

SENATE No. 405

The Commonwealth of Massachusetts

SENATE, March 24, 1943.

The committee on Legal Affairs, to whom was referred the petition (accompanied by bill, Senate, No. 230) of the Massachusetts Bar Association, by George Alpert, for legislation relative to salvage operations of trustees, report the accompanying bill (Senate, No. 405).

For the committee,

JOSEPH F. FRANCIS.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Three.

AN ACT RELATING TO SALVAGE OPERATIONS OF TRUSTEES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter two hundred and three of
2 the General Laws is hereby amended by inserting
3 after section twenty-four, as appearing in the Ter-
4 centenary Edition, the four following sections under
5 the caption SALVAGE OPERATIONS OF TRUSTEES:—
6 *Section 24A.* Unless otherwise expressly provided
7 by will or other instrument by which a trust is created,
8 upon the sale of real estate acquired by a trustee
9 under a will or other instrument as a result of a fore-
10 closure or a deed in lieu of foreclosure of any mortgage
11 held by the trust, for a consideration consisting in
12 part or in whole of a note secured by a mortgage
13 thereon or on a part thereof, the cash proceeds of
14 such sale, plus the net cash receipts from the manage-
15 ment of the property from the date the mortgage is
16 in default, shall be applied in the first instance to the
17 payment of all expenses and charges involved in ac-
18 quiring, managing, maintaining, caring for and selling
19 the property. Any balance of cash remaining shall
20 forthwith be apportioned between income and prin-
21 cipal as though such cash constituted the entire
22 proceeds of the sale.

23 *Section 24B.* Cash payments, whether of principal
24 or interest, on a note of the type referred to in section
25 twenty-four A, received subsequent to the time when
26 such note was accepted as part consideration shall,
27 if the total net cash receipts referred to in said sec-
28 tion twenty-four A were insufficient to pay expenses
29 and charges therein referred to, be first applied in
30 reduction of any deficiency until such deficiency is
31 cancelled. Subject to such provision, all such receipts,
32 whether of principal or interest, may in the discretion
33 of the trustee be apportioned between capital and
34 income at such times as the trustee deems advisable.
35 Such apportionment shall be made as of the same
36 date and in the same manner as is provided in said
37 section. The trustee, after the expenses referred to
38 in said section have been paid, may treat as income
39 all or any part of the interest received on such note.
40 A trustee who acts in good faith in making the appor-
41 tionments provided for in this section and section
42 twenty-four A shall not be charged with personal
43 liability for such acts.

44 *Section 24C.* Nothing contained in sections
45 twenty-four A and twenty-four B shall be construed
46 to prevent a trustee from determining that a note of
47 the type referred to in said section twenty-four A
48 taken in part consideration as therein provided is a
49 valid trust investment, either when taken or at any
50 time until fully paid, so as to permit apportionment
51 at the time of such determination; nor shall any
52 provision of said sections be deemed to prevent the
53 apportionment of the proceeds of a sale of such real
54 estate made, after notice to all parties, in accordance
55 with the decree of a probate court, on a petition for
56 sale thereof, which permits such sale and the receipt

57 of a mortgage and note by the trustee as part of the
58 purchase price; nor shall any provision of said sec-
59 tions be deemed to prevent a trustee from seeking the
60 instruction of the proper court if he deems it advis-
61 able.

62 *Section 24D.* The term "mortgage" as used in
63 said sections twenty-four A to twenty-four C, inclu-
64 sive, shall include a mortgage participation or a
65 mortgage certificate or any other form of interest in a
66 single entire mortgage, but shall not include a mortgage
67 participation or a mortgage certificate or any other
68 form of interest in a group of mortgages.

1 SECTION 2. The various provisions of this act
2 are hereby declared to be severable and if any such
3 provision or its application to any person or circum-
4 stance shall be held to be invalid or unconstitutional
5 such invalidity or unconstitutionality shall not affect
6 the validity or constitutionality of any of the remain-
7 ing provisions or their application to persons or
8 circumstances other than those as to which it is held
9 invalid.