

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

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

