

TRUST MORTGAGE FORECLOSURE (EXCERPT)
Act 210 of 1933

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 averring [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 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.