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CHAPTER 582

FORECLOSURE OF REAL ESTATE MORTGAGES; GENERAL PROVISIONS

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582.01 ATTORNEYS' FEES. The mortgagor may, in the mortgage, covenant to pay or authorize the mortgagee to retain an attorney's fee in case of foreclosure; but such fees shall not exceed the following amounts, and any provision for fees in excess thereof shall be void to the extent of the excess:

(1) When the debt secured by the mortgage does not exceed \$500.00, the fee shall not exceed \$25.00;

(2) When the debt exceeds \$500.00, but does not exceed \$1,000, the fee shall not exceed \$50.00;

(3) When the debt exceeds \$1,000, but does not exceed \$5,000, the fee shall not exceed \$75.00;

(4) When the debt exceeds \$5,000, but does not exceed \$10,000, the fee shall not exceed \$100.00;

(5) When the debt exceeds \$10,000, the fee shall not exceed \$200.00.

[R. L. s. 4499] (9646)

582.02 MAY BE COLLECTED, WHEN. When the mortgage provides for an attorney's fee in case of foreclosure, and an attorney at law of the state is employed to conduct the same, the mortgagee, his heirs, personal representatives or assigns, may, upon foreclosure, collect or retain such fee, but not in excess of the sum provided by section 582.01. When no such attorney is employed, if any sum as or for such fee be included in the amount for which the premises are sold, such sum shall be paid in money by the purchaser to the sheriff before the execution of the certificate of sale, and shall be paid by the sheriff to the mortgagor, or those having his estate in the mortgaged premises.

[R. L. s. 4500] (9647)

582.03 PURCHASER AT FORECLOSURE, EXECUTION, OR JUDICIAL SALE MAY PAY TAXES, ASSESSMENTS, INSURANCE PREMIUMS, OR INTEREST.

The purchaser at any sale, upon foreclosure of mortgage or execution or at any judicial sale during the year of redemption, may pay any taxes or assessments on which any penalty would otherwise accrue, and may pay the premium upon any policy of insurance procured in renewal of any expiring policy upon mortgaged premises, and may, in case any interest or instalment of principal upon any prior or superior mortgage is in default or shall become due during such year of redemption, pay the same, and, in all such cases, the sum so paid, with interest, shall be a part of the sum required to be paid to redeem from such sale. Such payments shall be proved by the affidavit of the purchaser, his agent or attorney, stating the items and describing the premises, which must be filed for record with the register of deeds, and a copy thereof shall be furnished to the sheriff at least ten days before the expiration of the year of redemption.

[R. L. s. 4501; 1909 c. 421; 1913 c. 110 s. 1; 1927 c. 347] (9648)

582.04 HOMESTEAD INCLUDED IN MORTGAGE; SEPARATE SALE. In all proceedings to foreclose any mortgage upon real property in this state, if the whole or any part of the homestead of the mortgagor, or of any one claiming under him, as such homestead is defined by the laws of this state, shall be included in the real estate described in such mortgage, the person claiming such homestead may, at any time prior to the foreclosure sale, serve or cause to be served upon the sheriff making such sale a notice of such claim which shall designate and describe with reasonable certainty the real estate so claimed and selected as such

homestead, which selection shall include the site of the dwelling and its appurtenances, shall be compact in form and shall be so made as not unreasonably to affect the value of the remaining part, which notice, together with the proof of service thereof, shall be filed for record and recorded in the office of the register of deeds. Upon the service and filing of such notice it shall be the duty of the sheriff, at the time of the sale, to first offer for sale and sell that part of the mortgaged real estate, or so much thereof as is necessary, which is not included in such selected homestead, and thereupon, if the proper purposes of the foreclosure require, he shall offer for sale and shall sell separately that part of the mortgaged real estate included in the selected homestead; provided, that if such homestead claimant shall have, prior to such foreclosure, made a property homestead selection from his real estate, he shall be bound thereby, and cannot change the same for the purposes of such foreclosure.

[1907 c. 389] (9649)

582.05 COURT TO APPOINT RECEIVER OF RENTS WITH POSSESSION.

On the commencement of proceedings to foreclose, either by action or advertisement, any mortgage on a leasehold estate of more than three years covering urban property, or at any time after such commencement until the expiration of the period of redemption, the owner of any such mortgage or the purchaser at the foreclosure sale, as the case may be, may apply to the district court for the appointment of a receiver to take immediate possession of the mortgaged premises and to hold, maintain, and operate the same and collect the rents and income therefrom, and apply the same in the manner hereinafter specified. The application for such receiver may be included in an action to foreclose the mortgage or may be by separate action and, if by separate action, the only necessary party defendant shall be the owner of the mortgaged leasehold at the time of the commencement of the action.

[1915 c. 305 s. 1] (9650)

582.06 DEFAULT TO BE SHOWN. The court shall appoint the receiver on a showing that default has been made in any of the conditions of the mortgage, without any further evidence and without regard to the solvency or insolvency of the person liable for the debt secured by the mortgage. The appointment shall be made without notice on a showing to the court that the danger of termination or forfeiture of the leasehold estate covered by the mortgage is imminent or that waste of the same is being committed, or that the owner of the leasehold cannot be found within the state. The mortgagee may be appointed receiver in the discretion of the court.

[1915 c. 305 s. 2] (9651)

582.07 RECEIVER TO FURNISH BOND. Before entering upon his duties, the receiver so appointed shall file in court a bond for the faithful performance of such duties on his part. The bond shall run to the owner of the mortgaged leasehold and shall be in such sum as the court shall determine and with such surety or sureties as shall be approved by the court.

[1915 c. 305 s. 3] (9652)

582.08 TO ENTER INTO POSSESSION AFTER FILING OF BOND. After filing the bond mentioned in section 582.07, the receiver shall enter into possession of the mortgaged premises and collect all the rents and income therefrom, and shall apply the same to the payment of the expenses of the receivership and to the payment of all sums of money necessary or proper to preserve and protect the leasehold estate, and to maintain and operate the mortgaged premises, and shall pay the surplus, if any, to the owner of the mortgaged leasehold at the termination of the receivership. The receiver may make any or all such payments on his own motion or may make the same in pursuance of an order of the court. Such expenses shall include reasonable attorneys' fees and receiver's fees to be fixed by the court.

[1915 c. 305 s. 4] (9653)

582.09 RECEIVER TO FILE ACCOUNT FOR APPROVAL. At the termination of the receivership for any cause, the receiver shall file his account in such court. On the approval and confirmation of the account the receiver shall dispose of the funds in his hands in accordance with the order of the court, and shall thereupon be entitled to a discharge by order of court, freeing and releasing him from all further liability on account of such receivership.

[1915 c. 305 s. 5] (9654)

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582.10 NOT TO LIMIT CERTAIN RIGHTS AND REMEDIES. The provisions of sections 582.05 to 582.09 shall in no manner detract from or limit the rights and remedies of the mortgagor or the mortgagee provided by law.

[1915 c. 305 s. 6] (9655)

582.11 POWERS AND DUTIES OF TRUSTEES IN CERTAIN CASES. When a mortgage made or assigned to a trustee or trust deed on any real property or any real and personal property located in this state has been heretofore or shall hereafter be foreclosed and bid in on such foreclosure by a trustee for the holders of the bonds or notes secured by such mortgage or trust deed, or for the holders of certificates or other evidences of equitable interest, in such mortgage or trust deed, or when a mortgagor after the mortgage has been executed and delivered, but not before nor as a part of the mortgage transaction, conveys directly to the mortgage trustee, thereby eliminating his title, the trustee may at any time petition the district court of the county in which such property, or any portion thereof, is situated for instructions in the administration of the trust. Upon the filing of the petition the court shall make an order fixing a time and place for hearing thereof, unless hearing has been waived, in writing, by the beneficiaries of the trust. Notice of the hearing shall be given by publishing a copy of such order one time in a legal newspaper of such county at least 20 days before the date of the hearing, and by mailing a copy thereof to each known party in interest then in being whose address is known, at his last known address, at least ten days before the date of the hearing, or in such other manner as the court shall order, and if the court shall deem further notice necessary it shall be given in such manner as may be specified in the order. Upon the hearing the court shall make such order as it deems appropriate, including an order to sell, mortgage, or lease such property, or any part thereof, in such manner and upon such terms as the court may prescribe. In the case of a sale, the court, in its discretion, may authorize the trustee to sell at private sale or may direct the sheriff of the county to offer such property for sale at public auction and sell the same to the highest bidder therefor for cash. Any sale of such property made at public auction shall be reported to the court for confirmation and confirmed by the court before the same shall become effective and valid. Notice of hearing on such confirmation shall be given to all parties in interest who have appeared in the proceedings. Upon such confirmation, the sheriff shall make, execute, and deliver, subject to such terms and conditions as the court in its order of confirmation may impose, a good and sufficient instrument of conveyance, assignment, and transfer. No confirmation of a private sale, mortgage, or lease shall be required. The order of confirmation in the case of a sale at public auction, and the order authorizing a private sale, mortgage, or lease, shall be final and conclusive as to all matters thereby determined, and shall be binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the supreme court may be taken from such order by any party in interest within 30 days from the entry thereof, by filing notice of appeal with the clerk of the district court, who shall mail a copy of the notice to each adverse party who has appeared of record.

[1937 c. 108 s. 1] (9655-5)

582.12 COURT'S POWERS OVER TRUSTS NOT LIMITED. Nothing in section 582.11 shall be deemed to limit or abridge the power or jurisdiction of the district court over trusts and trustees, or to limit the authority conferred upon any trustee by any mortgage, trust deed, or other instrument.

[1937 c. 108 s. 2] (9655-6)