TRUST MORTGAGE FORECLOSURE
Act 210 of 1933

AN ACT to provide for the acquisition, management and disposition, by the trustee or trustees as a trust under the jurisdiction of equity, of property mortgaged to such trustee or trustees to secure bonds or other obligations, where such acquisition is requested or assented to by the holders of a majority in amount of such bonds or obligations and no bid for the mortgaged property at public sale under decree of foreclosure was or is made or appears to be obtainable for a sum representing the fair and reasonable value of the interest in said property of all holders of such bonds or obligations; to provide for the concurrence or non-concurrence of such holders in said request and for the method, time and manner of payment to non-concurring holders of their pro rata share of the amount so bid by said trustee or trustees.

History: 1933, Act 210, Imd. Eff. July 3, 1933.

The People of the State of Michigan enact:

451.401 Trust mortgage foreclosure; definitions.

Sec. 1. As used in this act:

The term "trust mortgage" means any trust mortgage, trust indenture or deed of trust given to secure bonds or other obligations issued and authenticated as therein set forth.

The term "trustee" means the trustee or trustees of any such "trust mortgage."

The term "bonds" means bonds or other obligations outstanding and secured by any such "trust mortgage."

The term "request" as used in sections 2 and 3 of this act means the written request filed by the trustee or holders of bonds for authorization of the trustee to bid for and acquire the mortgaged property as provided in section 2 of this act.

The term "non-concurring holder or holders" means such holder or holders as shall have filed written refusal to concur in said "request."

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.401.

451.402 Trust mortgage foreclosure; insufficient bid; request for trustee to bid, procedure.

Sec. 2. Upon filing in any circuit court in chancery a report of the proceedings had in relation to the sale under a decree of said court for the foreclosure of any trust mortgage given to a trustee to secure bonds issued and authenticated as therein set forth, if it shall appear from said report that no bid was made for the mortgaged property or if a bid therefor was made and it shall, in the manner hereinafter set forth, be made to appear to the court that the sum so bid does not represent the then fair and reasonable value of the interest of the holders of such bonds secured thereby, and, in either event, that no bid for a sum representing such fair and reasonable value of said interest appears to be obtainable, the court may authorize the trustee to bid for and acquire said mortgaged property as hereinafter set forth. Such authorization to bid for and acquire such property shall be made only upon written request therefor to said court by said trustee, or the holders of not less than a majority of the amount of such bonds then secured by said trust mortgage. The request by such holders may be executed by said holders in person, or by agent or attorney. Upon the filing of such request the court shall make an order requiring all interested persons to appear at a time to be designated in said order and show cause, if any, why the court should not authorize the trustee to bid for and acquire the mortgaged property as above provided. The trustee shall cause said order to be published in some newspaper designated by the court and printed in the county where such foreclosure proceedings are pending, and/or in such other newspaper as the court may direct, once in each week for 15 successive weeks prior to the return day of said order to show cause and shall mail or cause to be mailed a copy thereof to the mortgagor, to all other parties in said foreclosure proceedings and to each holder of said bonds secured by said mortgage insofar as the names of such holders are known to the trustee, at least 12 weeks prior to the date specified in said order, such notice to be mailed in each instance to the last known postoffice address. Proof of such publication and of such mailing shall be filed in said proceedings on or before the return day of said order, and proof of mailing shall be sufficient if made by affidavit of the trustee, or by an agent, employee or representative of the trustee having knowledge of the facts, merely avering [averring] that a copy of said order was so mailed. Neither the validity nor the regularity of proceedings under this act shall be affected by the fact that any mortgagor, party, holder of said bonds or interested person may not have had actual notice of said order to show cause or by the fact that a copy of said order may not have been mailed to, or, for any other reason, may not have been received by such mortgagor, party, holder of said bonds or interested person. Any interested party shall have a right to be heard and may offer testimony upon the hearing on said order to show cause. On or before the return day of said order to show cause any holder of bonds secured by said trust mortgage may file in writing

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a refusal to concur in such request. An order authorizing but not requiring the trustee to bid for and acquire the mortgaged property for such sum as shall, in the judgment of the court, represent the fair and reasonable value of the interests therein of the holders of the bonds may be entered if, upon said hearing, the court shall find either that no bid was made for the property offered for sale under said decree or that the sums so bid therefor did not represent the fair and reasonable value of the interests of such holders in said property and that no bid for a sum representing such fair and reasonable value of such interest appears to be obtainable: Provided, however, That no such order shall be entered where the request has been made by the trustee unless the holders of not less than a majority of the amount of such bonds then outstanding shall, prior to the entry of said order, have joined in said request, by a writing filed in said proceedings executed by said holders in person or by agent or attorney. The trustee may make said bid in open court or may file said bid in writing in said proceedings within 30 days after the entry of said order. Such bid for and acquisition of said property by said trustee shall be for and on behalf of all holders of bonds secured by said trust mortgage who shall not, in the manner herein set forth, have filed in said proceedings their written refusal to concur in the request whereon said order to show cause was entered, according to respective pro rata interests, and every holder of said bonds shall be conclusively presumed to have assented to such acquisition of said property and to the use of such bonds of such holders therefor unless such holder shall have filed such refusal to concur. Any such acquisition by the trustee shall be subject to all rights of redemption of the mortgagor and other parties. The subsequent transfer of any bond in respect of which any request, assent or action under any provision of this act shall have been made, presumed or taken shall not affect such request, assent or action. To the extent of the net amount which would have been distributable on the bonds secured by said trust mortgage if such bid were fully paid in cash, the bid shall be satisfied by a pro rata credit deemed to have been made on each such bond. The court shall make provision in said order for payment to non-concurring holders of their pro rata share of the net amount to which each of said holders shall be entitled by reason of said bid and acquisition.

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.402.

451.403 Trust mortgage foreclosure; payment to non-concurring holders.

Sec. 3. The court may in its discretion provide in said order that such payment to non-concurring holders may be made in installments, or otherwise deferred for a period of time if the amount so deferred shall not exceed 25 per cent of the net amount of the bid: Provided, however, That the full pro rata to be paid said non-concurring holders hereunder shall, in any event, be made within 18 months from the entry of said order. The sum so deferred shall bear interest at the rate borne by said bonds. No personal obligation for such deferred payment shall be imposed upon the trustee but such deferred payment shall be secured upon the right, title and interest acquired by the trustee as a result of such acquisition and shall be enforced as herein provided. If payment to said non-concurring holders shall not be made as provided in said order, the court may, upon application of any non-concurring holder to whom such payment shall not have been made, order the trustee to sell the property so purchased by the trustee, or such part thereof as may be necessary, either at public or private sale after notice thereof shall have been given to all interested parties in such manner as the court shall direct, and out of the proceeds of said sale pay the sums due said non-concurring holders, the balance, if any, to belong to the beneficiaries of the trust hereafter provided for and to be held and dealt with by the trustee as the court shall direct.

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.403.

451.404 Trust mortgage foreclosure; trustee, maintenance and operation of property; sale, accounting.

Sec. 4. Any property acquired by the trustee as aforesaid shall be managed and administered by the trustee under and in accordance with the rules and principles of law and equity pertaining to express trusts generally subject to the jurisdiction of said court to be exercised in said cause by proceedings subsequent to the decree therein. The trustee shall be allowed all proper expenses and disbursements and reasonable compensation to be approved by the court. The trustee shall have power and authority to repair, maintain, protect, preserve and operate or lease the property until such time as a sale or other disposal thereof shall be approved or directed. The trustee may borrow money for any of said purposes, to discharge prior liens, taxes, assessments or other incumbrances against said property or for any other purpose of the trust and may secure such money so borrowed by mortgage of said property or by pledge of the income thereof. Any such mortgage or pledge shall be superior to and binding on the interests of the beneficiaries of said trust. It shall be the duty of the trustee to negotiate and effect a sale or other disposal of the property and make distribution of the proceeds of such sale or disposal to the beneficiaries of the trust at the earliest time at which the same can be done without sacrifice of the fair and reasonable value of such property. Any sale, unless for cash, shall be upon such terms as the court may approve after notice shall have been given to all beneficiaries of the trust in such manner as

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the court shall direct. No operating contract which is for more than 2 years or borrowing of money, mortgage, sale or other disposal shall be made except by and with the approval and authorization of the court upon notice in such manner as the court shall direct to the beneficiaries of said trust. The court may provide such other terms and conditions of the trust and powers, duties and authority of the trustee, not inconsistent with the foregoing, as to the court shall be deemed to be to the interests of the beneficiaries of the trust as a whole. Upon the complete consummation of a sale or other disposition of all of the trust property the trustee shall render in writing a full and complete report and account of the administration of said trust and of the distribution of the assets, income and proceeds thereof upon which a hearing shall be had after such notice to the beneficiaries of the trust as the court shall direct. If any such trust shall continue for more than 1 year an account and report of the administration of such trust shall be rendered at such times as may be required by the court but at least annually and when any such report shall have been made the final account and report aforesaid shall be required to cover only from the date of the then last account and report.

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.404.

451.405 Construction and application of act; severing clause.

Sec. 5. This act is intended to be remedial and to be liberally construed and to be supplemented by rule of court if necessary or expedient to the accomplishment or furtherance of the intents and purposes thereof. This act shall be applicable to and in all foreclosure proceedings of the nature aforesaid pending at the time of the coming into effect hereof in which the sale shall not then have been confirmed as well as to and in all such proceedings begun after the coming into effect hereof. If any provision hereof shall be found invalid or unenforceable the remaining provisions hereof shall not be affected thereby.

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.405.

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