

fix the amount of such additional clerk hire to be allowed, if any, and notify such officer thereof. If said county officer or any taxpayer of the county shall be dissatisfied with the decision of the board of county commissioners, he may, at his own expense, within ten days after the decision of said board, appeal to the district court. The district court, either in term or vacation and upon ten days notice to the chairman of the board of county commissioners, shall hear such appeal and summarily determine the amount of additional clerk hire needed by an order, a copy of which shall be filed with the county auditor.

Approved April 16, 1945.

CHAPTER 331—S. F. No. 637

An act to legalize foreclosure sales heretofore made and the records of mortgage foreclosure proceedings and limiting the time within which actions may be brought or defenses interposed questioning the validity of foreclosure proceedings.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Foreclosure sales under power validated. Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county of this state, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against any or all of the following objections, viz.:

Subdivision 1. Power of attorney. That the power of attorney, recorded or filed in the proper office prior to the passage of this act, to foreclose the mortgage, provided for by Minnesota Statutes 1941, Section 580.05:

(a) Did not definitely describe and identify the mortgage.

(b) Was not sufficiently witnessed or acknowledged, or was witnessed, and/or the acknowledgment of the execution of the same was taken, by the person to whom such power was granted, or if executed by a corporation, that the corporate seal was not affixed thereto.

(c) Had not been executed and recorded or filed prior to sale, or had been executed prior to, but not recorded or filed until after such sale.

(d) Was executed before there was default, or was executed subsequent to the date of the printed notice of sale or subsequent to the date of the first publication of such notice.

(e) Did not definitely describe and identify the mortgage, but instead described another mortgage between the same parties.

Subd. 2. Notice of sale. That the notice of sale:

(a) Was published only five times, or that it was published six times but not for six weeks prior to the date of sale.

(b) Properly described the property to be sold in one or more of the publications thereof but failed to do so in the other publications thereof, the correct description having been contained in the copy of said notice served on the occupant of the premises.

(c) Was published for six full weeks and the mortgage sale was postponed and the original notice, together with notice of postponement, was regularly published in at least one issue of the same newspaper intervening between the last publication of the original notice, and the date to which the sale was postponed.

(d) Correctly stated the date of the month and hour and place of sale but named a day of the week which did not fall on the date given for such sale, and/or failed to state or state correctly the year of such sale.

(e) Correctly described the real estate but omitted the county and state in which said real estate is located.

(f) Did not state the amount due or failed to state the correct amount due or claimed to be due.

(g) Described the place where the sale was to take place as a city instead of a village; or village instead of city.

(h) In one or more of the publications thereof, designated either a place or a time of sale other than that stated in the certificate of sale.

(i) Failed to state the names of one or more of the assignees of the mortgagee and described the subscriber thereof as mortgagee instead of assignee.

(j) Failed to state or incorrectly stated the name of the mortgagor, the mortgagee or assignee of mortgagee.

(k) Was not served upon persons whose possession of the mortgaged premises was otherwise than by their personal presence thereon, if a return or affidavit was recorded or filed as a part of the foreclosure record that at a date at least four weeks prior to the sale the mortgaged premises were vacant and unoccupied.

(l) Was not served upon all of the parties in possession of the mortgaged premises provided it was served upon one or more of such parties.

(m) Was not served upon the persons in possession of the mortgaged premises, if, at least two weeks before the sale was actually made, a copy of the notice was served upon the owner in the manner provided by law for service upon the occupants, or the owner received actual notice of the proposed sale.

(n) Gave the correct description at length, and an incorrect description by abbreviation or figures set off by the parentheses, or vice versa.

(o) Where the notice of mortgage foreclosure sale of the premises described in the notice was served personally upon the occupants of the premises as such, but said service was less than four weeks prior to the appointed time of sale.

Subd. 3. Separate parcels sold to one bidder. That distinct and separate parcels of land were sold together as one parcel and to one bidder for one bid for the whole as one parcel.

Subd. 4. Letters to foreign representative. That no authenticated copy of the order appointing, or letters issued to, a foreign representative of the estate of the mortgagee or assignee, was properly filed or recorded, provided such order or letters have been filed or recorded in the proper office prior to the passage of this act.

Subd. 5. Miscellaneous. (a) That said mortgage was assigned by a decree of a probate court in which decree the mortgage was not specifically or sufficiently described.

(b) That the mortgage foreclosed had been assigned by the final decree of the probate court to the heirs, devisees or legatees of the deceased mortgagee, or his assigns, and subsequent thereto and before the representative of the estate had been discharged by order of the probate court, the representative had assigned the mortgage to one of the heirs, devisees or legatees named in such final decree, and such assignment

placed of record and the foreclosure proceedings conducted in the name of such assignee and without any assignment of the mortgage from the heirs, devisees or legatees named in such final decree, and the mortgaged premises bid in at the sale by such assignee, and the sheriff's certificate of sale, with accompanying affidavits, recorded in the office of the register of deeds of the proper county.

Subd. 6. Sheriff's certificate. (a) That the sheriff's certificate of sale and/or the accompanying affidavits and return of service were not executed, filed or recorded within 20 days after the date of sale but have been executed and filed or recorded prior to the passage of this act.

(b) That the sheriff's certificate of sale described the sale as being held in the city of Hennepin whereas the sale was actually conducted in a city of the county of Hennepin.

Subd. 7. Hour of sale. That the hour of sale was omitted from the notice of sale, or from the sheriff's certificate of sale.

Subd. 8. Registration tax. (a) That prior to the foreclosure no registration tax was paid on the mortgage, provided such tax had been paid prior to the passage of this act.

(b) That an insufficient registration tax had been paid on the mortgage.

Subd. 9. Date. That the date of the mortgage or any assignment thereof or the date, the month, the day, hour, book and page, or document number of the record or filing of the mortgage or any assignment thereof, in the office of the register of deeds or registrar of titles is omitted or incorrectly or insufficiently stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments.

Subd. 10. Legal holiday. That the mortgage foreclosure sale was held upon a legal holiday.

Subd. 11. Non-compliance with section 508.57. That no notice of the pendency of the proceedings to enforce or foreclose the mortgage as provided in Minnesota Statutes 1941, Section 508.57, was filed with the registrar of titles and a memorial thereof entered on the register at the time of or prior to the commencement of such proceeding.

Subd. 12. Omission of statement of representative capacity. That the power of attorney to foreclose or the notice of sale was signed by the person who was the representative of an estate, but failed to state or correctly state his representative capacity.

Subd. 13. Omission of certain words. That the mortgage deed contained the word "Minn." immediately following the true and correct name of the corporate mortgagee, and the power of attorney to foreclose such mortgage, and the notice of mortgage foreclosure sale were executed by the corporate mortgagee in its true and correct name, omitting therefrom the word "Minn." as recited and contained in the mortgage immediately following the name of the corporate mortgagee.

Subd. 14. Defective description. That the complete description of the property foreclosed was not set forth in the sheriff's certificate of sale, if said certificate correctly refers to the mortgage by book and page numbers and date of filing and the premises are accurately described in the printed notice of sale annexed to said foreclosure sale record containing said sheriff's certificate of sale.

Subd. 15. Omission of seal of notary. That the seal of the notary was omitted from the certificate of acknowledgment of the sheriff or deputy sheriff, or the affidavit of costs and disbursements attached to the mortgage foreclosure record, the said affidavit of costs and disbursements being otherwise properly executed.

Subd. 16. Omission of year of recording. That the year of recording of the mortgage was improperly stated in the sheriff's certificate of mortgage foreclosure sale, the mortgage being otherwise properly described in said sheriff's certificate of mortgage foreclosure sale and said certificate of mortgage foreclosure sale further referring to the printed notice of mortgage foreclosure sale attached to said sheriff's certificate of mortgage foreclosure sale in which printed notice the mortgage and its recording was properly described.

Subd. 17. Action pending. That prior to the first publication of the notice of sale in foreclosure of a mortgage by advertisement, an action or proceeding had been instituted for the foreclosure of said mortgage, or the recovery of the debt secured thereby and such action or proceeding had not been discontinued.

Subd. 18. Acceptance of bid prior to sale. Every mortgage foreclosure sale by advertisement heretofore made in this state under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes as against the objection that at the time

and place of sale the sheriff considered and accepted a bid submitted to him prior to the date of sale by the owner of the mortgage and sold the mortgaged premises for the amount of such bid, no other bid having been submitted, and no one representing the owner of the mortgage being present at the time and place of sale.

Subd. 19. Unauthorized postponement. Every mortgage foreclosure sale by advertisement, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes, as against the objection that such sale was postponed by the sheriff to a date subsequent to the one specified in the notice of sale but there was no publication or posting of a notice of such postponement.

Subd. 20. Omission to state letters in full force. That in all mortgage foreclosure sales by advertisement by a representative appointed by a court of competent jurisdiction in another state or county and an authenticated copy of his letters or other record of his authority has been filed for record in the office of the register of deeds of the proper county such foreclosure sale and the record thereof are hereby legalized and confirmed as against any objection that there was not recorded with such letters or other record of authority the further certificate that said letters or other record of authority were still in force and effect.

Subd. 21. Incorrect figures. That the sheriff's affidavit of sale correctly stated in words the sum for which said premises were bid in and purchased by the mortgagee, but incorrectly stated the same in figures immediately following the correct amount in words.

Subd. 22. Prior to 1913. That prior to the year 1913, the mortgagee failed to execute and cause to be filed a power of attorney.

Sec. 2. Foreclosures by action. In all mortgage foreclosure sales by action wherein, heretofore, the report of sale:

(1) Has been confirmed by order filed in the action and a certificate of sale was thereafter executed in proper form but not recorded or filed within 20 days thereafter such certificate and the later record thereof are hereby legalized with the same effect as if such certificate had been executed, acknowledged and recorded or filed within such 20 days.

(2) Was made and presented to the court and the sale confirmed by an order filed in the action, but the report was not filed with the clerk until after the filing therein of the order

of confirmation, and in which the certificate of sale was executed in proper form but recorded more than 20 days after such confirmation, but within one year from the date of sale, such certificate and the record thereof and the subsequently filed report of sale are hereby legalized with the same effect as if such certificate had been executed, acknowledged, and recorded within such 20 days and as if such report of sale had been filed in the action at the time of filing the order of confirmation.

Sec. 3. Extension of time. In any mortgage foreclosure sale of real estate subsequent to the enactment of Laws 1933, Chapter 339, where before the expiration of the period of redemption, the purchaser at foreclosure sale without court order, entered into an agreement with the mortgagor, extending the period of redemption, such foreclosure proceedings, sale, and sheriff's certificate, issued therein, are hereby validated to the same extent as they would have been if such extension had been granted by court order, as against the objection or claim that such agreement waived or annulled the sale.

Sec. 4. Acknowledgments. All acknowledgments of the execution of any power of attorney, and the witnessing of the execution thereof, in which power of attorney the attorney authorized to foreclose said mortgage, acted as one of the witnesses on said power of attorney and as a notary public, under which power of attorney, said attorney so acting as a witness and notary public also acted as the attorney in charge of said foreclosure proceedings, are hereby legalized and declared in all respects valid as against the claim that said attorney had no legal right to act as a witness on the execution of said power of attorney, or to act as a notary public in taking the acknowledgment of the execution of said power of attorney.

Sec. 5. No statement authority still in force. That every mortgage foreclosure sale by advertisement by a representative appointed by a court of competent jurisdiction in another state or county in which before sale an authenticated copy of his letters or other record of his authority has been filed for record in the office of the register of deeds of the proper county but no certificate was filed and recorded therewith showing that said letters or other record of his authority were still in force, is hereby legalized and made valid and effective to all intents and purposes notwithstanding such omission.

Sec. 6. Curing errors in sales under power. That every mortgage foreclosure sale by advertisement heretofore made in this state under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the

register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized, made valid, and effective to all intents or purposes as against the following objections:

(1) That the notice of mortgage foreclosure sale correctly described the land by government subdivision, township and range, but described it as being in a county other than that in which said mortgage foreclosure proceedings were pending, and other than that in which said government subdivision was actually located.

(2) That the date of the recording or filing of the mortgage in the office of the register of deeds or registrar of titles is incorrectly noted on the mortgage by the officer recording or filing the same and is likewise incorrectly stated in the notice of sale or in the certificate of sale or both, or in any of the foreclosure papers, affidavits or instruments pertaining thereto.

(3) When such mortgage foreclosure sale by advertisement made in this state prior to January 1, 1935, that no power of attorney to foreclose said mortgage, as provided in Minnesota Statutes 1941, Section 508.05, was ever given or recorded or registered.

(4) That the foreclosure sale was made by an assignee of the mortgagee and there was not at the time of the foreclosure a valid record of an assignment of the mortgage, although there was a record in the office of the register of deeds or registrar of titles an assignment of record which was not properly attested and acknowledged to entitle the same to record.

Sec. 7. Sale under power prior to 1880. Every mortgage foreclosure sale by advertisement heretofore made in this state, prior to the year 1880, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections, that no notice was served upon the occupant of the premises, if occupied, and that no affidavit of vacancy was filed if the premises were unoccupied.

Sec. 8. Statute of limitations. Every mortgage foreclosure sale made in this state by advertisement prior to January 1, 1938, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes,

as against the objection that the mortgage and the foreclosure thereof was barred by the statute of limitations at the time of the foreclosure proceedings and sale.

Sec. 9. Cross-complaint. Every mortgage foreclosure sale heretofore made in this state which has proceeded under the statute providing for sale by foreclosure by advertisement, and in which proceeding at any time after the initial publication, the representative of an estate has appeared, pursuant to the provisions of Chapter 339, Laws of 1933, Chapter 47, Laws of 1935, Chapter 21, Laws of 1937, Chapter 7, Laws of 1939, and Chapter 38, Laws of 1941, or any laws or acts supplemental or amendatory thereto, and has petitioned for an order of the Court postponing the sale of such foreclosure by advertisement unless the mortgagee or the assignee of the mortgagee elects to proceed, if at all, to foreclose such mortgage by a cross-complaint in such action, and in which the mortgagee or the assignee of the mortgagee has elected to proceed and has proceeded by serving and filing upon the representative in such estate, a cross-complaint in such action, is hereby legalized and made valid and effective to all intents and purposes as against any claim or objection that the mortgagee or the assignee of the mortgagee has not served said cross-complaint upon any minor, and/or the representative or guardian, and/or guardian ad litem of any minor interested in such estate as heir, devisee, or otherwise, on behalf of which the representative of the estate has so appeared and petitioned.

Sec. 10. Pending proceedings not affected. The provisions of this act shall not affect any action or proceeding now pending or which shall be commenced within six months after the passage thereof, in any of the courts of this state involving the validity of such foreclosure, nor shall the validity of any provision of this act be questioned in any action or proceeding hereafter brought unless such action or proceeding be commenced within six months after the passage of this act.

Sec. 11. Severable. The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this act.

Approved April 16, 1945.