

such lien shall not reattach against any real estate transferred to any purchaser during the time when the lien of any such tax lien was not revived, nor shall any such lien so revived impair or affect the priority of the lien of any mortgage or other lien which gained priority during the time such lien was not revived.

This act shall become effective immediately upon its final enactment. When effective.

APPROVED—The 2d day of July, A. D. 1937.

GEORGE H. EARLE

No. 561

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, by prohibiting, for certain periods, the foreclosure sale of mortgaged property at less than its fair market value; and prescribing the method of fixing the fair market value of said property.

Section 1. Be it enacted, &c., That hereafter, before any execution shall issue against the mortgaged premises on the foreclosure of any mortgage, or on a judgment entered on any obligation secured by mortgage, the plaintiff or plaintiffs shall either—(1) file a statement in the court having jurisdiction over such execution, certifying, under oath, that he or they release and discharge the obligors and guarantors and any other parties liable, directly or indirectly, on the mortgage debt and the owners of the property affected thereby from all personal liability on the mortgage debt, interest, costs, taxes, and municipal claims; or (2) petition the court having jurisdiction to issue such execution to fix the fair market value of the property to be sold. Said petition shall be signed and sworn to by the plaintiff or plaintiffs.

Release.

Petition to fix fair market value.

Section 2. The petition shall set forth:

(a) The location, by address or description, of the mortgaged real estate to be 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.

Contents of petition.

(b) A statement of the fair market value of said property, and

(c) Shall name as respondents and state the addresses of the obligors and guarantors and any other persons, directly or indirectly, liable to petitioner for the payment of said mortgage debt and the owners of the property affected thereby.

Hearing.

Section 3. 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.

Service of petition.

Section 4. 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 fifteen days prior to the day fixed for the hearing of such petition, a notice to the said respondent or respondents of the filing of said petition, and at least fifteen days prior to the day thereon: Provided, however, That if there be no legal newspaper in the county, then in one newspaper of general circulation in said county.

Any obligor, guarantor, mortgagor, and any other person liable, directly or indirectly, for the payment of the mortgage debt, and any owner or owners of the property affected thereby, who is not joined as a party defendant nor served with a petition as provided in this section, shall be deemed to be discharged from all personal liability to the petitioner on the mortgage debt, interest, and costs; but any such failure to serve the petition shall not be deemed to affect or impair the validity of any execution, sale or the title secured thereby.

Return of service.

Section 5. 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 hearing shall be had until the court shall be satisfied that service has been made upon all the respondents in any of the methods herein provided.

Hearing and procedure.

Section 6. At such hearings any party in interest may introduce into evidence testimony of the fair market value of the premises to be sold.

If no answer be filed within the time provided for in

this act, or if an answer be filed which does not controvert the allegation of the fair market value of the property as averred in the petition, the plaintiff or plaintiffs may file in the court a statement under oath releasing the obligors and guarantors, and any other persons liable, directly or indirectly, for the mortgage debt, and the owners of the property affected thereby, from personal liability to the extent of the fair market value as averred in the petition. Whereupon the court shall order the sale to be proceeded with forthwith.

If no answer be filed within the time herein provided for, or if an answer be filed contraverting the averment in the petition as to the fair market value of the property and no testimony be produced at the hearing supporting such denial of the fair market value, and no such declaration of release is filed by the plaintiff or plaintiffs prior to the hearing, the court shall determine and fix as the fair value of the property and amount thereof alleged in the petition to be the fair market value.

If answer be filed alleging as the fair market value an amount in excess of the fair market value of the property as averred in the petition, the plaintiff or plaintiffs may agree to accept as the fair market value of the property the value set up in the answer, and in such case may file under oath a declaration releasing the obligors and guarantors and any other persons liable, directly or indirectly, for the mortgage debt and the owners of the property affected thereby from personal liability to the extent of the fair market value as averred in the answer. Whereupon the court shall order the sale to be proceeded with forthwith. If an answer shall be filed and testimony produced setting forth that the fair market value of the property is more than the value stated in the petition, the court shall determine and fix the fair market value of the premises, which shall in no event exceed the amount of the mortgage debt, interest, costs, taxes, and municipal claims, and for such purpose may appoint no more than three appraisers to assist the court in determining said fair value.

After the hearing and the determination by the court of the fair market value of the property to be sold, the execution may issue; but said property shall not be sold for less than the fair market value so determined and fixed.

Section 7. If said property cannot be sold at a price equal or greater than the fair market value so fixed, a report thereof shall be made by the plaintiff or plaintiffs to the court, whereupon the court shall postpone the sale of the premises for a period not exceeding six months from the date of such report. No notice or advertisement shall be required for such postponed sale.

Property not to be sold for less than determined fair market value.

Sale.

Postponement of sale.

Postponed sale.

Section 8. If, at such postponed sale, a price equal to or greater than the fair market value of the property shall not be bid, a report thereof shall be made to the court, whereupon the court shall again postpone the sale of the premises for an additional period not exceeding six months. No notice or advertisement shall be required for such postponed sale.

Further postponement; option of court.

Section 9. If, at such second postponed sale, a price equal to or greater than the fair market value of the property shall not be bid, a report thereof shall be made to the court, whereupon the court may order said sale confirmed to the highest bidder, or may postpone the sale in the same manner and subject to the same conditions as the previous postponements, for such further periods not exceeding an aggregate of one year, as the court shall deem equitable and just.

Persons liable get benefit of amount realized above fair market value.

Section 10. Nothing in this act shall be construed to affect the right of any mortgagor, and any person liable, directly or indirectly, for the payment of the mortgage debt, to the benefit of any amount realized, on any execution sale, in excess of the fair market value fixed or agreed to in accordance with the provisions of this act.

Exceptions.

Section 11. The provisions of this act shall not apply to the foreclosure of any mortgage held by any Federal land bank or the Federal Farm Mortgage Corporation, if, at the time of said foreclosure, the United States of America owns a majority of the capital stock of such bank or corporation.

Constitutional provision.

Section 12. The provisions of this act shall be severable, and if any section, provision, or clause thereof shall be held to be unconstitutional, the decision so holding shall not be construed to affect or impair any other section, provision, or clause of this act. It is hereby declared as the legislative intent that this act would have been enacted had such unconstitutional section, provision, or clause not been included therein.

When effective.

Section 13. This act shall become effective immediately upon final enactment.

APPROVED—The 2d day of July, A. D. 1937.

GEORGE H. EARLE

No. 562

AN ACT

Prohibiting, during a declared emergency, foreclosure, entry of judgment, and issuance of execution, on agreements, bonds, and mortgages affecting real property because of failure to fully discharge municipal liens against such property where such liens, pursuant to ordinance or resolution, are being paid in installments.