

CENTRAL HOUSING COMMITTEE
Interior Building
Washington

Sub-Committee on Law and Legislation

April 4, 1936.

Mr. Frederic A. Delano
Chairman
Central Housing Committee
Washington, D. C.

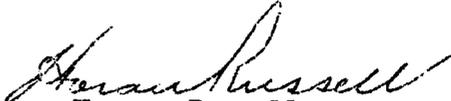
Dear Mr. Delano:

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The Sub-Committee on Law and Legislation, having made an intensive study of existing foreclosure procedure and costs in the forty-eight States and the District of Columbia, and emergency moratorium legislation in said jurisdictions, as evidenced by the digests of State foreclosure and moratorium legislation, transmitted herewith and marked Appendices I and II, now makes a special report to the Central Housing Committee on the "Social and Economic Effects of Existing Foreclosure Procedure and Emergency Moratorium Legislation", which is attached hereto.

The digests of State foreclosure and moratorium legislation, attached as appendices, have already been forwarded to each agency for the use of their legal staffs.

Sincerely yours,


Horace Russell
Chairman

SPECIAL REPORT NO. 1

ON

SOCIAL AND ECONOMIC

EFFECTS OF

EXISTING FORECLOSURE PROCEDURE

AND

EMERGENCY MORATORIUM LEGISLATION

Submitted
to
Central Housing Committee
by its
Sub-Committee on Law and Legislation

April 2, 1936.

DIVERSITY OF STATE FORECLOSURE LAW AND PROCEDURE
AND EMERGENCY MORATORIUM LEGISLATION

Differences in the Relative Rights of Debtors and Creditors under State Foreclosure Laws

Our study of the foreclosure and moratorium laws in the various states reveals differences which have a decided effect upon the relative rights of mortgagors and mortgagees in the different sections of our country. In some jurisdictions the laws require complicated and expensive foreclosure proceedings before the property can be brought to sale; and in others they provide long redemption periods after foreclosure sale before possession and a clear title can be acquired by the lender or other successful bidder. On the other hand, the laws of some states permit quick foreclosures by unregulated power of sale with no redemption. It is obvious that in these latter jurisdictions the rights of a mortgage borrower, after a default in the performance of his obligations under the mortgage, are relatively less than in those jurisdictions where foreclosure proceedings are complicated and expensive, or where a period of redemption must elapse before the borrower's rights in the mortgaged property can be finally terminated.

Diversity of Foreclosure Procedure

A general survey indicates that in twenty-eight states foreclosure is by action in court. Ten states use unregulated power of sale. Five states use regulated power of sale, and the remaining states have various other methods. Thirty-one states provide a redemption period ranging from four months in Oregon to two years in Alabama. Seventeen states have no redemption period, but, of these, eight use foreclosure in court which requires months to complete.

Social and Economic Justice of Moratorium Legislation

Twenty-three states have some form of moratorium legislation, which usually takes the form of postponing the foreclosure, extending the redemption period, or abolishing or limiting the right to deficiency judgments. There is no question but that such emergency laws have arisen because depressed economic conditions prevailing throughout the country greatly increased the number of mortgagors who were unable to fulfill their contracts. These laws may be regarded as having been enacted on the following social and economic basis.

The unrestricted foreclosure of farm and home mortgages under the circumstances prevailing at the time when the moratorium laws were initiated would have deprived large numbers of persons of essential shelter and protection, and would have left them without the necessary means for earning a living. Such wholesale evictions might have seriously endangered basic interests of society. Not only was there the possibility that a large class of dispossessed persons might have been created unable to make

their own way in society, but there was also the possibility that the security value of real estate might have been permanently impaired through the continuance of depression conditions. To meet this emergency situation the moratorium laws were passed.

Nearly all moratorium statutes expressly provide that the income obtained from the property during the period while the mortgagor holds possession, or the fair value of the rental which might have been obtained for it, shall be turned over to the mortgagee or used for the payment of taxes and upkeep on the mortgaged property. In this way a compensation is afforded the mortgagee for the enforced suspension of his right to foreclose.

Moratorium legislation has been a product of depression conditions. It has been justified by the courts on the ground that in an emergency, such as that created by the depression, the legislature may authorize a reasonable moratorium to protect the vital interests of the community. Accordingly it is to be expected that such legislation will disappear with the passing of the emergency which called it into being.

Dealings in Mortgage Credit Retarded by Diversified and Uneconomic Foreclosure Legislation

Of the more permanent foreclosure laws, the extreme diversity itself undoubtedly has some tendency to retard and limit interstate dealings in mortgage securities. The hazards and administrative expense of large insurance companies and other mortgage loan institutions operating on a national basis are necessarily increased by wide variations in the rights and remedies incident to foreclosure, regardless of the advantages or disadvantages under the laws of any particular state.

However, the more important effects of state foreclosure laws in retarding interstate dealings in mortgage credit, and intrastate dealings as well, are to be found in those instances where the enforcement of the debt against the security involves burdensome conditions and long delays for the lender, or where the process of foreclosure entails excessive hazards and risks for the borrower. Statutes which provide a lengthy, expensive, complicated or otherwise burdensome foreclosure procedure, or which interpose a long period of redemption before title and possession to the mortgaged property can be obtained, have a tendency to increase interest rates and security requirements throughout the jurisdiction, since prospective lenders naturally take into account the procedure available for realizing the debt out of the security when determining the conditions on which they will be willing to make loans. If, on the other hand, the notice requisite for a foreclosure sale in a particular jurisdiction is not such as to give the mortgagor a reasonable opportunity to be present at the sale and to protect his equity by bidding, or if foreclosure otherwise subjects the mortgagor to hazards and risks which are unnecessary for the protection of the mortgagee, prudent landowners may be expected to abstain from borrowing on mortgage security except in cases of absolute necessity.

Greatest Diversity in Foreclosure Law Found in Provision for Period of Redemption

The feature of mortgage and foreclosure law which has perhaps the widest variation and the most direct effect on the rights of the parties is that dealing with redemption by the mortgagor. It is the essence of every mortgage that, upon payment of the debt to the mortgagee in compliance with its terms, the title to the property will remain indefeasible in, or will revert to, the mortgagor or his assigns. This distinguishes a mortgage from a sale. If the mortgagor does not pay the debt on the day fixed it is clear that the lender should not be compelled to wait more than a reasonable time before receiving payment or title to the property in lieu thereof. It is also clear that sufficient advance notice of the sale of the property must be given the mortgagor and the general public if there is to be competitive bidding at the foreclosure sale. The foreclosure statutes in force in many states are framed on the principle that the mortgagee should give adequate notice and that the borrower should have a reasonable time in which to pay the debt before losing his property. However, the various interpretations of what constitutes a reasonable time and the diversity of the means used for obtaining it complicate the problem.

There is a clear distinction between the equity of redemption and a statutory right of redemption after foreclosure. The equity of redemption is that interest in the land which is held by the mortgagor before foreclosure, while the right of redemption is not an interest but a mere personal privilege given by the statute to the mortgagor after the land has been sold.

Some states prolong the equity of redemption by requiring that a certain time elapse between the commencement of foreclosure proceedings and the sale thereunder. In Indiana, this period is one year and replaces the old right of redemption after foreclosure in that state. It has been contended that a right of redemption after foreclosure is undesirable because of its tendency to decrease bidding at sales, since the purchaser's title is inferior to the mortgagor's right of redemption. There appears to be considerable force to this argument when value and market conditions are such as to attract purchasers generally.

In a majority of those states where a period of redemption has been provided the legislature has chosen, however, to create a right of redemption after foreclosure, rather than to prolong the equity of redemption before sale. Some of the statutes fix the redemption price at the amount of the mortgage debt and others at the amount bid for the property on the sale. In support of statutes giving a period of redemption after foreclosure and fixing the redemption price to agree with the amount bid at the sale, rather than with the amount of the debt, the following argument has been made. When the mortgagor's interest is completely cut off by the sale, the mortgagee, who in most instances is the purchaser, will try to bid in the property at a figure lower than the debt secured, and then endeavor to obtain a deficiency judgment against the mortgagor for the balance. But when a redemption period after the sale is allowed during which the property may be redeemed for the amount of the successful

bid, the mortgagee will bid in the property for at least the full amount of the debt, provided the security is adequate, for, as the mortgagor or junior lienors can redeem the property for the amount bid, the mortgagee, were he to bid less than the debt, would be left with an unsecured claim for the difference upon redemption.

Foreclosure by Regulated Power Sale.

Some states prolong the equity of redemption by requiring complicated and cumbersome foreclosure proceedings. These involve expenses and uncertainties in connection with the title which benefit no one. A foreclosure outside of court under an unregulated power of sale may, on the other hand, result in the mortgagor being deprived of his property without the notice requisite for judicial foreclosures and without adequate opportunity to secure the protection of competitive bidding at the sale. Through statutory regulation of the power of sale it is possible, however, to establish a foreclosure procedure which is simple, rapid and inexpensive; which affords the mortgagee an efficient remedy against the borrower and the security; which avoids possible uncertainties in the title; and which, at the same time, satisfies the mortgagor's wish for reasonable notice of the sale in order that he may have an opportunity to protect his equity in the property and avoid an unwarranted or excessive deficiency judgment. Under the regulated power of sale procedure the legislature may also make such provision for a period of redemption before or after sale as may appear reasonable under the circumstances.

RECOMMENDATION OF THE SUB-COMMITTEE ON LAW AND LEGISLATION: Adoption by the States of Carefully Drawn Uniform Mortgage and Foreclosure Legislation in order to Eliminate Diversity of Foreclosure Procedure, to Provide Greater Social and Economic Justice Between Mortgagors and Mortgagees and to Facilitate Dealings in Interstate Mortgage Credit.

In 1927 the National Conference of Commissioners on Uniform State Laws drafted a proposed uniform mortgage act which was approved by the American Bar Association, the National Association of Real Estate Boards, the American Title Association, the Association of Life Insurance Counsel, the Farm Mortgage Bankers Association, and counsel for Federal and Joint stock land banks. While a few states have incorporated some of the major features of the uniform act into their mortgage and foreclosure laws, no state has as yet adopted it fully. One probable reason for this failure is the almost equal division of opinion among the states as to the desirability of a period of redemption after foreclosure and the similar division of opinion as to the benefits of foreclosure under power of sale.

This Sub-Committee has made an intensive study of this proposed uniform law and it is in agreement with the National Commissioners as to the desirability of having a carefully drawn uniform real estate mortgage and foreclosure law in force in all of the states which would facilitate the

interstate flow of mortgage credit. However, the Sub-Committee is not of the opinion that the proposed uniform law will in all respects accomplish these objectives. Accordingly, it proposes to draft a uniform law which in its opinion, will afford a proper vehicle for the accomplishment of these purposes. This draft will be submitted to the Central Housing Committee in a subsequent report.

In view of the present diversity of local opinion upon the procedure which should be followed in foreclosing mortgages on real property, as evidenced by the many major and minor variations in the foreclosure laws of the several states as well as by the failure of the proposed uniform mortgage act to obtain legislative recognition, this Sub-Committee recognizes the difficulties and delays which will be encountered in procuring the enactment of uniform mortgage legislation. Accordingly, this Sub-Committee further recommends that the foreclosure and mortgage laws now in force in the several states be studied with a view to ascertaining in what respects particular amendments in the laws of individual states would facilitate interstate or intrastate dealings in mortgage credit or tend to promote sound and equitable relations between mortgagors and mortgagees, taking into account the conditions existing within the state under consideration. In the opinion of this Sub-Committee, specific studies of this character offer more immediate prospects for the establishment of mortgage credit transactions on sound foundations than any other course of action which this Sub-Committee has considered. At the same time, such studies will further the efforts to procure uniform legislation in those states which are unwilling to enact such legislation at present.

Acknowledgment.

This report on the "Social and Economic Effects of Existing Foreclosure Procedure and Emergency Moratorium Legislation", has been prepared for your Sub-Committee on Law and Legislation by Mr. Burton C. Bovard, Counsel, Federal Housing Administration.

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SUB-COMMITTEE ON LAW AND LEGISLATION

DAVID A. BRIDEWELL, SECRETARY

APPENDIX NO. I

to the
Sub-Committee on Law and Legislation's
SPECIAL REPORT NO. 1
to the
Central Housing Committee

DIGEST

OF

STATE MORTGAGE MORATORIUM LEGISLATION

AND

JUDICIAL INTERPRETATION OF SAME

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(Compiled on May 15, 1935, and revised on August 20, 1936, by David A. Bridewell, Attorney, Federal Home Loan Bank Board, from statutes listed in Loose Leaf Service of Commercial Clearing House, Inc.; National Housing Service of Prentice-Hall, Inc.; the individual statutes of the various states; judicial interpretation of the various statutes compiled from cases found in the various advance sheets of the reports, and in the Current Digest of the West Publishing Company.)

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PREFACE

Emergency legislation in aid of mortgage debtors may be roughly classified as follows:

1. Laws prohibiting foreclosures and sales thereunder until a certain date or for a reasonable time in the discretion of the court:

Arizona, California, Delaware, Idaho, Illinois, Iowa, Louisiana, Michigan, Montana, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, and Wisconsin.

2. Laws extending the period of redemption on mortgages in foreclosure. Most of this legislation is discretionary in form, providing that the courts may, upon proper showing, extend the redemption period for a reasonable time or for a definite period, usually from one to two years. Strictly speaking, these statutes extending the redemption period are not moratoria, but they have been treated briefly in the compilation which follows because they are usually a part of the mortgage moratoria statutes.

Iowa, Kansas, Michigan, Minnesota, New Hampshire, South Dakota.

3. Laws abolishing deficiency judgments after foreclosures. North Dakota has abolished deficiency judgments entirely, while South Carolina has abolished them in foreclosures of purchase money mortgages and deeds of trust.
4. Laws limiting the right to a deficiency judgment by requiring the sale of the mortgaged property to be based on the "fair", "reasonable", "just", or "equitable" value of the property. The purpose of such legislation is to provide a means whereby the property might satisfy the debt, even though depressed real estate values make this impossible if the sale progresses normally. Most of these statutes empower the courts to deny confirmation of foreclosure sales where the "fair market value" of the property was not bid. For instance, in Idaho deficiency judgments in an amount greater than the difference between the debt and the cost, and the reasonable value of the property, are prohibited. In Michigan and Wisconsin, the courts may fix a minimum price at which the property can be sold. Other States have set up local Appraisal Boards to pass upon the property

sold and set the price at which it may be sold. While these measures, like the moratoria proper, are usually passed under emergency power, they are not limited in most instances by an expiration date, and hence, will, unless repealed, constitute a permanent change in foreclosure practice.

Arkansas, Arizona, California, Idaho, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Texas and Wisconsin.

In connection with a study of these emergency mortgage moratorium statutes, it should be kept in mind that the Supreme Court of the United States, on Jan. 8, 1933, handed down a decision in the case of Home Building and Loan Assoc. v. John H. Blaisdell and Rosella Blaisdell, his wife, 54 S. Ct. 231, 290 U.S. 398, upholding the mortgage moratorium law of Minnesota.

ALABAMALaw Limiting Right to Deficiency Judgment

Legal actions, pending or instituted before October 1, 1939, for recovery of debts secured by any mortgage or lien on real estate, must be stayed until mortgage or lien is foreclosed. Debtor may set off fair market value of the security. (Laws of 1935, H.B. 422, effective June 24, 1935.)

Constitutionality upheld in Mutual Building & Loan Assn. v. Moore, Admr. (Ala. Sup. Ct., June 11, 1935.)

ARIZONALaws Prohibiting Foreclosures

In pending or future real estate mortgage foreclosure suits, the court may order a two-year continuance unless good cause to the contrary is shown. (Chapter 29, Laws of 1933. Approved and Effective March 4, 1933).

Laws Limiting Right to Deficiency Judgment

No deficiency judgment may be given plaintiff in foreclosure suit unless it is proved that, at the time the note and mortgage were executed, the value of the property was in excess of the amount remaining due on the note. (Chapter 88, Laws of 1933. Approved March 18, Effective June 13, 1933).

ARKANSASLaws Postponing Defendant's Answer in Foreclosure Proceedings

Answers in suits to foreclose mortgages, deeds of trust, or pledges, executed prior to January 1, 1933, shall not be due until three months after service of summons or publication of warning order. In fixing date of sale and confirming sale, court shall consider the condition of debtor, economic conditions, and the fair price of the property. Provisions of Act do not apply to mortgages, deeds of trust, or other liens executed subsequent to January, 1933. (Act No. 21, Laws of 1933, Approved and Effective, February 9, 1933, as amended by Act No. 49, Laws of 1935. Approved and Effective February 18, 1935).

ARKANSAS (Continued)

Laws Abolishing Deficiency Judgments

Deficiency judgments abolished by requiring mortgages to bid amount of loan plus interest and cost (or fair value of the property if the value was more than the loan) in foreclosure proceedings. (Act No. 57, Laws of 1933, Effective February 25, 1933).

This Act held unconstitutional, as violation of United States Constitution, Article 1 - Section 10, and Constitution of Arkansas, Article 2 - Section 17, in Adams v. Spillyard, et al., 61 S. W. (2d) 686.

CALIFORNIA

Laws Postponing Foreclosures

Until January 1, 1934, sales under a power of sale in a mortgage or deed of trust or decree of foreclosure of real property, improved with a single family dwelling, in cases where default in payment of principal only exists, are prohibited. (Chapter 263, Laws of 1933, Effective May 9, 1933, Chapter 1057, Laws of 1933, Effective August 29, 1933).

Until February 1, 1935, sales under certain mortgages and deeds of trust, except mining property and the foreclosure of vendee's interest under certain contracts of purchase, for default in payment of principal only, are prohibited. The statute of limitation on such obligations is extended. Permits avoidance of sale or forfeiture and postpones sales for default of installment payments until after effective date, February 1, 1935, and prevents actions against guarantor's obligations and the enforcement of security which is effected by the Act. (Chapter 1, Session Laws of 1934, Approved September 15, 1934).

This Act was construed in Trompeter and Company (O.V.) v. Superior Court, County of Los Angeles, California, 80 Cal. App. Div. 961.

Until September 1, 1935, in the foreclosure of a mortgage or deed of trust, the court may provide that the sale of the property shall not be held until or after such date as the court considers just and equitable, but in no event later than September 1, 1935. Statute of limitation extended. (Assembly Bill No. 23, Laws of 1935, Approved and Effective about February 1, 1935).

Petition for Postponement of Sale

Mortgagor or trustor under certain deeds of trust may, within 90

CALIFORNIA (Continued)

days after notice of default, or within 30 days after July 21, 1935, but not later than January 1, 1937, petition for postponement of sale. Court may postpone sale not later than February 1, 1937. Redemption period may be extended to February 1, 1937. (Chap. 348, Laws of 1935, Effective June 21, 1935. Repeals Chap. 1, Laws of 1934, Effective September 15, 1934, and Chap. 7, Laws of 1935, Effective January 31, 1935.)

In re Porter (Superior Court, Los Angeles County, California, July 31, 1935) held unconstitutional Chap. 348 insofar as it applied to a postponement of sale under chattel mortgage, but upheld the provisions relating to real property.

Bank of America v. Pierson (Superior Court, Los Angeles County, Calif., 1935) upheld constitutionality of c. 34B, Laws of 1935.

Laws Limiting Right to Deficiency Judgment

Deficiency judgments after foreclosures limited to the amount by which the debt exceeds the fair market value of the property. No deficiency judgment when the mortgage or deed of trust was executed to secure all or any portion of the purchase price of the property to which such mortgage or deed of trust applies. Until thirty days after Approval and Effective date of this Act, no sale or decree of foreclosure. Where period of redemption has not expired, same may be extended until September 1, 1935. This Act does not apply to mortgages executed subsequent to the effective date of the act. (Chapter 793, Laws of 1933, Approved and Effective August 21, 1933).

This act held unconstitutional in Bennett v. Superior Court of Los Angeles County, et al., on February 27, 1935, 42 Pacific Reporter, 2d Series 80 - Advance Sheet, as impairing obligation of contracts.

COLORADO

There is no mortgage moratorium law in this State.

CONNECTICUT

No mortgage moratorium laws were passed during the emergency period in this State, probably because foreclosure provisions of the statute of the State provide that the court has the right to set the time within which the defendant must pay or be barred. Such provisions, of course, give the court the discretion to extend the period of redemption, which is provided for by the current legislation in other States.

DELAWARE

Law Extending Time for Execution Process

Execution process may be stayed for six months when application has been made to the Home Owner's Loan Corporation for refunding of the mortgage. (Chapter 39, Second Special Session, 1933, Approved December 18, 1933, Expired March 1, 1935).

DISTRICT OF COLUMBIA

No emergency mortgage moratorium legislation has been enacted in the District.

FLORIDA

No emergency legislation in aid of mortgage debtors has been passed by this State.

The Supreme Court of this State has held, in a recent case: "In the absence of mortgage moratorium statute, courts are without authority to extend redemption period in foreclosure proceedings and to stay such proceedings during periods of economic depression." -- Morris v. White, 160 So. 516.

GEORGIA

As foreclosure laws are lenient on mortgagor, providing for a long period in which mortgagor may pay before decree given and as mortgagor may redeem at any time within ten years from last recognition by mortgagee of right of redemption, the Legislature of this State evidently determined that no emergency mortgage moratorium legislation was necessary.

IDAHO

Law Suspending Real Estate Mortgage Foreclosures

Until December 31, 1934, the Governor was authorized to declare legal holidays limited to certain businesses and activities for one or more periods not to exceed more than sixty days each. (Chapter 124, Session Laws of 1933, Approved March 2, 1933.)

IDAHO (Continued)

On July 18, 1934, the Governor of the State issued proclamation effective midnight of that date until September 15, 1934, declaring a legal holiday with respect to foreclosure of mortgages upon real estate and foreclosure or cancellation of contracts for the sale of real estate. The District Courts and Judges were empowered and authorized to suspend any or all proceedings of the above nature upon application of any defendant in any such action. This proclamation of the Governor suspending real estate mortgage foreclosures was held unconstitutional in *Alliance Trust Company v. Hall*, 5 F. Supp. 285.

Court may extend action for foreclosure of a mortgage on real estate until March 1, 1937. Execution of deed to property already sold at sheriff's sale may be prevented until March 1, 1937. This act not applicable to mortgages pledged to secure payment of public debt or deposit of public funds. (Chapter 36, Laws of 1935, Approved and Effective February 20, 1935.)

Law Extending Redemption Period

Court empowered to extend time for redemption from sales under execution until March 1, 1937. (Chapter 36, more specifically cited above.)

Law Limiting Right to Deficiency Judgment

No deficiency judgment may be entered in any amount greater than the difference between the mortgage indebtedness, plus the cost of foreclosure and sale and the reasonable value of the property. (Chapter 150, Laws of 1933, Approved and Effective March 10, 1933.)

ILLINOIS

Moratorium period provided by legislation in this State has now expired.

INDIANA

Evidently no emergency mortgage moratorium legislation has been enacted in this State. However, present foreclosure laws are rather liberal to mortgagor.

Unless a mortgage contains an express covenant for payment of the money secured, or there is a separate bond, or note, or other agreement to pay the sum due, the remedy of the mortgagee is limited to the property mortgaged.

IOWA

Laws Continuing Foreclosure Suits

Actions for the foreclosure of mortgages and deeds of trust on real estate may be continued until March 1, 1935, upon application of the owner, unless, upon a hearing, good cause is shown to the contrary. (Chapter 182, Session Laws of 1933, Approved and Effective February 9, 1933, Expires March 1, 1935).

This Act held constitutional in *Craig v. Waggoner*, 256 N.W. 285; construed in *Reed v. Snow*, 254 N.W. 800; *McDonald v. Ferring*, 255 N.W. 719.

Court may order continuance until March 1, 1937, in pending or future suits for the foreclosure of real estate mortgages or deeds of trust, unless good cause to the contrary is shown. All applications made with court under Act of 1933, Chapter 182, are considered refiled under this Act. This Act does not apply to mortgages or deeds of trust subsequent to January 1, 1934, nor where the real estate was acquired subsequent to such date unless continuance has been granted under Acts of 1933, Chapter 182. (S.F. No. 34, Session Laws of 1935, Approved February 4, 1935, Effective February 8, 1935).

First Trust Joint Stock Land Bank of Chicago v. Loizeaux et al., Iowa Dist. Ct., Dubuque County, November, 1935, held this law unconstitutional, the economic emergency no longer existing, and the continuance authorized being in violation of the Constitutional provision prohibiting impairment of contracts.

Any actions on land contracts executed prior to January 1, 1934; wherein the vendor has retained legal title, may be suspended until March 1, 1937, unless good cause to the contrary be shown. Within thirty days after service of notice of forfeiture, a suspension of proceedings may be obtained abating the action until March 1, 1937, unless good cause to the contrary be shown. (S.B. No. 59, Laws of 1935, Approved and Effective February 20, 1935, Expires March 1, 1937).

Laws Extending Redemption Period

In foreclosure suits where the redemption period has not expired, the court may order, unless good cause is shown to the contrary, that no sheriff's deed shall be issued until March 1, 1935. In the meantime the owners may redeem the property and are entitled to the possession thereof. (Chapter 179, Laws of 1935, Approved and Effective March 18, 1933, Expired March 1, 1935).

This Act held constitutional in *Des Moines Joint Stock Land Bank v. Nordham*, 217 Iowa 1319, 253 N.W. 701, on the ground that the State

IOWA (Continued)

has a right to legislate for the welfare of its people in times of economic emergency. Decided on basis of Home Building and Loan Association v. Blaisdell, 290 U. S. 398, 54 S. Ct., 231, January 8, 1933. Also held constitutional in Connecticut Chain Life Insurance Company v. Roth, 254 N.W. 918. Construed in Hawkeys Life Insurance Company v. Ogg, 254 N.W. 847, Equitable Life Assurance Society v. Kramer, 253 N.W. 809; Tuska v. Eberhart, 256 N.W. 740; Illinois State Bank of Quincy, Ill., for use and benefit of Janson v. Dawson, 259 N.W. 196.

In any action for the foreclosure of a real estate mortgage or a deed of trust commenced prior to March 1, 1935, and in which a decree has been or may hereafter be entered, but the redemption period has not expired, the court may order that no sheriff's deed shall be issued until March 1, 1937, and in the meantime the owner or owners may redeem such property and are entitled to possession thereof. The provisions of this Act apply only to mortgages or deeds of trust executed prior to March 1, 1934, except in cases where the period of redemption has been extended by court order. (H.F. No. 84, Session Laws of 1935, Approved February 6, 1935, Effective February 8, 1935).

None of the provisions of Chapters 179 and 182, Laws of 1933, shall apply to mortgages made on and after January 1, 1934. (H.B. 357, First Special Session Laws of 1933, Approved and Effective March 12, 1934).

Laws Relating to Judgments

Judgments rendered hereafter on promissory obligations secured by mortgage or deed of trust, but without foreclosure, are non-renewable, and are void after 2 years - except for purposes of set-off. Judgments rendered heretofore or pending are without effect after 2 years from passage of this Act, except as a set-off. (Laws of 1935, S.B. 176, approved April 29, 1935, effective on publication.)

KANSASLaw Prohibiting Mortgage Foreclosures

In mortgage foreclosure proceedings, courts of equity are declared to have power to refuse confirmation where bid is inadequate or the sale is in any way unfair. Court may fix price at which property is to be bid in a sale is to be confirmed. (Chapter 218, Laws of 1933, Effective March 7, 1933).

This Act held unconstitutional by United States District Court in Phoenix Joint Stock Land Bank of Kansas City v. Dewey, et al. 8 F. Supp. 678, and construed in Prudential Insurance Company v. Ziegler 140 Kansas 572.

KANSAS (Continued)Laws Extending the Period of Redemption

By joint resolution No. 18, a moratorium was declared on all periods of redemptions from judicial sales for six months after March 4, 1933. The Governor was given power to extend moratorium for six more months if he deemed it necessary for the preservation of the public peace, safety, etc. (Chapter 232, Laws of 1933, Approved March 20, 1933, Effective March 21, 1933).

This Act was held unconstitutional in extending a moratorium until September 4, 1933, *Lingerfelt v. Hieronimus*, District Court, Labette County, July 29, 1933, *Oakland State Bank v. Bolin*, 40 P. (2d) 437. Construed in *Phoenix Joint Stock Land Bank v. Dewey*, 8 F. Supp. 678. The moratorium as extended by the Governor for an additional six months was also held unconstitutional by the Wyandotte District Court in *McDonnell v. Cannavan* on October 20, 1933.

The period for redemption on real estate may be extended for such additional time as the court shall deem it just and equitable, but in no event beyond March 1, 1935. (Chapter 3, Second Special Session, 1934. Approved March 2, 1934, Effective March 3, 1934.)

The period of redemption, as extended under Chapter 3, Special Session Laws of 1934, may be further extended until January 15, 1937. Provisions of this Act do not apply to a purchase price mortgage where less than one-third of the purchase price has been paid, nor to any real estate where the same is not occupied in good faith. Nor in cases where the court has found that the premises have been abandoned by the owner. Nor to an owner who has acquired title since March 4, 1933. (H.B. 299, Laws of 1935, Approved February 28, 1935, Effective March 1, 1935).

Postponement of Right to Deficiency Judgment

Until March 1, 1935, no deficiency judgment shall be enforced unless a period of redemption as allowed by existing law or as extended under the provisions of this Act, has expired. (Chapter 3, Second Special Session 1934, Approved March 2, 1934, Effective March 3, 1934).

Prior to January 15, 1937, no deficiency judgment shall be enforced until the period of redemption as allowed by existing law or as extended by this Act, has expired. (H.B. 299, more specifically cited above).

KENTUCKY

No emergency moratorium laws have been passed by this State.

LOUISIANALaw Postponing Foreclosure Proceedings

District court is given authority to postpone foreclosure sales on petition of the mortgagor or owner in possession until the second Monday in May, 1936. Mortgagor may be directed to pay rental or income value of land for the payment of taxes, insurance, interest, etc. The Act applies only to mortgage made prior to the approval of this Act. (Act No. 159, Laws of 1934, Approved July 13, 1934, Effective August 1, 1934).

This Act was construed in *Newman v. Reems*, 158 So. 13; *Metropolitan Casualty Insurance Company of New York v. Bowden*, 159 So. 394. In *Metropolitan Life Insurance Company v. Morris*, 159 So. 388, it was held that this moratorium statute was not "an unreasonable exercise of the State's police power in view of the economic emergency - - -".

Law Providing for the Abolition of Deficiency Judgments

Right to deficiency judgments is abolished where creditor avails himself of the waiver of appraisement. This Act applies only to obligations arising after this Act becomes effective. (Act No. 28, Laws of 1934, Approved July 12, 1934, Effective August 1, 1934).

General Moratorium on All Debts

The Debt Moratorium Commissioner (State Bank Commissioner) has authority under such rules and regulations as he may prescribe, to suspend all laws relative to the enforcement of all debt, public or private, except debts owed to the state and to the United States, and to suspend all laws authorized for the reduction of such debt to judgment and the enforcement thereof or the enforcement of any mortgage securing same. No extension shall be granted for any period after twelve o'clock noon on the 20th day after the adjournment of the regular session of the Legislature for the year 1936. After three months, any creditor may apply with the Commissioner for hearing to determine whether payment of debt should be suspended. The Commissioner may approve any composition to which the creditor and debtor agree. (H.B. No. 2, Laws of 1934, Approved November 21, 1934, Effective December 6, 1934).

The above law, H.B. No. 2 - 1934, authorizing Debt Moratorium Commissioner to suspend certain debtors' obligations, on application, until expiration date of act, was continued. (Laws of 1936, H.B. No. 300, approved June 22, 1936, expires 20 days after 1938 regular session adjourns).

MAINE

No emergency mortgage moratorium legislation has been passed by this State.

MARYLAND

Laws Restricting Power of Sale and Foreclosure Proceedings

In all cases submitted to either the Circuit Courts or Baltimore City Courts for the passage of a decree as provided in Section 720 of the Code of Public Laws of Maryland (1930 Ed.), no decree shall hereafter be passed during the period of emergency, unless such application is concurred in by the record holders of not less than 25% of the entire mortgage debt. (Chap. 56, Session Laws of 1933, Approved December 15, 1933, Expired June 1, 1935.)

This act declared unconstitutional in *U. S. Mortgage Company v. Mathews*, 173 A. 903, July 6, 1934 but reversed in 55 S. Ct. (Md.) 168, December 3, 1934.

In all mortgages of real estate and/or leasehold property, wherein there is inserted a clause authorizing the mortgagee or any other person to be named therein to sell the mortgaged premises, such power of sale shall not be exercised during the period of the emergency except by and with the consent of the record holders of not less than 25% of the entire unpaid principal debt secured by the mortgage sought to be foreclosed.

(Chapter 57, Session Laws of 1933, Approved and Effective December 15, 1933, Expired June 1, 1934.)

MASSACHUSETTS

No emergency mortgage moratorium legislation was enacted by the Legislature of this State. This was probably due to the liberal redemption provisions made for mortgagors under the present legislation, i.e., a mortgagor may, after breach of condition, redeem the land mortgaged, unless the mortgagee or person claiming or holding under him has obtained possession of the land and has continued that possession for three years, or unless the land had been sold pursuant to the power of sale contained in the mortgage.

MICHIGAN

Laws Postponing Foreclosure of a Mortgage

Pending or future actions for the foreclosure of real estate mortgages or deeds of trust or for the specific performance of land contracts may be continued until not later than March 1, 1937, upon good cause shown. Foreclosures by advertisement may be continued where equity of redemption

MICHIGAN (Continued)

has not expired. Foreclosure by advertisement may be brought into Court and continued. (No. 98, Acts of 1933. Approved and Effective June 2, 1933, Expired March 1, 1935, as amended by No. 20, Acts of 1934, Approved and Effective March 28, 1934; No. 3, Acts of 1935, Approved and Effective February 26, 1935, Expires March 1, 1937; and as further amended by No. 152, Acts of 1935 and No. 158, Acts of 1935, Effective June 4, 1935.)

This Act held constitutional and not one impairing the obligation of contracts in *Russell v. Battle Creek Lumber Company*, Michigan S. Ct., January 30, 1934, 252 N.W. 561, 265 Michigan 649. The court decided the case on the authority of *Home Building and Loan Association v. Blaisdell*, 290 U. S. 398, 54 S. Ct. 231. This Act was construed in *Young v. Union Joint Stock Land Bank of Detroit* (1934) 253 N.W. 225, 266 Michigan 83; *Daugherty v. Reading*, 254 N.W. 189, 266 Michigan 514; *Jaadra v. Van Ommaen*, 252 N.W. 485, 265 Michigan 673; *Becker v. Detroit Savings Bank*, 257 N.W. 853; *Virginia Joint Stock Land Bank v. Hudson*, 254 N.W. 234; *Michigan Trust Co. v. Rose*, 259 N.W. 878.

Law Extending Redemption Period

The redemption period may be extended in mortgages already foreclosed. (This is a part of Acts more specifically set forth above.)

In all actions now pending for the forfeiture, foreclosure, or specific performance of an executory contract for the purchase of real estate in which a Writ of Restriction has not been issued or in such actions hereinafter commenced in a court of chancery, the court may extend the time in which the right of redemption may be exercised until March 1, 1937. (Act No. 5, Laws of 1935, Approved and Effective February 25, 1935. Expires March 1, 1937.)

Law Limiting Right to Deficiency Judgments

No deficiency judgments entered after January 1, 1933, may be enforced until March 1, 1937. The Court may determine fair rental terms. (This provision is a part of Acts more specifically set forth above.)

Law Giving Court Right to Set Price at Which Land is Sold at Foreclosure

The court may fix and determine the minimum price at which the real property may be sold under foreclosure proceedings. (No. 229, Acts of 1933, Approved and Effective July 5, 1933.)

MINNESOTALaw Postponing Foreclosure Proceedings

Court may postpone actions heretofore commenced for foreclosure of a mortgage on real estate. In case mortgage has been foreclosed, the

MINNESOTA (Continued)

court may order a resale if the sale price is unreasonable and inadequate. The court may postpone the enforcement of judgment by execution sale. No extension or postponement may be granted under this Act until March 1, 1937. This Act does not apply to any mortgage held by the United States or any of its agencies, nor to any mortgage pledged to secure a public debt or to secure payment of deposits of public money. (H.F. No. 431, Session Laws of 1935, Approved and Effective March 17, 1935.)

Provisions of the above act extended until March 1, 1937 (Chap. 47, Laws of 1935, Approved and Effective March 15, 1935.)

Law Extending Period of Redemption

Where real estate has been foreclosed or where sale is ordered in real-estate proceedings instituted prior to two years after 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 May 1, 1935. Court may order resale in foreclosure by action where sale price appears unreasonably low. (Chapter 339, Session Laws of 1933, Approved and Effective April 18, 1933, Expires May 1, 1935.)

This Act was held constitutional in *Blaisdell, et al., v. Home Building and Loan Association* (Minn., July 7, 1933), 249 N.W. 334. The decision of the Minnesota Supreme Court was upheld in the Supreme Court of the United States in a decision handed down January 8, 1933, 54 S. Ct. 231, 290 U.S. 298. The decisions in both courts were rested upon the following argument: While it was conceded that the statute impaired the obligations of the mortgage contract, the existence of the economic emergency justified the Legislature in exercising its police power to relieve the people from the devastating effects of that emergency.

In *Grace v. Lichtscheidl* (Minn., July 7, 1933), 249 N.W. 672, it was held that, if the law is valid so as to permit extension of period of redemption from mortgage foreclosure sales of homesteads, it should also be valid to permit extension of redemption period from mortgage foreclosure sales of property not homestead of mortgagor. This Act was further construed in *Anderson v. Hill* (April 20, 1934), 254 N.W. 585; *Swanson v. Cross Lake Land Company*, 255 N.W. 812, *Young v. Penn Mutual Life Insurance Company*, 256 N.W. 906; *Mosse v. Mutual Benefit Life Insurance Company*, 259 N.W. 19.

The provisions of the above Act were extended to March 1, 1937 (Chapter 47, Laws of 1935, Approved and Effective March 15, 1935.)

Laws Limiting Right to Deficiency Judgment

Prior to May 1, 1935, no action shall be maintained on a deficiency judgment until the period of redemption as allowed by existing law or as extended under this Act, has expired. (Chapter 339, more specifically set forth above.)

MINNESOTA (Continued)

Prior to March 1, 1937, no action may be maintained 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. (E.F. No. 431, more specifically set forth above.)

Actions on deficiency judgments are barred to not later than March 1, 1937. (Chapter 47, Laws of 1935. Approved and Effective March 15, 1935.)

MISSISSIPPILaw Postponing Foreclosure of Mortgage

Mortgagor may enjoin proceeding to foreclose mortgage, provided he shows that he has sought to refinance his mortgage through some Federal agency. In suits to foreclose mortgages and deeds of trust executed after March 4, 1933, the court shall fix an "upset" price and shall direct the mortgagor to pay all or a portion of the rental value of the premises to the mortgagee for a term not to exceed two years, after which the property may be sold. (H.B. 270, Laws of 1934, Approved and Effective April 4, 1934, Expired May 1, 1935.)

Held constitutional in *Wilson Banking Co., et al., v. Colvard*, Miss. Sup. Ct., April 22, 1935. Held inapplicable to Federal Land Bank on Federal agency theory. *Federal Land Bank of New Orleans v. Tatum, et al.*, Miss. Sup. Ct., November 25, 1935.

Foreclosure procedure for mortgages executed before March 4, 1933, established. (S.B. 84, Laws of 1936.)

Law Limiting Right to Deficiency Judgment

Prior to May 1, 1935, no action may be maintained for a deficiency judgment until the period of time extension allowed in any proceeding begun under this Act shall have expired. (Chapter 274, Laws of 1934, Approved and Effective April 4, 1934, Expired May 1, 1935.)

Deficiency judgment suits prohibited before March 1, 1935. (S.B. 84, Laws of 1936, Effective May 1, 1936, Expires May 1, 1938.)

MISSOURI

No emergency mortgage moratorium legislation has been passed in this State. Probably this is due to the fact that the provisions for foreclosure and redemption of property in this State are rather lenient to the mortgagor.

MONTANA

Law to Postpone Foreclosure Proceedings

Mortgagor-owner may make application with court for an order staying all proceedings in pending or future mortgage foreclosure actions. Court given authority to study such proceedings for a period not to extend beyond March 1, 1935. (Chapter 116, Laws of 1933, Approved and Effective March 14, 1933.)

Law Extending Period of Redemption

Court may extend period of redemption for such additional time as it may deem just and equitable but in no event beyond March 1, 1937. This Act applies only to mortgages upon real property and in which the period of redemption has not yet expired and in pending and future proceedings. This Act does not apply to mortgages made after the approval of the Act. Nor do provisions of the Act apply to any mortgage while it is held by the United States or by an agency, department, board, or commission thereof, nor any mortgage held as security for payment of a public debt or the deposit of public funds. (Chapter 122, Laws of 1935, Approved and Effective March 13, 1935.)

Law Limiting Right to Deficiency Judgment

Deficiency judgments are abolished in all actions for foreclosure of mortgages for balance of purchase price of real property. (H.B. 16, Laws of 1935, Approved and Effective February 6, 1935.)

NEBRASKA

Law Prohibiting and Postponing Foreclosure

Courts may stay foreclosure proceedings of mortgages on real estate, unless good cause is shown to the contrary, until the first day of March 1935, or so long as the Act is in effect. (Chapter 65, Laws of 1933, Approved and Effective March 2, 1933, Expires March 1, 1935.) This law was construed in *Castek v. Tuggey*, 265 N.W. 506.

The provisions of the above Act were extended until March 1, 1937. In addition, tax sale foreclosures and actions on notes secured by real estate were also stayed, within the discretion of the court, until March 1, 1937. Provisions of the Act do not apply to any mortgage, deed of trust, land sale contract, or secured note to be issued subsequent to March 1, 1934. (H.B. 1, Laws of 1935, Approved and Effective February 27, 1935, Amending and Repealing Sections 20-21, 159 and 2021, 161, C. S. Supp. 1933; Expires midnight March 1, 1937.)

NEBRASKA (Continued)Law Abolishing Deficiency Judgments

Deficiency judgments are abolished in mortgage foreclosure actions. (Chapter 41, Session Laws of 1933, Approved and Effective April 26, 1933. Also, cited as H.B. 10 and as Sec. 20-2141, C.S. Supp. Nebraska.)

NEVADA

No emergency mortgage moratorium legislation has been enacted in this State probably because there is a one-year redemption period for property sold under foreclosure of mortgage in this State.

NEW HAMPSHIRELaw Postponing Foreclosure Proceedings

The court may suspend an action to foreclose a mortgage on real estate or it may suspend for a reasonable period sales in foreclosure action. (Chapter 161, Laws of 1933, Approved and Effective June 15, 1933. Expires within four years unless the Governor proclaims the emergency ended; as amended by H.B. No. 56, Laws of 1935, Approved and Effective February 7, 1935.)

Law Extending Period of Redemption

The court may extend the redemption period in proceedings to foreclose a mortgage on real estate for a reasonable time. (See Statute citations above.)

NEW JERSEYLaw Providing for Sale at Fair Market Value of Property

Fair market value in sale on property in mortgage foreclosure actions required. Mortgagor, when sued on a deficiency judgment, may raise issue of the fair market value. (Chapter 82, Laws of 1933, Approved and Effective March 29, 1933.)

This statute was declared unconstitutional by the Supreme Court of this State in *Vanderbilt v. Bruton Plane Company* (N. J. November 23, 1933), 111 N.J.L. 596, on the ground that the statutory setting of a fair market value, standing alone, as a self-sufficient, resistless fact in reduction of an otherwise collectable debt, was such a restriction and limitation upon the mortgagee's right of recovery on a bond as to be an impairment of

NEW JERSEY (Continued)

pre-existing contract and therefore in conflict with Article 1, Section 10, Subdivision 1, Federal Constitution and Article 4, Section 7, Paragraph 3, New Jersey Constitution, prohibiting passage of law impairing obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when contract was made.

NEW MEXICO

No emergency mortgage moratorium legislation has been enacted in this State. However, by the laws of 1931, Chapter 149, Page 260, Senate Bill 63, junior lien holders and the mortgagor are given a right of redemption, but this right has existed in New Mexico prior to 1931.

NEW YORKLaw Prohibiting Foreclosure Proceedings

No action for the foreclosure of a mortgage on real estate solely on account of default in payment of principal and no action on any bond secured by such mortgages shall be brought before July 1, 1937. This Act applies to participation mortgages and mortgage bonds. All pending actions are dismissed. (Chapter 793, Laws of 1933, Approved and Effective August 26, 1933, as extended by Chapter 278 (Act No. 265), Laws of 1934, Approved and Effective April 23, 1934, by Chapter 1, Laws of 1935, Approved and Effective January 18, 1935, and as further extended by Chapter 86, Laws of 1936, Effective March 6, 1936.)

This Act was held constitutional as not impairing obligation of contract in *McCarty et al. v. Prudence Bonds Corporation*, (N. Y. S. Ct., Special Term, September 20, 1933), 266 N. Y. S. 629-C 793. This Act was also construed in *Cole v. Miller* (1934) 268 N. Y. S. 443; 150 Misc. 32; *Bank of Babylon v. F. E. Summers Coal and Lumber Company*, 268 N. Y. S. 46, 149 Misc. 617; *Laporte v. Druiss Company*, 273 N. Y. S. 11; *Joseph E. Marks Company v. Hattan*, 269 N. Y. S. 210; *Sherwin v. Jones*, 269 N. Y. S. 121, 150 Misc. 342, Rev. (City Court) 267 N. Y. S. 759, 149 Misc. 481; *Manufacturers' National Bank of Troy v. Toole*, 274 N. Y. S. 168; *Kinke v. Samuels*, 190 N. E. 324, 264 N. Y. 144, Rev. 268 N. Y. S. 551, 240 App. Div. 1008, Resettled 269 N. Y. S. 912; *Kress v. Central Trust Co. of Rochester*, 153 Misc. 297; *Westchester Trust Company v. Fox* 276 N. Y. S. 355.

Where the principal of mortgages shall become due, prior to July 1, 1934, it shall become payable six months after the expiration of the emergency period. The principal of mortgages becoming due between July 1, 1934, and July 1, 1935, becomes payable one year after the expiration of the emergency period. Actions for the principal of mortgage bonds are likewise suspended. (Chapter 357, Laws of 1934, Approved and Effective May 7, 1934.)

NEW YORK (Continued)Laws Limiting Right to Deficiency Judgments

Deficiency judgments after foreclosure shall be granted only on motion, and if no motion is made within ninety days after confirmation of the sale, such sale shall be in full satisfaction of the debt. Deficiency judgments shall be based upon the fair and reasonable market value or the sale price, whichever is higher, of the mortgaged premises during period of emergency, which extends to July 1, 1936. (Chapter 794, Laws of 1933, Approved and Effective August 28, 1933, as extended by Act No. 270, Laws of 1934, Approved and Effective April 23, 1934, as extended by Chapter 2, Laws of 1935, Approved January 18, 1935, as amended by Chapter 268, Laws of 1935, Effective April 1, 1935, and as further extended by Chapter 87, Laws of 1936, Effective March 6, 1936.)

The period of emergency provided for by the above legislation was extended until July 1, 1935, by Chapter 277, Laws of 1934 and further extended to July 1, 1936, by Chapter 2, Laws of 1935.

This Act was interpreted in *Railroad Co-op. Building and Loan Association v. Boston Building, Inc., et al.* (N.Y., Surpl. Ct., Special Term, Nov. 3, 1933), 267 N.Y.S. 204, in which it was held that retroactive law which tends to take away or impair rights vested under existing laws or valid contracts or which creates new obligation or attaches new disability to transactions already passed, is invalid as to sales made prior to Act, but not during period of Act.

This Act was also construed in *Weisel v. Hagdahl Realty Company*, 271 N.Y.S. 629; *Russell v. Wolf*, 271 N.Y.S. 639; *Managhan v. May*, 273, N.Y.S. 475; *New York Life Insurance Company v. H. & J. Gutttag Corporation*, 192 N.E. 481, 256 N.Y. 292, Rev. 272, N.Y.S. 724, 242 App. Div. 603; *Metropolitan Life Insurance Company v. Rosenfield*, 274 N.Y. 531; *Farmers' and Mechanics' Savings Bank of City of Lockport v. Eagle Building Company*, 276 N.Y.S. 246; *Kramer v. Relgov Realty Company*, 276, N.Y.S. 641.

NORTH CAROLINALaw Continuing Foreclosure Actions

Court may continue foreclosure actions on mortgages and deeds of trust for one year. This power exists only for two years and only in specified counties of the State. (H.B. No. 1458, Laws of 1933, Approved and Effective May 13, 1933; S.B. No. 135, Laws of 1933, Approved and Effective February 28, 1933, and for two years; H.B. 1287, Laws of 1933, Approved and Effective April 24, 1933; and H.B. 1169, Laws of 1933, Approved and Effective May 12, 1933.)

NORTH CAROLINA (Continued)

Law Abolishing or Limiting Right to Deficiency Judgments

Deficiency judgments abolished in foreclosures and sales under power of sale in purchase money mortgages and deeds of trust. (Chapter 36, Laws of 1935, Approved and Effective February 6, 1933.)

Ordinary deficiency judgments are to be determined by the reasonable value of the real estate and the mortgagee may prove such reasonable value by way of defense. (Chapter 275, Laws of 1933, Approved and Effective April 18, 1933.)

Law Guaranteeing Sale of Property at Fair Price in Foreclosure Proceedings

The court may order a resale before confirmation in an action to foreclose a mortgage on real estate. (Chapter 275, Laws of 1933, Approved and Effective April 18, 1933.)

This Act was construed in *Hopkins v. Swain*, 174 S.E. 409, 206 North Carolina 439; *Whitiker v. Chase*, 174 S.E. 225, 206 North Carolina 335.

NORTH DAKOTA

Laws Prohibiting or Postponing Foreclosure Actions

On March 20, 1934, the Governor issued a proclamation making it unlawful to oust an owner from his farm home lost through foreclosure without allowing the owner an opportunity to secure the benefits of Federal legislation. (Provided for by Chapter 157, Laws of 1933, Approved and Effective February 21, 1933. Expires at end of two years.)

On April 5, 1935, the acting Governor of the State issued the following proclamation, to be effective until revoked: "Until this Proclamation is revoked, or modified, no judicial, executive, or administrative officer of this State, or of any of the subdivisions thereof, shall entertain any proceeding or sign any order or other document of any kind which has for its purpose, or which tends to promote, the transfer or change of ownership, title to, equities in, or possession of real or personal property, contrary to the wishes and needs of the owner or possessor of such property or of rights of equities therein. Providing, that such proceedings may be entertained or order or other document signed upon satisfactory showing first made to such office, that such owner or possessor has the legal right and has been given reasonable opportunity to avail himself of the remedies provided under the terms of Senate Bill No. 23, known as the legal moratorium, as recently approved, or under the terms of the Frazier-Lemke Amendment to the Bankruptcy Act, and has freely and voluntarily waived the benefits of such remedies, or has unreasonably refused to avail himself thereof. Any person injured or feeling aggrieved by the operations or provisions of this Proclamation is authorized to file his petition for relief at the Governor's office."

NORTH DAKOTA (Continued)

Foreclosure of real estate mortgages by advertisement are abolished except on mortgages held by the State or by the University. (Chapter 158, Laws of 1933, Approved and Effective March 4, 1933)

Hearings are required prior to the confirmation of sales in foreclosure proceedings, and courts given power to extend terms of the mortgage and postpone foreclosure proceedings. (S.B. 23, Laws of 1935, Approved and Effective March 9, 1935.)

Laws Extending Redemption Period

The period within which a mortgagor or judgment debtor may redeem from a mortgage foreclosure or execution sale of real estate, but for which a deed has not been issued, is extended for a period of two years from February 21, 1933. (Chapter 157, Laws of 1933, Approved and Effective February 21, 1933)

Redemption period is extended to not later than July 1, 1937. (S.B. 23, Laws of 1935, Approved and Effective March 9, 1935) In State ex rel. Cleveringa v. Klein (N.D. Sup. Ct., June 12, 1933), 249 N.W. 118, it was held that the statute (Chapter 157, Laws of 1933) shortening or extending period of redemption from real estate mortgage foreclosure sale is "impairment of obligation of contract" as to mortgages existing at time of enactment of statute. Also deprives holder of mortgage executed prior to passage of statute of property without due process. (Constitution, N.D., Section 13) Statute extending period of redemption from real estate mortgage foreclosure sale, which statute by its own terms was to expire in two years, held valid governing mortgages executed and foreclosed during period of its operation.

Laws Limiting Right to Deficiency Judgment

In actions for the foreclosure of mortgages, the court shall have no power to render a deficiency judgment. (Chapter 155, Laws of 1933, Approved and Effective March 7, 1933, Expires at the end of two years. Repealed by S.B. 23, Session Laws of 1935, Approved March 9, 1935)

OHIOLaw Postponing Foreclosure Proceedings

Proceedings to foreclose a mortgage or enforce a specific lien may be postponed not later than April 1, 1937. This Act applies only to mortgages executed prior to May 18, 1933. (H.B. 30, Regular Session, 1935, Effective February 4, 1935, Amending Sections 11, 588 of the General Code, as amended by H.B. 144, December 12, 1934; and repealing Sections 11, 588 of the General Code as amended by H.B. 219, May 15, 1933, and H.B. 144, December 12, 1934.)

OKLAHOMA

Laws Postponing Foreclosure Proceedings

In pending or future actions for foreclosure of mortgages or other liens upon real estate, defendant shall not be required to answer until the expiration of nine months from service of summons or if answer has been filed, no trial shall be held for nine months. (Chapter 16, S. B. No. 76, Laws of 1933, Approved and Effective March 7, 1933, Expires at end of two years.)

This Act was held unconstitutional as it affects actions pending at its effective date State ex rel. Osage County Savings and Loan Association v. Worten, 29 P. (2d) 1.

For two years after the approval of this Act, the court is vested with discretion of granting a continuance in all actions to foreclose mortgages or deeds of trust. (Same Statutory citations given above.)

This provision of the Act was held constitutional as it allows judicial discretion in the granting of continuances; but it is unconstitutional in an arbitrary and capricious extension of time for nine months in all cases. State ex rel. Roth v. Waterfield, 29 P. (2d) 24, rehearing denied, 29 P. (2d) 24.

OREGON

Law Postponing Foreclosure Decree

The Legislature, by a joint resolution, advised courts of equity not to decree foreclosure where the mortgagor is making a bona fide effort to pay. (H.J. Res. 18, Regular Session, 1933, Effective March 2, 1933.)

PENNSYLVANIA

Law Postponing Foreclosure Proceedings

The Court of Common Pleas is vested with power to stay Writs of Execution for the sales of dwellings or farms to prevent serious inequity. Provisions of this Act not applicable to mortgages under Title II of the National Housing Act. (P.L. 827, Act of May 18, 1933, Effective May 18, 1933, extended by H.B. 233, Laws of 1935, Effective March 28, 1935, to continue in force until March 31, 1937.)

Law Insuring Sales of Property at Fair Value in Foreclosure Proceedings

Procedure is provided for courts to determine fair value of property

PENNSYLVANIA (Continued)

to be sold at foreclosure sales. (Act No. 59, Laws of 1933, Effective January 17, 1934, to continue in force until July 1, 1935.) Construed in Market Street National Bank, et al., v. Huff, et al., Pa. Sup. Ct., E. D., June 29, 1935; and Evans v. Provident Trust Co. of Philadelphia, Pa. Sup. Ct., E. D., June 29, 1935. Deficiency Judgment Act of 1935 is constitutional as a reasonable remedial act. - Ridge Allen Building & Loan Association v. Leshefko, 24 D. & C. 703.

RHODE ISLAND

No emergency mortgage moratorium legislation has been enacted in this state.

SOUTH CAROLINALaws Postponing Foreclosures

Courts of the State are empowered to stay foreclosure suits. Boards of Conciliation appointed to effect settlements in mortgage cases. (Act No. 823, Laws of 1934, Effective March 2, 1934, Expires after two years; extended 18 months from April 10, 1936, by Act No. 303, H.B. 811, Act of 1936, Effective April 10, 1936.)

Laws Limiting Rights to Deficiency Judgment

When a personal judgment is asked, any defendant may, within 90 days after sale of mortgaged property, apply for an order of appraisal of true value. If the value is in excess of the deficiency after application of the net proceeds of sale, the judgment is extinguished and if the returned value, after deduction of the sale price, is less than the deficiency, the deficiency is deemed paid, pro-tanto, and is enforceable for only the remainder. (Act 264, Laws of 1933, Approved and Effective May 2, 1933.)

SOUTH DAKOTALaw Suspending Foreclosure Actions

Foreclosures by advertisement may be suspended by court when so requested by mortgagor. (Chapter 135, Laws of 1933, Approved and Effective March 11, 1933.)

This Act held valid in State ex rel. N.W. Mutual Life Insurance Co. v. Circuit Court (S.D., S. Ct., July 7, 1933.), 249 N.W. 631, since there

SOUTH DAKOTA (Continued)

remains sufficient remedy on contract which secures all substantial rights or parties. The Act simply restricts the conditions under which the power of foreclosure by sale might be exercised. Statute held to cover mortgages in existence at the time of its passage.

Laws Extending Redemption Period

Redemption period may be extended for an additional year in mortgage foreclosure proceedings if mortgagor pays: (1) all taxes due, (2) interest on mortgage at sale date (3) 7% interest for one year from sale date upon total amount of sale (4) interest upon principal of mortgage for one year, in advance at rate originally provided for in mortgage before maturity, and (5) foreclosure costs. (Chapter 137, Laws of 1933, Effective June 2, 1933.)

This law does not apply to mortgage held by joint stock land bank organized under Federal Farm Loan Act. - Ellingson, et al., v. Iowa Joint Stock Land Bank, S. Dak. Sup. Ct., January 10, 1936.

The mortgagor may file a petition with the Circuit Court prior to the expiration of the normal redemption period, and secure an extension of such period to not later than March 1, 1937. The Act does not apply to mortgages held by the State, the United States, or agency, to obligations guaranteed by the United States, or to mortgages held as security for a public debt or deposit. (H.B. 20, Laws of 1935, Approved and Effective March 2, 1935.)

Law Abolishing Deficiency Judgments

Deficiency judgments abolished. (Chapter 138, Laws of 1933, Effective May 28, 1935, as amended by H.B. 109, Laws of 1935, Effective February 27, 1935.)

Law Effecting Mortgage Contract in General

All contracts between mortgagors and mortgagees are unenforceable and unrecordable if containing: (1) pledge or assignment of right to possessor of homestead, etc., property prior to expiration of redemption period; (2) agreement for mortgagor to pay taxes; (3) waiver of exemptions; (4) consent to receivers' appointment; however, these provisions are not applicable to any mortgage executed to the United States or any instrumentality thereof. (H.B. 27, Laws of 1935, Approved and Effective March 16, 1935.)

TENNESSEE

No emergency mortgage moratorium legislation has been enacted in this State, as liberal provisions for redemption is provided by present legislation.

TEXASLaws Postponing Foreclosure Proceedings

Courts empowered to grant stays of proceedings in suits for the recovery of real property or foreclosure of liens or mortgages on real property, filed within 180 days from the effective date of the Act or pending when the Act becomes effective. The extension shall last for 180 days, but the court may, upon further application at the end of the first extension period, but not after 200 days from the effective date of the Act, grant further extensions, but not beyond May 1, 1934. (Chapter 102, Laws of 1933, Effective May 1, 1933. Expires after 200 days.)

The Act is unconstitutional in that it impairs the obligation of contracts executed before its effective date. *Life Insurance Company of Virginia v. Sanders*, Texas Circuit Court of Civil Appeals, El Paso Division, 62 S. W. (2d) 348.

The Act is constitutional and is "The lawful exercise of legitimate Governmental powers" in the interest of public welfare in extending the time for the sale of land under a deed of trust. *Lingo Lumber Company v. Haynes*, 64 S. W. (2d) 835. This Act was also construed in *South Texas Bank and Trust Company v. Cocke*, 72 S. W. 650; *Knox v. Morrison*, 66 S. W. (2d) 384; *Mountain Townsite Company v. Cooper*, 63 S. W. (2d) 1050.

The entire Act was held unconstitutional in *Murphy v. Phillips*, 63 S. W. (2d) 404. Rehearing in this case was denied October 4, 1933; However, a contrary decision was reached in *Beaumont Petroleum Syndicate v. Brossard*, Texas Court of Civil Appeals, 9th District, November 2, 1933.

Court may grant continuances and stays of execution until February 1, 1935, where neither the indebtedness nor the lien securing same has been renewed or created since May 1, 1933. (S. B. No. 3, Second Special Session, 1934, Approved and Effective February 28, 1934, Expires February 1, 1935.)

This "Moratorium Act" violates Section 16 of Article 1 of the Constitution of Texas, which prohibits the enactment of laws impairing the obligation of contracts. *Travelers Insurance Company et al. v. Marshall et al.*, 76 S. W. (2d) 1007. This Act also construed in *Glenn v. Jones*, 73 S. W. (2d) 1072; *Glenn v. Hollums*, 73 S. W. (2d) 1058; *Dallas Joint Stock Land Bank v. Ballard et al.*, 74 S. W. (2d) 297; *Oppenheimer v. Haley*, 72 S. W. (2d) 411; *Williams v. Holmes*, 74 S. W. (2d) 1040; *Brown v. Lubfcock Development Corporation*, 75 S. W. (2d) 319.

Law Limiting Right to Deficiency Judgment

In suits to collect deficiency judgments rendered after foreclosure proceedings, defendant allowed to plead as a defense that the property was sold for less than its actual value. The actual value may be shown

TEXAS (Continued)

and the defendant is entitled to a credit of any difference between its actual value and the sale price of the property. Any action to enforce deficiency judgment must be begun within six months from the date of sale. (Chapter 92, Laws of 1933, Effective April 21, 1933.)

This anti-deficiency judgment law violates Section 16, Article 1, of the Constitution, which prohibits legislation, impairing the obligation of contracts. *Langever v. Miller*, 76 S. W. (2d) 1025.

UTAH

No emergency mortgage moratorium legislation has been enacted in this State. However, Code of State provides that Court, in its discretion, may grant stay of execution on judgments.

VERMONT

Law Postponing Execution or Foreclosure Sales

Court empowered to stay execution or foreclosure sales for three months. (No. 30, Laws of 1933, Effective March 24, 1933; Expired March 1, 1936, unless by joint resolution or proclamation of the Governor the emergency is considered terminated before said date; as amended by Laws of 1935, H.B. No. 108, Effective February 28, 1935, extending moratorium until March 1, 1937.)

Law Extending Period of Redemption

Court within its discretion and for the benefit of the parties concerned may extend the period of redemption. (Same Statutory citations as above.)

VIRGINIA

No emergency mortgage moratorium legislation has been enacted in this State. However, the Court in its discretion may fix an equitable redemption period as justified by all the surrounding circumstances of case.

WASHINGTON

No emergency mortgage moratorium legislation has been enacted in this State. However, redemption provisions of present foreclosure laws are rather lenient.

WEST VIRGINIA

No emergency mortgage moratorium legislation has been enacted in this State.

WISCONSINLaw Postponing Foreclosures

Sales in foreclosure action on any farm or homestead commenced prior to March 1, 1935, may, within the discretion of the court, be prohibited for a reasonable period not to exceed two years beyond the usual one year period, but not beyond March 1, 1938. At all times, motion for confirmation of sale shall be made only on notice given by plaintiff to mortgagors. (Chap. 11, Laws of 1933, Approved and Effective February 17, 1933; Chap. 125, Laws of 1933, Approved May 15, Effective May 17, 1933; Chap. 474, Laws of 1933, Approved and Effective July 29, 1933, as amended and repealed in part by Laws of 1935, Chap. 319, Effective August 2, 1935, Expires April 1, 1937, and Chap. 449, Effective September 13, 1935.)

Construed in *Foelske v. Stockhouser*, 254 N.W. 340; *First National Bank v. W. J. Durham Lumber Co.*, 256 N. W. 783.

Law Extending Redemption Period:

Period of redemption may be extended not later than April 1, 1938, where mortgage foreclosed and redemption period has not expired, or where sale occurs after August 2, 1935, in such foreclosure action, now pending, or begun before April 1, 1937, or on sale where redemption period has not expired, or where such sale occurs after August 2, 1935, and before April 1, 1937. (Laws of 1935, Chap. 319, Effective August 2, 1935, Expires April 1, 1937, as amended by Laws of 1935, Chap. 547, Effective October 4, 1935.)

Constitutionality upheld in *Mutual Building & Savings Assn. v. Willing, et al.*, Wis. Sup. Ct., June 2, 1936.

Local county mediation boards are established to effect compromises between mortgage debtors and creditors. (See part of above cited Acts.)

In actions for foreclosure or performance of land contracts where judgment is entered before April 1, 1937, the court may extend redemption period three years, the defendant paying current interest or taxes or both. (Laws of 1933, Chap. 301, Effective June 23, 1933, as amended by S. B. No. 511, Laws of 1935, Chap. 362, Effective August 14, 1935.)

WISCONSIN (Continued)

No extension of redemption period permitted unless court directs mortgagor, owner or judgment debtor to pay taxes and interest. In any ejection or unlawful detainer action brought prior to April 1, 1937, against a lessee on a lease of ten years or more, where the lessee has constructed improvements of more than one-half the land's value, except leases mentioned in Sec. 234.19 court may allow redemption period of one to three years. (Laws of 1935, Chap. 482, Effective September 20, 1935.)

Law Limiting Right to Deficiency Judgment

Before sale in foreclosure action, in which judgment is rendered prior to January 1, 1938, court must exercise its equitable powers and fix the value of the mortgaged premises. (Chap. 13, Laws of 1933, Approved February 23, 1933, Effective February 25, 1933.)

WYOMING

No emergency mortgage moratorium legislation has been enacted in this State. However, execution on judgment is within the discretion of the Court.