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NEW JERSEY. MORTGAGE LAWS
COMMISSION.

REPORT OF THE MORTGAGE LAWS
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REPORT

**188 W. State Street
Trenton, N. J.**

OF THE

MORTGAGE LAWS COMMISSION

*To the One Hundred and Fifty-fifth
Legislature of New Jersey*

MARCH 2, 1931

EDWARD WEST, *Chairman*

ALFRED S. MARCH

JOHN R. SIRACUSA

WILLIAM J. BLAIR

WILLIAM J. EGAN

ATWOOD C. WOLF, *Secretary*

Report of the Mortgage Laws Commission

To the Legislature of New Jersey:

The Mortgage Laws Commission, originally created by Joint Resolution in 1928 for the purpose of modifying and revising the present laws with respect to mortgages and mortgage investments in this State and to devise some satisfactory method of facilitating the foreclosure of mortgages, begs leave to submit herewith a brief report of its findings and activities.

Incidentally, this commission recommends and strongly urges that no action be taken at this time on any proposed measure to facilitate or speed up the processes of foreclosure until after the expiration of the present year. The existing financial conditions, due to the late economic upheaval, have, most unfortunately, occasioned an almost complete withdrawal of mortgage money from the market, and as a consequence, real estate owners and investors have suffered and will continue for some months to suffer, very severe losses and set-backs because of their inability to refinance their holdings.

The collapse of the financial markets of the world and the scarcity of any available capital, has, on the other hand, necessitated the turning of most securities into cash.

The result, as we all know, has been a desire on the part of most holders of mortgage securities to call in their holdings. Home owners, real estate investors and developers, finding it practically impossible to raise funds from other sources, have been rather hard hit and our courts and sheriffs offices are clogged up to the limit with foreclosure actions and execution sales.

Banking institutions in this State, in order to meet any possible emergencies, have adopted and consistently pursued a course of refusing to tie up their assets in long term investments. They must at all times have on hand a large percentage of their assets in ready cash. Building and Loan Associations have been

sorely strained since the fall of 1929 by heavy withdrawals, and what with the tightening up of regulatory legislation, such as the requirement of a "reserve fund," etc. and the necessity for meeting maturing series of shareholdings, they have practically no moneys to lend on bond and mortgage. Besides, both banks and building loan associations, have been compelled, as a result of these same conditions, to themselves take over innumerable parcels of real estate, at greatly reduced values, and with severe losses.

In our opinion, it would be most unwise, at present, to speed up or facilitate the processes of foreclosure since the inevitable result of such legislation would be to simply add to what is already a most unfortunate and oppressive condition.

It may be said, however, that the hesitancy to invest in mortgage securities is largely due to the fear that such investments in New Jersey at least, are and have been considered as "frozen assets," and that the difficulties which attend the realization on such securities, such as time and expense, obsolete and archaic foreclosure proceedings, etc., in themselves are a bar to any possible assistance in this respect. Be that as it may, this commission feels that for the next few months at least, the situation in the main, will not be eased to any considerable extent, even in those States where foreclosure proceedings are more modernized and less subject to delay. Besides, the home-owner and unfortunate investor must, in these unprecedented days, be given a little more time within which to search around for other sources of funds to preserve their equities and rights of redemption.

Then again, we feel that these conditions have conspicuously illustrated to the people some examples and situations from which we will profit by proper analyzation, during the next few months, and incorporate in the revision we will propose to your Honorable Bodies at the 1932 Session.

PREPARATORY INVESTIGATION

For the better part of two years after the creation of the mortgage laws commission, our members have made a study of the Mortgage Laws of the various States of the Union. Con-

ferences have been held with accredited committees of the New Jersey Title Association, N. J. Bankers Association, N. J. Building and Loan League and the Association of Real Estate Boards. In addition, we have conferred with the Mortgage Departments of Insurance Companies and had some considerable correspondence with Mortgage Investment Institutions both in and out of this State, including some Federal Land Banks.

Criticisms and suggestions were carefully considered and analyzed, but always with a view toward properly safeguarding the rights of the property owner as well as the investor.

It became increasingly obvious that mortgage funds would be far less expensive and more easily available if the very nature of the investment were made more fluid. This could be accomplished only by a radical change in the foreclosure processes. Instead of a period of protracted litigation of from six to nine months, this should be cut down to not more than ten weeks including four weeks for advertising the proposed sale.

Our commission held numerous public hearings in various parts of the State, and we were exceedingly surprised to find such wide variance in the practice and procedure which presently obtains in foreclosure cases in the various counties of North and South Jersey. Proceedings on bond and warrant are virtually unheard of in the northern part of New Jersey. Foreclosures in the Circuit Courts of Salem, Burlington, Cumberland, Camden and Hunterdon Counties are quite common, but in the more populated sections of our State, are rarely, if ever, resorted to.

We found that almost uniformly, the larger mortgage institutions, including insurance companies and even Federal Land Banks have refused to enter the field in New Jersey until this change in procedure was effected.

At the 1929 Session of the Legislature, we caused to be introduced a series of measures which were designed to temporarily relieve the situation. These were all approved by the State Bar Associations (see Year Book 1929-1930, N. J. State Bar Association) and all passed in the House of Assembly. It was urged upon us when these measures were in the Senate to withhold them all until our complete revision would be adopted.

Accordingly, we extended our studies and investigations and incorporated these measures in our completed bill which was submitted in 1930 and became known as "Senate No. 92."

This bill, among numerous other items, treated with a decentralization of the courts having jurisdiction in foreclosure cases, cutting down the time to file answers or appearances by defendants, lessened the costs, provided for absent defendants, *lis pendens*, appointment of rent receivers and the procedure thereon, deficiency suits, rights of redemption, payment of accrued taxes or other municipal liens, insurance premium, and interest on underlying or prior mortgages, estoppels, piecemeal foreclosures, cancellation and recording, and adopted a new short form of mortgage.

Numerous conferences were held with representatives of interested parties before the bill was drafted and its contents and purposes were unanimously approved. Members of the commission addressed various Bar Associations and Real Estate Boards of the State on the matters contained in this proposed legislation and were enthusiastically ratified with occasional new suggestions which were later embodied therein.

After its submission to the 1930 Legislature, Senate Bill No. 92 was, at the special request of this commission, subjected to a public hearing.

The measure met with general approval from all sources with the exception of one, and this single objection was not so much directed against the entire bill, since it was conceded that the proposed legislation had some very excellent features; the objection mainly was directed against the policy of vesting in the Circuit Courts, coequal jurisdiction with Chancery in foreclosure cases.

As a result, the measure was recommitted to our Mortgage Laws Commission and its passage was not pressed further during the 1930 Legislative Session.

Since then, the radical changes in our economic structure hereinabove referred to, have occurred, and in our opinion, the failure of the provisions of Senate Bill No. 92 to become a part of the law of our State, was a rather fortunate coincidence.

PENDING LEGISLATION

This Commission feels itself obliged to respectfully advert to a series of bills now pending in the Senate, obviously designed to cut down the period of foreclosure proceedings to sixty days.

Not only is this measure deficient in many respects, but, we feel, that its approval will bring about a condition nothing short of calamitous. It provides, as the penalty for speed in foreclosure suits, that no suits for deficiencies on bonds can be maintained. The effect of this provision would be to repulse outside capital from coming into New Jersey rather than attract it.

Our investigation has shown, and practical experience has proved, that the granting of almost every mortgage loan in New Jersey as well as elsewhere, is largely induced by the financial stability of the person who, or corporation which, executes the bond accompanying the mortgage. Without the bond, or any similar obligation, there can be no mortgage loan. Should Senate Bill No. 71 (1931) become a law, and foreclosure suits be instituted thereunder, even existing bonds will be absolutely nullified. We feel this would be entirely too radical a change, and should be discouraged.

Considering that this bill would wipe out the right of redemption in all cases, and considering also the present financial condition and scarcity of mortgage funds, it will virtually be saying to home owners whose properties are encumbered by maturing or defaulted mortgage liens, "We will make it possible to take your property away from you within eight weeks from now, and even though you might be able thereafter to borrow sufficient cash to extinguish your mortgage debt, yet you cannot have your property back."

FUTURE ACTION

As stated above, the members of this Commission have studied their work with great care. Having obtained and carefully considered the views of all the important bodies and factors whose interest are centered in realty mortgages, we feel that the results of our labor should be before the Legislature at this time.

Moreover, there is now pending before you a Revision of the Property Law (Senate No. 53) as submitted by the Commission on Revision and Consolidation of Public Statutes. While dealing with the law of property and mortgages generally, the framers of that bill have purposely omitted all provisions with respect to "Actions and Remedies." This was properly left for our Commission and the proper contacts have already been made for collaborations during the present year, to the end that we will, at your next annual session, be ready with our legislation in this respect.

Meanwhile we approve of Senate Bill No. 73 (by Senator Leap) cutting down Sheriffs' fees and would further suggest that Senate Bill No. 74 (also by the Senator from Salem) respecting deficiency suits, be held in abeyance until the coming in of our revision.

Respectfully submitted,

MORTGAGE LAWS COMMISSION,

EDWARD WEST, *Chairman*,
ATWOOD C. WOLF, *Secretary*,
ALFRED S. MARCH,
WILLIAM J. BLAIR,
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