

## New Zealand.



### ANALYSIS.

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| <p><b>Title.</b></p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Interpretation.</li> <li>3. Application of Act to certain mortgages.</li> <li>4. Act to apply to agreements for sale and purchase of land.</li> </ol> <p style="text-align: center;"><i>Extension Orders.</i></p> <ol style="list-style-type: none"> <li>5. Jurisdiction to grant extension orders. Limitation of time for notice of motion. Limitation of extension.</li> <li>6. Matters for consideration of Court on application for extension order.</li> <li>7. Extension in parts.</li> <li>8. Motions for extension orders.</li> <li>9. Application for extension order may in certain cases be referred by Judge to Magistrate or other person.</li> </ol> <p style="text-align: center;"><i>Limitation of Powers of Mortgagees under Mortgages to which this Act applies.</i></p> <ol style="list-style-type: none"> <li>10. Limitation of rights of mortgagees until 31st March, 1925. Limitation of rights of mortgagees after 31st March, 1925. Limitation after grant of extension order.</li> </ol> | <p style="text-align: center;"><i>Special Provisions affecting all Mortgages to which this Act applies.</i></p> <ol style="list-style-type: none"> <li>11. If date fixed for repayment has passed, mortgagor may repay principal on three months' notice.</li> <li>12. Rates of interest.</li> <li>13. Trustee may arrange renewal of mortgage.</li> <li>14. Validation of written agreements to vary mortgages.</li> <li>15. Mortgages repayable by instalments.</li> </ol> <p style="text-align: center;"><i>General.</i></p> <ol style="list-style-type: none"> <li>16. Actions for recovery of interest or other moneys payable by virtue of instruments to which former Mortgages Extension Acts applied not barred by Statute of Limitations.</li> <li>17. Special equitable jurisdiction conferred on Supreme Court.</li> <li>18. Costs in proceedings under this Act.</li> <li>19. Act to apply to Crown.</li> <li>20. Regulations.</li> <li>21. Repeals. Savings. Schedule.</li> </ol> |
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### 1924, No. 25.

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| <b>Title.</b>          | AN ACT to confer on the Supreme Court Jurisdiction to extend the Due Date for Payment of the Principal Sums secured by certain Mortgages, and to make other Provisions in respect of Overdue Mortgages.<br>[24th October, 1924.]  |
| <b>Short Title</b>     | BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—<br>1. This Act may be cited as the Mortgages Final Extension Act, 1924.  |
| <b>Interpretation.</b> | 2. In this Act, unless inconsistent with the context,—<br>“ Court ” means the Supreme Court of New Zealand :<br>“ Judge ” means a Judge of the Supreme Court :<br>“ Mortgage ” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of moneys or for the performance of any contract is granted over land or chattels or any interest therein respectively ; and includes any instrument of security granted over or in respect of any policy for securing a life insurance, endowment, or annuity : |

“Mortgagor” means a person liable under the provisions of a mortgage, and includes any person who has guaranteed the performance by the mortgagor of any covenant, condition, or agreement expressed or implied in the mortgage, whether such guarantee is expressed in the mortgage or in any other instrument, and also includes any person against whom a mortgagor has a legal or equitable right of indemnity in respect of any liabilities under the mortgage :

“Mortgagee” means the person entitled to the benefit of the security of the mortgage :

“Trade mortgage” means a mortgage securing to any bank, trading company, or merchant the balance of the account current of a customer of such bank, trading company, or merchant, whether such mortgage is granted by the customer or by any surety for the customer.

3. This Act shall apply to all mortgages except—

(a.) Trade mortgages ;

(b.) Securities for loans granted under the Repatriation Act, 1918 ; and

(c.) Mortgages executed after the twenty-fourth day of October, nineteen hundred and nineteen, being the date of commencement of the Mortgages Extension Act, 1919.

Application of Act to certain mortgages.

4. (1.) Except as otherwise provided in subsection three of this section, the provisions of this Act shall extend and apply, with the necessary modifications, to agreements for the sale and purchase of land made on or before the twenty-fourth day of October, nineteen hundred and nineteen.

Act to apply to agreements for sale and purchase of land.

(2.) For the purposes of this Act an agreement for the sale and purchase of land shall be deemed to be a mortgage of such land to secure payment of the unpaid purchase-money and interest thereon, and fulfilment of the conditions set forth in the agreement.

(3.) The provisions of this Act shall not extend or apply to—

(a.) Any agreement for the sale and purchase of land entered into pursuant to the Workers’ Dwellings Act, 1910 ; or

(b.) Any agreement for the sale and purchase of a leasehold interest in land unless freehold land is comprised with leasehold in the agreement.

#### *Extension Orders.*

5. (1.) In respect of any mortgage to which this Act applies the Court is hereby empowered by order of the Court (hereinafter termed an extension order) to extend the due date appointed by the mortgage, or by any agreement or other document executed subsequent to the mortgage, for the payment of the principal moneys or any part thereof.

Jurisdiction to grant extension orders.

(2.) No extension order shall be made except upon the application of a mortgagor.

(3.) No extension order shall be made unless notice of motion for such order is filed by the mortgagor not later than the thirty-first day of January, nineteen hundred and twenty-five, in some office of the Court within the provincial district in which the land or property mortgaged, or part of such land or property, is situate.

Limitation of time for notice of motion.

Limitation of extension.

(4.) No extension order shall extend the due date to a date later than the thirty-first day of March, nineteen hundred and twenty-seven.

(5.) The Court may exercise the jurisdiction conferred by this section notwithstanding any contract or agreement of the parties, and notwithstanding that the date appointed for the payment of principal moneys by the mortgage or by any previous extension thereof has passed.

(6.) A mortgage in respect whereof an extension order is made under this section shall be read and interpreted subject to and in accordance with such order.

Matters for consideration of Court on application for extension order.

6. (1.) In determining whether any extension order shall be made the Court may take into consideration—

- (a.) The effect of the continuance of the mortgage upon the security thereby afforded to the mortgagee :
- (b.) The inability of the mortgagor to redeem the property either from his own moneys or by borrowing at a reasonable rate of interest :
- (c.) The conduct of the mortgagor in respect of any breaches by him of the covenants of the mortgage :
- (d.) Any hardship that would be inflicted on the mortgagee by the continuance of the mortgage or upon the mortgagor by the enforcement thereof.

(2.) If, having regard to the foregoing and to all other relevant considerations, the Court is of opinion that it is just and equitable that the due date should be postponed, an extension order may be made accordingly.

Extension in parts.

7. The Court may, if it thinks fit, by an extension order appoint several dates for the payment in parts of the principal moneys, and may provide that the extension order shall cease to have effect if default is made in payment of any part on the day appointed by the order for payment thereof.

Motions for extension orders.

8. (1.) Every application to the Court for an extension order shall be made by motion.

(2.) Notice of such motion shall be served on the mortgagee and on every person (other than the person filing the notice of motion) who is a mortgagor as defined by section two of this Act in respect of the mortgage.

(3.) The mortgagor filing the notice of motion shall use due diligence in effecting the required services, and if he fails to do so the mortgagee may move to dismiss the motion, and the Court may on that ground dismiss the motion accordingly.

(4.) If a person upon whom notice is required to be served is dead or is absent from New Zealand, or his address is unknown, the Court may, upon the application of the person desiring to effect such service, dispense with such service, or direct such substituted or alternative service as the Court thinks fit.

(5.) Every motion under this section may be heard and disposed of by a Judge in Chambers, or by a Registrar in Chambers.

(6.) There shall be no appeal from an extension order under this Act if made by a Judge, but an appeal shall lie to a Judge in Chambers from any such order made by a Registrar.

(7.) An extension order may be made subject to such terms and conditions not inconsistent with the provisions of this Act as the Judge or Registrar thinks fit.

(8.) Where separate notices of motion for an extension order are filed by more than one mortgagor in respect of the same mortgage, all such motions shall be heard together unless the Court in any special case otherwise directs.

(9.) Where a motion for an extension order has been heard and determined, no other notice of motion for an extension order may be filed by the same or by any other mortgagor in respect of the same mortgage.

9. (1.) A motion for an extension order may be referred by a Judge for determination as follows:—

(a.) If the principal sum expressed to be secured by the mortgage does not exceed one thousand pounds, it may be referred by order of the Judge to a Magistrate to be named in the order, such reference to be at the discretion of the Judge and without application by or hearing any party entitled to be heard on the motion for the extension order:

(b.) If the principal sum expressed to be secured by the mortgage exceeds one thousand pounds, it may, on the application of any party entitled to be heard on the motion for the extension order, be referred by order of the Judge to a Magistrate if the Judge, upon the hearing of such application, considers that, for the convenience of witnesses or for any other reason, it is desirable that the motion should be so referred:

(c.) In any case it may be referred by order of the Judge to any person to whom the mortgagor and mortgagee may, in writing, agree that the determination of the motion should be referred.

(2.) A Magistrate to whom a motion has been referred under this section shall have all the powers and duties of the Court in respect of the hearing and determination of the motion and of the making or refusal of an extension order.

(3.) On receipt of the order of the Judge referring a motion to him the Magistrate shall forthwith cause notice to be served upon the parties, appointing a day and time for the hearing of such motion.

(4.) The decision of a Magistrate upon a motion referred to him shall be final and conclusive.

(5.) Where a motion for an extension order is referred to a person other than a Magistrate under paragraph (c) of subsection one hereof, the time of hearing and the procedure upon such motion shall be in the discretion of such person, and his determination shall be final and conclusive, and he shall have all the powers of the Court in respect of the hearing and determination of the motion and of the making or refusal of an extension order.

(6.) Any order or determination made by a Magistrate or other person under this section shall be under the hand of such Magistrate or other person, and shall have effect according to its tenor, and

Application for extension order may in certain cases be referred by Judge to Magistrate or other person.

such Magistrate or other person shall forthwith transmit such order or determination to a Registrar of the Court, who shall cause the same to be filed in the proper register of the Court without fee

*Limitation of Powers of Mortgagees under Mortgages to which this Act applies.*

Limitation of  
rights of  
mortgagees until  
31st March, 1925.

10. (1.) Subject only to the provisions of this section, all restrictions upon the powers and rights of mortgagees imposed by the Acts hereby repealed shall, on the commencement of this Act, cease to have force and effect.

(2.) Until after the thirty-first day of March, nineteen hundred and twenty-five, it shall not be lawful for a mortgagee under a mortgage to which this Act applies—

- (a.) To call up or demand payment from any mortgagor of the principal sum or any part of the principal sum secured by any such mortgage, or to commence any action upon the covenant or agreement to pay such principal sum ; or
- (b.) To exercise any power of sale or entry into possession conferred by any such mortgage or by statute.

(3.) Until after the thirty-first day of March, nineteen hundred twenty-five, it shall not be lawful for a mortgagee under a mortgage to which this Act applies to commence any action or proceeding for breach of any covenant, agreement, or condition, expressed or implied, in any such mortgage (other than a covenant, agreement, or condition for the payment of interest) without special leave of the Court, which special leave a Judge of the Court is hereby empowered to grant upon motion heard and determined in Chambers if, after taking into consideration the matters specified in subsection one of section six hereof, and all other relevant considerations, the Judge is satisfied that it is just and equitable that such leave should be granted. A covenant or agreement to pay the principal sum secured by any mortgage is not a covenant or agreement to which this subsection applies.

Limitation of  
rights of  
mortgagees after  
31st March, 1925.

(4.) After the thirty-first day of March, nineteen hundred and twenty-five, in any case where notice of motion for an extension order has been duly filed in respect of a mortgage, it shall not be lawful for the mortgagee under such mortgage to exercise any of the powers or rights specified in subsection two or subsection three hereof until such motion has been heard and determined or otherwise disposed of.

Limitation after  
grant of extension  
order.

(5.) If an extension order is made in respect of a mortgage to which this Act applies, it shall not be lawful for the mortgagee under such mortgage to exercise any of the powers or rights specified in subsection two hereof unless and until default is made by the mortgagor in complying with the terms and conditions of the extension order, or of the mortgage as affected by the extension order.

(6.) After the thirty-first day of March, nineteen hundred and twenty-five, in any case where notice of motion for an extension order has not been duly filed, it shall be a condition precedent to the right of a mortgagee under a mortgage to which this Act applies to exercise any power of sale or entry into possession conferred by any such mortgage or by statute, or to commence any action claiming payment

of the principal sum secured by any such mortgage, or any part thereof, that the mortgagee, after the thirty-first day of March, nineteen hundred and twenty-five, shall have served, as hereinafter in this section provided, a notice demanding payment of the principal sum on a day to be named in such notice, not being less than three calendar months from the date of such service; and it shall not be lawful for the mortgagee to exercise any such power of sale or entry, or to commence any such action, until after the date named in such notice.

(7.) The notice required by the last preceding subsection shall be sufficiently given and served if served either on the person or persons primarily liable to the mortgagee on the covenants of the mortgage, or on the person or persons in occupation or possession of the mortgaged property at the time of the service.

(8.) The provisions of subsection one of section one hundred and sixteen of the Property Law Act, 1908, shall, with the necessary modifications, apply in respect of every notice required by this section.

(9.) The provisions of this section in respect of notice are in substitution for the provisions of section sixty-eight of the Property Law Act, 1908, and that section shall have no application in respect of a mortgage to which this Act applies.

*Special Provisions affecting all Mortgages to which this Act applies.*

11. Where the date appointed by any mortgage to which this Act applies, or by any renewal or extension thereof, for the payment of any principal moneys secured by any mortgage has passed (whether before or after the commencement 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 three months' previous notice in writing of his intention so to repay.

If date fixed for repayment has passed, mortgagor may repay principal on three months' notice.

12. (1.) Where the rate of interest provided by a mortgage to which this Act applies, or by an agreement in writing or other document executed subsequent to such mortgage, is a rate exceeding six per centum per annum, interest shall continue to be payable by the mortgagor at such greater rate until repayment of the principal sum secured by the mortgage.

Rates of interest.

(2.) Where the rate of interest provided by a mortgage to which this Act applies, or by an agreement in writing or other document executed subsequent to such mortgage, is six per centum per annum or a rate less than six per centum per annum, interest shall be payable by the mortgagor at the rate of six per centum per annum until repayment of the principal sum secured by the mortgage :

Provided that if the date appointed by the mortgage or by such subsequent agreement or document for repayment of the principal sum is a date prior to the commencement of this Act, interest shall be payable from the commencement of this Act at the rate of six per centum per annum, and in any other case interest shall be payable at the rate provided by the mortgage or by such agreement or document

until the date therein appointed for repayment of the principal sum, and thereafter at the rate of six per centum per annum.

(3.) Where the rate of interest payable in respect of any mortgage was, by virtue of subsection two of section nine of the Mortgages and Deposits Extension Act, 1921, increased to six and a half per centum per annum, the rate of interest in respect of that mortgage shall, as from the commencement of this Act, be either the rate provided by the mortgage or by an agreement in writing or other document executed subsequent to the mortgage, or six per centum per annum, whichever is the greater rate.

(4.) Interest shall be payable on the days appointed by the mortgage or by any agreement in writing or other document subsequent to the mortgage. If no such days are so appointed, interest shall be payable half-yearly on the last days of April and October in each year.

(5.) Where a mortgage to which this Act applies, or an agreement in writing or other document executed subsequent to such mortgage, provides a reduced rate of interest on punctual payment, such reduced rate shall for the purposes of this section be deemed to be the rate provided in such mortgage, agreement in writing, or other document.

Trustee may arrange renewal of mortgage.

13. It shall be lawful for any trustee mortgagee under a mortgage to which this Act applies to arrange with his mortgagor for a renewal of any mortgage for any 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.

Validation of written agreements to vary mortgages.

14. Every agreement in writing between a mortgagor and a mortgagee under a mortgage to which this Act applies whereby any provision of the mortgage is varied or annulled, whether such agreement was made at any time before or is made after the commencement of this Act, shall have the same force and effect as if such agreement were expressed in a deed duly executed by the parties thereto.

Mortgages repayable by instalments.

15. Where by the terms of a mortgage to which this Act applies the payment of both principal and interest is provided by a series of regular instalments upon the completion of which the principal debt becomes extinguished, each such instalment shall for the purposes only of this Act be deemed to consist wholly of interest.

#### *General.*

Actions for recovery of interest or other moneys payable by virtue of instruments to which former Mortgages Extension Acts applied not barred by Statute of Limitations.

16. Any period terminating on the passing of this Act and commencing not earlier than the fourteenth day of August, nineteen hundred and fourteen (being the date of the passing of the Mortgages Extension Act, 1914), shall not be taken into account in the computation of the period prescribed by any Statute of Limitations upon the expiration whereof right of action is barred for the recovery of moneys which have heretofore become due (whether before or after the said fourteenth day of August, nineteen hundred and fourteen) in respect of principal or interest or on any other account by virtue of any mortgage or other deed or instrument to which the Mortgages Extension Act, 1914, or the Mortgages Extension Act, 1919, at any time applied.

Special equitable jurisdiction conferred on Supreme Court.

17. In order that full effect may be given to the intent of this Act the Supreme Court shall, in every matter arising in respect of a mortgage or of an agreement for sale and purchase to which this Act

applies, have full power and jurisdiction to deal with and determine such matter in such manner (not inconsistent with the provisions of this Act) as it deems just and equitable under the circumstances of the case, notwithstanding that express provision in respect of such matter is not contained herein.

18. No party to any proceedings before the Supreme Court under this Act shall be liable to pay the costs of any other party to such proceedings. Costs in proceedings under this Act.

19. All the provisions of this Act shall apply to the Crown. Act to apply to Crown.

20. The Governor-General in Council may from time to time make regulations for giving full effect to the provisions of this Act and for the due administration thereof. Regulations.

21. (1.) The enactments mentioned in the Schedule hereto are hereby repealed. Repeals.

(2.) All proceedings pending at the commencement of this Act under any enactment hereby repealed may be continued and completed as if this Act had not been passed, and all leave heretofore granted under any such enactment, or hereafter granted in any such pending proceedings, shall enure for the purposes of this Act as if granted thereunder. Savings.

## SCHEDULE.

Schedule

### ENACTMENTS REPEALED.

- 1919, No. 8.—The Mortgages Extension Act, 1919.  
 1921, No. 30.—The Mortgages and Deposits Extension Act, 1921.  
 1921, No. 47.—The Loan Companies Act, 1921: Section 4.