive bids at fair market value). If the property is worth more than the bid value, the court presumes that others will increase the bid amount. Id.

41. See UNIFORM LAND TRANSACTION ACT, § 3-510(b) (1978) (presenting the mechanics of foreclosure and the idea that a foreclosure sale is a market event geared to achieving the highest possible land value). Contra Terry Schaplow, Oregon's Statutory Right of Redemption—Any Redeeming Qualities?, 16 WILLAMETTE L. REV. 891, 903 (1980) (criticizing statutory redemption rights on the grounds that bidding by non-mortgagors is chilled because indefeasible title is not obtained until the redemption period ends).

42. Equitable redemption allowed the debtor to bring past payments up to date and avoid unjust forfeiture of his land. See supra note 23. If the foreclosure sale price is inadequate, the mortgagee can exercise his statutory right to redeem and avoid an unjust property taking. See supra note 39.

43. Statutory redemption rights are criticized in several ways. First, to redeem, the entire mortgage amount must be paid in cash. 1 OSBORNE, supra note 8, § 8, at 18. Yet, there would not be a foreclosure if the mortgagor could pay even a substantial part of his debt in cash. 1 id. Second, the questionable character of title purchased at a
received title subject to the mortgagor's statutory privilege. Vested title could not pass to the purchaser until the mortgagor's possession of the property ended with the statutory period. This created a cloud on the title which often produced a depressed sale price.

Statutory redemption laws have been subjected to judicial and legislative revision, particularly during depressed economic periods. Although two states have repealed redemption laws, nearly half of the states presently regulate after sale redemption activities.

Foreclosure sale acts to depress the sale price. Bauer, supra note 12, at 72-75 (discussing actual benefits and costs of Iowa's system of statutory redemption). Third, statutory redemption decreases the value of the land as a security device and usually increases the delay and costs of the transaction. See Schaplow, supra note 41, at 903. Finally, statutory redemption causes a delay in payment on behalf of the debtor, who may redeem the property at the last minute. Id.

44. See Prather, supra note 13, at 431-32 (discussing the mortgagor's right of redemption and its delay effect upon the foreclosure process).

45. Id.

46. A "cloud on title" is defined as "[a]n outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect ..." BLACK'S LAW DICTIONARY 255 (6th ed. 1990).

47. See Prather, supra note 13, at 452. The criticisms of statutory redemption presented in footnote 43 (increased costs and inefficiencies) combine to create a hardship to the foreclosure sale purchaser. The purchaser's speedy acquisition of the land is prevented while the hopeless mortgagor has an opportunity to milk the property through his statutory right of possession. The instability of the foreclosure sale often leads to fewer bids and a lower sale price. Id.; see Robert M. Washburn, The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales, 53 S. CAL. L. REV. 843, 931 (1980).

48. See, e.g., Hardyston Nat'l Bank of Hamburg v. Tartamella, 267 A.2d 495, 497 (N.J. 1970). The New Jersey Supreme Court claimed that the statutory ten day redemption period was incompatible with other jurisdictions. Id. at 498. The court extended the mortgagor's redemption right for policy reasons. Id. at 497.

49. 1 OSBORNE, supra note 8, § 8, at 18. The experience of the depression years in the 1930s revealed that statutory redemption was inadequate in periods of severe or extensive economic depression. 1 id. To compensate for these deficiencies, a wave of legislation followed. 1 id. Equity courts have given relief by various measures such as refusal to confirm an inadequate bid price, ordering resales for the same reason, or setting up fair prices initially or on resale. 1 id. §§ 330-31, at 691-95. Legislatures have responded by lengthening the redemption period or by introducing moratoria legislation during economic collapse. 1 id.


51. See Bauer, supra note 12, at 5 n.11. Statutory redemption rights arose in communities where farming was especially prominent. Bauer, supra note 13, at 390. Nearly all states west of the Mississippi River, with the exception of Louisiana (civil law), Texas, Oklahoma, and Nebraska, had some form of statutory redemption rights. Id. at 400 n.175. As of 1985, eleven states, including Minnesota, require a pure form of statutory redemption. See Bauer, supra note 12, at 5 n.11. In short, each statute
The statutory privilege of redemption began in Minnesota with the General Statute Act of 1866. The Minnesota Legislature has twice acted to provide relief to mortgagors during hard economic times. The effects of the Depression prompted a two-year moratorium on mortgage foreclosure that was enacted in 1933 and continued until July of 1942. A second moratorium was enacted in May of 1983 in response to economic malaise and record unemployment trends. These enactments reflect the state’s strong preference to protect farm and home ownership.

C. Confusing The Terms

Today, the statutory right of redemption depends upon the terms of the particular statute and the construction of these terms by the courts. The confusion between equitable redemption and the statutory privilege of redemption comes from the functional similarity of the two principles. Although the United States Supreme Court generally designates who may redeem, a formula for the amount to pay, and a time limit for the statutory redemption period. See 1 OSBORNE, supra note 8, § 307, at 639; see also 2 GLENN, supra note 8, § 229, at 1100.

52. MINN. GEN. STAT., ch. 81, § 13 (1866). The 1866 Act provided that:

The mortgagor, his heirs, [and mortgagor’s] executors ... whose real property is sold in conformity [with] this chapter, may within twelve months after such sale, redeem such property ... by paying the sum of money for which the same was sold, together with interest on the same, ... [at] the time of sale.

Id.


54. Id. at 805.

55. Id.

56. See id. at 816.

57. 59 C.J.S. Mortgages § 819 (1949); see Durfee & Doddridge, supra note 13, at 838 (stating the effect of statutory redemption is complicated by the terms of a statute, as well as the decisions construing them).

58. Both principles allow the defaulting land owner a chance to redeem his property. 1 OSBORNE, supra note 8, § 7, at 15. Courts have confused these principles because of this shared function. See Schaplow, supra note 41, at 891-95 (discussing the Oregon Supreme Court’s struggle with lower courts to clarify redemption terms and concepts prior to 1980).
and several state courts have made this distinction clear,59 some states have made notable errors.60

In Minnesota, the boundary between equitable and statutory redemption is not clearly defined. Early judicial decisions distinguished the two principles,61 but later courts began to muddle the terms.62 Many Minnesota courts refer to the equity of redemption as statutory redemption,63 some courts refer to statutory redemption as

59. See Chicago & Vincennes R.R. v. Fosdick, 106 U.S. 47, 71 (1882) (ruling the equity of redemption is not exhausted until the sale is final); Parker v. Dacres, 190 U.S. 43, 48 (1889) (holding the right to redeem after the foreclosure sale is statutory); see also First Ill. Nat'l Bank v. Hans, 493 N.E.2d 1171, 1174 (Ill. App. Ct. 1986) (stating the equity of redemption, inherent in every mortgage, terminates at the foreclosure sale); Land Assocs., Inc. v. Becker, 703 P.2d 1004, 1006 (Or. Ct. App. 1985) (declaring the statutory right of redemption is different from the equity of redemption); Gesa Fed. Credit Union v. Mutual Life Ins. Co. of New York, 696 P.2d 607, 611-12 (Wash. Ct. App. 1985) (reporting the right to redeem after the foreclosure sale is not a right of equity; it is purely statutory); Durfee & Doddridge, supra note 13, at 888 n.43 (presenting the inherent contrast between equitable and statutory redemption).

60. See Schaplow, supra note 41, at 891 n.1. In 1882, much confusion was created when two independent court reporters supported two very different versions of the same Supreme Court decision for an equitable redemption case. Id.; see, e.g., Mason v. Northwestern Ins. Co., 106 U.S. 163, 164 (1882) (presenting the unclear language that resulted in two different versions of the Supreme Court decision).

61. Compare Hill v. Edwards, 11 Minn. 22, __, 11 Gil. 5, 10 (1865) (stating the right of equitable redemption is an incident part of every mortgage) and Holton v. Meighen, 15 Minn. 69, __, 15 Gil. 69, 79 (1870) (stating the equity of redemption exists despite express terms to the contrary in the mortgage) with Dickinson v. Hayes, 26 Minn. 100, 101, 1 N.W. 834, 835 (1879) (stating that after foreclosure by advertisement, the only right of redemption is that which is given by statute) and Bowen v. Bankers Life Co., 185 Minn. 35, 38, 299 N.W. 774, 775 (1931) (advocating the same).

62. Compare Bowen v. Bankers Life Co., 185 Minn. 35, 38, 299 N.W. 774, 775 (1931) (holding that after foreclosure, the only right of redemption is that which is given by statute) with Blaisdell v. Home Bldg. & Loan Ass'n, 189 Minn. 422, 433, 249 N.W. 334, 338 (1931) (stating that after foreclosure by advertisement, the court may extend the period of equitable redemption to offset the statutory right of redemption) and In re Klein, 9 F. Supp. 57 (D. Minn. 1934) (recognizing and applying the equity of redemption after a foreclosure sale).

63. This occurs when Minnesota courts apply statutory redemption as a means for the owners to save their land, without addressing the original statutory intent to resolve price inadequacy. See, e.g., Kooda Bros. Constr., Inc. v. United Fed. Sav. and Loan Ass'n of Alexandria, 400 N.W.2d 407, 409 (Minn. Ct. App. 1987) (claiming a mechanics lien against the debtor's property is not extinguished at the foreclosure sale because there can be no deficiency arising from foreclosure when a property is purchased by the mortgagee for the full amount of debt); Woodmen of the World Life Ins. Soc'y v. Sears, Roebuck & Co., 294 Minn. 126, 132-33, 200 N.W.2d 181, 184-85 (1972) (holding the mortgagee-purchaser's right to receive rent assigned in a mortgage is terminated upon foreclosure when the property is sold for the full amount of the debt because the mortgagee-purchaser takes subject to unpaid debts and is presumed to have adjusted its bid accordingly); Gardner v. W.M. Prindle & Co., 185 Minn. 147, 151, 240 N.W. 351, 352-53 (1932) (referring to the mortgagee's purchase price as the mortgagor's debt
the equity of redemption, while other courts do not distinguish equitable redemption from statutory redemption and apply the principles equivocally. Over time, additional confusion may have come from inattentive reading of opinions and subsequent opinion writing.

Despite the blurred boundaries created by Minnesota courts, this confusion of terms never removed the inherent distinction between redemption principles found in early Minnesota law. In the General Laws Act of 1869, the legislature subtly maintained the distinction between statutory and equitable redemption by declaring that a security interest exists "either before or after" a foreclosure sale and ignoring the adequacy of sale price; Tomasko v. Cotton, 200 Minn. 69, 72, 273 N.W. 628, 630 (1937) (stating a property is redeemable by statute for the mortgage debt at foreclosure, thereby blurring the line between equitable and statutory redemption).

64. This occurs when Minnesota courts apply the balancing of powers principle of equitable redemption to resolve price issues arising from foreclosure sales. This principle pertains to the mortgagee/mortgagor and does not include third party bidders. Thus, the balancing of powers principle lies outside the aim of statutory redemption and ignores the very people the statute enlists to resolve price inadequacies. Some courts use this principle to balance competing interests during the statutory period. See, e.g., Pamperin v. Scanlan, 28 Minn. 345, 349, 9 N.W. 868, 870 (1881) (using a balance of powers approach to solve redemption issues that arise in the statutory period); First Nat'l Bank of Winnebago v. Boler, 291 Minn. 185, 188, 190 N.W.2d 94, 96 (1971) (extending the balancing of powers principle to include third party bidders by stating the purpose of filing for statutory redemption is to give notice to whomever may be competing to redeem the property and to disclose how much the redemption may cost); Rambeck v. La Bree, 156 Minn. 310, 312, 194 N.W. 643, 645-46 (1923) (holding that the failure to correctly file redemption certificate documents does not invalidate a mortgagor's redemption when the rights of a subsequent redemptioner are not impaired).

65. State v. Zacher, 504 N.W.2d 468, 472 (Minn. 1993) (holding that a mortgage continues to exist after a foreclosure sale, even though the mortgage debt itself is extinguished). Thus, equitable redemption and statutory redemption are equivocated despite their historically distinct and separate applications. See, e.g., Wood v. Waldon, 116 Minn. 474, 477, 134 N.W. 127, 128-29 (1912) (holding that after foreclosure, the mortgagee is no longer a creditor but a purchaser); cf. Cross Cos., Inc. v. Citizens Mortgage Inv. Trust, 305 Minn. 111, 118, 232 N.W.2d 114, 118 (1975) (appellant arguing that rents and profits derived from the default property after a foreclosure sale are mortgagee assets).

66. It is easy to observe how these principles were confused in Minnesota. During the Great Depression, the Minnesota Supreme Court decisions actually contradict each other. The court in Bowen v. Bankers Life Co. held redemption principles as separate. Bowen v. Bankers Life Co., 185 Minn. 35, 38, 299 N.W. 774, 775 (1931). In Blaisdell v. Home Building & Loan Ass'n, the court blurred these principles by declaring the period of equitable redemption may offset the right of statutory redemption. Blaisdell v. Home Bldg. & Loan Ass'n, 189 Minn. 422, 433, 249 N.W. 334, 338 (1933).

67. See supra note 61 and cases cited.
for criminal acts that defeat security in real property. This distinction, however, was apparently not clearly expressed for the courts to construe.

In 1963, the legislature diluted this subtle distinction between redemption principles by changing the terms of the particular statute. As a result, the courts overlooked the equity of redemption. In 1993, the legislature revised the statute to address redemption issues but continued to ignore the fundamental distinction. Today, the real confusion in Minnesota courts is centered on the equity of redemption and when it ends: whether at the foreclosure sale or at the end of the statutory redemption period.

68. Act of Mar. 4, 1869, ch. 64, 1869 MINN. GEN. LAWS 78. This statute states: That no mortgagor or other person shall remove any building, fixture or fence, situate or being upon any real estate on which . . . any . . . lien exists, either before or after the foreclosure of such mortgage or sale in satisfaction of such lien, to the prejudice of any holder of such mortgage or lien. Id. § 1 (emphasis added).

69. Numerous Minnesota court decisions up to the late 1930s served to blur the legislative distinction between equitable and statutory redemption. See supra notes 61-62 and accompanying text.

70. Compare supra note 68 (citing Act of Mar. 4, 1869, ch. 64, 1869 MINN. GEN. LAWS 78) with MINN. STAT. § 609.615 (1963), which states in part: "Whoever removes or damages real property which is subject to a mortgage, mechanic's lien, or contract for deed, with intent to impair the value of the property, without the consent of the security holder may be sentenced as follows. . . ." Id. (emphasis added). The 1963 statute dropped the 1869 reference to before or after the foreclosure sale and ambiguously states "subject to a mortgage." Id.

71. See supra note 62, cases cited and accompanying text.

72. The ambiguity of redemption principles remains despite the revised 1993 statute. Compare supra note 70 (citing MINN. STAT. § 609.615 (1963)) with MINN. STAT. § 609.615 (Supp. 1993), which states in part: Whoever removes or damages real property which is subject to a mortgage, mechanic's lien, or contract for deed, including during the period of time allowed for redemption, with intent to impair the value of the property, without the consent of the security holder, may be sentenced as follows . . . .

Id. (emphasis added to illustrate new reference to redemption periods).

73. Minnesota case law is contradictory in this regard. Several cases imply the equity of redemption ends at foreclosure while others imply it terminates at the end of the statutory period. See State v. Zacher, 490 N.W.2d 149, 150 (Minn. Ct. App. 1992) (explaining that the mortgage no longer exists as a security interest after foreclosure, thereby implying that equitable redemption terminates at the foreclosure sale); Gardner v. W.M. Prindle & Co., 185 Minn. 147, 151, 240 N.W. 351, 353 (1932) (stating that even though the mortgagor's estate is insolvent, whatever right the mortgagee has under a mortgage to collect rent is terminated at the foreclosure sale); cf. Farmers and Merchants Bank of Preston v. Junge, 458 N.W.2d 608, 700 (Minn. Ct. App. 1990) (ruling that equitable title purchased at a foreclosure sale does not pass until the end of the redemption period); Kooda Bros. Constr. Co. v. United Fed. Sav. & Loan Ass'n of Alexandria, 400 N.W.2d 407, 409 (Minn. Ct. App. 1987) (holding that covenants of
III. THE ZACHER DECISION

A. The Facts

John Zacher executed a $50,000 mortgage loan with Staples State Bank. The bank based the loan amount upon the appraised future value of the building, which included improvements Zacher intended to make with $20,000 of the loan. The mortgage stipulated that the secured property included "all existing or later added improvements and fixtures."

Zacher defaulted on his loan and the bank foreclosed by advertisement. The bank purchased Zacher’s property at the foreclosure sale for the full amount of the mortgage plus interest. Thereafter, Zacher remained in possession of the property, subject to his statutory right of redemption. The controversy arose when Zacher removed fixtures from his building only one day before the statutory redemption period was to expire. The items removed by Zacher were later found in his storage facility.

The Minnesota Supreme Court affirmed the trial court’s ruling, finding John Zacher guilty of defeating a security interest in real property under Minnesota Statute Section 609.615. Judge Short dissented.

---

74. State v. Zacher, 504 N.W.2d 468, 469 (Minn. 1998).
75. Id.
76. Id.
77. Id.
78. Id.
79. Id.
80. Id.; see, e.g., MINN. STAT. § 580.23 (1) (1994) (stating that a residential property owner has six months, commencing from the foreclosure sale event, to redeem his property by paying the foreclosure sale amount in cash).
81. Zacher, 504 N.W.2d at 469.
82. Id.
83. Id. at 473.
84. Id. at 151-52.
85. Id. Judge Short asserted that a mortgage continues to function after a foreclosure sale. Id. Judge Short also maintained that the mortgagee purchaser at the foreclosure sale has a security interest until the period of redemption expires. Id. at 152.
The State of Minnesota appealed the holding and petitioned the supreme court for review.86

B. The Court's Analysis

In Zacher, the supreme court deemed the controversy to be an issue of statutory interpretation and thus a question of law for de novo review.87 To reach its decision, the court evaluated case law within the jurisdiction88 and considered the legislative intent behind the statute.89 The court also considered an intervening social policy argument by the Minnesota Mortgage Bankers Association.90

Zacher argued that his mortgage expired upon foreclosure, and thus, the bank's security interest in his property expired with the foreclosure action.91 The court found that this reasoning would render the statute meaningless.92 The supreme court held, en banc, that Zacher's property continued to be subject to the mortgage after the foreclosure sale and until the statutory redemption period expired.93 The court limited this decision to mortgagees as purchasers for acts under the criminal statute.94

IV. ANALYSIS OF THE ZACHER DECISION

The Zacher court correctly ruled that a mortgage continues to act as security through the statutory redemption period.95 The court's analysis, however, does not adequately explain this decision. Because the mortgage debt is extinguished at foreclosure, the mortgage as a remedy no longer exists.96 It is logical, therefore, to conclude that a security interest in mortgaged property also terminates upon foreclosure.97 The doctrine of equitable redemption, however, developed to preserve the mortgage as a security device and to avoid

87. State v. Zacher, 504 N.W.2d 468, 470 (Minn. 1993).
88. Id. at 471-72.
89. Id. at 472.
90. Id. The court considered the argument that additional costs would arise from a mortgage transaction that did not cover the mortgagee's interest during the statutory redemption period. Id. The cost of placing the property into receivership status would be high and cumbersome to legally achieve. Id. at 471.
91. Id. at 470.
92. Id. at 473.
93. Id.
94. Id. at 470.
95. Id. at 472.
96. Id. Respondent Zacher argued this premise before the court of appeals. Zacher, 490 N.W.2d at 150.
97. Zacher, 490 N.W.2d at 151.
unjust property taking. The historic intent behind equitable redemption firmly supports the court ruling that a mortgage continues to act as security through the statutory redemption period.

The Zacher court failed to interpret Minnesota Statute Section 609.615 within the context of its common law origin. With the enactment of the statute in 1869, the legislature declared that a security interest in mortgaged land existed before and continued after the foreclosure sale. In essence, the 1869 legislature enacted a statutory extension of the common law principle of equitable redemption. Even though the Zacher court correctly presumed the legislature's true intent, the concept of common law redemption was not explained.

Furthermore, the Zacher court failed to clarify the principles of equitable and statutory redemption and their significance to Minnesota redemption rights. The court did not address whether the extension of common law equity through the statutory redemption period extinguished the redemption statute or whether the two principles are to operate concurrently. By holding as it did, the Minnesota Supreme Court missed an opportunity to clarify the law behind Minnesota redemption rights.

The problems presented by the Zacher decision can be resolved by judicially distinguishing common law and statutory redemption in a future case. Alternatively, the Minnesota Legislature could respond to the Zacher decision by modifying the present statutory terms of redemption.

98. 2 Hilliard, supra note 6, ch. 26, §§ 1-2, at 30-31. The concept of correlative rights between the mortgagor (equitable redemption) and mortgagee (strict foreclosure) preserved the mortgage instrument as a security device. 2 id.; see also 1 Osborne, supra note 8, § 6, at 12-14.

99. See 1 Osborne, supra note 8, § 6, at 13.

100. The court reviewed early case law but failed to assess the later confusion of terms. Zacher, 504 N.W.2d at 471-72.

101. See supra note 70.

102. State v. Zacher, 504 N.W.2d 468, 473 (ruling the bank had a security interest in the property Zacher removed after the foreclosure sale).

103. See id. at 470-72. Although the court reviewed case law and argued statutory intent, the court failed to explain the principle of equitable redemption and its similarity to statutory redemption. Id. This is important because history holds the two principles separate by application, despite their similar functions. See supra notes 21 and 100.

104. See Zacher, 504 N.W.2d at 470-71 (citing Minn. Stat. § 609.615 (1990), which declares the removal of property from mortgaged land a criminal act but fails to distinguish Minnesota redemption rights and their significance to the origins of the statute).

105. Id. In contrast, Minnesota courts have previously held that the period of equitable redemption may be extended to offset the statutory period of redemption. Blaisdell v. Home Bldg. & Loan Ass'n, 189 Minn. 422, 433, 249 N.W. 334, 338 (1931), aff'd, 290 U.S. 398 (1934).
Minnesota Statute Section 609.615.\footnote{106} This would clear up any confusion that a court may have by better defining present redemption rights. Such change would be consistent with the spirit of the \textit{Zacher} decision, which tries to make the statute useful.\footnote{107}

Also, several legislative scenarios are possible to correct the problem. First, the legislature could extend the equitable redemption period. By putting off the finality of foreclosure, the mortgagor would have a longer period of time to bring the mortgage payments up to date. This solution, however, could function as a disadvantage to the mortgagee by making endless possession possible for the mortgagor.\footnote{108}

Second, the legislature could repeal statutory redemption. The mortgagor’s “right” to redeem the property would end with the foreclosure. Under this form of foreclosure, the mortgagor may recover a market value on the property because the redemption statute “cloud” is no longer present. The mortgagor, however, has less time to bring the mortgage up to date and would be unable to refinance the debt.\footnote{109}

The solution lies in balancing powers between the mortgagor and mortgagee. It is possible to get the best of both scenarios. The legislature could amend the statute to allow statutory redemption only in situations where the mortgagee is the purchaser.\footnote{110} Other buyers could bid with the security of receiving instant “clear” title.\footnote{111} This would create a competitive bidding process the mortgagee could not

\footnote{106. In \textit{Koenigs v. Travis}, the court held that it is the province of the legislature and not of the court to modify rules of common law. \textit{Koenigs v. Travis}, 246 Minn. 466, 480, 75 N.W.2d 478, 487 (1956) (citing \textit{Congdon v. Congdon} 160 Minn. 343, 362, 200 N.W. 76, 82 (1924)).}

\footnote{107. \textit{State v. Zacher}, 504 N.W.2d 468, 473 (Minn. 1993) (stating the statute would be meaningless if the court were to accept Zacher’s argument that the mortgage (and thus, the mortgagee-purchaser’s security interest in the property) was extinguished).}

\footnote{108. This imbalance has been created before. Medieval England developed the mortgagee’s right of strict foreclosure to balance this potential threat of endless mortgagor possession. See supra note 31 and accompanying text.}

\footnote{109. History has also seen this imbalance. Statutory redemption was created in response to strict foreclosure, as a remedy for price inadequacies that arose through foreclosure actions. See supra note 38.}

\footnote{110. Amending the statute would avoid future confusion of redemption principles. The \textit{Zacher} court established that a mortgage is a security device until the end of the statutory redemption period. This decision, however, does not address the very purpose of statutory redemption: to mitigate foreclosure sale price inadequacies. See supra note 38. When the mortgagee is the purchaser of the property and market value is not achieved, statutory redemption should be used to mitigate the price inadequacy that arises in the mortgagee-purchaser situation. See, e.g., 1 \textit{OSBORNE}, supra note 8, § 8, at 18.}

\footnote{111. Without statutory redemption, bidders at the foreclosure sale could purchase clear title without a redemption term encumbrance. See supra note 46.}
avoid and, ultimately, a foreclosure sale price at or near fair market value.\textsuperscript{112} At the same time, the mortgagor is given a means to redeem his property or reduce the windfall that a mortgagee often gains through foreclosure.\textsuperscript{113}

This solution avoids the use of financial hardship as an acquisition device.\textsuperscript{114} By repealing statutory redemption, except when a mortgagee is the purchaser, a "balanced" price would be derived through clear, unencumbered, market potential. It may prevent other people in John Zacher's predicament from taking their sweat-equity out of the banker's purse.

V. CONCLUSION

Historically, redemption rights arose from common law and later became regulated by statute. Although Minnesota originally distinguished each redemption right, over time these principles became confused.\textsuperscript{115} The \textit{Zacher} decision declared that common law equity does not end at the fall of the foreclosure sale hammer.\textsuperscript{116} Rather, it continues through the statutory redemption period for acts that defeat a security interest in real property.\textsuperscript{117}

By the court's approach, the mortgagee's security interest in a foreclosed property is still unclear. The \textit{Zacher} decision failed to clarify the underlying confusion between equitable and statutory redemption in Minnesota. Given a future case, the Minnesota Judiciary should

\textsuperscript{112} It is ironic that perhaps the sound way to achieve maximum market price at a foreclosure sale is to dispose of, or greatly limit, the present redemptory statute. After all, the historic aim of redemption statutes is to achieve price adequacy. \textit{See supra} note 58.

\textsuperscript{113} This way the mortgagor is protected by statutory redemption in the worst case scenario: the market is so depressed no one shows up for the sale and the mortgagee purchases the property for the debt owed. Statutory redemption would, of course, allow the mortgagee a period of time after the sale to fix this price inadequacy by refinancing the foreclosed property.

\textsuperscript{114} \textit{See supra} note 34. Courts of equity abhor a forfeiture. The common law concept of balanced powers developed equitable redemption and strict foreclosure as corollary rights. 2 Hilliard, \textit{supra} note 6, ch. 26, §§ 1-2, at 30-31; 1 Osborne, \textit{supra} note 8, § 6, at 12-14.

\textsuperscript{115} \textit{See supra} notes 61-66 and accompanying text, establishing the confusion of redemption terms by Minnesota courts.

\textsuperscript{116} \textit{See} State v. Zacher, 504 N.W.2d 468, 473 (Minn. 1993) (stating the bank had a security interest in John Zacher's property that continued after the foreclosure sale and until the end of the statutory redemption period).

\textsuperscript{117} \textit{Id.}
better define statutory and equitable redemption and their significance to Minnesota redemption rights. Alternatively, the Minnesota Legislature could statutorily respond.

Thomas W. Bigley
MEMORIAL FOR CHIEF JUDGE ANNE SIMONETT†

† The following are the eulogies that were given at the memorial services for Chief Judge Simonett held on May 9, 1995 at the church of the Nativity of Our Lord in St. Paul, Minnesota.