

CHAPTER 47—H. F. No. 431

An act relating to the granting of relief in certain cases during the emergency declared to exist, from inequitable foreclosure of mortgages on real estate and execution sales of real estate and for postponing certain sales and for extending the periods of redemption from certain others; and relating to the jurisdiction and procedure for such relief and for the right to possession during the extended period, and for limiting the right to maintain actions for deficiency judgments.

Whereas, the severe financial and economic depression existing for several years past has resulted in extremely low prices for the products of the farms and the factories, a great amount of unemployment, an almost complete lack of credit for farmers, business men and property owners and a general and extreme stagnation of business, agriculture and industry; and

Whereas, a condition of subnormal rainfall has existed in the State of Minnesota for several years, and this condition has greatly reduced the total products of the farms in Minnesota during the past two years; and

Whereas, many owners of real property, by reason of said conditions, are unable, and it is believed will for some time be unable to meet all payments as they come due of taxes, interest and principal of mortgages on their properties, and are, therefore, threatened with loss of such properties through mortgage foreclosure and judicial sales thereof; and

Whereas, many such properties have been and are being bid in at mortgage foreclosure and execution sales for prices much below what is believed to be their real values and often for much less than the mortgage or judgment indebtedness, thus entailing deficiency judgments against the mortgage and judgment debtors; and

Whereas, it is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth have created an emergency of such nature that justifies and validates legislation for the extension of the time of redemption from mortgage foreclosure and execution sales and other relief of a like character; and

Whereas, the State of Minnesota possesses the right under its police power to declare a state of emergency to exist; and

Whereas, the inherent and fundamental purposes of our government is to safeguard the public and promote the general welfare of the people; and

Whereas, under existing conditions the foreclosure of many real estate mortgages by advertisement would prevent fair, open and competitive bidding at the time of sale in the manner now contemplated by law; and

Whereas, it is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth have created an emergency of such a nature that justifies and validates changes in legislation providing for the temporary manner, method, terms and conditions upon which mortgage foreclosure sales may be had or postponed and jurisdiction to administer equitable relief in connection therewith may be conferred upon the District Court; and

Whereas, Mason's Minnesota Statutes of 1927, Section 9608, which provides for the postponement of mortgage foreclosure sales, has remained for more than thirty years, a provision of the statutes in contemplation of which provisions for foreclosure by advertisement have been agreed upon;

NOW THEREFORE,

Be it enacted by the Legislature of the State of Minnesota:

The provisions of this act shall not apply to any mortgage while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof, as security or pledge of the maker, its successors or assigns, nor shall the provisions of this act apply to any mortgage held as security or pledge to secure payment of a public debt or to secure payment of the deposit of public funds.

The following sections of this act preceding Part Two shall constitute Part One.

Section 1. Emergency declared to exist.—In view of the situation hereinbefore set forth, the Legislature of the State of Minnesota hereby declares that a public economic emergency does exist in the State of Minnesota.

Sec. 2. Mortgagee may apply to the district court for relief.—In any proceedings heretofore commenced for the foreclosure of a mortgage on real estate by advertisement, in which a sale of the property has not been had, or in any such proceedings hereafter commenced, when the mortgagor, or the owner in possession of the mortgaged premises, or any one claiming under said mortgagor, or any one liable for the mortgage debt, at any time after the issuance of the notice of such foreclosure proceedings, shall apply to the District

Court of the county wherein such foreclosure proceedings are being had, or are pending, by filing and serving a summons and verified complaint with prayer that the sale in foreclosure by advertisement shall be postponed and that the foreclosure, if any, shall proceed by action. If it appears to the court that granting of the relief as prayed would be equitable and just, then, and in that event, the foreclosure proceedings by advertisement may be postponed by the court by an ex parte order which shall be served with the summons and complaint upon the party foreclosing or his attorney, and at the time of the hearing upon said order the court may then further postpone such sale, and the parties seeking to foreclose such mortgage shall proceed, if at all, to foreclose said mortgage by interposing a cross complaint in such action. Such service may be made as now provided for the service of a summons in a civil action, or by registered mail, on the person foreclosing or his authorized agent or attorney, at the last known address of such person, agent or attorney respectively. As a condition precedent to such postponement of such foreclosure sale by advertisement the party filing such verified complaint shall pay to the clerk for the person foreclosing the mortgage the expenses incurred, not including attorney's fees which may accrue prior to any postponement. The filing of such verified complaint shall be deemed a waiver of publication of notice of postponement of the foreclosure sale, and the sale at the time which may be fixed by the court shall be deemed to be a sale postponed in lieu of the time of sale specified in the published notice of mortgage foreclosure sale.

Sec. 3. Court may order resale.—When any mortgage has been foreclosed by action, the court shall, on the coming in of the report of sale, cause notice of a hearing thereon to be served on the parties to the action who have appeared, and fix the time and place for the hearing on said report. Before granting an order confirming said sale, the court shall, if it appears upon due examination that the sale price is unreasonably and unfairly inadequate, or that justice has otherwise not been done, order a resale. If the sale is confirmed, the sheriff, or his deputy, shall forthwith execute and deliver the proper certificate of sale which shall be recorded within twenty days after such confirmation. Upon the hearing of the motion for an order, confirming the sale of the premises involved in the foreclosure of mortgages by action, in case the evidence is insufficient to establish a fair and reasonable market or rental value of such property, the court shall receive any competent evidence, including evidence tending to establish the actual value of the property involved

in said mortgage foreclosure proceedings, for the purpose, or purposes, for which said property is or can be used. The court shall also receive any evidence tending to show to what extent, if any, the property has decreased in actual or market value by reason of the economic conditions existing at the time of or prior to such sale.

Sec. 3. 1. Compromises.—In case the parties to any such foreclosure action shall agree in writing upon terms of compromise settlement thereof, or of composition of the mortgage indebtedness, or both, the court shall have jurisdiction and may by its order confirm and approve such settlement or composition, or both, as the case may be.

Sec. 3. 2. Jurisdiction of court.—The court shall have the same jurisdiction to postpone the enforcement of judgment by execution sale or to order resale or give other relief where such judgment is rendered in an action to collect a debt or obligation secured by a real estate mortgage, the foreclosure of which might be affected under the terms of this act, as is conferred by this act with regard to the mortgage.

Sec. 4. Period of redemption may be extended.—Where any mortgage upon real property has been foreclosed and the period of redemption has not yet expired, or where a sale is hereafter had, in the case of real estate mortgage foreclosure proceedings, now pending, or which may hereafter be instituted prior to the expiration of two years from and after the passage of this act, or upon the sale of any real property under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter within two years from and after the passage of this act, the period of redemption may be extended for such additional time as the court may deem just and equitable but in no event beyond March 1, 1937; provided that the mortgagor, or the owner in possession of said property, in the case of mortgage foreclosure proceedings, or the judgment debtor, in case of sale under judgment, or execution, shall prior to the expiration of the period of redemption apply to the District Court having jurisdiction of the matter, on not less than ten days' written notice to the mortgagee or judgment creditor, or the attorney of either, as the case may be, for an order determining the reasonable value of the income on said property, or, if the property has no income, then the reasonable rental value of the property involved in such sale, and directing and requiring such mortgagor or judgment debtor to pay all or a reasonable part of such income or rental value in or toward the payment of

taxes, insurance, interest, mortgage or judgment indebtedness at such times and in such manner as shall be fixed and determined and ordered by the court; and the court shall thereupon hear said application and after such hearing shall make and file its order directing the payment by such mortgagor, or judgment debtor, of such an amount at such times and in such manner as to the court shall, under all the circumstances, appear just and equitable. Provided, further, that upon the service of the notice or demand aforesaid that the running of the period of redemption shall be tolled until the court shall make its order upon such application. Provided, further, however, that if such mortgagor or judgment debtor, or personal representative, shall default in the payments, or any of them, in such order required, on his part to be done, or commits waste, his right to redeem from sale shall terminate 30 days after such default, and holders of subsequent liens may redeem in the order and manner now provided by law beginning 30 days after the service upon such mortgagor, or judgment debtor, or their personal representatives or assigns and holders of subsequent liens, of notice of default and the filing of such notice of default with proof of service thereof with the clerk of such District Court, and his right to possession shall cease and the party acquiring title to any such real estate shall then be entitled to the immediate possession of said premises. Such 30 day period shall not begin to run until the filing of an order by the court finding such default or waste to exist. Provided, further, that the time of redemption from any real estate mortgage foreclosure or judgment or execution sale heretofore made, which otherwise would expire less than 30 days after the passage and approval of this act, shall be and the same hereby is extended to a date 30 days after the passage and approval of this act, and in such case, the mortgagor, or judgment debtor, or the assigns or personal representative of either, as the case may be, or the owner in possession of the property, may, prior to said date, apply to said court for and the court may thereupon grant the relief as hereinbefore and in this section provided. Provided, further, that prior to March 1, 1937, no action shall be maintained in this state for a deficiency judgment until the period of redemption as allowed by existing law or as extended under the provisions of this act has expired.

Sec. 5. Court may revise and alter terms.—Upon the application of either party prior to the expiration of the extended period of redemption, as provided in this act, and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise

and alter such terms in such manner as the changed circumstances and conditions may require.

Sec. 6. Trial to be within thirty days.—The trial of any action, hearing or proceeding mentioned in this act, shall be held within thirty days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during vacation of the court, and the order of the court shall be filed within five days after trial or hearing, no more than five days stay shall be granted, and review by the Supreme Court may be had by certiorari, if application for the writ shall be made within fifteen days after notice of such order, and such writ shall be returnable within thirty days after the filing of such order.

Sec. 7. Inconsistent acts repealed.—Every law and all the provisions thereof now in force insofar as inconsistent with the provisions of this act, are hereby suspended until March 1, 1937. No extension of the period for redemption, nor any postponement of sale, shall be ordered or allowed under this act which would have the effect of extending the period for redemption beyond March 1, 1937.

Sec. 8. 1 Application of act.—This act as to mortgage foreclosures shall apply only to mortgages made prior to April 18, 1933, but shall not apply to mortgages made prior to the passage of this act which shall hereafter be renewed or extended for a period ending more than one year after the passage of this act; neither shall this act apply in any way which would allow a resale, stay, postponement or extension to such time that any right might be adversely affected by a statute of limitation.

Sec. 8. 2 Application of act.—The provisions of this act shall also apply to mortgage foreclosures wherein the District Court has previously postponed the sale or granted one or more extensions of the time for redemption, all pursuant to the provisions of Laws 1933, Chapter 339; provided, that the period of redemption has not expired; and shall also apply to actions and proceedings now pending or hereafter commenced under said act.

Sec. 9. Provisions severable.—The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this act.

Sec. 10. Definitions.—The words “mortgagor”, “mortgagee”, “judgment creditor”, “judgment debtor”, and “purchaser”, whenever used in this act, shall be construed to include the plural as well as the singular, and also to include their personal representatives, successors and assigns; provided, however the words “successors or assigns”, when used in this act, shall be construed to include only persons who stand in privity of estate to the mortgagor.

Sec. 11. Application.—Whenever the term “this Act” is referred to in that part of the bill amended so as to constitute Part One hereof, the same shall be construed as having reference only to Part One of this act.

PART TWO

Section 1. To apply to homesteads only.—The following, Part Two, of this Act shall apply only to real estate occupied as a home exclusively by the person seeking relief or persons dependent upon him and to farm lands used by the person seeking relief as his principal means of furnishing necessary support to such person, his family and dependents, and shall apply only to cases not entitled to relief under some valid provision of Part One of this Act.

Sec. 2. Mortgagee may apply to district court for relief.—In any proceedings heretofore commenced for the foreclosure of a mortgage on real estate by advertisement, in which a sale of the property has not been had, or in any such proceedings hereafter commenced, when the mortgagor, or the owner in possession of the mortgaged premises, or anyone claiming under said mortgagor, or anyone liable for the mortgage debt, at any time after the issuance of the notice of such foreclosure proceedings, shall apply to the District Court of the county wherein such foreclosure proceedings are being had, or are pending, by filing and serving a summons and verified complaint with prayer that the sale in foreclosure by advertisement shall be postponed and that the foreclosure, if any, shall proceed by action. If it appears to the court that granting of the relief as prayed would be equitable and just, then, and in that event, the foreclosure proceedings by advertisement may be postponed by the court by an *ex parte* order which shall be served with the summons and complaint upon the party foreclosing or his attorney and at the time of the hearing upon such order, the court may then further postpone such sale, and the parties seeking to foreclose such mortgage shall proceed, if at all, to foreclose said mortgage by interposing a cross complaint in such action. Such service may be made as now

provided for the service of a summons in a civil action, or by registered mail on the person foreclosing or his authorized agent or attorney at the last known address of such person, agent or attorney respectively. As a condition precedent to such postponement of such foreclosure sale by advertisement the party filing such verified complaint shall pay to the clerk for the person foreclosing the mortgage the expenses incurred not including attorney's fees which may accrue prior to any postponement. The filing of such verified complaint shall be deemed a waiver of publication of notice of postponement of the foreclosure sale and the sale at the time which may be fixed by the court shall be deemed to be a sale postponed in lieu of the time of sale specified in the published notice of mortgage foreclosure sale.

Sec. 3. Jurisdiction of court.—The court shall have the same jurisdiction to postpone the enforcement of judgment by execution sale or to order resale or give other relief where such judgment is rendered in an action to collect a debt or obligation secured by a real estate mortgage, the foreclosure of which might be affected under the terms of this Act, as is conferred by this Act with regard to the mortgage.

Sec. 4. Application of act.—The provisions hereof shall not apply to mortgages made after the passage of this Act nor to mortgages made prior to the passage of this Act which shall hereafter be renewed or extended to become due more than a year after such passage; neither shall this Act apply in any way which would allow a resale, stay, postponement or extension to such time that any right might be adversely affected by a statute of limitation.

Sec. 5. Limitation to act.—No postponement or extension shall be ordered under conditions which, under the temporary emergency, would substantially diminish or impair the value of the contract or obligation of the person against whom the relief is sought, without reasonable allowance to justify the exercise of the police power hereby authorized.

Sec. 6. Trial to be held within twenty days.—The trial of any action, hearing or proceeding provided for in this Act shall be held within 20 days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during vacation of the court, and the order of the court shall be filed within 5 days after trial or hearing, no more than 5 days' stay shall be granted within which to apply for amended findings, and order or for review, and review by the Supreme Court may be had by certiorari, if

application for the writ shall be made within 10 days after notice of such order and such writ shall be returnable within 30 days after the filing of such order.

Sec. 7. Provisions severable.—The provisions of this Act shall be severable. The invalidity of any one provision, section or part shall not affect the validity of the remainder. Wherever the term "this Act" or "hereof" are used in Part Two, the same shall be construed as having no reference to Part One.

Sec. 8. Duration of act limited.—This Act shall remain in effect only during the continuance of the emergency and in no event beyond March 1, 1937. No extension of the period for redemption nor any postponement of sale shall be ordered or allowed under this Act which would have the effect of extending the period for redemption beyond March 1, 1937.

Sec. 9. Application of act.—Nothing in Part Two of this Act shall limit or restrict any provision of Part One.

Approved March 15, 1935.

CHAPTER 48—H. F. No. 561

An act to amend Laws 1933, Chapter 120, Section 8, relating to borrowing funds for support or relief of the poor, and validating and confirming all bonds issued and all proceedings had for the issuance of such bonds, for the purpose embraced therein, so as to extend the operation of said act until April 1, 1937.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Time of law extended.—Laws 1933, Chapter 120, Section 8, is hereby amended so as to read as follows:

"Sec. 8. This act shall be in force and effect until April 1, 1937."

Approved March 15, 1935.

CHAPTER 49—S. F. No. 687

An act to authorize banks, savings banks, building and loan associations and savings and loan associations, trust companies and other banking institutions to make loans, advances