

# STATUTORY RULES.

1916. No. 284.

## REGULATIONS UNDER THE WAR PRECAUTIONS ACT 1914-1916.

SIR ARTHUR STANLEY, Governor of the State of Victoria and its Dependencies, in the Commonwealth of Australia, acting as the Deputy of the Governor-General in accordance with the provisions of the Constitution, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *War Precautions Act 1914-1916* to come into operation forthwith.

Dated this tenth day of November, 1916.

A. L. STANLEY,  
Deputy of the Governor-General.

By His Excellency's Command,

G. F. PEARCE,  
Minister of State for Defence.

### WAR PRECAUTIONS (MORATORIUM) REGULATIONS.

1. These Regulations may be cited as the War Precautions (Moratorium) Regulations. Short title.

2. In these Regulations, unless the contrary intention appears— Definitions.

“Mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for payment of moneys or for the performance of any contract is granted over land or chattels or any interest therein respectively, and includes an equitable mortgage by deposit of title deeds, and any document by which the duration of a mortgage is extended;

“Mortgagor” means the person liable under the provisions of a mortgage, and includes any person who has guaranteed the performance by the mortgagor of any covenant, condition, or agreement expressed or implied in the mortgage, whether such guarantee is expressed in the mortgage or in any other instrument;

“Mortgagee” means the person entitled to the benefit of the security of any mortgage;

“Supreme Court” means the Supreme Court of a State;

“The Court” means the High Court or the Supreme Court of a State, or in the case of a mortgage in which the principal sum does not exceed Two thousand pounds, a County or District Court or a Local Court of Full Jurisdiction;

“The rate provided in the mortgage” means the rate of interest provided in the mortgage, or, where there is provided in the mortgage a reduced rate of interest in the case of punctual payment, the reduced rate; and shall not in any case be construed to refer to any increased rate of interest stipulated to be paid in any contingency.

Regulations not to apply to certain fluctuating trading advances.

3. These Regulations shall not apply to any fluctuating trading advance exceeding Two thousand pounds which is made by way of bank overdraft secured by a mortgage, unless the High Court or the Supreme Court, upon the application of the mortgagor, determines that having regard to the matters mentioned in sub-regulation (5) of Regulation 3 of these Regulations it is desirable that these Regulations should apply.

Limitation of rights of mortgagees.

4. (1) A mortgagee shall not, without leave of the Court—
- (a) call up or demand payment from any mortgagor of any part of the principal sum secured by the mortgage;
  - (b) exercise any power of sale;
  - (c) commence any action or proceeding, or continue any action or proceeding commenced after the twentieth day of September, One thousand nine hundred and sixteen, for breach of any covenant, agreement, or condition expressed or implied in any mortgage other than a covenant, agreement, or condition for—
    - (i) the payment of interest, or
    - (ii) the insurance, maintenance, or cultivation of the mortgage property, or the payment of rates, taxes and other charges, or the doing of any acts for the preservation of the security;
  - (d) commence any action or proceeding, or continue any action or proceeding commenced after the twentieth day of September, One thousand nine hundred and sixteen, for interest at any rate higher than the rate provided in the mortgage or the rate payable under Sub-regulation (7) of this Regulation, as the case may be; or
  - (e) take any steps for obtaining an order for foreclosure or possession or occupation.

(2) Application for the leave of the Court may be made by motion with notice to such persons as the Court considers entitled thereto, or *ex parte* in any case in which by reason of special circumstances the Court considers such procedure to be just and equitable.

(3) Any such application may be made to and disposed of by Justice or Judge in chambers.

(4) In dealing with any application for leave under this Regulation the Court may, subject to this Regulation—

- (a) grant the application on such terms and conditions (if any) as the Court thinks fit; or
- (b) refuse the application.

(5) In any case where, after the date fixed by the mortgage for payment of the principal sum, the principal sum or any part thereof remains unpaid, and the Court is of opinion that the mortgagor is unable to redeem the property, or to repay a portion of the principal sum, as the case may be, either from his own moneys or by borrowing at a rate of interest not exceeding six per centum per annum, the Court shall not grant leave to take any proceedings for such redemption or repayment unless the Court is satisfied—

- (a) that, by reason of the wasting nature of the security, the continuance of the mortgage would seriously affect the security; or

(b) that the conduct of the mortgagor has, in respect of any breaches by him of the covenants of the mortgage, or in respect of any matter affecting the rights or remedies of the mortgagee, or in respect of dealings with the mortgagee, been such as to render him undeserving of the benefit or protection of these Regulations.

(6) The decision of the Court upon an application for leave under this Regulation shall be final and conclusive and without appeal.

(7) In any case where after the due date for repayment of the principal sum or any part thereof, the principal sum or part remains unpaid, the time for repayment of the principal sum or part shall, unless and until an application for leave is dealt with by the Court under this regulation, be by force of these Regulations extended upon the terms that interest shall continue to be payable at the close of the same intervals of time as are provided by the mortgage with respect to the interest thereby secured, or, if no provision is so made, then quarterly, and at the following rate:—

(a) in the case of a mortgage of which the principal sum or unpaid part does not exceed Two thousand pounds—the rate provided in the mortgage, or the rate of six per centum per annum, whichever is the less; and

(b) in the case of a mortgage of which the principal sum or unpaid part exceeds Two thousand pounds—the rate provided in the mortgage, or six per centum per annum, whichever is the greater:

Provided that in the latter case the Court may, on the application of the mortgagor, fix a lower rate, not being lower than the rate provided in the mortgage or six per centum per annum, whichever is the less.

5. In every action or proceeding by a mortgagee for the recovery of any sum for interest secured by a mortgage, the Court hearing the action or proceeding may, if in its discretion and in the circumstances of the case it deems it just and expedient, in lieu of giving judgment for immediate payment, give judgment for payment at a date to be fixed, or by instalments payable at such times as the Court in its discretion determines, and for this purpose the Court shall have jurisdiction to cause judgment to be entered in such form as it deems best to give full effect to the intent of these Regulations, and to direct the method of enforcement of the judgment.

Jurisdiction of Court in actions for recovery of interest secured by mortgage:

6. 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 principal only and interest is stated not to be payable the instalments shall for the purposes of these Regulations be deemed to include interest at such rate as is assessed by the Court.

Where mortgage repayable by instalments.

7. Where a mortgage provides for the payment of the principal sum on demand, and a demand has not at the commencement of these Regulations been made, the principal sum shall for the purpose only of these Regulations be deemed to be payable immediately after the commencement of these Regulations.

Mortgages payable on demand.

8. (1) Notwithstanding anything contained in the preceding Regulations, any mortgagee in possession, who entered into possession on or before the twentieth day of September, 1916, may exercise all his powers under the mortgage without leave of the Court: Provided that, on the application of the mortgagor, the Court may, if in all the circumstances it thinks it just and equitable so to do, forbid the mortgagee from exercising any power of sale or of foreclosure, and may otherwise make such order in the premises as it thinks fit.

Mortgages in possession.

(2) The provisions of Sub-regulations (2), (3), (4) and (6) of Regulation 4 of these Regulations shall apply to any such application in like manner as they apply to applications for the leave of the Court under Regulation 4.

Consent by mortgagor to exercise of powers by mortgagee.

9. (1) When a mortgagor is entitled to the benefit or protection of these Regulations, he may consent to the exercise by the mortgagee of any power, but such consent shall not take away the necessity of the leave of the Court, unless the consent is in writing and witnessed by a solicitor of the High Court or the Supreme Court, who certifies in writing that the consent is given by his advice.

(2) If consent is given and certified, the leave of the Court shall, so far as the consent extends, be unnecessary.

Extension of Regulations to agreements for sale and purchase of land and to leases containing a purchasing clause.

10. (1) The provisions of these Regulations shall extend and apply *mutatis mutandis*, to agreements for sale and purchase of land (including exchange), and to leases of land containing an optional or compulsory purchasing clause.

(2) For the purposes of these Regulations an agreement for sale and purchase of land shall be deemed to be a mortgage of such land to secure payment of the unpaid purchase-money and interest thereon, and fulfilment of the conditions set forth in the agreement.

(3) For the purposes of these Regulations a lease of land containing a purchasing clause shall be dealt with in all respects as if the lessee had already notified his exercise of an option to purchase under an optional purchasing clause, and as if the lessor were mortgagee and the lessee were mortgagor of the land, and as if the rent reserved by the lease were interest and the agreed purchase-money were principal-moneys secured. The term of the lease shall, if necessary, be extended for the purpose of giving effect to this provision.

11. Notwithstanding anything contained in these Regulations these Regulations shall not apply to—

- (a) any mortgage, or an agreement for sale and purchase, or any lease containing an optional or compulsory purchasing clause, which is executed after the twentieth day of September, One thousand nine hundred and sixteen, if the mortgage agreement or lease contains a condition or covenant expressly excluding the provisions of these Regulations; or
- (b) any agreement for the sale and purchase of leasehold interests in land only, whether such agreement was entered into before or after the twentieth day of September, One thousand nine hundred and sixteen; but this provision shall not extend so as to exclude from the provisions of these Regulations agreements for the sale and purchase of land partly freehold and partly leasehold; or
- (c) any transaction in relation to which any member of the Forces or a female dependant is entitled to any benefit or protection under the provisions of Statutory Rules 1916, No. 163, as amended by any subsequent regulations; or
- (d) any mortgage to secure the repayment of a loan without interest granted by a Starr-Bowkett Society to one of its members.

12. Regulation 15 of the War Precautions (Supplementary) Regulations (Statutory Rules 1916, No. 250 as amended by Statutory Rules 1916, Nos. 254 and 271) is hereby repealed.

Authorised Version C1916L00284 registered 10/09/2022