

TENANTS, PURCHASERS, AND MORTGAGORS' RELIEF.

21° GEO. V., No. XLV.

No. 45 of 1930.

AN ACT to afford relief to Tenants, Purchasers, and Mortgagors in occupation of Dwelling-houses, and for other relative purposes.

[Assented to 22nd December, 1930.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

Short title.

1. This Act may be cited as the *Tenants, Purchasers, and Mortgagors' Relief Act, 1930*, and shall come into operation on a date to be fixed by proclamation.

Definitions.

2. (1.) In this Act, subject to the context—

“Commissioner” means a Commissioner appointed under this Act;

“Dwelling” means a house (together with the premises appurtenant thereto) which is used as a dwelling or habitation only and not for the purpose of carrying on or conducting any business therein, and for the purposes of this definition “house” includes any part of a house which is separately occupied as a dwelling, and where an occupier is entitled to the sole and exclusive use of any part of a house that part shall be deemed to be occupied separately notwithstanding that the occupier is entitled to share in the use of some other part;

- “Landlord” means the person entitled to receive the rent in respect of a dwelling;
- “Lease” includes a tenancy agreement;
- “Magistrate” means a police or resident magistrate or a magistrate of the local court;
- “Mortgage” means any deed, memorandum of mortgage, instrument or agreement whereby security for repayment of moneys is granted over any dwelling, and includes an equitable mortgage by deposit of title deeds and any documents whereby the duration of a mortgage is extended; and includes also an agreement for the sale of a dwelling, which has not been completed by conveyance or transfer, and under which the purchase money is payable by instalments, but not by way of rent;
- “Mortgagor” means the person who is liable under the provisions of a mortgage or entitled to redeem it, or is the purchaser under such an agreement for sale as aforesaid and who is in occupation of the dwelling comprised therein;
- “Mortgagee” means the person entitled to the benefit of the security of any mortgage, and includes the vendor under such an agreement for sale as aforesaid;
- “Tenant” means the person or persons by whom the rent in respect of a dwelling is payable, and who is in actual occupation of such dwelling.

(2.) For the purposes of this Act an agreement for sale and purchase of a dwelling, which has not been completed by conveyance or transfer, shall be deemed to be a mortgage of the dwelling to secure payment of the unpaid purchase money and interest thereon, and fulfilment of the conditions set forth in the agreement; provided that, when the purchase money (with or without interest) is made payable as or by way of rent then, for the purposes of this Act, the agreement shall be deemed to be a lease and the purchaser a tenant and the vendor a landlord.

(3.) This Act shall be construed subject to the Constitution of the Commonwealth and the laws made thereunder, so that any of its provisions, which may be held to be inconsistent with such Constitution or laws, shall, to the extent of the inconsistency, be held to be severable from the remainder of the Act and not to affect the force or validity thereof.

Appointment of
Commissioners.

3. (1.) The Governor may appoint such Commissioners as he deems necessary for the purposes of this Act.

(2.) No person shall be qualified to be appointed a Commissioner unless he is a judge or a magistrate.

Protection Orders on the ground of Unemployment.

Power of Com-
missioner to make
protection orders
in favour of
tenants.

4. (1.) Upon the application of any tenant a Commissioner may make a protection order in respect of the dwelling occupied by such tenant.

(2.) No such order shall be made unless the applicant satisfies the Commissioner that, by reason of unemployment, he is unable to pay the rent accrued or accruing due in respect of the dwelling, and there is no immediate prospect of his becoming able to do so, and that his failure to pay any rent owing, which has become payable before the date of the application, is and was due to the same cause.

Effect of protection
order.

5. (1.) During the operation of the protection order—

(a) no distress shall be levied in respect of any rent accrued, accruing or to accrue due by the applicant in respect of the dwelling;

(b) no person shall re-enter the dwelling or take possession thereof against the applicant, notwithstanding that the interest of the applicant in the dwelling has been determined.

(2.) The order may be filed in any court of law, and shall operate as a stay for all purposes of all proceedings in that court for the recovery of the dwelling, or to recover or enforce the payment of any rent payable by the applicant in respect thereof, and as a stay for all purposes of any judgment or order of such court for the payment by the applicant of any such rent.

(3.) A register of protection orders made under this Act shall be kept by the Registrar of the Supreme Court in the prescribed manner, and shall be open to inspection by the public; and for the purpose of enabling such register to be kept a Commissioner shall, forthwith after the making of any protection order by him, cause a copy thereof, certified by him, to be forwarded to the said registrar, who shall enter short particulars thereof in the register.

(4.) When the lease of the dwelling contains an option of purchase thereof, the time (if any) limited for the exercise of the option shall be deemed to be extended by a period equal to the time during which any protection order is in operation in respect of the dwelling.

(5.) No person who is the grantee or entitled to the benefit of any bill of sale (within the meaning of the Bills of Sale Act, 1899) over any chattels in the dwelling, upon which, but for the protection order, the landlord could by law distrain for arrears of rent shall, by virtue of any power incident to such bill of sale, seize, remove or take possession of such chattels or any of them or otherwise deal with or dispose of the same, unless he shall first pay to the landlord the amount for which a distress for rent would be available to the landlord under section twenty-nine of the Bills of Sale Act, 1899.

(6.) No sheriff, bailiff, or other person acting in the execution of the process of any court shall seize or take possession of, or sell or otherwise dispose of, any chattels, in the dwelling, upon which, but for the protection order, the landlord might distrain for any arrears of rent, unless the person at whose instance the process has been issued shall pay to the landlord the amount for which the landlord might so distrain, subject to any limitation imposed by law on the claim of a landlord for rent in respect of goods seized or taken under process of execution.

(7.) The person, who has paid any amount pursuant to subsection five or six, shall be deemed to be an assignee from the landlord of a portion of the landlord's claim against the tenant equal to such amount, and may enforce his claim as such assignee (but in his own name) under and subject to the provisions of section eleven of this Act and not otherwise, and that section shall apply to the claim of such person accordingly.

6. (1.) Upon the application of any mortgagor, a Commissioner may make a protection order in respect of the dwelling comprised in the mortgage.

Power of Commissioner to make protection order for benefit of mortgagor.

(2.) No such order shall be made under this section unless the applicant satisfies the Commissioner that, by reason of unemployment, he is, and will be unable to pay the amount, whether of principal or interest or both, payable or becoming or to become payable under the mortgage, and that his failure to pay any amount owing under the mortgage, which has become payable before the date of the application, is and was due to the same cause.

Effect of order in
respect of
mortgages.

7. (1.) During the operation of any order made under the last preceding section, the mortgagee shall not enforce or seek to enforce or proceed with the enforcement of the mortgage.

(2.) The prohibition hereinbefore contained extends to—

- (a) the calling up or demand of payment from the mortgagor of the whole or any part of the principal or interest moneys secured by the mortgage;
- (b) the commencement or continuance of any action or proceeding for the recovery of any principal or interest moneys due under the mortgage or the enforcement of any judgment for any such moneys;
- (c) the exercise of any power of sale;
- (d) the obtaining or taking or keeping of possession of the dwelling comprised in the mortgage;
- (e) the commencement or continuance of any action, proceeding or application for foreclosure, or the exercise of any power to cancel or terminate any rights of the applicant in respect of the dwelling.

(3.) In the case of an agreement for sale, if the vendor has cancelled the agreement and terminated the right of purchase, the Commissioner may annul the vendor's action and reinstate the agreement and the rights of the applicant thereunder.

(4.) Such order as aforesaid may be filed in any court of law, and such court shall give effect thereto, in respect of any proceedings in such court, as occasion requires.

Cases in which no
order is to be
made under ss. 4
or 6.

8. (1.) No order shall be made under sections four or six—

- (a) unless the applicant satisfies the Commissioner that he has made all reasonable efforts to obtain employment, and that he is and has been unable to obtain employment through no fault of his own;
- (b) if the Commissioner is satisfied that the landlord or mortgagee by reason of the circumstances will suffer any undue hardship in the event of the order being made; or
- (c) if the Commissioner is satisfied that by reason of the circumstances no order should be made.

(2.) On the hearing of any application under either of the said sections the Commissioner shall take into consideration the means and earning capacity of any member of the applicant's family who habitually resides in the dwelling.

(3.) Any protection order may be limited in its operation to portion of the rent or interest for which the tenant or mortgagee is liable, and in that case the order shall not be operative in respect of the remaining portion of such rent or interest.

9. (1.) Every such protection order as aforesaid shall, as hereinafter provided, remain in force for such time, not exceeding three months, as the Commissioner may direct; but a Commissioner may at any time and from time to time extend the operation of an order for any period not exceeding three months

Term of and power to extend or discharge protection order.

(2.) A Commissioner may discharge any protection order on the application of any landlord or mortgagee affected thereby.

10. During the operation of any protection order it shall not be lawful for the landlord of the premises affected thereby to increase the rate of the rent to be payable in respect thereof beyond the rate at which such rent was payable at the time when the application was made.

Rent not to be increased during operation of order.

11. Upon the termination of a protection order, all proceedings stayed by the order may be continued, and all remedies may be pursued for the payment of all amounts accrued due at the time of the making of the order under the lease or mortgage of the dwelling or becoming due (subject to section ten) whilst the order was in force, together with interest calculated at a rate to be fixed by the Commissioner not exceeding six pounds per centum per annum during the operation of the order on the amount of any rent or interest affected thereby:

Effect of termination of protection order.

Provided that the amount aforesaid shall be payable by such reasonable instalments (if any) as a Commissioner may see fit to order.

12. (1.) A Commissioner may order that during the operation of any protection order payment of rates or taxes, imposed on or in respect of the dwelling affected by the order, which have become due since, or within twelve months immediately preceding the making of the order, shall not be enforced against the landlord or mortgagee by the State Government or by any local authority.

Protection of landlord or mortgagee against rates and taxes.

(2.) In this section "State Government" includes any corporation or person which or who is an instrumentality of, or represents, such Government, and "local authority" includes a municipal corporation, a road board, and a local board of health.

(3.) A Commissioner may at any time revoke any order made under this section either wholly or as to any particular sum that may be due for rates or taxes.

Orders for Relief in respect of Payment of Principal Moneys.

Power to grant relief to mortgagors.

13. (1.) A mortgagor who has made default in payment of any principal moneys secured by any mortgage, or who is able to prove that he will not be able to pay on the due date any such principal moneys, may apply to a Commissioner for relief.

(2.) After hearing the party or parties appearing before him, the Commissioner may either refuse or grant an order for relief to the mortgagor, and such order may, if the mortgagee has taken possession of the dwelling, include a direction to relinquish such possession:

Provided that no order for relief made hereunder shall extend or apply to any principal moneys which became due and payable before the first day of October, nineteen hundred and thirty; and references to principal moneys in the sections of this Act relating to orders for relief shall not be deemed to extend to principal moneys which became due and payable before the date aforesaid.

(3.) An order for relief shall remain in force until it is cancelled or set aside by an order of a Commissioner or of a judge, or until the expiry of this Act.

Effect of order of relief.

14. (1.) Whilst the order for relief remains in force the mortgagee shall not without the leave of a judge—

- (a) call up or demand payment from the mortgagor of the whole or any part of the principal moneys secured by the mortgage;
- (b) commence or continue any action or proceeding for the recovery of any principal moneys due under the mortgage or the enforcement of any judgment for any such moneys;
- (c) exercise any power of sale;

- (d) obtain or take or keep possession of the dwelling comprised in the mortgage;
- (e) commence or continue any action, proceeding, or application for foreclosure, or exercise any power to cancel or determine any rights of the applicant in respect of the dwelling.

(2.) In the case of an agreement for sale, if the vendor has cancelled the agreement and terminated the right of purchase, the Commissioner may annul the vendor's action and reinstate the agreement and the rights of the applicant thereunder.

15. (1.) Applications to a judge for leave to proceed, notwithstanding an order for relief, shall be made in the prescribed manner, and in dealing with any such application the judge may either grant the application on such terms and conditions (if any) as the judge thinks fit, or refuse the application.

Applications for leave to proceed.

(2.) In dealing with any such applications the judge shall have regard to all the circumstances of the case, including the ability of the mortgagor to redeem the property out of his own moneys, or out of moneys which he is able to borrow, the nature and condition of the security, the hardship that may be suffered by the mortgagee in the event of refusal, and the conduct of the mortgagor.

General.

16. A protection order or order for relief shall not prevent the enforcement by appropriate measures or proceedings of the covenants or agreements in a mortgage or lease, in so far as they do not provide for the payment of moneys with respect to which the order is intended to be operative; but so that the landlord or mortgagee shall not, contrary to any provision of this Act, demand or compel payment of moneys to which the order does extend, or cause the dwelling to be sold or the tenant or mortgagor to be dispossessed thereof, or the estate, interest, or rights of the tenant or mortgagor therein to be foreclosed, forfeited, cancelled or terminated."

Protection orders and orders for relief not to be a general bar to enforcement of covenants.

17. No period of time during which any protection order or order for relief is operative shall be taken into account in computing the time limited by any statute of limitations in relation to any claim affected by the order, or in computing the

Period of suspension of rights not to be taken into account in computing time.

time within which any right, claim, proceeding or process affected thereby ought to be enforced, exercised, commenced, continued or executed.

Order may be obtained against superior mortgagee.

18. (1.) In case a landlord or vendor, against whom a protection order or order for relief is in operation in respect of any dwelling, has mortgaged such dwelling to another person (hereinafter called the "superior mortgagee"), then the tenant or purchaser, on whose application the order was granted, may apply to a Commissioner to prohibit, during the operation of the order, the superior mortgagee, or any person claiming through or under him, from disposing of or dealing with the dwelling or taking any measures or proceedings in respect thereof, except subject to the tenant's or purchaser's rights as against such landlord or vendor, and so as not to interfere with the exercise and enjoyment of such rights.

(2.) An order made under this section shall be subject to such conditions (if any) as the Commissioner may think fit to prescribe, and shall have effect according to its tenor, and shall be observed by the superior mortgagee and every person claiming through or under him.

(3.) An order made under this section may be revoked by a Commissioner at any time.

Provision in case mortgage money is repayable by instalments.

19. Where by the terms of a mortgage payment is provided by a series of regular instalments, and the rate of interest is not fixed in the mortgage or the instalments are expressed to be for the principal only and interest is stated not to be payable, the instalments shall for the purpose of the making of any order by a Commissioner under this Act be deemed to include interest at such rate as is assessed by the Commissioner.

Regulations to provide for notice of applications being given to interested parties.

20. (1.) The regulations to be made under this Act shall provide for at least seven days' notice being given to all parties interested of any applications to be made under this Act, and for any interested parties attending the hearing or their solicitors or counsel being heard and allowed to take part in the proceedings.

(2.) Substituted service of notices may, however, be prescribed in cases in which it is impracticable, or would cause undue delay, to effect actual service on any party.

Orders under this Act to be final and to be judicially noticed.

21. (1.) Any order or decision of a Commissioner or judge in any matter arising under this Act shall be final and without appeal.

(2.) Judicial notice shall be taken of all orders made under this Act.

22. (1.) Any person contravening any provision of this Act, or any order made thereunder, by act or omission, shall be guilty of an offence and liable on summary conviction to a penalty not exceeding twenty pounds. Infractions of this Act.

(2.) Any act, measure or proceeding done or taken in contravention of this Act, or any order made thereunder, shall be deemed to be invalid and illegal.

23. The Registrar of Titles may, upon the submission to him for registration of a transfer of land on sale by the mortgagee thereof, require such evidence as he deems necessary that the sale sought to be given effect to by the transfer does not contravene any provision of this Act, and may refuse to register such transfer until such evidence is submitted to him. Transfers of land on sale by mortgagees.

24. The parties to any contract made or entered into after the date of the commencement of this Act may exclude the operation thereof as between themselves; but this Act shall be operative and have effect notwithstanding the terms of any contract made or entered into before such date. Exclusion of Act.

25. The costs of any application to a judge or Commissioner under this Act shall be in his discretion, and any order for costs made hereunder may be enforced as an order of the Supreme Court, but a Commissioner shall have no power to award or allow costs in connection with the granting or refusal of any protection order or any application for such an order. Costs.

26. No fees shall be exacted by any Government department or officer for any act done or services performed under this Act in connection with or for the purposes of a protection order or an application for such an order. No fees to be taken.

27. Any moneys required for the administration of this Act shall be paid out of such moneys as may be appropriated by Parliament for the purpose. Financial provision.

28. The Governor may make such regulations as it may be necessary or convenient to make in order to provide for the effective operation of this Act or to facilitate the carrying out of the objects thereof. Regulations.

Duration of
orders.

29. (1.) No protection order shall be made under this Act after the thirty-first day of December, nineteen hundred and thirty-one, but such an order may, subject to this Act, be extended at any time or to any time after the said date; provided that no such order as aforesaid shall be operative after the thirty-first day of March, nineteen hundred and thirty-two.

(2.) No order for relief shall be operative after the thirty-first day of March, nineteen hundred and thirty-two.
