

## CHAPTER 37—H. F. No. 188

*An act relating to the right of financial corporations to acquire and hold real estate, amending Mason's Minnesota Statutes of 1927, Section 7648.*

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

Section 1. **Law amended.**—Mason's Minnesota Statutes of 1927, Section 7648, is hereby amended to read as follows:

"7648. **Limitation of real estate for bank purpose.**—Save as otherwise specially provided, the entire cost of land and buildings for the transaction of the business of such a corporation, including premises leased to others, shall not be more than as follows, assets other than cash being taken at cash market value: For a bank or a trust company, 40 per cent of its existing capital and surplus; for a savings bank, 50 per cent of its net surplus; for a building and loan association, five per cent of its net assets. Any such corporation may change its location, dispose of its place of business, and acquire another, upon the written approval of the commissioner of banks."

Approved Feb. 28, 1941:

## CHAPTER 38—H. F. No. 631

*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 state 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, and 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, the condition of subnormal rainfall which existed generally in the state of Minnesota in several recent years, has resulted in greatly reduced herds of livestock on farms at the present time, and for want of such livestock to

which present supplies of grains and forage might be fed, poor market conditions have become aggravated, and the market value of grains and other farm commodities has been greatly reduced, and this resulting condition has greatly reduced the total income from farms in Minnesota for several years last past; 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 30 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. May apply to District Court for moratorium.**—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 sales.

**Section 3. Proceedings in foreclosure by action.**—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 20 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.

(1). 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.

(2). 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 ren-

dered in an action to collect a debt or obligation secured by a real estate mortgage, the foreclosure of which might be effected under the terms of this act, as is conferred by this act with regard to the mortgage.

**Sec. 4. Period of redemption 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 *July 1, 1942*; 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 there shall have been filed in the office of the clerk of court an order by the court finding such default or waste to exist, and thereupon 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 order may be made by the court after hearing held upon not less than five days notice in writing to the defaulting party or his attorney. Provided, further, that 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 *July 1, 1942*, 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.**—Under 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. Hearings, etc., shall be held within 30 days.**—The trial of any action, hearing or proceeding mentioned in this act, shall be held within 30 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 15 days after notice of such

order, and such writ shall be returnable within 30 days after the filing of such order.

**Sec. 7. Inconsistent laws suspended.**—Every law and all the provisions thereof now in force insofar as inconsistent with the provisions of this act, are hereby suspended until *July 1, 1942*. 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 *July 1, 1942*.

**Sec. 8. Application of act.**—(1) 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 April 18, 1933, 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.

(2). 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 Mason's Supplement 1940, Sections 9633-1 to 9633-21, inclusive; provided, that the period of redemption has not expired; and also shall apply to actions and proceedings now pending or hereafter commenced under said acts.

**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. Construction of act.**—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. Applicable 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. May apply to District Court for moratorium.**—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 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. To apply to execution sales.**—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. Limitations of act.**—The provisions hereof shall not apply to mortgages made after April 18, 1933, nor to mortgages made prior to April 18, 1933, 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. No extension in certain cases.**—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. Hearings, etc., shall be held within 20 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 five days after trial or hearing, no more than five 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. Limitations of act.**—This act shall remain in effect only during the continuance of the emergency and in no event beyond *July 1, 1942*. 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 *July 1, 1942*.

**Sec. 9. Not to restrict any provision of Part 1.**—Nothing in Part Two of this act shall limit or restrict any provision of Part One.

Approved Feb. 28, 1941.

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#### CHAPTER 39—S. F. No. 133

*An act relating to the incorporation of villages, amending Mason's Minnesota Statutes of 1927, Section 1111.*

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

**Section 1. Law amended.**—Mason's Minnesota Statutes of 1927, Section 1111, is hereby amended to read as follows:

“1111. **Incorporation of villages in certain cases.**—Any district, section or parts of section not in any incorporated village, and in the state of Minnesota, which has been platted into lots and blocks, also the lands adjacent thereto, when said plat has been duly and legally certified according to the laws of this state, and filed in the office of the register of deeds for the county in which said lands or the larger portion thereof lie, said territory containing a resident population of not more than 10,000 nor less than 100, may become incorporated as a village in the manner hereinafter prescribed. But the unplatted part of such territory must adjoin the platted portions and be so conditioned as properly to be subjected to village government. Provided, that any village, whose incorporation shall hereafter be declared void by judgment of court, may reincorporate under this act, notwithstanding the fact that such village does not contain 100 inhabitants, and in such reincorporation may include all or part of the territory embraced in the original incorporation; provided, however, that any district, section or parts of sections which has been platted into lots and blocks, as herein provided, and which is contiguous to the state line and having a population of not less than 50 inhabitants, may, upon a petition of not less than ten voters, residents therein, become incorporated as a village in the manner hereinafter prescribed.”

Approved Feb. 28, 1941.