

New Zealand.



REPEALED: See Act, 19 19 No. 8

ANALYSIS.

Title.

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| <ol style="list-style-type: none"> 1. Short Title. 2. Interpretation. 3. Limitation of rights of mortgagees during the continuance of a state of war in New Zealand. 4. Conditions on which leave of the Supreme Court may be granted to mortgagee to call up principal or exercise right of re-entry, &c. 5. Jurisdiction of Court in actions for recovery of interest secured by mortgage. 6. Where mortgage repayable by instalments. | <ol style="list-style-type: none"> 7. Extension of Act to agreements for sale and purchase of land and to leases containing a purchasing clause. 8. Jurisdiction of Supreme Court with respect to matters arising under this Act. 9. Governor may by Proclamation impose conditions on the withdrawal of moneys deposited at interest with savings-banks and other institutions. 10. Act to apply to Crown. 11. Regulations. 12. Duration of Act. |
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1914, No. 7.

AN ACT to limit the Powers and Rights of Mortgagees during a State of War. Title.

[14th August, 1914.]

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

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| <ol style="list-style-type: none"> 1. This Act may be cited as the Mortgages Extension^a Act, 1914. 2. In this Act, unless inconsistent with the context,—
“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:
“Mortgagor” means the 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:
“Mortgagee” means the person entitled to the benefit of the security of any mortgage. | <p>Short Title.</p> <p>Interpretation.</p> |
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Limitation of rights of mortgagees during the continuance of a state of war in New Zealand.

3. (1.) So long as a state of war exists in New Zealand, and for such period as may be prescribed by regulations hereunder, not exceeding six months after a state of war has ceased to exist, it shall not be lawful for a mortgagee without the leave of the Supreme Court—

- (a.) To call up or demand payment from any mortgagor of the principal sum or any part of the principal sum secured by any mortgage :
- (b.) To exercise any power of sale or entry into possession conferred by any mortgage or by statute :
- (c.) To commence any action or proceeding for breach of any covenant, agreement, or condition expressed or implied in any mortgage other than a covenant, agreement, or condition for the payment of interest :
- (d.) To commence any action or proceeding for any rate of interest higher than the reduced rate (if any) provided in the mortgage in the case of punctual payment.

(2.) Application for the leave of the Supreme Court may be made by originating summons.

(3.) A state of war exists in New Zealand when His Majesty is at war with any foreign prince or State.

(4.) All Courts shall take judicial notice of the existence or termination of a state of war.

4. (1.) If the ground upon which such leave is prayed is that the mortgagor has failed to pay the principal sum or any part thereof at any date, whether before or after the commencement of this Act, appointed for payment thereof, no such leave shall be granted so long as interest on the principal sum secured at the ordinary rate is paid by the mortgagor within such time or times as the Supreme Court is hereby authorized to appoint in that behalf.

(2.) If the ground upon which such leave is sought is the breach of any covenant, condition, or agreement other than non-payment of the principal sum or any part thereof or non-payment of interest, the Supreme Court shall in every case determine whether such breach is of such a nature as to seriously endanger the security of the mortgagee, and shall not grant such leave unless the Supreme Court determines that the security is so seriously endangered.

5. In every action or proceeding by a mortgagee for the recovery of any sum for interest secured by a mortgage the Court hearing such action or proceeding may, if in its discretion and in the circumstances of the case it deems it just and expedient in lieu of giving judgment for immediate payment, give judgment for payment at a date to be fixed, or by instalments payable at such times as such Court in its discretion determines, and for this purpose such Court shall have jurisdiction to cause judgment to be entered in such form as it deems best to give full effect to the intent of this Act, and to direct the method of enforcement of such judgment.

6. Where by the terms of a mortgage 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.

Conditions on which leave of the Supreme Court may be granted to mortgagee to call up principal or exercise right of re-entry, &c.

Jurisdiction of Court in actions for recovery of interest secured by mortgage.

Where mortgage repayable by instalments.

7. (1.) The provisions of this Act shall extend and apply, *mutatis mutandis*, to agreements for sale and purchase of land, and to leases of land containing an optional or compulsory purchasing clause.

Extension of Act to agreements for sale and purchase of land and to leases containing a purchasing clause.

(2.) For the purposes of this Act an agreement for 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.) For the purposes of this Act a lease of land containing a purchasing clause shall be dealt with in all respects as if the lessee had already notified his exercise of an option to purchase under an optional purchasing clause, and as if the lessor were mortgagee and the lessee were mortgagor of the land, and as if the rent reserved by the lease were interest and the agreed purchase-money were principal-moneys secured. The term of the lease shall, if necessary, be extended for the purpose of giving effect to this provision.

(4.) The Supreme Court shall have exclusive jurisdiction in respect of agreements for sale and purchase and of leases containing a purchasing clause, and of all payments falling due thereunder.

8. 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 an agreement for sale and purchase, or a lease containing a purchasing clause, have full power and jurisdiction to deal with and determine such matter 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.

Jurisdiction of Supreme Court with respect to matters arising under this Act.

9. (1.) So long as a state of war exists in New Zealand, and for such period as may be prescribed by regulations hereunder, not exceeding six months after a state of war has ceased to exist, the Governor in Council may from time to time as he thinks fit by Proclamation declare that moneys heretofore or hereafter deposited at interest with any savings-bank, Municipal Corporation, building society, investment company, or public company, not being moneys deposited at call, shall not be withdrawn by depositors except subject to conditions and upon terms set forth in such Proclamation.

Governor may by Proclamation impose conditions on the withdrawal of moneys deposited at interest with savings-banks and other institutions.

(2.) Any Proclamation issued under this section may relate to one or more institutions or corporations part of whose business it is to accept deposits of money, or it may relate to such institutions or corporations generally, and may relate to the whole or part only of the sums deposited.

(3.) Every such Proclamation shall according to its tenor have the force of law.

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

Act to apply to Crown.
Regulations.

11. The Governor 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.

12. This Act shall continue in force until the thirty-first day of December, nineteen hundred and fifteen, and no longer.

Duration of Act.