



## ANALYSIS

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1994, No. 13

## An Act to amend the Property Law Act 1952

[27 June 1994

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Property Law Amendment Act 1994, and shall be read together with and deemed part of the Property Law Act 1952 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1994.

**2. Restriction on exercise of mortgagee's rights**—(1) Section 92 of the principal Act is hereby amended by repealing subsection (1A) (as inserted by section 3 of the Property Law Amendment Act 1993), and substituting the following subsection:

“(1AA) For the purposes of subsection (1) and subsection (6) of this section, the entering into of a contract to sell or the granting of an option to purchase land shall not be regarded as the exercise of a power of sale if the contract or option is conditional (either solely or together with other conditions) on the failure by the owner to remedy a default specified in a notice under subsection (1) of this section served either before or after the contract is entered into or the option is granted, as the case may be.”

(2) Section 3 of the Property Law Amendment Act 1993 is hereby consequentially repealed.

**3. Preferential claims**—The principal Act is hereby amended by inserting, after section 104PP (as inserted by

section 5 of the Property Law Amendment Act 1993), the following section:

“104PPA. (1) This section applies to a mortgagee to which this Part of this Act applies of the property of a company, other than a company in liquidation at the time the mortgagee became such a mortgagee, if the mortgagee became such a mortgagee under—

“(a) A floating charge; or

“(b) A fixed or specific charge that conferred a floating security at the time it was created.

“(2) A mortgagee to which this section applies must apply property that is subject to the charge—

“(a) First, to reimburse the mortgagee for the reasonable expenses of the mortgagee in entering into possession of the mortgaged property or receiving income from the mortgaged property, as the case may be, or of doing anything that the mortgagee is required or entitled to do; and

“(b) Secondly, to pay preferential claims to the extent and in the order of priority specified in the Seventh Schedule (except clauses 1 and 9 (b)) to the Companies Act 1993—

before paying any claim of the mortgagee.

“(3) In the application of the Seventh Schedule to the Companies Act 1993 in accordance with subsection (2) of this section,—

“(a) References to a liquidator are to be read as references to a mortgagee to which this section applies; and

“(b) References to the commencement of the liquidation are to be read as references to the date on which the mortgagee became a mortgagee to which this section applies; and

“(c) References to a company being put into or being in liquidation are to be read as references to the mortgagee becoming a mortgagee to which this section applies.

“(4) Nothing in this section applies in relation to a company in respect of whose property a person became a mortgagee to which this section applies before the commencement of the Property Law Amendment Act 1994 and the provisions of section 101 of the Companies Act 1955 shall continue to apply in relation to that company notwithstanding the repeal of that section.”