



Administration of Justice Act 1973

1973 CHAPTER 15

PART II

MISCELLANEOUS

8 Extension of powers of court in action by mortgagee of dwelling-house.

- (1) Where by a mortgage of land which consists of or includes a dwelling-house, or by any agreement between the mortgagee under such a mortgage and the mortgagor, the mortgagor is entitled or is to be permitted to pay the principal sum secured by instalments or otherwise to defer payment of it in whole or in part, but provision is also made for earlier payment in the event of any default by the mortgagor or of a demand by the mortgagee or otherwise, then for purposes of section 36 of the ^{M1} Administration of Justice Act 1970 (under which a court has power to delay giving a mortgagee possession of the mortgaged property so as to allow the mortgagor a reasonable time to pay any sums due under the mortgage) a court may treat as due under the mortgage on account of the principal sum secured and of interest on it only such amounts as the mortgagor would have expected to be required to pay if there had been no such provision for earlier payment.
- (2) A court shall not exercise by virtue of subsection (1) above the powers conferred by section 36 of the ^{M2} Administration of Justice Act 1970 unless it appears to the court not only that the mortgagor is likely to be able within a reasonable period to pay any amounts regarded (in accordance with subsection (1) above) as due on account of the principal sum secured, together with the interest on those amounts, but also that he is likely to be able by the end of that period to pay any further amounts that he would have expected to be required to pay by then on account of that sum and of interest on it if there had been no such provision as is referred to in subsection (1) above for earlier payment.
- (3) Where subsection (1) above would apply to an action in which a mortgagee only claimed possession of the mortgaged property, and the mortgagee brings an action for foreclosure (with or without also claiming possession of the property), then section 36 of the Administration of Justice Act 1970 together with subsections (1) and (2) above

Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1973, Section 8. (See end of Document for details)

shall apply as they would apply if it were an action in which the mortgagee only claimed possession of the mortgaged property, except that—

- (a) section 36(2)(b) shall apply only in relation to any claim for possession; and
 - (b) section 36(5) shall not apply.
- (4) For purposes of this section the expressions “dwelling-house”, “mortgage”, “mortgagee” and “mortgagor” shall be construed in the same way as for the purposes of Part IV of the Administration of Justice Act 1970.
- (5) This section shall have effect in relation to an action begun before the date on which this section comes into force if before that date judgment has not been given, nor an order made, in that action for delivery of possession of the mortgaged property and, where it is a question of subsection (3) above, an order *nisi* for foreclosure has not been made in that action.
- (6) In the application of this section to Northern Ireland, subsection (3) shall be omitted.

Marginal Citations

M1 1970 c. 31.

M2 1970 c. 31.

Status:

Point in time view as at 01/02/1991. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the Administration of Justice Act 1973, Section 8.