

New Zealand.

ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Application of principal Act to subsequent mortgage when power of sale exercised under prior mortgage. 3. Defining "date of adjustment" in relation to adjustable debts. 4. Only specified adjustable debts deemed to be discharged. 5. Power to vary certain orders under which rates are payable, or are secured on any property. | <ol style="list-style-type: none"> 6. Vesting-orders may be made by Adjustment Commissions. 7. Restricting exercise of powers under adjusted mortgages. 8. As to liability of applicant to guarantor in respect of payments made under guarantee. 9. Review of liability of guarantor who loses his rights against applicant. 10. Extending time for recovery of rates where commencement of proceedings prohibited. |
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1937, No. 30.

- Title.** AN ACT to amend the Mortgagors and Lessees Rehabilitation Act, 1936. [22nd December, 1937.]
BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—
- Short Title.** 1. This Act may be cited as the Mortgagors and Lessees Rehabilitation Amendment Act, 1937, and shall be read together with and deemed part of the Mortgagors and Lessees Rehabilitation Act, 1936 (hereinafter referred to as the principal Act).
- 1936, No. 33**

2. Where the property that was subject to any mortgage ceased before the passing of the principal Act to be subject to the mortgage by reason of the sale of the property under a power conferred otherwise than by that mortgage, and the mortgagor or any other person remained liable to the mortgagee or any other person after the sale (whether in a representative capacity or otherwise) for any moneys formerly secured by the mortgage (including any moneys expended or costs incurred by the mortgagee in relation to the mortgage or to the sale), that liability shall be deemed to be and to have always been a liability under a guarantee in respect of an adjustable mortgage, and the provisions of the principal Act shall be deemed to have always applied accordingly with respect thereto.

Application of principal Act to subsequent mortgage when power of sale exercised under prior mortgage.

3. (1) For the purposes of the principal Act the term "date of adjustment", in relation to any applicant, means the date on which his adjustable debts are deemed to be discharged under subsection one of section forty-nine of the principal Act.

Defining "date of adjustment" in relation to adjustable debts.

(2) Where, whether before or after the passing of this Act, the Adjustment Commission has made an order adjusting the liabilities of any applicant but has not fixed the date of adjustment, the date on which the order is sealed by the Court shall be deemed to be the date of adjustment. Where the Adjustment Commission has made two or more orders as aforesaid this subsection shall be deemed to relate to the last of those orders, unless the Adjustment Commission orders that it shall relate to any other order.

(3) Section forty-nine of the principal Act is hereby consequentially amended by omitting from subsection two the words "date fixed as provided in the last preceding subsection", and substituting the words "date of adjustment".

4. No adjustable debt of any applicant shall be deemed to have been discharged under subsection one of section forty-nine of the principal Act (whether before or after the passing of this Act) unless it is specified in an order of the Adjustment Commission providing for its discharge or is specified in the statement of the

Only specified adjustable debts deemed to be discharged.

applicant's assets and liabilities filed under the principal Act or in any amended statement thereof filed before the date of adjustment.

Power to vary certain orders under which rates are payable, or are secured on any property.

5. (1) Where before the passing of this Act an Adjustment Commission has made an order providing for the payment or satisfaction by any applicant of any rates as an adjustable debt, whether by instalments or otherwise, the applicant may within two months after the passing of this Act apply to the Adjustment Commission for a variation of the order. On any application so made the Adjustment Commission may make such order as it deems just and equitable for the variation or discharge of the first-mentioned order, whether by remitting the rates or any part thereof or otherwise.

(2) Where before the passing of this Act an Adjustment Commission or the Court of Review has made an order the effect of which, by reason of any rates secured on the property, is that the total amount remaining secured on any property of an applicant by any adjustable security or adjustable securities exceeds the basic value or the value of the property as mentioned in subsection one or in subsection two of section forty-two of the principal Act, as the case may be, the applicant may within two months after the passing of this Act apply to the Adjustment Commission for a variation of the order. On any application so made the Adjustment Commission may make such orders as it deems necessary for the purpose of making the first-mentioned order comply with the principal Act and for the purpose of making any other provisions consequential thereon.

Vesting-orders may be made by Adjustment Commissions.

6. (1) Where any Adjustment Commission has heretofore made or hereafter makes an order under section forty-six or section forty-seven of the principal Act for the sale of any property it may by the same or a subsequent order vest the property in the purchaser.

(2) All orders made by any Adjustment Commission before the passing of this Act for the vesting of any property in any person are hereby validated and declared to have been lawfully made, subject to any right of appeal conferred by the principal Act.

7. (1) Where (whether before or after the passing of this Act) the amount secured by any adjustable mortgage has been reduced under section forty-two of the principal Act, or the terms and conditions of any adjustable mortgage have been varied or a new mortgage has been substituted therefor under section forty-three of the principal Act, no power of sale, rescission, or entry into possession conferred by the mortgage shall become or be deemed to have become exercisable, and no moneys secured by the mortgage shall become or be deemed to have become payable, by reason of any default (whether made before or after the passing of this Act) in payment of any moneys so secured or in performance or observance of any other covenant expressed or implied in the mortgage unless the mortgagee serves on the mortgagor in accordance with section sixty-one of the principal Act a notice specifying the default complained of and a date on which the power will become exercisable or the moneys will become payable if the default is not sooner remedied, and requiring the mortgagor to remedy the default, and the mortgagor fails to remedy the default before the date so specified.

Restricting
exercise of
powers under
adjusted
mortgages.

(2) The date to be specified in the notice as aforesaid shall not be earlier than one month from the service of the notice nor earlier than the date on which the power would have become exercisable or the moneys would have become payable if this section had not been passed. A notice under this section may be served before the last-mentioned date.

(3) The provisions of this section shall apply notwithstanding any stipulation or agreement to the contrary, whether made before or after the passing of this Act.

(4) Nothing in this section shall be construed to affect any sale, rescission, or entry into possession made before the passing of this Act, or any judgment obtained before the passing of this Act.

8. (1) Where the liabilities of any applicant have been adjusted under the principal Act (whether before or after the passing of this Act), no guarantor under a guarantee in relation to any adjustable debt, adjustable lease, or adjustable security shall have any claim against

As to liability
of applicant to
guarantor in
respect of
payments made
under
guarantee.

the applicant in respect of any amount paid by the guarantor under the guarantee after the date of adjustment (and whether before or after the passing of this Act), except to the extent to which the payment reduces the liability (if any) of the applicant under the adjustable debt, adjustable lease, or adjustable security as adjusted as aforesaid, or except (in any other case) to the extent to which provision for the payment or satisfaction of the guarantor's claim is made by an order under section forty-nine of the principal Act.

(2) Nothing in this section shall be construed to restrict the operation of section forty-nine of the principal Act with respect to the liability of the applicant in relation to any amount that may have been paid by the guarantor under the guarantee before the date of adjustment (and whether before or after the passing of this Act).

Review of
liability of
guarantor who
loses his
rights against
applicant.

9. (1) Where as a result of the adjustment of the liabilities of any applicant any guarantor has, whether before or after the passing of this Act, lost a right to make a claim against the applicant in respect of any amount paid or to be paid by the guarantor under the guarantee before or after the date of adjustment, the Adjustment Commission may, either at the time of the adjustment of the applicant's liabilities (without formal application by the guarantor), or subsequently (upon application made by the guarantor under this section), make such order for the variation or for the complete or partial discharge of the liability of the guarantor under the guarantee as it deems just and equitable on account of the loss of the guarantor's rights against the applicant, having regard to the relative hardship on all the parties concerned and to any other relevant consideration.

(2) No application by a guarantor under this section shall be heard by the Adjustment Commission unless it is filed within two months after the date of adjustment of the liabilities of the applicant against whom the guarantor has lost any right as aforesaid or, where the date of adjustment was before the passing of this Act, within two months after the passing of this Act.

(3) The provisions of this section shall apply with respect to every guarantor, whether or not he is an applicant under the principal Act, and shall be in addition to and not in derogation of the provisions of the principal Act relating to the adjustment or the discharge of the liabilities of guarantors.

10. (1) The period during which the commencement or continuation of proceedings in any Court for the recovery of any rates is prohibited by the operation of section fifty-five of the principal Act shall not be taken into account for the purposes of section seventy-seven of the Rating Act, 1925.

(2) This section shall not apply in any case where the time limited by the said section seventy-seven for the giving of judgment for the rates has expired before the passing of this Act.

Extending time
for recovery of
rates where
commencement
of proceedings
prohibited.
See Reprint
of Statutes,
Vol. VII,
p. 1007