

MORTGAGE

CHAPTER 150

S. B. No. 247—(Whelan.)

AUTHORIZING CROP MORTGAGES IN FAVOR OF U. S., ETC., INCLUDING BANK OF NORTH DAKOTA

An Act to amend and re-enact Section 2 of that certain initiated law entitled "An Act declaring mortgages on growing and unharvested crops to be against the public policy of this state, and abolishing the same," approved and adopted by the electors at the June 29th, 1932, Primary Election.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 2 of said initiated law be amended and re-enacted to read as follows:

§ 2. That all mortgages on growing and unharvested crops are abolished, and that any and all mortgages on growing and unharvested crops hereafter taken shall be held null and void and of no effect; provided, however, that the provisions of this Act shall not apply to any mortgage or lien in favor of the United States, the State, any county or any department or agency of either thereof; including the Bank of North Dakota.

§ 3. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 4, 1933.

CHAPTER 151

S. B. No. 25—(Miklethun.)

BILLS OF SALE, ETC., UPON CROPS CIRCUMVENTING CROP MORTGAGE LAW

An Act prohibiting the solicitation and procurement of bills of sale or other transfers to obtain title to, or liens upon crops in circumvention of the Crop Mortgage Law, enacted by the people of the State of North Dakota at the primary election in June, 1932, and approved in the November election of 1932; and providing that all such transfers heretofore made shall be void.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. UNLAWFUL TO SOLICIT OR PROCURE BILLS OF SALE, AND TRANSFERS CIRCUMVENTING THE CROP MORTGAGE LAW.] It shall be unlawful for any person, firm, corporation or association to solicit or procure bills of sale or transfers of whatever nature, for the purpose of obtaining title to, or liens upon growing crops for the year

1933, and thereafter, in circumvention of the Crop Mortgage Law passed by the people of North Dakota on June 29, 1932, and any such bill of sale or transfer obtained since said Crop Mortgage Law became effective shall be null and void.

§ 2. PRESUMPTION.] Any such bill of sale or transfer mentioned in the above Section shall be presumed to be a violation of the Crop Mortgage Law.

§ 3. PENALTY.] Any person, firm, corporation or association violating any of the provisions of this Act shall be guilty of a misdemeanor, and for each offense, shall be fined in the penal sum of \$300.00.

§ 4. EMERGENCY.] Whereas, since said Crop Mortgage Law was passed by the people of North Dakota, and became effective as law, various persons, firms, corporations and associations have obtained from farmers, bills of sale, transfers and deeds to land, to circumvent the provisions of said law, and have thus involved the farmers in legal complications and expense; and that such acts are being continued in this state; *therefore*: an emergency exists, and this Act shall be in full force and effect from and after the date of its passage and approval.

Approved March 4, 1933.

CHAPTER 152

H. B. No. 56—(Swendseid.)

REDEMPTION PERSONAL PROPERTY FROM FORECLOSURE SALE

An Act to amend and re-enact Section 8134 of the 1913 Compiled Laws of North Dakota, relating to the redemption of personal property sold at mortgage foreclosure sale.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 8134 of the 1913 Compiled Laws of North Dakota is hereby amended and re-enacted to read as follows:

§ 8134. REDEMPTION FROM MORTGAGE SALE. HOW MADE.] Any mortgagor of personal property, or his assignee, may redeem the same or any part thereof from a sale upon foreclosure of any mortgage within five days after such sale, exclusive of the day of sale, by paying or tendering to the owner of the mortgage, his agent or attorney, or the person making the sale, the amount for which said property was sold, with interest at the rate of six per cent per annum and costs of keeping said property from the date of the sale. The mortgagor or his assignee desiring to redeem such property shall at the time of sale give written notice to the person making

the sale of his desire to make such redemption; otherwise he shall be deemed to have waived his right to do so. In case such notice is served, the person making such sale shall retain the possession of the property sold until the expiration of said five days and shall be entitled to his reasonable expenses in caring for the same.

Approved March 1, 1933.

CHAPTER 153

S. B. No. 5—(Tinnes.)

DISCHARGE REAL ESTATE MORTGAGES NOT RENEWED

An Act to provide that real estate mortgages not renewed or extended of record within 15 years shall be discharged from public record.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. DISCHARGE OF REAL ESTATE MORTGAGE NOT RENEWED OR EXTENDED OF RECORD.] Three months from and after the taking effect of this Act, every mortgage of real estate which has not been renewed or extended of record within fifteen years after its due date or when no due date is shown in the mortgage, then within twenty years after the recording of such mortgage, shall be discharged of record by order of a Judge of the District Court within the district in which the mortgaged real estate is situated upon application of any party interested and without notice.

Approved February 11, 1933.

CHAPTER 154

S. B. No. 115—(Marshall.)

COSTS OF FORECLOSURE — ATTORNEY'S AFFIDAVITS

An Act to amend and re-enact Section 7792 of the Compiled Laws of North Dakota for 1913, relating to the amount of costs on foreclosure of liens, and attorney's affidavits; repealing all Acts or parts of Acts in conflict herewith, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. That Section 7792 of the Compiled Laws of North Dakota for the year 1913 be, and the same is hereby amended and re-enacted to read as follows:

§ 2. COSTS ON FORECLOSURE OF LIENS, AND ATTORNEY'S AFFIDAVITS.] In all actions or proceedings for the foreclosure of mortgage upon personal property, or a mortgage or other lien upon real property, the plaintiff, or the person commencing such action or proceeding, shall be entitled to tax as a part of his costs the sum of twenty-five dollars; provided that no fee shall be allowed unless the

foreclosure proceedings shall be conducted under the supervision of an attorney duly authorized to practice in the courts of this state; provided, however, that before any attorney's fee provided for herein shall be allowed, paid, received, claimed or charged against the property, or allowed or taxed in said action or proceedings, the attorney or attorneys bringing the action or proceeding above mentioned shall at or prior to the time of the sale of the property, or prior to the time of entering judgment in said action or proceeding, file with the Register of Deeds of the county in which said action is commenced, an affidavit to the effect that such attorney or attorneys have been in good faith employed to bring said action or proceedings to foreclose said mortgage or other lien and that the full amount of the fees provided by law inures solely to his or their benefit, and that no agreement or understanding directly or indirectly has been made with any person for any division of said attorney's fees, that no part thereof is or has been agreed to be paid to the party foreclosing said mortgage or other lien and that such attorney or attorneys is or are actual bona fide residents of the State of North Dakota.

§ 3. SAVING CLAUSE.] Provided, however, that this Act shall not apply to any action or proceedings for the foreclosure of mortgages or liens pending at the time of the taking effect of this Act.

§ 4. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

§ 5. EMERGENCY.] An emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.

Approved February 14, 1933.

CHAPTER 155

S. B. No. 3—(Martin.)

JUDGMENT FORECLOSURE REAL ESTATE MORTGAGE

An Act to amend and re-enact Section 8100 of the Compiled Laws of North Dakota for the year 1913, relating to the foreclosure of mortgages, and what judgments may be entered therein.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 8100 of the Compiled Laws of the (State of North Dakota) is hereby amended and re-enacted to read as follows:

§ 8100. JUDGMENT INCLUDES WHAT.] Whenever an action shall be brought for the foreclosure or satisfaction of a mortgage, the court shall have power to render a judgment against the mortgagor for the amount of the mortgage due at the time of the rendi-

tion of such judgment and the costs of the action, and to order and decree a sale of the mortgaged premises, or such part thereof, as may be sufficient in full and complete satisfaction thereof, and shall have power to order and compel the delivery of the possession of the premises to the purchaser; but in no case under this Article shall the possession of the premises so sold be delivered to the purchaser or person entitled thereto, until after the expiration of one year from such sale, and the court shall direct and the judgment shall provide that during the said one year period that the debtor or owner of said premises shall be entitled to the possession, rents, use and benefits of the real property sold from the date of such sale until the expiration of the said one year period; and the court shall have no power to render a deficiency judgment. Nothing herein shall be construed to postpone or affect any remedy the creditor may have against any party personally liable for the mortgage debt other than the mortgagors and their grantees.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

§ 3. EMERGENCY.] This Act is hereby declared to be an emergency measure, and shall be in full force and effect from and after its passage and approval.

Approved March 7, 1933.

CHAPTER 156

H. B. No. 323—(Anderson of Logan.)

NOTICE OF INTENTION FORECLOSURE REAL ESTATE MORTGAGES

An Act to amend and re-enact Section 8099a of the Supplement to the Compiled Laws of 1913, as amended by Chapter 143 of Laws of North Dakota for 1927, pertaining to the giving of notices of intention to foreclose real estate mortgages.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 8099a of the Supplement to the Compiled Laws of 1913, as amended by Chapter 143 of Laws of North Dakota for 1927, be, and the same is, hereby amended and re-enacted to read as follows:

§ 8099a. NOTICE.] Before any action or proceeding shall be commenced to foreclose a mortgage on real property, a written notice describing the real estate, giving the date and amount of the mortgage, the sum due for principal, interest and taxes paid by the owners of the mortgage, respectively, and stating that, if the same be not paid within thirty days from the date of the mailing or service of such notice, proceedings will be commenced to foreclose the mortgage, shall be served on the title owner of the real estate described in

such mortgage, as shown by the records in the office of the Register of Deeds of the county in which said real estate is situated, except in the one case hereinafter provided, more than thirty days prior to the commencement of such action or proceeding. The said notice shall be served on such title owner by registered mail, addressed to such title owner at his post office address as such address is shown in the chain of title of such real estate in the records of the aforesaid office, or in the mortgage, but if such post office address be not so shown, said notice may be served by registered mail, addressed to said title owner at the post office nearest any part or tract of said real estate, provided, however, that service of said notice shall in any case be sufficient if said notice be received by such title owner; provided further, that a United States Post Office Registry Return Receipt showing that said notice has been delivered to such title owner, or to his agent for him, shall be prima facie evidence that he has received the same. If the title to such real estate is in the name of a deceased person, no service of such notice need be made, unless an administrator or executor of the estate of such deceased person has been appointed in the county in which said real estate is located, in which case said notice may be served on such administrator or executor either by personal service or by registered mail; provided that personal service of such notice on such title owner or on the administrator or executor of the estate of such deceased person, wherever appointed, made in the manner provided by law for the service of a summons in a civil action, either within or without the State of North Dakota, shall be sufficient; provided further that the certificate of the County Judge or of the legal custodian of the probate records of the county in which the real estate is situated, stating that no executor or administrator of the estate of such deceased title owners has been appointed in said county, recorded in the office of the Register of Deeds of said county, shall be sufficient evidence of that fact. Proof of the service herein required or that such title owner is a deceased person shall be made by affidavit of any person having knowledge of the facts; by a certificate of the Board of Health of North Dakota; or in other manner by law provided; and such proof of service, or of death shall be filed at the time of the filing of the complaint in any action of foreclosure and shall be recorded with the notice and certificate of sale in all other cases; provided, that if said owner, administrator, or executor shall, before the expiration of the thirty days from the service of such notice, perform the conditions or comply with the provisions upon which the default shall have occurred such mortgage shall be reinstated and shall remain in full force and effect the same as if no default has occurred therein; provided, further, that if an action or proceeding to foreclose such mortgage be not commenced within ninety days after the date of the service of the notice herein provided for, all proceedings under such notice shall be deemed discontinued.

§ 2. EMERGENCY.] An emergency is hereby declared and this Act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1933.

CHAPTER 157

S. B. No. 2—(Marshall.)

EXTENSION REDEMPTION REAL ESTATE MORTGAGE FORECLOSURE

An Act temporarily extending the time in which redemption may be made from real estate mortgage foreclosure, and real estate execution sales.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. That whereas a public emergency and crisis exists throughout this state endangering the public health, welfare and morals, in that agricultural crops and products have been sold on an average below the cost of production since 1922, and all agricultural land values have virtually disappeared, due to the nation-wide depression, which caused under-consumption and produced starving millions throughout the nation; and whereas taxes have been steadily increasing in spite of the deplorable condition of agriculture, and whereas agriculture is the principal industry in this state and all other industries are solely dependent for their existence upon agriculture; and whereas there is at present no means whatsoever by which existing mortgages and judgments can be refinanced, and such debtors are at the absolute mercy of their creditors; and whereas hundreds and thousands of families have already lost their homes through mortgage foreclosures or other judicial proceedings; and whereas hundreds and thousands more will lose their homes unless some relief is given, therefore, in order to prevent the utter ruin and destruction of agriculture, commerce and industry and the collapse of civil government, and in order to maintain the integrity of the family and the home, and the public health, welfare, and morals of the people of this state, the period within which a mortgagor or judgment debtor may redeem from a foreclosure sale or an execution sale of real estate, hereafter made, is hereby extended from one year to two years from the date of such sale.

§ 2. That the period within which a mortgagor or judgment debtor may redeem from a mortgage foreclosure or execution sale of real estate, but for which deed has not been issued, is hereby extended for a period of two years from the date of the passage and approval of this Act.

§ 3. That the Legislature does hereby declare that this Act is passed under the police power of the State for the reasons and pur-

poses herein stated, and requests that the courts construe all of its provisions liberally, with a view of carrying out the purposes herein stated.

§ 4. SAVING CLAUSE.] It is hereby declared that if any of the provisions of this Act in any manner contravenes the provisions of the Constitution, the remaining provisions would have been enacted by this Legislative Assembly even though such provisions had been eliminated from the Act; hence, if any of the provisions are found to be violative of the Constitution, the remaining provisions shall not be affected by such invalidity but shall remain in full force and effect.

§ 5. EMERGENCY.] This Act is hereby declared to be an emergency measure and shall take effect and be in force for a period of two years only from and after its passage and approval, and the period within which a mortgage or execution debtor may redeem real estate from a sale thereafter made shall be governed by the laws now in effect.

Approved February 21, 1933.

CHAPTER 158

S. B. No. 170—(Marshall.)

RESTRICTION FORECLOSURE REAL ESTATE MORTGAGE BY ADVERTISEMENT

An Act to amend and re-enact Section 8073 of the Compiled Laws of North Dakota for the year 1913, authorizing foreclosure of real estate mortgages by advertisement by restricting the remedy of foreclosure by advertisement to mortgages executed to the Manager of the Bank of North Dakota and by him assigned to the State Treasurer of the State of North Dakota, as trustee for the State of North Dakota, and mortgages negotiated by the Board of University and School Lands to the State of North Dakota, as mortgagee; providing a saving clause and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 8073 of the Compiled Laws of North Dakota for the year 1913 be amended and re-enacted to read as follows:

§ 8073. POWER OF SALE. FORECLOSURE AUTHORIZED.] Every mortgage of real property heretofore or hereafter executed to the Manager of the Bank of North Dakota, as mortgagee, and by him assigned to the State Treasurer, as Trustee for the State of North Dakota, and every mortgage negotiated by the Board of University and School Lands to the State of North Dakota as mortgagee, containing a power of sale, may upon default being made in the conditions of such mortgage, be foreclosed by advertisement in the cases and in the manner provided by law, and from and after the passage

and approval of this Act no other mortgage of real property shall be so foreclosed, but must be foreclosed by action.

§ 2. SAVING CLAUSE.] Providing, however, that no foreclosure now pending, or in which notice before foreclosure has been served at the time of taking effect of this Act, shall be affected hereby, and such foreclosure may proceed to completion in the same manner, and with the same force and effect as if this Act had not been passed.

§ 3. EMERGENCY.] An emergency is hereby declared to exist, and this Act shall be in full force and effect from, and after the date of its passage and approval.

Approved March 4, 1933.

CHAPTER 159

H. B. No. 94—(Anderson of Logan.)

VALIDATION REAL ESTATE MORTGAGE FORECLOSURE SALES MADE PRIOR TO JANUARY 1, 1927

An Act to legalize and validate real estate mortgage foreclosure sales made prior to January 1, 1927 whether or not Power of Attorney or Attorney's Affidavit or Notice of Intention to Foreclose has been filed, recorded, given, or served as provided by the law in force at the time of such foreclosure and sale thereunder were made, and limiting the time within which actions may be commenced or defenses interposed in relation thereto.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. From and after January 1st, 1934, no action shall be commenced to set aside the foreclosure of a mortgage foreclosed prior to January 1st, 1933 and no foreclosure of a mortgage so foreclosed shall thereafter be set aside and no defense shall be interposed in an action based on the foreclosure of such mortgage by virtue of any defect in the form, substance, service or manner of service of the notice of intention to foreclose such mortgage, and although no Power of Attorney or Attorney's Affidavit or Notice of Intention to Foreclose such mortgage, and served as provided by law.

Approved March 9, 1933.