



Administration of Justice Act 1970

1970 CHAPTER 31

PART IV

ACTIONS BY MORTGAGEES FOR POSSESSION

36 Additional powers of court in action by mortgagee for possession of dwelling-house

- (1) Where the mortgagee under a mortgage of land which consists of or includes a dwelling-house brings an action in which he claims possession of the mortgaged property, not being an action for foreclosure in which a claim for possession of the mortgaged property is also made, the court may exercise any of the powers conferred on it by subsection (2) below if it appears to the court that in the event of its exercising the power the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage.
- (2) The court—
 - (a) may adjourn the proceedings, or
 - (b) on giving judgment, or making an order, for delivery of possession of the mortgaged property, or at any time before the execution of such judgment or order, may—
 - (i) stay or suspend execution of the judgment or order, or
 - (ii) postpone the date for delivery of possession,for such period or periods as the court thinks reasonable.
- (3) Any such adjournment, stay, suspension or postponement as is referred to in subsection (2) above may be made subject to such conditions with regard to payment by the mortgagor of any sum secured by the mortgage or the remedying of any default as the court thinks fit.
- (4) The court may from time to time vary or revoke any condition imposed by virtue of this section.

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- (5) This section shall have effect in relation to such an action as is referred to in subsection (1) above begun before the date on which this section comes into force unless in that action judgment has been given, or an order made, for delivery of possession of the mortgaged property and that judgment or order was executed before that date.
- (6) In the application of this section to Northern Ireland, " the court" means a judge of the High Court in Northern Ireland, and in subsection (1) the words from " not being " to " made " shall be omitted.

37 Exclusive jurisdiction of county court in certain mortgage actions

- (1) Where a mortgage of land consists of or includes a dwelling-house and no part of the land is situated in Greater London or the county palatine of Lancaster, then, subject to subsection (2) below, if a county court has jurisdiction by virtue of section 48 of the County Courts Act 1959 or section 38 of this Act to hear and determine an action in which the mortgagee under that mortgage claims possession of the mortgaged property, no court other than a county court shall have jurisdiction to hear and determine that action.
- (2) This section shall not apply to an action for foreclosure or sale in which a claim for possession of the mortgaged property is also made.
- (3) Nothing in this section shall be taken as affecting the jurisdiction of any court to hear and determine an action which is pending in that court at the date on which this section comes into force.

38 Further provisions as to actions in county court for possession of mortgaged land

- (1) If an action in which the mortgagee under a mortgage of land claims possession of the mortgaged property would, by virtue of section 48 of the County Courts Act 1959, be within the jurisdiction of a county court had that claim been the only claim made in the action, a county court shall have jurisdiction to hear and determine the action notwithstanding that a claim for payment by the mortgagor of the amount owing in respect of the mortgage is also made in the action and that by reason of the amount claimed the last-mentioned claim is not within the jurisdiction of a county court.
- (2) Nothing in subsection (1) above shall be taken as empowering a county court to hear and determine an action for foreclosure or sale which is not within the jurisdiction of a county court.
- (3) Without prejudice to section 102(3)(c) of the County Courts Act 1959 (which enables county court rules to authorise the registrar to hear and determine certain proceedings and actions), the registrar of a county court may hear and determine any action in which the mortgagee under a mortgage of land claims possession of the mortgaged land, being an action which is within the jurisdiction of a county court.

39 Interpretation of Part IV

- (1) In this Part of this Act—
 - " dwelling-house " includes any building or part thereof which is used as a dwelling;

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" mortgage " includes a charge and " mortgagor " and " mortgagee " shall be construed accordingly ;

" mortgagor " and " mortgagee " includes any person deriving title under the original mortgagor or mortgagee.

- (2) The fact that part of the premises comprised in a dwelling-house is used as a shop or office or for business, trade or professional purposes shall not prevent the dwelling-house from being a dwelling-house for the purposes of this Part of this Act.