

MORTGAGORS' INTEREST REDUCTION ORDINANCE 1931.*

1603

An Ordinance to provide for the Reduction of the Rates of Interest payable in respect of certain fixed Liabilities and to enable Tribunals to give effect to such Reduction.

1. This Ordinance may be cited as the *Mortgagors' Interest Reduction Ordinance 1931*.* Short title.
2. This Ordinance shall commence on a date to be fixed by the Minister by notice in the *Gazette*.† Commencement.
3. In this Ordinance, unless the contrary intention appears— Definitions.
 - “Mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of money is granted over real or personal property or any interest therein, and includes an agreement for sale and purchase of real or personal property where payment of the unpaid purchase money and interest thereon is secured on such property;
 - “Mortgagor” means any person liable to payment of moneys secured by mortgage and any person who has guaranteed such payment;
 - “Mortgagee” means any person entitled to receive payment of any moneys payable under a mortgage;
 - “the Court” means the Supreme Court of the Northern Territory.
4. This Ordinance shall apply to all mortgages existing at the commencement of this Ordinance. Application of Ordinance.
- 5.—(1.) Any mortgagor, by application in the prescribed form, may apply to the Court at any time within twelve months after the commencement of this Ordinance for reduction of the rate of interest payable under his mortgage. Application for reduction of interest.
 - (2.) A copy of every such application shall be served as prescribed upon the mortgagee, who shall be given an opportunity to show cause why the application should not be granted.
 - (3.) Where it is not shown to the Court that there are any special circumstances relating to the mortgage in respect of which the application is made, the Court shall make an order

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† The date fixed was 1st September, 1931.

for the reduction of the rate of interest payable under such mortgage at the rate of Four shillings and sixpence for every One pound of such interest calculated as provided by such mortgage, but no such order shall have the effect of reducing the rate of interest under the mortgage below Five pounds per centum per annum.

(4.) If the mortgagee satisfies the Court that there are any such special circumstances, the Court may make such reduction, not exceeding the rate of reduction specified in the last preceding sub-section, as in its opinion the circumstances require, or may refuse the application if in its opinion such refusal is warranted.

(5.) Where the Court is satisfied that—

- (i) the mortgagor has requested the mortgagee to reduce his rate of interest in manner contemplated by this Ordinance;
- (ii) the mortgagee has refused to make a reduction reasonable in the circumstances; and
- (iii) there are no special circumstances justifying such refusal, the Court may order the mortgagee to pay costs.

(6.) If the Court is satisfied that the application has been occasioned by the refusal of the mortgagor to accept a reasonable offer of reduction by the mortgagee, the Court may order the mortgagor to pay costs.

(7.) Any order made under this section for the payment of costs shall specify such sum as the Court thinks reasonable which shall be paid to the party in whose favour such order is made.

(8.) Any order made under this section shall be final and conclusive, and no appeal shall lie in respect thereof.

(9.) If any mortgagee holds such mortgage as a trustee—

- (a) such mortgagee shall not be deemed to be guilty of a breach of trust by reason only of his *bona fide* making a reasonable offer of reduction of interest pursuant to sub-section (6.) of this section or by reason of his *bona fide* failure to show cause why a reasonable application under sub-section (1.) of this section should not be granted; and
- (b) the Court, in considering any question as to the payment of costs under sub-section (5.) of this section shall have regard *inter alia* to the fiduciary position of such mortgagee as trustee in determining whether or not his refusal to make the reduction applied for was reasonable in the circumstances.

6.—(1.) Any payment of interest made in accordance with an order made as provided by this Ordinance shall be a full discharge of the mortgagor's liability under his mortgage for interest in respect of the period to which the payment relates. Effect of order.

(2.) Any order made under this Ordinance shall apply only in respect of interest accruing due after the commencement of this Ordinance.

(3.) Every such order shall continue in force during the continuance of the mortgage in respect of which it is made unless the Court, for special reasons, otherwise directs.

(4.) During the continuance of any order made under this Ordinance a mortgagee shall not demand, sue for or enforce payment of interest in respect of any period to which the order relates at a rate greater than that allowed by such order.

7. Any term or condition of a mortgage, instrument or agreement which, apart from this section, would operate so as to prevent the mortgagor from obtaining the benefit of this Ordinance, shall to that extent be void. Contracting out.

8. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance. Regulations.
