

# BILL

No. 77 of 1932.

An Act for the Relief of Mortgagors and Purchasers.

(Assented to 1932.)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

**1.** This Act may be cited as "*The Mortgagors' and Purchasers' Relief Act.*"

**2.**—(1) No person shall—

- (a) take or continue proceedings by way of foreclosure or sale or otherwise, or proceed to execution on or otherwise to the enforcement of any judgment or order of any Court, whether entered or made before or after the coming into force of this Act, for the recovery of principal money secured by any mortgage of land or any interest therein made or executed prior to the coming into force of this Act;
- (b) take or continue any proceedings under any power of sale, or levy any distress, or take, resume or enter into possession of any land or interest therein for the recovery of principal money under any power contained in a mortgage of land, or of any interest therein executed prior to the coming into force of this Act;
- (c) declare or take advantage of the forfeiture of any land or of any right or interest acquired therein or of any sum of money paid for or on account of the purchase money of such land or of any interest therein, or by way of deposit or otherwise under the terms of a contract for sale or purchase made or entered into prior to the coming into force of this Act;
- (d) take or continue any proceedings for the recovery of any part of the principal money secured by mortgage or payable as part of the purchase money of any land or any interest therein payable by the purchaser or mortgagor upon any covenant or agreement as principal or guarantor, or otherwise, whether express or implied, made or entered into prior to the coming into force of this Act, or enforce by execution or other process any judgment ob-

tained in respect of any such covenant or agreement—

except by leave of a judge granted upon application as hereinafter provided.

(2) The application shall be made upon originating notice in accordance with the provisions of the Rules of Court, and shall be made to a Judge of the Supreme Court in Chambers, a local Judge of the Supreme Court, or a Master in Chambers.

**3.—**(1) Subject to the provisions hereinafter contained, no forfeiture of any interest acquired under a contract for the sale or purchase of land or any interest therein given, made or entered into prior to the coming into force of this Act shall take effect or be deemed to have taken effect until after an order made by a judge as provided for in section 2 hereof.

(2) Subject to the provisions hereinafter contained no principal money secured or payable by any mortgage of or contract for purchase or sale of land made or entered into prior to the passing of this Act shall be deemed to be due or in default so as to affect or make inoperative any provisions therein for discharging, releasing or conveying any portion or portions of the land thereunder in accordance with the terms or provisions therefor in such mortgage or contract contained, the operation of such provisions being hereby extended so long as the payment of such principal is not enforceable under the provisions of this Act:

Provided, however, that should the vendor or mortgagee claim a readjustment of the amount to be paid for a discharge, release or conveyance of one or more portions in order to ensure sufficient security for the amount of principal remaining unpaid, upon failure to agree thereon such claim shall be settled by the judge.

**4.—**(1) Subject to the provisions hereinafter contained, sections 2 and 3 hereof shall not apply to any contract for sale or purchase or to any mortgage made or entered into after the coming into force of this Act or to any extension or renewal made or entered into after the coming into force of this Act of a mortgage made or entered into prior to that date where such extension or renewal is for not less than three years and the rate of interest provided for in the original mortgage is not increased by such extension or renewal, nor to the proceedings taken for the recovery of interest (including arrears of interest which may under the terms of any such mortgage or extension or renewal have been or may be added to the principal money secured thereby) or rent or taxes or insurance or other disbursements for which the mortgagor was liable in the first instance, and as to which he is in default, nor to any proceedings or act done by a mortgagee in possession on the day of the passing of this Act with respect to the land or interest in land of which he is the mortgagee, nor to proceedings taken for the recovery of interest, taxes or insurance or

other disbursements payable by the mortgagor in the first instance under a mortgage and paid or tendered on his default by the holder of a subsequent mortgage of the same lands.

(2) Nothing in this Act shall apply to or affect any right or remedy now exercisable for the enforcement of any mortgage or other security of a like nature made or entered into for the purpose of securing the bonds or debentures of any corporation, but the holders of any such bonds or debentures, and any trustee for them, or the mortgagee named in any such mortgage as trustee or otherwise shall have and may exercise any such right or remedy whether the same is conferred by the general law or acquired under any such mortgage or other security as fully and effectually as if this Act had not been passed.

**5.—**(1) On any application the judge may grant the leave applied for, or if he is of opinion that time should be given to the person liable to make any payment, the judge may in his absolute discretion, after considering all the circumstances of the case and the position of all the parties, by order refuse to permit the exercise of any right or remedy, or may stay execution or postpone any forfeiture, as the case may be, for such time and subject to such conditions as he thinks fit.

(2) The judge may give directions as to the service of notice of the hearing of the application upon any person whom he deems a proper party to the proceedings, and may adjourn the hearing for that purpose, or he may dispense with service of the notice of the application upon any party who appears to have abandoned his interest in the property if the judge considers that service of the notice would occasion useless or unnecessary expense or delay.

**6.** It shall not be necessary to support any such application by affidavit or other evidence, except such evidence, if any, as may be necessary to show the nature and extent of the relief required, but if any contest arises between the parties the judge to whom the application is made may make such requirements or give such directions as to evidence on the part of any party as the judge may deem proper.

**7.** The order may provide for the giving of any undertaking, or the deposit in court or otherwise of any security, or the appointment of a receiver or the granting of an injunction.

**8.** The costs of the application shall be in the discretion of the judge, who shall fix the amount of the same, and by whom they shall be paid, and he may direct that they be added to the mortgage or other debt, but in the case of any mortgage or other contract on which there is owing less than three thousand dollars, the costs shall not be fixed at a greater amount than fifteen dollars.

**9.** An order made under this Act may, if subsequent circumstances render it just so to do, be suspended or discharged or otherwise varied or altered upon application to a Judge of the Supreme Court in Chambers, a Local Judge of the Supreme Court or a Master in Chambers, or to the Judge of the District Court in Chambers.

**10.** The powers conferred by this Act shall be in addition to and not in derogation of any other powers of the court.

**11.** The provisions of this Act shall apply to any actions or proceedings which are taken in any Court in Alberta, notwithstanding that the lands in question in the action or proceeding are situate without the Province of Alberta or the agreement or mortgage or other contract was made and entered into outside the Province of Alberta.

**12.** *The War Relief Act*, being chapter 92 of the Revised Statutes of Alberta, 1922, is hereby repealed.

**13.** This Act shall come into force on the day upon which it is assented to and shall remain in force until the first day of May, 1934, and thereafter shall cease to have any force or effect.

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SECOND SESSION  
SEVENTH LEGISLATURE

22 GEORGE V  
1932

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**B I L L**

An Act for the Relief of Mortgagors  
and Purchasers.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. LYMBURN

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EDMONTON:  
W. D. McLEAN, KING'S PRINTER  
1932