

**REVISED JUDICATURE ACT OF 1961 (EXCERPT)**

**Act 236 of 1961**

**CHAPTER 31**

**FORECLOSURE OF MORTGAGES AND LAND CONTRACTS**

**600.3101 Jurisdiction of circuit court to foreclose mortgages of real estate and land contracts; exception.**

Sec. 3101. The circuit court has jurisdiction to foreclose mortgages of real estate and land contracts. However, the procedures set forth in this chapter shall not apply to mortgages of real estate and land contracts held by the Michigan state housing development authority.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1981, Act 172, Imd. Eff. Dec. 10, 1981.

**600.3105 Mortgage; land contract; foreclosure proceeding; unsatisfied execution on judgment at law; separate proceeding; consolidation.**

Sec. 3105. (1) If a judgment has been obtained in any other civil action for the money, or part thereof, demanded in the complaint in an action to foreclose a mortgage on real estate or a land contract, no proceeding shall be had in the action to foreclose unless the sheriff or other proper officer has returned an execution as unsatisfied, in whole or in part, and certified that he can find no property of the defendant out of which to satisfy the execution except the mortgaged premises.

(2) After a complaint has been filed to foreclose a mortgage on real estate or land contract, while it is pending, and after a judgment has been rendered upon it, no separate proceeding shall be had for the recovery of the debt secured by the mortgage, or any part of it, unless authorized by the court.

(3) When a complaint is filed to foreclose a trust mortgage or deed of trust given to secure notes, bonds, or other evidences of indebtedness, the court may at any time before final judgment require all cases begun subsequent to the filing of the foreclosure complaint, by plaintiffs holding notes, bonds, or other evidences of indebtedness secured by the mortgage, to be consolidated with the action to foreclose, and the court may adjudicate the rights of the individual security holders.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.3110 Foreclosure of interest or installment; payment before judgment.**

Sec. 3110. Whenever a complaint is filed for the satisfaction or foreclosure of any mortgage on real estate or land contract, upon which there is due any interest or any portion or installment of the principal and there are other portions or installments to become due subsequently, the complaint shall be dismissed upon the defendant's bringing into court, at any time before the judgment of sale, the principal and interest due, with costs.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.3115 Foreclosure proceeding; sale, time.**

Sec. 3115. Whenever a complaint is filed for the foreclosure or satisfaction of any mortgage on real estate or land contract, the court has power to order a sale of the premises which are the subject of the mortgage on real estate or land contract, or of that part of the premises which is sufficient to discharge the amount due on the mortgage on real estate or land contract plus costs. But the circuit judge shall not order that the lands subject to the mortgage be sold within 6 months after the filing of the complaint for foreclosure of the mortgage or that the lands which are the subject of the land contract be sold within 3 months after the filing of the complaint for foreclosure of the land contract.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.3120 Foreclosure proceeding; judgment of sale; payment of principal, interest, and costs.**

Sec. 3120. If, after a judgment of sale is entered against him, the defendant brings into court the principal and interest due with costs, the proceedings in the action shall be stayed; but the court shall enter a judgment of foreclosure and sale to be enforced by a further order of the court upon a subsequent default in the payment of any portion or installment of the principal, or of any interest thereafter to become due.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.3125 Sale of land on foreclosure; authorized persons; public sale; time; place; MCL 600.6091 applicable.**

Sec. 3125. All sales of land on foreclosure of a land contract or mortgage on real estate shall be made by

the county clerk of the county in which the judgment was rendered or of the county where the land or some part of the land is situated, by a deputy county clerk, or by some other person duly authorized by the order of the court. These sales shall be at public sale between the hour of 9 a.m. and 4 p.m. and shall take place at the courthouse or place of holding of the circuit court in the county in which the land or some part of its is situated or at any other place the court directs. The sale is subject to section 6091.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

#### **600.3130 Sale of land on foreclosure; deed.**

Sec. 3130. (1) The person making the sale shall execute deeds specifying the names of the parties in the action, the date of the land contract or mortgage, when and where it was recorded, a description of the premises sold, and the amount for which each parcel of land described in the deed was sold; and he shall indorse upon each deed the time it becomes operative if the premises are not redeemed according to law. Unless the premises or any parcel of them are redeemed within the time limited for redemption the deed shall become operative as to all parcels not redeemed, and shall vest in the grantee named in the deed, his heirs, or assigns all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage or at any time thereafter.

(2) The deed of sale as soon as practicable and within 20 days after the sale shall be deposited with the register of deeds of the county in which the land therein described is situated, and the register shall indorse upon the deed the time it was received and shall record the deed at length in a book to be provided in his office for that purpose and shall index the deed in the regular index of deeds, and the fee for recording the deed shall be included among the other costs and expenses allowed by law. If the premises or any parcel of them are redeemed the register of deeds shall write on the face of the record the word "Redeemed" and he shall write at what date the entry is made and sign the entry with his official signature.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

#### **600.3135 Proceeds of sale; application; disposition and investment of surplus.**

Sec. 3135. (1) The proceeds of every sale under a judgment shall be applied to the discharge of the debt adjudged by the court to be due and of the costs awarded; and if there is any surplus it shall be brought into court for the use of the defendant, or of the person entitled to it, subject to the order of the court.

(2) If the surplus or any part of it remains in the court for the term of 3 months without being applied for, the circuit court may direct that it be put out at interest under the direction of the court for the benefit of the defendant, his representatives, or assigns, to be paid to them by the order of the court.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.3140 Mortgage foreclosure sale; redemption; amount stated in recorded affidavit; fee; portions of premises.**

Sec. 3140. (1) The mortgagor, the mortgagor's heirs or personal representative, or any person that has a recorded interest in the property lawfully claiming from or under the mortgagor or the mortgagor's heirs or personal representative may redeem the entire premises sold as ordered under section 3115 by paying, within 6 months after the sale, to the purchaser or the purchaser's personal representative or assigns, or to the register of deeds in whose office the deed of sale is deposited as provided in the court rules, for the benefit of the purchaser, the amount that was bid with interest from the date of the sale at the interest rate provided for by the mortgage.

(2) The vendee of a land contract, the vendee's heirs or personal representative, or any person lawfully claiming from or under the vendee or the vendee's heirs or personal representative may redeem the entire premises sold as ordered under section 3115 within 6 months after the sale by paying to the purchaser or the purchaser's personal representative or assigns, or to the register of deeds in whose office the deed of sale is deposited as provided in the court rules, for the benefit of the purchaser, the amount that was bid with interest from the date of the sale at the interest rate provided for by the land contract.

(3) A register of deeds shall not determine the amount necessary for redemption under this section. The purchaser shall attach an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property, including any daily per diem amounts, and the date by which the property must be redeemed must be stated on the certificate of the auctioneer. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption money. The purchaser shall accept the amount computed by the designee.

(4) If redemption money is paid to the register of deeds under this section, the person redeeming the

property shall pay a fee of \$5.00 to the register of deeds for the care and custody of the redemption money.

(5) If payments are made as provided under this section, the deed of sale is void. If a distinct lot or parcel separately sold is redeemed, leaving a portion of the premises unredeemed, the deed of sale is void only as to the portion or portions of the premises that are redeemed.

(6) The amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1963, Act 240, Eff. Sept. 6, 1963;—Am. 1970, Act 86, Eff. Apr. 1, 1971;—Am. 2004, Act 538, Eff. Mar. 30, 2005;—Am. 2014, Act 432, Imd. Eff. Dec. 30, 2014.

#### **600.3145 Redemption from sale; additional sums for taxes and insurance premiums.**

Sec. 3145. The court may make provision in any judgment of foreclosure for the adding to the amount determined in the judgment to be due, any sum or sums paid at any time after the foreclosure and prior to the expiration of the period of redemption, as taxes assessed against the property and/or the portion of the premium of any insurance policy covering any buildings located on the premises as is required to keep the policy in force until the expiration of the period of redemption, if under the terms of the mortgage it would have been the duty of the defendants determined to be personally liable to have paid the taxes or insurance premium had the mortgage not been foreclosed. In case of any such payment which is made prior to the entry of the order confirming the commissioner's report of sale, determination of the additional liability shall be made in the order. In case of any such payment made after the entry of the order proof of the payment may be made by filing with the register of deeds with whom the deed of sale is deposited, an affidavit of payment by the purchaser or some one in his behalf having knowledge of the facts together with a receipt evidencing the payment of the taxes, or, in case of insurance premiums, an affidavit of an agent of the insurance company stating the making of the payment and also what portion of the payment covers the premium for the period prior to the expiration of the period of redemption. Redemption shall not be effected after the determination, or filing of affidavit and receipt, or affidavits, as the case may be, except upon payment of the additional sum or sums. In case the property is not redeemed the taxes or premiums paid after the confirmation of sale shall not be added to or included in the deficiency judgment.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.3150 Original judgment in foreclosure cases; determination of personal liability; execution for amount of deficiency; delivery of possession.**

Sec. 3150. In the original judgment in foreclosure cases the court shall determine and adjudge which defendants, if any, are personally liable on the land contract or for the mortgage debt. The judgment shall provide that upon the confirmation of the report of sale that if either the principal, interest, or costs ordered to be paid, is left unpaid after applying the amount received upon the sale of the premises, the clerk of the court shall issue execution for the amount of the deficiency, upon the application of the attorney for the plaintiff, without notice to the defendant or his attorney. The court may order and compel the delivery of the possession of the premises to the purchaser at the sale.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

#### **600.3155 Upset price at sale.**

Sec. 3155. In any forfeiture, foreclosure, or specific performance case based upon a mortgage on real estate or land contract the court may fix and determine the minimum price at which the real property covered by the mortgage or land contract may be sold at the sale under the forfeiture, foreclosure, or specific performance proceedings.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.3160 Persons other than mortgagor or vendee securing debt.**

Sec. 3160. If the land contract or mortgage debt is secured by the obligation or other evidence of debt of any other person besides the vendee or mortgagor, the plaintiff may make that person a party to the action, and the court may order payment of the balance of the debt remaining unsatisfied, after a sale of the mortgaged premises, against this other person as well as against the vendee or mortgagor, and may enforce this judgment as in other cases.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.3165 Sale of premises sufficient to satisfy amount due; judgment as security; default; sale of whole premises.**

Sec. 3165. (1) If the defendant does not bring into court the amount due, with costs, or if for any other

cause a judgment is entered for the plaintiff, and if it appears that the premises can be sold, in parcels, without injury to the interests of the parties, the judgment shall direct as much of the premises subject to the mortgage or land contract to be sold as is sufficient to pay the amount then due on the mortgage or land contract, with costs, and the judgment shall remain as security for any subsequent default.

(2) If there is any default subsequent to the judgment, in the payment of any portion or installment of the principal or of any interest due upon the mortgage or land contract, the court may, upon the petition of the plaintiff, by a further order founded upon the first judgment, direct a sale to be made of as much of the premises subject to the mortgage or land contract as is sufficient to satisfy the amount due, with costs of the petition and subsequent proceedings on it, and the same proceedings may be had as often as a default happens.

(3) If it appears to the court that the premises subject to the mortgage or land contract are so situated that a sale of the whole premises will be most beneficial to the parties the judgment shall be entered for the sale of the whole premises in the first instance. In this case the proceeds of the sale shall be applied to the interests, portion, or installment of the principal due as well as towards the whole or residue of the sum secured by the mortgage or land contract and not due and payable at the time of the sale. And if the residue does not bear interest the court may direct that the residue be paid with a rebate of the legal interest for the time during which the residue will not be due and payable; or the court may direct that the balance of the proceeds of the sale, after paying the sum due with costs, be put out at interest for the benefit of the plaintiff, to be paid to him as the installments or portions of the principal, or the interest become due, and the surplus for the benefit of the defendant, his representatives, or assigns, to be paid to them on the order of the court.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

**600.3170 Trust mortgage property; authority of trustee to bid in at foreclosure for bondholders, effect of acquisition on rights of parties; management after acquisition; powers and duties of trustee; disposal; report; accounting; construction of section; supplementation by court rule.**

Sec. 3170. (1) When a complaint is filed in any circuit court for the foreclosure of any trust mortgage or deed of trust given to a trustee or trustees to secure bonds or other obligations issued and authenticated as set forth in the trust instrument, and on the sale of the mortgaged property had under the judgment on the complaint, no bid is made or appears to be obtainable for a sum which in the judgment of the court represents the then fair and reasonable value of the interest in the premises of the holders of the bonds or other obligations secured by the trust mortgage or deed in trust, the court may authorize the trustee or trustees to bid for and acquire the mortgaged property for a sum which in the judgment of the court represents the then fair and reasonable value of the interest. The court shall authorize the trustees to bid only if the court believes that to do so will be for the best interest of the holders of the bonds or obligations as a whole, and only if the persons requesting the authorization shall be representative in number of the persons holding bonds or obligations and hold at least a majority in value of the bonds or obligations. The authorization shall be made on the hearing on the report of the proceedings had in relation to the sale under the foreclosure judgment and may authorize that the bid be made in open court at the hearing or at any further offering for sale if the court directs any further offering for sale to be made. The acquisition by the trustee is subject to all rights of redemption by the mortgagor and other parties. The bid and acquisition and full title if not redeemed shall be for and on behalf of all holders of the bonds or other obligations secured by the mortgage and then outstanding according to their several and respective interests and the property shall be held and administered accordingly. The bid shall be satisfied by a pro rata credit on each bond or other obligation to the extent of the net distribution which would have been distributed on the bonds or other obligations if the bid were to be paid in cash.

(2) Any property so acquired shall be managed and administered by the trusts under and in accordance with the rules and principles of law and equity pertaining to express trusts generally subject to the jurisdiction of the court to be exercised in the cause by proceedings subsequent to the judgment and order. The trustee shall be allowed all proper expenses and disbursements and reasonable compensation to be approved by the court. The trustee has power and authority to repair, maintain, and operate or lease the property until a sale or other disposal of the property is approved or directed. The trustee may borrow money for the payment of the portion of the bid required to be paid in cash and for any other purpose of the trust or for the benefit of the holders of the bonds, obligations, or beneficial certificates under the trust and secure that borrowed money by mortgage of the property of the trust. This mortgage shall be superior to and binding upon the interests of the holders of the bonds or obligations or beneficial certificates provided for by this section. It is the duty of the trustee to negotiate and effect a sale or other disposal of the property at the earliest time at which it can be

done without sacrifice of the fair and reasonable value of the property. Any sale may be for cash or in whole or in part for bonds, notes, debentures, stocks, or other securities. 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 consent of or due notice to a majority in interest of the then beneficiaries of the trust. The court in the order authorizing the trustee to bid and acquire the property as provided above or by any order made subsequent to it may provide any other terms, conditions, powers, duties, and authority of the trust and of the trustee not inconsistent with the foregoing and any limitations on the foregoing which the court considers just and which are approved by a majority in interest of the beneficiaries of the trust. The court may likewise provide for the surrender and cancellation or for the pro rata cancellation, as the case may be, of the bonds or other obligations and for the issuance of certificates evidencing the beneficial interests in and under the trust. Upon a sale or other disposal of all the trust property and the complete consummation of the disposal the trustee shall render in writing a full and complete report and account of the administration of the trust and of the distribution of the assets of the trust upon which a hearing shall be had after due notice to the holders of beneficial interests whose appearances are then on file. If any trust continues more than 1 year an account and report of its administration shall be rendered when required by the court but at least annually and when any report has been made the final account and report required above shall be required to cover only from the date of the then last account and report.

(3) This section 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 its intents and purposes.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.3175 Discharge of mortgage on real property, land contract or tax lien; action; evidence of payment; lapse of 15 years; judgment.**

Sec. 3175. (1) When a recorded mortgage on real property, land contract, or tax lien (except tax liens held by the state or any political subdivision of the state) on lands or property has been paid or satisfied or when 15 years have elapsed since the debt or lien secured by the mortgage, land contract, or tax lien became due and payable or since the last payment made upon it, and no civil action or proceedings have been commenced to collect the same and in case of tax deeds when no service of notice to interested persons (of any kind) has been filed with the county clerk, the owner of the land or property may institute an action in the circuit courts to discharge the mortgage, land contract or tax lien.

(2) If it appears to the court at the trial, either by the production in evidence of the original mortgage, land contract, tax lien, bond or bonds, promissory notes to secure the payment of which the mortgage was given, or by any other competent evidence, that the debt or lien secured by the mortgage, land contract, or tax lien has been fully paid both in principal and interest; or if it appears to the court by competent evidence that the debt or lien has been past due for 15 years, or that 15 years have elapsed since the last payment was made on the debt or lien and that no action or proceeding has been commenced to foreclose or perfect the mortgage, land contract, or tax lien the court shall enter judgment to that effect which contains within it the names of the witnesses and the nature of the evidence by which the facts have been made to appear. A minute of this shall be entered in the court's journal. A copy of the judgment, signed by the judge of the court and attested by the clerk of the court under the seal of the court shall be delivered to the plaintiff and may be recorded in the office of the register of deeds for the county or counties in which the mortgage, land contract, or tax lien is recorded in the same manner and with the same effects in all respects as if it were a formal discharge of the mortgage, land contract, or tax lien duly executed by the mortgagee or owner of the land contract or tax lien.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.3180 Actions equitable in nature.**

Sec. 3180. Actions under this chapter are equitable in nature.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.3185 Mortgage foreclosure; defendant as service member or deployed in overseas service; actions by court; mortgage and land contract entered into before effective date of act; definitions.**

Sec. 3185. (1) If a defendant in an action to foreclose a mortgage on real estate or a land contract is a service member and either the defendant entered into the mortgage or land contract before becoming a service member or the defendant is deployed in overseas service, the court on its own motion may, or on motion of or in behalf of the service member shall, do either or both of the following, unless the court determines that the ability of the defendant to comply with the terms of the obligation secured by the mortgage or land contract is not materially affected by the service member's military service:

(a) Stay proceedings in the action until 6 months after the end of the service member's period of military service.

(b) Issue another order that is equitable to conserve the interests of the parties.

(2) This section does not apply to a mortgage or land contract entered into before the effective date of the amendatory act that added this section.

(3) As used in this section:

(a) "Active duty" means full-time duty in the active military service of the United States. Active duty includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Active duty does not include full-time national guard duty.

(b) "Military service" means any of the following:

(i) Active duty.

(ii) If the service member is a member of the national guard, service under a call to active service authorized by the president or secretary of defense of the United States for a period of more than 30 consecutive days under 32 USC 502(f) to respond to a national emergency declared by the president and supported by federal money.

(iii) A period during which the service member is absent from active duty because of sickness, wounds, leave, or other lawful cause.

(c) "Period of military service" means the period beginning on the date on which the service member enters military service and ending on the date on which the service member is released from military service or dies while in military service.

(d) "Service member" means an individual who is in military service and is a member of the armed services or reserve forces of the United States or a member of the Michigan national guard.

**History:** Add. 2008, Act 138, Imd. Eff. May 21, 2008.