

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

10th November, 1931.

Right Hon. Mr. Forbes.

MORTGAGORS RELIEF AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>EXTENSION OF PROVISIONS OF PRINCIPAL ACT FOR GRANT OF RELIEF TO MORTGAGORS.</p> <p>2. Duration of principal Act extended.</p> <p>3. Extension of application of principal Act to include mortgages executed during interval between commencement of Act and passing thereof.</p> <p>4. Limitation of application of principal Act in respect of insurance policies.</p> <p>5. Restricting exercise by guarantor of rights against mortgagor.</p> <p>6. Section 7 of principal Act amended.</p> <p>7. Extension of powers of Court to grant relief under principal Act in respect of mortgages of farm lands.</p> <p>8. Court may refer application to Adjustment Commission for report.</p>	<p>APPOINTMENT AND FUNCTIONS OF MORTGAGORS' LIABILITIES ADJUSTMENT COMMISSIONS.</p> <p>9. Power to establish Adjustment Commissions to assist Court in exercise of its jurisdiction under principal Act.</p> <p>10. Adjustment Commission to consider and report to Court on applications referred to it.</p> <p>11. Further powers of Adjustment Commission.</p> <p style="text-align: center;">MISCELLANEOUS.</p> <p>12. Repeal.</p> <p>13. Powers of mortgagee in respect of past default by mortgagor not revived on expiry of Court's order.</p> <p>14. Notice of proceedings under principal Act to be given to all persons having registered interest in mortgaged property.</p> <p>15. Costs in proceedings under principal Act.</p> <p>16. Where date fixed for repayment has passed, mortgagor may repay principal on three months' notice.</p> <p>17. Trustee may arrange renewal of mortgage.</p> <p>18. Section 14 of principal Act not to oust jurisdiction of Supreme Court.</p>
--	---

A BILL INTITULED

AN ACT to amend the Mortgagors Relief Act, 1931.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Mortgagors Relief Amendment Act, 1931, and shall be read together with and deemed part of the Mortgagors Relief Act, 1931 (hereinafter referred to as the principal Act).

Short Title.

10 EXTENSION OF PROVISIONS OF PRINCIPAL ACT FOR GRANT OF RELIEF TO MORTGAGORS.

2. Section one of the principal Act is hereby amended by omitting from subsection two thereof the reference to the thirty-first day of December, nineteen hundred and thirty-two, and substituting a reference to the thirty-first day of December, nineteen hundred and thirty-three.

Duration of principal Act extended.

Extension of application of principal Act to include mortgages executed during interval between commencement of Act and passing thereof.

3. (1) The principal Act is hereby declared to be applicable to mortgages executed on or after the eighteenth day of March, nineteen hundred and thirty-one (being the date of the commencement of that Act), and before the seventeenth day of April, nineteen hundred and thirty-one (being the date of the passing of that Act).

5

(2) Section three of the principal Act is hereby consequentially amended by omitting from paragraph (b) the word "commencement", and substituting the word "passing".

Limitation of application of principal Act in respect of insurance policies.

4. (1) Nothing in the principal Act or in any order made thereunder shall apply with respect to any instrument of security granted over or in respect of any policy for securing a life insurance, endowment, or annuity, at any time after the maturity of the policy or the death of the assured.

10

(2) Section three of the principal Act shall be read subject to the provisions of this section.

15

Restricting exercise by guarantor of rights against mortgagor.

5. (1) Section four of the principal Act is hereby amended by inserting, after the words "expressed or implied in the mortgage" in paragraph (b) and also in paragraph (c) of subsection one thereof, the words "or in any instrument of guarantee in respect of such mortgage".

(2) For the purposes of the principal Act the term "mortgagee" shall, unless the context otherwise requires, include every person whose powers are restricted by section four of that Act, as amended by the *last preceding* subsection.

20

Section 7 of principal Act amended.

6. Section seven of the principal Act is hereby amended by repealing paragraph (f) thereof.

25

Extension of powers of Court to grant relief under principal Act in respect of mortgages of farm lands.

7. In addition to the powers conferred on the Court by section eight of the principal Act, the Court, in determining any application for relief under that Act made in respect of any lands which in the opinion of the Court are mainly or substantially used for farming purposes, may do all or any of the following things, namely:—

30

(a) It may postpone for such period as it thinks fit, not exceeding two years from the date of the order, the due date for the payment of any interest or principal, whether such due date has arrived or not:

(b) It may reduce to such rate as it thinks fit the rate of interest payable under any mortgage. Any reduction of interest under this paragraph shall be made to take effect as from such date, either before or after the date of the order, as may be specified therein in that behalf:

35

(c) It may remit the whole or any part of any arrears of interest accrued due before the date of the order.

40

Court may refer application to Adjustment Commission for report.

8. If in its discretion it thinks fit so to do, the Court may refer any application for relief made to it under the principal Act (whether made before or after the passing of this Act) to an Adjustment Commission appointed in accordance with the provisions hereinafter contained in this Act, and may adjourn the proceedings to enable it to obtain from the Commission a report on the circumstances of the case, with such recommendations (if any) as the Commission may make in the matter.

45

APPOINTMENT AND FUNCTIONS OF MORTGAGORS' LIABILITIES ADJUSTMENT COMMISSIONS.

50

Power to establish Adjustment Commissions to assist Court in exercise of its jurisdiction under principal Act.

9. (1) For the purpose of assisting the Court in the exercise of its jurisdiction under the principal Act, and generally for the purpose of encouraging voluntary settlements between mortgagees and mortgagors, there shall be established such number of Mortgagors' Liabilities

55

Adjustment Commissions (hereinafter referred to as Adjustment Commissions) as the Governor-General thinks necessary. Every Adjustment Commission shall be given such distinguishing name as the Governor-General determines.

5 (2) Every Adjustment Commission shall consist of such number of persons, not being more than three, as the Governor-General may appoint. Every person so appointed shall hold office during the pleasure of the Governor-General.

10 (3) Any person may be appointed to hold office concurrently as a member of two or more Adjustment Commissions.

(4) Where there are two or more members of an Adjustment Commission, one member shall be appointed by the Governor-General to be the Chairman thereof.

15 (5) Every Adjustment Commission shall sit at such times and places as, subject to the direction of the Minister of Finance, it may determine. Where there are two or more members, no sitting of an Adjustment Commission shall take place unless all the members thereof are present.

20 (6) In the event of the sickness or other incapacity of any member of an Adjustment Commission, the Governor-General may appoint any person to act in the place of such member during his incapacity.

(7) Every Adjustment Commission shall, within the scope of its jurisdiction, be deemed to be a Commission under the Commissions of Inquiry Act, 1908, and all the provisions of that Act shall apply thereto accordingly.

25 (8) The procedure of an Adjustment Commission shall, subject to this Act and to any regulations that may be made under the principal Act in relation thereto, be such as that Adjustment Commission thinks fit:

30 Provided that the meetings of an Adjustment Commission shall not be open to the public, nor shall any report of any such meeting or of the findings or recommendations of any such Commission be published in any newspaper.

35 10. (1) On reference to an Adjustment Commission, in accordance with this Act, of any application for relief made to the Court by any mortgagor, it shall be the duty of that Commission, subject to any directions of the Court in that behalf, to investigate the financial position of the mortgagor, and, to such extent as may be necessary for that purpose, to investigate also the financial position of any other person. The Commission shall also have regard to the several matters mentioned in section seven of the principal Act, and shall as soon as practicable furnish to the Court its report on the application with such recommendations, if any, as it thinks fit to make.

Adjustment Commission to consider and report to Court on applications referred to it.

40 (2) If as the result of the investigation by an Adjustment Commission the parties agree to enter into a voluntary arrangement for a modification of their respective rights and obligations, the Commission shall report the fact to the Court, with a statement of the nature of the proposed arrangement, and thereupon the Court may, if it thinks fit, dismiss the application for relief or adjourn it to allow effect to be given to the terms of the arrangement by the execution of all necessary instruments.

50 11. In addition to the powers conferred on an Adjustment Commission by the last preceding section, any such Commission may, with the concurrence of the Minister of Finance, on application

Further powers of Adjustment Commission.

in that behalf made by a mortgagor or mortgagee, endeavour to promote a voluntary modification by the parties to any mortgage of their mutual rights and obligations, and for that purpose the Adjustment Commission shall have and may exercise the powers of investigation conferred on it by the *last preceding* section.

5

MISCELLANEOUS.

Repeal.

12. Section nine of the principal Act (conferring jurisdiction on the Court with respect to powers exercised or things done during the period elapsing after the commencement of the principal Act on the eighteenth day of March, nineteen hundred and thirty-one, and before its passing on the seventeenth day of April, nineteen hundred and thirty-one) is hereby repealed, as spent.

Powers of mortgagee in respect of past default by a mortgagor not revived on expiry of Court's order.

13. Where pursuant to the principal Act, as amended by this Act, the Court has, whether before or after the passing of this Act, made any order in relief of a mortgagor, the expiry of such order, or the repeal or expiry of the principal Act, shall not revive any rights or powers of the mortgagee in respect of any default made by the mortgagor before the date of the order of the Court granting such relief as aforesaid.

Notice of proceedings under principal Act to be given to all persons having registered interest in mortgaged property.

14. Section ten of the principal Act is hereby amended by omitting the words "to such persons" in subsection one, and substituting the words "all persons in New Zealand having any registered interest in the mortgaged property, and to such other persons".

Costs in proceedings under principal Act.
Cf. 1924, No. 25, s. 18

15. No party to any proceedings under the principal Act, or this Act, before the Supreme Court or a Magistrate's Court, or an Adjustment Commission, shall be liable to pay the costs of any other party to any such proceedings.

Where date fixed for repayment has passed, mortgagor may repay principal on three months' notice.
Cf. *ibid.*, s. 11

16. Where the date appointed by any mortgage to which the principal Act applies, or by any renewal or extension thereof, for the repayment of any principal moneys secured by the mortgage has passed (whether before or after the passing of this Act) and no agreement in writing has been made between the mortgagor and the mortgagee for a renewal or extension of the term thereof, the mortgagor shall be entitled to repay to the mortgagee such principal moneys upon giving to the mortgagee not less than three months' previous notice in writing of his intention so to repay.

Trustee may arrange renewal of mortgage.
Cf. *ibid.*, s. 13

17. (1) It shall be lawful for any trustee mortgagee under a mortgage to which the principal Act applies to arrange with the mortgagor for a renewal of such mortgage for a term not exceeding five years, at such rate of interest as such trustee may think fit, notwithstanding that a higher rate of interest might be obtainable for a new loan.

(2) Nothing in this section shall be construed to limit the powers conferred on a trustee by section two of the Trustee Amendment Act, 1924, or otherwise howsoever.

(3) The powers conferred by the said section two shall be deemed to include power to reduce the rate of interest payable under any mortgage.

Section 14 of principal Act not to oust jurisdiction of Supreme Court.

18. Nothing in section fourteen of the principal Act shall be construed to limit or heretofore to have limited the jurisdiction of the Supreme Court where application for relief under that Act has heretofore been made or is hereafter made by a mortgagor in respect of any mortgage to which that section applies.