

OBLIGORS OR GUARANTORS OF BONDS AND MORTGAGES

Act of Jul. 1, 1935, P.L. 203, No. 197

Cl. 68

AN ACT

To protect the obligors or guarantors of bonds and mortgages, and owners of property affected thereby, and others indirectly liable for the payment thereof, and owners of mortgaged property affected thereby, by restricting the right to proceed against certain property and persons; limiting the amount of deficiency judgments; and continuing rights, duties, and obligations established or forfeited under prior laws relating to deficiency judgments.

Section 1. Be it enacted, &c., That in all cases where a bond and mortgage, or any other obligation securing or guaranteeing the payment thereof, is or has been given for the same debt, the real property, bound by such bond and mortgage, shall first be proceeded against and sold on execution, and the amount of the deficiency judgment ascertained, as hereinafter provided, before any other real property of the mortgage debtor may be attached, levied on or sold for the debt secured by such bond and mortgage, and before any property, real or personal, of any such other person may be sold for the debt secured by such bond and mortgage.

Section 2. Whenever any real property is sold, on or before June thirtieth, one thousand nine hundred and thirty-seven, on any execution on the foreclosure of any mortgage, or on a judgment entered on any obligations secured by mortgage, and the sum, for which such property was sold, is not sufficient to satisfy the debt, interest and costs, including taxes, the plaintiff or use plaintiff shall, within six months after such sale, petition the court out of which such execution issued to fix the fair value of the property sold at the time of such sale.

Section 3. The petition shall set forth-

(a) The location by address or description of the real estate sold, the name or names of the mortgagors, and all other persons known to petitioner to be or who may be, directly or indirectly, liable to petitioner or any other person for the payment of said mortgage debt.

(b) The price for which said property was sold at sheriff's sale.

(c) The cost of the proceedings under which the property was sold.

(d) The amount of the judgment, and the accrued and unpaid taxes, water rents, and other State and municipal liens, and interest and penalties thereon, and other prior mortgage or judgment liens at the time of the said sale.

(e) A statement of the fair value of said property at the time of said sale, and shall name as respondents, the mortgagors and all other persons known to petitioner to be or who may be, directly or indirectly, liable to petitioner, or any other person for the payment of said mortgage debt, or any obligation securing or guaranteeing such mortgage debt.

Section 4. The court shall thereupon fix a date for hearing on said petition not less than fifteen days after the filing thereof, and said petition shall be served upon each and all of the persons named therein as respondents at least ten days prior to the date fixed for hearing. At any time prior to the hearing, any respondent or other person in interest may appear and answer, setting up in his answer his interest in the proceedings, and answering the averments of the petition. Any

party in interest may, prior to the time of the hearing, demand in writing a jury trial on any material issue or issues of fact raised by the pleadings, whereupon the said issue or issues shall be determined by a jury trial as in other cases.

Section 5. Said petition may be served by the sheriff of the county, or by the sheriff of any other county specially deputized for that purpose, upon the respondents named therein-

(a) by handing an exact copy thereof to each of them personally, or

(b) by leaving an exact copy thereof at the residence of each of them with an adult member of his family, or

(c) if service cannot be had in either of the above methods, and the return of the sheriff is that the respondent or respondents or any of them cannot be found in this county or state, said respondent or respondents may be served by publishing in the legal newspaper of the county, and one newspaper of general circulation in the county, at least ten days prior to the presentation of such petition, a notice to the said respondent or respondents of the filing of said petition and of the time and place fixed for hearing thereon: Provided, however, That if there be no legal newspaper in the county, then in one newspaper of general circulation in said county.

Section 6. Return of the service of any petition shall set forth particularly the time, place, and manner of service, and shall be filed before the time fixed for hearing. No judgment shall be entered or hearing had, until the court shall be satisfied that service has been made upon all the respondents in any one of the methods herein provided.

Section 7. At such hearings, any party in interest may introduce into evidence, testimony of the fair value of the premises sold, at the time of the sale or of any other matter in issue. If the fair value of the said property at the time of the said sale shall be finally determined to be less than the total of the amounts of the judgment with interest and costs, any prior mortgage or judgment liens not discharged by the sale, the secured and unpaid taxes, water rents, and other State or municipal liens with interest and penalties thereon, the court shall enter a deficiency judgment in the said proceeding in the amount of the difference, and thereupon the liability of all persons, directly or indirectly, liable for the payment of the said mortgage debt shall be limited to the amount of the said deficiency judgment: Provided, however, That in no event shall the fair value be determined to be less than the price for which the property was sold at such sheriff's sale.

Section 8. After such sheriff's sale, no such plaintiff or use plaintiff shall take any proceedings to recover or collect the amount of the mortgage debt, until and unless such deficiency judgment shall have been entered, and if the plaintiff or use plaintiff shall fail to present such petition within six months after such sale, the prothonotary shall enter satisfaction of such judgment upon the written motion of the defendant or other party in interest: Provided, however, That such motion bears the written approval of a judge of the court out of which the execution issued. Such satisfaction shall have the effect of terminating as well, the liability of all persons, directly or indirectly, liable for the payment of said mortgage debt or any obligation securing or guaranteeing such mortgage debt.

Section 9. The defendant in the foreclosure proceedings or judgment, or the real owner of the property sold, or any other

person or persons bound by any obligation securing or guaranteeing the payment of the mortgage debt, or other person in interest may, at any time after the sale, present a petition to the court in like manner to fix the fair value of the property sold. In such case, there shall be named as respondents the plaintiff and use plaintiffs as well as all other persons known to petitioner to be, directly or indirectly, liable to plaintiff or use plaintiff or any other person for the payment of the said mortgage debt, and the case shall proceed in the same manner as hereinbefore provided for the in the case of a petition by the plaintiff or use plaintiff.

Section 10. Whenever at such sheriff's sale the holder of a lien, subsequent to that upon which the sale was had, shall become the purchaser of the said property, he shall not be entitled to take any proceedings to recover or collect the amount of the debt secured by the said lien or encumbrance, until and unless a deficiency judgment shall be entered on such debt, within the time and in the manner as hereinbefore provided, in proceedings to obtain a deficiency judgment under the mortgage upon which the sheriff's sale was had, and in such case, all the provisions of this act shall apply with the same force and effect as if the said sale had been held upon said subsequent lien or any obligation secured thereby.

Section 11. This act shall be deemed and shall be construed to be a continuation of the provisions of the act, approved the seventeenth day of January, one thousand nine hundred and thirty-four (Pamphlet Laws, two hundred forty-three, one thousand nine hundred thirty-three-one thousand nine hundred thirty-four), entitled "An act to protect the owners of mortgaged property during the present emergency by limiting the amount of deficiency judgments during a certain period," and all rights vested, or duties or obligations imposed, or rights forfeited under the provisions of said act, shall be deemed continued, so vested, imposed or forfeited under this act and enforceable under this act, notwithstanding the expiration of said act of January seventeenth, one thousand nine hundred and thirty-four by its own limitation.

Section 12. The provisions of this act shall be severable, and if any of the provisions shall be held to be unconstitutional, such decision shall not affect the validity of any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.

Section 13. This act is an emergency measure under the police power of this Commonwealth.

Section 14. All acts and parts of acts inconsistent herewith are hereby repealed.

Section 15. The provisions of this act shall become effective on July 1, 1935.