

14 capacity for this purpose, as well as to make payment for the stock
15 so purchased from the proceeds of the loan so obtained.

1 SEC. 2. This act being deemed of immediate importance shall be
2 in full force and take effect from and after its passage and publication
3 in the Centerville Daily Iowegian of Centerville, Iowa, a newspaper
4 published at Centerville, Iowa, and in the Charles City Daily Press, a
5 newspaper published at Charles City, Iowa.

Senate File 293. Approved May 4, 1935.

I hereby certify that the foregoing act was published in the Centerville Daily Iowegian, May 7, 1935, and the Charles City Daily Press, May 8, 1935.

MRS. ALEX MILLER, *Secretary of State.*

CHAPTER 115

MORTGAGES. EMERGENCY DELAY OF FORECLOSURES

S. F. 34

AN EMERGENCY ACT relating to the foreclosure of real estate mortgages and deeds of trust; providing for the continuance of such actions; providing for determination by the court of the rights of the holder of such mortgages, and of the owner or owners of the real estate, and of persons liable on such mortgages, deeds of trust, or the notes secured thereby, to the possession of the real estate, and to the rents, income and profits therefrom; providing for suspension of conflicting acts; providing that applications heretofore filed under chapter one hundred eighty-two (182), acts of the Forty-fifth General Assembly, whether ruled upon or not, shall be considered as refiled under this act; and providing for the termination of this act.

WHEREAS, the Forty-fifth General Assembly enacted chapter one hundred eighty-two (182), providing for the continuance of actions for the foreclosure of real estate mortgages and deeds of trust upon the conditions provided for in said act.

WHEREAS, that at the time of the enacting of said chapter the governor of the state of Iowa had declared that an emergency existed, and the general assembly had determined that such an emergency did exist, which was general throughout the state, and that the safety and future welfare of the state as a whole was endangered thereby, and the general assembly acting under the power reserved by the people of Iowa did so enact said chapter, and

WHEREAS, in the case entitled "Des Moines Joint Stock Land Bank, Appellant, vs. David T. Nordholm, et al., Appellees," 217 Iowa, page 1319, decided by the supreme court of the state of Iowa, on the fourth day of April, 1934, it was held that legislation of this character was not in violation of the constitutional provisions regarding the impairment of the obligations of contracts, or the deprivation of vested property rights without due process of law, and it was stated that contract rights and vested interests must reasonably yield to the paramount rights of the state through the reservoir of its reserved police power to protect by appropriate legislation, its sovereignty, its government, its people and their general welfare against exigencies arising out of a great emergency, and

WHEREAS, the governor of the state of Iowa in his inaugural address to the Forty-sixth General Assembly stated in substance that said emergency

still exists, and that the need of the people of Iowa for the continuance of foreclosure actions as provided by chapter one hundred eighty-two (182), acts of the Forty-fifth General Assembly, still exists and that the period thereof should be extended, and

WHEREAS, the governor of the state of Iowa has not rescinded or recalled or otherwise modified the proclamation above referred to, and

WHEREAS, the Forty-sixth General Assembly has determined that such emergency exists at this time, and that the need exists for continuing and extending the time to which continuance of such actions may be had, and that the need for such relief is as great at this time as it was at the time of the enactment of chapter one hundred eighty-two (182), acts of the Forty-fifth General Assembly, therefore,

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. The Forty-sixth General Assembly hereby declares and
2 determines that the emergency which existed when chapter one hun-
3 dred eighty-two (182), of the acts of the Forty-fifth General Assembly
4 was enacted does continue to exist, and that such emergency at this
5 time is general throughout the state of Iowa, and that the safety and
6 future welfare of the state as a whole is endangered thereby. The
7 general assembly acting under the power reserved by the people of
8 Iowa does hereby enact the following:

1 "SEC. 2. In all actions for the foreclosure of real estate mortgages or
2 deeds of trust or notes secured thereby now pending in which decrees
3 have not been entered and in all actions hereafter commenced for the
4 foreclosure of real estate mortgages or deeds of trust or on notes se-
5 cured thereby, in any court of record in the state of Iowa, while this
6 act is in effect, the court, upon the application of the owner or owners
7 of such real estate who are defendants in said cause, and shall upon hear-
8 ing upon an application filed for a continuance, order said cause con-
9 tinued until March 1, 1937, unless good cause is shown to the contrary,
10 and upon the entry of such order of continuance, the court shall make
11 order or orders for possession of said real estate giving preference to
12 the owner or owners in possession, determine a fair rental to be paid
13 by the party or parties to be in possession, and the court shall further
14 order the application and distribution of the rents, income, and profits
15 from said real estate, and make such provision for the preservation
16 of said property as will be just and equitable during the continuance
17 of said cause, which order or orders shall provide that such rents, in-
18 come or profits shall be paid to and distributed by the clerk of the
19 district court of the county in which said suit is pending, or any other
20 person agreed upon by the parties to the action, and further provide
21 that in such distribution, taxes, insurance, cost of maintenance and
22 upkeep of said real estate shall be paid in the priority named, and any
23 balance distributed as the court may further direct; provided, how-
24 ever, that the court shall, upon a substantial violation of its said order
25 or orders, or for other good and sufficient cause shown, set aside said
26 order of continuance and the cause shall proceed to trial as by law
27 now provided, the provisions of this act to the contrary notwith-
28 standing.

1 "SEC. 3. All applications heretofore filed for continuances under
2 chapter one hundred eighty-two (182), of the acts of the Forty-fifth
3 General Assembly, and on which orders have been entered continuing
4 said cause, and which orders are now in full force and effect, and all
5 applications which have not been adjudicated shall be considered re-
6 filed even though hearing may have been had and order entered on the
7 applications, which applications may be amended, or substitutions
8 made therefor, and such cause shall not proceed to trial until the
9 application for a continuance, or the amendments thereto, or the sub-
10 stituted application therefor has been disposed of by court order, and
11 in all such cases the provisions of section two (2) of this act relating to
12 the continuances to March 1, 1937, possession, rentals, distribution
13 of rents and profits, and the setting aside of the orders for contin-
14 uance, shall apply.

1 "SEC. 4. The provisions of this act shall not apply to any mortgages
2 or deeds of trust executed subsequent to January 1, 1934, nor shall
3 it apply to mortgagors or mortgagors under deeds of trust who ac-
4 quired the real estate subsequent to January 1, 1934, except only in
5 cases where continuances have already been granted by court order
6 under chapter one hundred eighty-two (182), of the acts of the Forty-
7 fifth General Assembly of Iowa.

1 "SEC. 5. The provisions of this act shall apply to any mortgages or
2 deeds of trust executed prior to January 1, 1934, and subsequently
3 renewed.

1 "SEC. 6. In all cases where the hearing has not already been had on
2 the application for continuance, the court shall determine the rentals
3 and distribution of the rents, issues and profits from and after the
4 date of the commencement of the said action of foreclosure.

1 "SEC. 7. If any section, subsection, clause, sentence, or phrase of
2 this act is for any reason held to be unconstitutional and/or invalid,
3 such decision shall not affect the validity of the remaining portions
4 of this act. The legislature hereby declares that it would have passed
5 this act and each section, subsection, clause, sentence, or phrase hereof,
6 irrespective of whether any one or more of the sections, subsections,
7 clauses, sentences, or phrases be declared unconstitutional.

1 "SEC. 8. All acts and parts of acts in conflict with this act are
2 suspended while this act is in effect."

1 SEC. 9. This act being deemed of immediate importance shall be
2 in full force and effect after its passage and publication in the Charles
3 City Press, a newspaper published at Charles City, Iowa, and in the
4 Davenport Democrat, a newspaper published at Davenport, Iowa.

Senate File 34. Approved February 4, 1935.

I hereby certify that the foregoing act was published in the Charles City Press, Febru-
ary 6, 1935, and the Davenport Democrat, February 7, 1935.

MRS. ALEX MILLER, *Secretary of State.*