

MORATORIUM (AMENDMENT) ACT.

Act No. 58, 1936.

George VI,
No. 58, 1936.

An Act to amend the Moratorium Act, 1932, in certain respects; and for purposes connected therewith. [Assented to, 23rd December, 1936.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. (1) This Act may be cited as the "Moratorium (Amendment) Act, 1936."

(2) The Moratorium Act, 1932-1935, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Moratorium Act, 1932-1936.

Amendment of
Act No. 57,
1932.

Sec. 2.

(Interpre-
tation.)

2. The Principal Act is amended—

(a) (i) by inserting in subsection one of section two next after the definition of "Mortgagee" the following new definition:—

"Person who has guaranteed the payment of money" includes and shall be deemed always to have included a person who to the knowledge of the creditor at the time of incurring such liability has incurred a primary liability to the creditor to pay money to such creditor as surety for a third person.

(ii) by inserting next after the same subsection the following new subsection:—

(1A) A lessee from a mortgagor shall not be and shall be deemed never to have been,
for

for the purposes of this Act or of any Act repealed by this Act, a person entitled to redeem the mortgage.

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- (b) by inserting at the end of subsection two of section six the following words:—

Sec. 6.

(Mortgages to the Crown, etc.)

Provided that where a mortgagor has by instrument inter vivos disposed of the whole of his estate or interest in any mortgaged property it shall not be necessary, nor shall it be deemed ever to have been necessary, to give any such notice to such mortgagor.

Provided further that in the case of a mortgage of land it shall not be necessary, nor shall it be deemed ever to have been necessary, to give notice to any person whose interest in the land was created by an instrument which is not registered either under the Registration of Deeds Act, 1897, or the Real Property Act, 1900, but this proviso shall not apply where the person whose interest is so unregistered is the original mortgagor or his personal representative or where such person is in possession of the land or where the mortgagee has express notice of the interest of such person.

- (c) (i) by inserting in subsection two of section nine after the words "from entering into possession" wherever occurring the words "or taking proceedings to obtain possession";

Sec. 9.

(Limitation of rights of mortgagee.)

- (ii) by inserting at the end of paragraph (a) of the same subsection the following new proviso:—

Provided further that where on or after such date any unpaid interest has been or shall be capitalised in accordance with the terms of the mortgage, such interest shall not, for the purposes of this subsection, be, by reason of such capitalisation, deemed to have been or to be paid.

(iii)

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(iii) by inserting at the end of the same subsection the following new subsection:—

(2A) Where the mortgagor has, by failing to make a payment of money, made default under the provisions of any covenant or agreement referred to in paragraph (b) or paragraph (c) of subsection two of this section he shall be deemed to continue to be in such default notwithstanding that the mortgagee has made the payment which the mortgagor has so failed to make.

(iv) by inserting next after subsection four of the same section the following new subsection:—

(4A) An order made by the court under subsection one of this section, giving a mortgagee leave to exercise all or any of his rights, powers or remedies against the mortgaged property, shall enure and shall be deemed always to have enured for the benefit of the assigns of the mortgagee, and shall not be and shall be deemed never to have been prejudiced or affected by any change occurring after the making of such order in the title to or ownership of the mortgaged property.

Sec. 10.
(Bemedy of
mortgagee,
etc.)

(d) (i) by inserting at the end of subsection one of section ten the following words:—

“Where the terms of a mortgage provide for the capitalisation of interest, the date at which by such terms a rest may be taken shall, for the purposes of this section, be regarded as the date upon which the interest is payable, and default shall be deemed to be made or to have been made in the payment thereof if such interest be not paid at such date notwithstanding any capitalisation thereof.”

(ii) by inserting after subsection four of the same section the following new subsection:—

(4A) On any application under this section the court may order the mortgagor, puisne

puisne mortgagee or purchaser, as the case may be, to file accounts, verified by affidavit, showing, for or in respect of the period specified in the order, the amounts of rents, profits or income received by him from the mortgaged or purchased property, and the sums paid by him for rates, taxes, insurance premiums and other charges and outgoings on or in relation to such property, and may order the person making such affidavit to attend before the court for cross-examination thereon.

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- (e) by inserting next after section thirteen the following new section:—

13A. (1) Where a mortgagee under a mortgage of land to which the provisions of this Part of this Act apply has, either before or after the commencement of the Moratorium (Amendment) Act, 1936, entered into possession of the mortgaged property or appointed a receiver thereof and has been paid or tendered by the mortgagor or any subsequent mortgagee, or has, out of the rents, profits or income of the mortgaged property, received an amount sufficient to discharge all interest due to him and to all prior mortgagees (if any) and all rates, taxes and other outgoings on or in respect of the mortgaged property properly paid by him, or, where a receiver has been appointed, such interest, rates, taxes and other outgoings have been discharged out of such rents, profits or income, the court may, on the application of the mortgagor or any subsequent mortgagee, order the mortgagee to deliver up possession to the applicant, or to determine the appointment of the receiver either absolutely or on such terms and conditions as it thinks fit.

Further provisions as to mortgagee in possession.

(2) A mortgagee in possession of land comprised in any mortgage to him shall, on request in writing made by the mortgagor or any subsequent mortgagee and on tender of a reasonable sum for the expenses of preparing the

the account, give to such mortgagor or subsequent mortgagee an account in writing verified by statutory declaration showing all rents, profits and income received by him and all moneys appropriated or paid by him for interest, rates, taxes or other outgoings on or in respect of the mortgaged property.

The court may, on the application of the person who requested the account, order the person who made the statutory declaration to attend before the court for cross-examination thereon.

(3) If such mortgagee neglects or refuses, within a reasonable time to give such account, the court may, on the application of the person who has requested such account, order such mortgagee to give to the applicant, within a time to be fixed by the order, such account.

(4) In this section "mortgagor" means the person entitled to the equity of redemption in the mortgaged land, or if the land comprised in the mortgage is under the provisions of the Real Property Act, 1900, has the same meaning as in that Act.

Sec. 14.
(Consent
by the
mortgagor
to exer-
cise of
powers,
etc., by
mortgagee.)

(f) by inserting at the end of section fourteen the following new subsections:—

(5) Where a mortgagor has, by instrument inter vivos, disposed of the whole of his estate or interest in any mortgaged property, the consent of such mortgagor shall not be necessary and shall be deemed never to have been necessary under this Act or under any Act repealed by this Act to enable the mortgagee to exercise, without the leave of the court, any of his rights, powers or remedies against that mortgaged property.

(6) (a) In the case of a mortgage of land the consent of any person whose interest in the land was created by an instrument which is not at the time the right, power or remedy is exercised registered under either the Registration of Deeds

Deeds Act, 1897, or the Real Property Act, 1900, shall not be necessary and shall be deemed never to have been necessary under this Act or under any Act repealed by this Act, to enable the mortgagee to exercise without the leave of the court all or any of his rights, powers or remedies against the land. No. 58, 1933.

(b) Paragraph (a) of this subsection shall not apply where the person whose interest is so unregistered is the original mortgagor or his personal representative or where such person is in possession of the land or where the mortgagee has express notice of the interest of such person.

(7) Where a mortgagee exercises, without the leave of the court, any power of sale or foreclosure of the mortgaged property or of the land subject to the mortgage, as the case may be, the exercise of such power shall operate to discharge the liability under any covenant expressed or implied in the mortgage of any person whose consent would, but for subsection five or subsection six of this section, have been necessary to the exercise of such right, power or remedy and who has not in fact consented thereto.

(g) by inserting next after section fourteen the following new section:— New s. 14A.

14A. Unless otherwise therein expressly provided and subject to any such provision a consent given by a mortgagor pursuant to the provisions of section six or of section fourteen of this Act or in accordance with the provisions of the Moratorium Act, 1930, or any Act amending the same in force at the date of the consent— Further provisions as to consent.

(a) shall be, and shall, from the commencement of this Act, be deemed always to have been irrevocable;

(b) shall enure and be deemed always to have enured for the benefit of any person thereafter acquiring any interest in the mortgage;

(c)

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(c) shall, so far as it extends, be and be deemed always to have been sufficient for the purpose, without any further consent by any person thereafter acquiring any interest in the mortgaged property; and

(d) if given after the purported exercise by the mortgagee of any right, power or remedy to which such consent relates, shall be and be deemed always to have been as efficacious as if given before such exercise.

New s. 23A.

(h) by inserting next after section twenty-three the following new section:—

Council not to bring suit for charging order in certain events.

23A. No suit shall be brought by the council of any municipality or shire to enforce the charge for rates on land whilst such land is subject to any mortgage registered under either the Registration of Deeds Act, 1897, or the Real Property Act, 1900, to which the provisions of this Part of this Act apply, unless the mortgagee under such mortgage is in possession of the mortgaged land or he or any receiver appointed by him is in receipt of the rents and profits thereof.

Sec. 34.
(Restriction on rights of mortgagees.)

- (i) (i) by inserting in paragraph (a) of subsection seven of section thirty-four after the word "mortgagor" the words "whether such order be made before or after the commencement of this Act";
- (ii) by inserting in paragraph (b) of the same subsection after the word "force" the words "whether such deed be executed before or after the commencement of this Act";
- (iii) by inserting in paragraph (c) of the same subsection after the words "being a company" the words "whether such order or resolution be made or passed before or after the commencement of this Act";
- (iv) by inserting at the end of paragraph (d) of the same subsection the following words
"whether

“whether the decree or order for such administration be made before or after the commencement of this Act”;

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(v) by inserting at the end of the same section the following new subsection:—

(8) A creditor whose proof of debt has, before the commencement of the Moratorium (Amendment) Act, 1936, been rejected on the ground that the provisions of subsection seven of this section did not extend to the winding-up of a company or the administration of the estate of a deceased mortgagor pursuant to an order or decree made or resolution passed before the commencement of this Act, or to the administration of the estate of a mortgagor against whom a sequestration order has, before such commencement, been made, or who has, before such commencement, executed a deed of assignment or of arrangement, and whose proof of debt is after the commencement of the Moratorium (Amendment) Act, 1936, admitted, shall be entitled to be paid, out of any money available for dividend, any dividends he has failed to receive, before that money is applied to the payment of any future dividend; but he shall not be entitled to disturb the distribution of any dividend declared before his debt is proved after the commencement of the Moratorium (Amendment) Act, 1936, by reason that he has not participated therein.

(j) by inserting next after section forty the following new section:—

New s. 40A.

40A. Where, under the provisions of a mortgage to which the provisions of Part II of this Act apply, a mortgagee is empowered to expend moneys in payment of rates, taxes or insurance premiums or for the protection, preservation or benefit of the mortgaged property, and to add the amount of any such payments to the mortgage debt, and in pursuance of such provisions the mortgagee, after the commencement of the

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the Moratorium (Amendment) Act, 1936, has expended or shall expend moneys in any such payments, the moneys so expended shall, unless such moneys were so expended with the consent in writing, or at the request in writing, of the mortgagor, be deemed not to be advances made or credits provided or given within the meaning of paragraph (h) of section eight or of paragraph (c) of subsection six of section thirty-four of this Act.

Sec. 41.
(Rights and remedies of person entitled to benefit of guarantee.)

- (k) (i) by omitting from subsection one of section forty-one the words "whether before or after" and by inserting in lieu thereof the word "before";
- (ii) by inserting next after the same subsection the following new subsection:—

(1A) Money payable by a purchaser to a vendor under a contract for the sale of land for or on account of the purchase price thereof and interest thereon shall for the purposes of this section be and be deemed always to have been money the payment whereof is secured by a mortgage of land.

Sec. 42.
(Policies of insurance.)

Debts, trust funds and other choses in action.

- (1) by inserting at the end of section forty-two the following new subsection:—

(2) Nothing in this Act or in any enactment by this Act repealed, shall be construed to prevent a mortgagee of a debt, trust fund or other chose in action (not being a mortgagee of a mortgage debt) from suing the debtor, trustee or other the person against whom the chose in action is enforceable, to recover any moneys due and payable by such debtor, trustee or other person under or by reason of such debt, trust or other chose in action or from receiving from such debtor, trustee or other person such moneys.

Sec. 43.
(Offences.)

- (m) by inserting in section forty-three, after the words "section thirteen" the words "or section 13A";

(n).

(n) by omitting from paragraph (b) of subsection one of section forty-six the words "aforesaid place of abode or business, and if that letter is not returned through the post-office undelivered" and by inserting in lieu thereof the words "place of abode or business last known to the person giving the notice."

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Sec. 46.
(Notices.)

(o) by inserting next after section forty-six the following new sections:—

New ss.
46A, 46B,
and 46C.

46A. In the events mentioned in the first column hereunder and distinguished by a number therein any notice required or authorised by this Act to be given may be given to the respective persons mentioned in the second column and distinguished by a corresponding number in place or on behalf of the persons respectively referred to in the first column as the mortgagor and the respective persons so mentioned and distinguished in the second column shall have and be deemed always to have had power to make any application to the court or to give any consent under any of the provisions of this Act in place or on behalf of the respective persons referred to in the first column as the mortgagor:—

Consents
and
notices.

First Column.

Second Column.

- | | |
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| <p>1. Where the mortgagor is dead and probate of his will or letters of administration of his estate have been granted or resealed in New South Wales.</p> <p>2. Where the mortgagor is a bankrupt or has executed a deed of assignment or arrangement under the provisions of any bankruptcy law for the time being in force.</p> | <p>1. The personal representative of the mortgagor or other the person in whom the interest of the mortgagor in the mortgaged property has vested.</p> <p>2. The person in or to whom the interest of the mortgagor in the mortgaged property is vested or has been conveyed or assigned or, where the interest of the mortgagor in the mortgaged property is not vested in or has not been assigned or conveyed to any other person, the person who is empowered to direct the mortgagor to convey or assign his interest in the mortgaged property.</p> |
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First

Moratorium (Amendment) Act.

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First Column.

Second Column.

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| <p>3. Where the mortgagor is a company and the company is being wound up whether voluntarily, compulsorily or under the supervision of the Court.</p> <p>4. Where the mortgagor is an insane patient or an incapable or insane person within the meaning of the Lunacy Act of 1898, or any Act amending or replacing the same.</p> | <p>3. The liquidator of the company.</p> <p>4. The Master in Lunacy or the person to whom has been committed the management of the estate of the mortgagor, as the case may be.</p> |
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**Notice to
the Public
Trustee
in certain
events.**

46B. (1) Where, either before or after the commencement of the Moratorium (Amendment) Act, 1936, a mortgagee has, under this Act, obtained the leave of the court to exercise all the rights, powers and remedies expressly or impliedly given to him by the mortgage, any notice required or authorised by this or any other Act to be given to the mortgagor or to any other person interested in the mortgaged property for any purpose of or relating to or in any way concerning the exercise of any such right, power or remedy may, where such mortgagor or person is dead and there is no personal representative of such mortgagor or person in New South Wales, be given personally or by post to the Public Trustee and shall be accompanied by a statement containing such particulars as may be prescribed.

(2) Any notice given in accordance with the provisions of subsection one of this section shall be as valid and effectual as if given to the personal representative of the mortgagor or person unless probate of the will or letters of administration of the estate of such mortgagor or person is granted to some person other than the Public Trustee within one month after such notice has been so given.

46c.

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46c. During such time as any right or remedy of the mortgagee of any property or the vendor of any land against the mortgagor or mortgaged property or the purchaser or purchased land is or has been, by reason of this Act or any Act hereby repealed, suspended, time shall not run against such mortgagee or vendor under the provisions of any Statute of Limitations barring such right or remedy of the mortgagee or vendor against the mortgagor, mortgaged property, purchaser or purchased land. **Statutes of limitations not to run.**

- (p) by omitting from the matter relating to Division 1 of Part II appearing in section one the figures "23" and by inserting in lieu thereof the figures and letter "23A." **Sec. 1. (Division into Parts.)**
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