



1980

c 296 Mortgages Act

Ontario

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CHAPTER 296

Mortgages Act

1. In this Act,

Interpre-
tation

- (a) "conveyance" includes assignment, appointment, lease, settlement and other assurance and covenant to surrender made by deed on a sale, mortgage, demise or settlement of any property or on any other dealing with or for any property; and "convey" has a corresponding meaning;
- (b) "encumbrance" includes a mortgage in fee or for a less estate, a trust for securing money, a lien, and a charge of a portion, annuity or other capital or annual sum; and "encumbrancer" has a corresponding meaning, and includes every person entitled to the benefit of an encumbrance, or to require payment or discharge thereof;
- (c) "land" includes tenements and hereditaments, corporeal or incorporeal, houses and other buildings, and also an undivided share in land;
- (d) "mortgage" includes any charge on any property for securing money or money's worth; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to his estate, interest or right in the mortgaged property; and "mortgagee" includes any person deriving title under the original mortgagee.
R.S.O. 1970, c. 279, s. 1.

PART I

RIGHTS AND OBLIGATIONS OF MORTGAGORS AND
MORTGAGEES

2.—(1) Notwithstanding any stipulation to the contrary where a mortgagor is entitled to redeem he may require the mortgagee, instead of giving a certificate of payment or reconveying and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs, and the mortgagee is bound to assign and convey accordingly.

Obligation
on mortgagee
to transfer
instead of
reconveying

Idem

(2) The right of the mortgagor to require an assignment belongs to and is capable of being enforced by each encumbrancer or by the mortgagor, notwithstanding any intermediate encumbrance; but a requisition of an encumbrancer prevails over that of the mortgagor, and as between encumbrancers a requisition of a prior encumbrancer prevails over that of a subsequent encumbrancer.

Exception

(3) This section does not apply if the mortgagee is or has been in possession. R.S.O. 1970, c. 279, s. 2.

Right of mortgagor to inspect title deeds

3. Notwithstanding any stipulation to the contrary a mortgagor, as long as his right to redeem subsists, is entitled, at reasonable times, on his request, and at his own cost and on payment of the mortgagee's costs and expenses in that behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee. R.S.O. 1970, c. 279, s. 3.

Right of mortgagor to copy of mortgage

4.—(1) Notwithstanding any stipulation to the contrary, within thirty days after receipt by the mortgagee of a mortgage executed by the mortgagor, the mortgagee or his solicitor or representative shall deliver or mail or cause to be delivered or mailed a true copy of the mortgage to the mortgagor or his solicitor or representative.

Offence

(2) If the mortgagee or his solicitor or representative fails to deliver or mail or cause to be delivered or mailed a true copy of the mortgage to the mortgagor or his solicitor or representative within thirty days after receipt by the mortgagee of the mortgage executed by the mortgagor as required by subsection (1), the mortgagor may, within ten days after the period of thirty days has elapsed, demand from the mortgagee a true copy of the mortgage, and, if the mortgagee fails to comply with the demand within ten days after receipt of the demand by him, he is guilty of an offence and on conviction is liable to a fine of not more than \$50. R.S.O. 1970, c. 279, s. 4.

Action for possession of land by mortgagor

5. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person. R.S.O. 1970, c. 279, s. 5.

6.—(1) All money payable to a mortgagor on an insurance of the mortgaged property, including effects, whether affixed to the freehold or not, being or forming part thereof, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received. Application of insurance money

(2) Without prejudice to any obligation to the contrary imposed by law or by special contract, a mortgagee may require that all money received on an insurance of the mortgaged property be applied in or towards the discharge of the money due under his mortgage. R.S.O. 1970, c. 279, s. 6. Idem

7. There shall, in the several cases mentioned in this section, be deemed to be included, and there shall in those several cases be implied, covenants to the effect stated in this section, by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by him with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say, Covenants to be implied:

(a) in a conveyance by way of mortgage, the following covenants by the person who conveys, and is expressed to convey as beneficial owner, namely, on mortgage by beneficial owner

- (i) for payment of the mortgage money and interest, and observance in other respects of the proviso in the mortgage,
- (ii) for good title,
- (iii) for right to convey,
- (iv) that, on default, the mortgagee shall have quiet possession of the land, free from all encumbrances,
- (v) that the mortgagor will execute such further assurances of the said lands as may be requisite, and
- (vi) that the mortgagor has done no act to encumber the land mortgaged,

according to the forms of covenants for such purposes set forth in Schedule B to the *Short Forms of Mortgage Act*, subject to the provisions of that Act; R.S.O. 1980, c. 474

on mortgage
of leaseholds,
by beneficial
owner

(b) in a conveyance by way of mortgage of leasehold property, the following further covenants by the person who conveys and is expressed to convey, as beneficial owner, namely,

(i) that the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed, and is in full force, unforfeited, and unsurrendered, and in no wise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance, and

(ii) that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe and perform, or cause to be paid, observed and performed, all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made and those deriving title under him indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent, or the non-observance or non-performance of such covenants, conditions and agreements, or any of them. R.S.O. 1970, c. 279, s. 7.

Implied
covenants in
mortgages
are joint
and several

8. In a mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenants on their part shall be deemed to be joint and several covenants by them, and where there are more mortgagees than one the implied covenant with them shall be deemed to be a covenant with them jointly unless the amount is expressed to be secured to them in shares or distinct sums, in which latter case the implied

covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him. R.S.O. 1970, c. 279, s. 8.

9.—(1) A mortgagee of freehold or leasehold property may take and receive from the mortgagor a release of the equity of redemption in the property, or may purchase the same under any judgment or decree or execution without thereby merging the mortgage debt as against any subsequent mortgagee or person having a charge on the same property. Release of equity of redemption without merger of debt

(2) Where a prior mortgagee so acquires the equity of redemption of the mortgagor no subsequent mortgagee is entitled to foreclose or sell the property without redeeming or selling, subject to the rights of such prior mortgagee, in the same manner as if such prior mortgagee had not acquired the equity of redemption. Position of subsequent mortgagee

(3) This section does not affect any priority or claim any mortgagee may have under the registry laws. R.S.O. 1970, c. 279, s. 9. Priority under registry

10. Where a person entitled to any freehold land by way of mortgage has died, and his executor or administrator has become entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and the mortgagee's estate in the land, and such executor or administrator has the same power as to any part of the land on payment of some part of the mortgage debt, or on any arrangement for exonerating the whole or any part of the mortgaged land, without payment of money, and such conveyance, assignment, release or discharge is as effectual as if the same had been made by the persons having the mortgagee's estate. R.S.O. 1970, c. 279, s. 10. Powers of executors of mortgagee

11.—(1) In this section, "court" means the Supreme Court or the county or district court of the county or district in which the land or any part thereof is situate. Interpretation

(2) The payment in good faith of any money to and the receipt thereof by the survivor or survivors of two or more mortgagees, or the executors or administrators of such survivor, or their or his assigns, effectually discharges the Effect of receipts of surviving mortgagee, etc.

person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the security.

Where mortgagee cannot be found

(3) When a mortgagor or any person entitled to pay off a mortgage desires to do so and the mortgagee, or one of several mortgagees, cannot be found or when a sole mortgagee or the last surviving mortgagee is dead and no probate of his will has been granted or letters of administration issued, or where from any other cause a proper discharge cannot be obtained, or cannot be obtained without undue delay, the court may permit payment into court of the amount due upon the mortgage and may make an order discharging the mortgage.

Payment out of money paid into court

(4) The money paid into court shall be paid out of court with any accrued interest to the mortgagee or mortgagees or to the executor or administrator of the mortgagee or as the court by order for payment into court or any subsequent order may direct.

Notice to mortgagee

(5) The court may require notice to be given by advertisement or as may be considered proper to the mortgagee or those claiming under him either before or after making the order.

When amount offered questioned

(6) When the amount admitted to be due upon the mortgage appears to be open to question the court may as a condition of making the order require payment into court of a sum in excess of the amount admitted to be due and in such case the additional sum is subject to the further order of the court.

Provision for subsequent interest and costs

(7) The court may require payment into court of an additional sum to answer any claim by the mortgagee for subsequent interest and costs.

Death of mortgagee, order for discharge

(8) When a mortgagee has died and all money due upon the mortgage was paid to him in his lifetime or has been paid to a person entitled to receive the same after his death or where in any other case it appears that all money due upon the mortgage has been paid and for any reason a discharge or reconveyance cannot be obtained without undue delay and expense the court may make an order discharging the mortgage.

Registration of order discharging

(9) Upon the registration of an order discharging a mortgage it has the same effect as the registration of a certificate of discharge signed by the mortgagee would have under the *Registry Act*.

(10) An appeal lies to the Court of Appeal from any order made under this section. R.S.O. 1970, c. 279, s. 11. Appeal

12. The purchaser in good faith of a mortgage may, to the extent of the mortgage, and except as against the mortgagor, set up the defence of purchase for value without notice in the same manner as a purchaser of the mortgaged property might do. R.S.O. 1970, c. 279, s. 12. Defence of purchase for value without notice

13. Notwithstanding any stipulation in the mortgage to the contrary, the right of a mortgagee to distrain for interest in arrear upon a mortgage is limited to the goods and chattels of the mortgagor, and to such of them as are not exempt from seizure under execution. R.S.O. 1970, c. 279, s. 13. Exemption from liability to distress

14.—(1) As against creditors of a mortgagor, or person in possession of mortgaged premises under a mortgagor, the right, if any, to distrain upon the mortgaged premises for arrears of interest or for rent, in the nature of or in lieu of interest under the provisions of any mortgage is restricted to one year's arrears of such interest or rent. Limitation upon right to distrain

(2) This restriction does not apply unless some one of such creditors is an execution creditor, or unless there is an assignee for the general benefit of such creditors appointed before lawful sale of the goods and chattels distrained, nor unless the officer executing such writ of execution or such assignee, by notice in writing to be given to the person distraining or his attorney, bailiff, or agent before such lawful sale, claims the benefit of this restriction. When restriction to apply

(3) When such notice is given, the distrainer shall relinquish to the officer or assignee the goods and chattels so distrained, upon receiving one year's arrears of such interest or rent and his reasonable costs of distress, or if such arrears and costs are not paid or tendered he shall sell only so much of the goods and chattels distrained as is necessary to satisfy one year's arrears of such interest or rent and the reasonable costs of distress and sale, and shall thereupon relinquish any residue of them, and pay any residue of money, proceeds thereof so distrained, to such officer or assignee. Duty of distrainer when restriction applies

(4) An officer executing an execution, or an assignee who pays any money to relieve goods and chattels from distress under this section, is entitled to reimburse himself therefor out of the proceeds of the sale thereof. R.S.O. 1970, c. 279, s. 14. Reimbursement of officer or assignee

15. Goods and chattels distrained by a mortgagee shall not be sold except after such public notice as is required to be given by a landlord who sells goods and chattels distrained for rent. R.S.O. 1970, c. 279, s. 15. Notice of sale

Payment
of principal
upon default

16.—(1) Notwithstanding any agreement to the contrary, where default has been made in the payment of any principal money secured by a mortgage of freehold or leasehold property, the mortgagor or person entitled to make such payment may at any time, upon payment of three months interest on the principal money so in arrear, pay the same, or he may give the mortgagee at least three months notice, in writing, of his intention to make such payment at a time named in the notice, and in the event of his making such payment on the day so named he is entitled to make the same without any further payment of interest except to the date of payment.

Exception

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice, he is thereafter entitled to make such payment only on paying the principal money so in arrear and interest thereon to the date of payment together with three months interest in advance.

Saving

(3) Nothing in this section affects or limits the right of the mortgagee to recover by action or otherwise the principal money so in arrear after default has been made. R.S.O. 1970, c. 279, s. 16.

Right to
redeem
after 5 years

17.—(1) Where any principal money or interest secured by a mortgage of freehold or leasehold property is not, under the terms of the mortgage, payable until a time more than five years after the date of the mortgage, then, if at any time after the expiration of such five years any person liable to pay or entitled to redeem tenders or pays to the person entitled to receive the money the amount due for principal money and interest to the time of such tender or payment, together with three months further interest in lieu of notice, no further interest is chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage.

Exceptions

(2) This section does not apply to any mortgage given by a joint stock company or other corporation nor to any debenture issued by any such company or corporation for the payment of which security has been given on freehold or leasehold property. R.S.O. 1970, c. 279, s. 17.

Paying off
mortgage
when pro-
vision made
for a lower
rate for
punctual
payment

18.—(1) Where provision is made in a mortgage that if interest is paid promptly it will be accepted at a lower rate than that provided in the mortgage, and interest at the lower rate has been paid according to such condition up to the time when all the principal money has become payable, any person liable to pay or entitled to redeem is entitled to pay the principal

money and interest on the same at the lower rate at any time after the time for payment of the principal money on giving three months notice of his intention to make such payment or on paying three months interest at such lower rate in lieu of notice.

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice, he is thereafter entitled to make such payment only on paying the principal and interest at the lower rate to the date of payment, together with three months interest in advance. R.S.O. 1970, c. 279, s. 18. Mortgagor falling to pay according to notice

19.—(1) In this section, “original mortgagor” means any person who by virtue of privity of contract with the mortgagee is personally liable to the mortgagee to pay the whole or any part of the moneys secured by the mortgage. Interpretation

(2) Notwithstanding any stipulation to the contrary in a mortgage, where a mortgagor has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify the mortgagor with respect to the mortgage, the mortgagee has the right to recover from the grantee the amount of the mortgage debt in respect of which the grantee is obligated to indemnify the mortgagor; provided that the right of the mortgagee to recover the amount of the mortgage debt under this section from the grantee of the equity of redemption shall as against such grantee terminate on the registration of a grant or transfer of the equity of redemption by such grantee to another person unless prior to such registration an action has been commenced to enforce the right of the mortgagee. Right of mortgagee to recover personal judgment

(3) Where a mortgagee has the right to recover the whole or any part of moneys secured by a mortgage from an original mortgagor and also has a right by virtue of this section to recover from a grantee of the equity of redemption from a mortgagor, if the mortgagee recovers judgment for the amount of the mortgage debt against the original mortgagor, the mortgagee thereupon forever ceases to have a right to recover under this section from a grantee, and if the mortgagee recovers judgment under this section against a grantee he thereupon forever ceases to have a right to recover from the original mortgagor; provided that where there is more than one original mortgagor this section does not affect the right of a mortgagee after the recovery of judgment against one original mortgagor to recover judgment against the other original mortgagor or mortgagors. R.S.O. 1970, c. 279, s. 19. Limit of right of action

Interpre-
tation

20.—(1) In this section, “building mortgage” means any mortgage made for the purpose of financing the construction of a building.

When no
action may
be brought

(2) Where, in any building mortgage made on or after the 1st day of July, 1942, it is expressly stated that it is a building mortgage made pursuant to this section, no action may be brought by the mortgagee after the expiration of one year from the date of the maturity of the mortgage whereby to recover payment from the person who executed the mortgage of the whole or any part of the moneys therein secured, if such person has made a *bona fide* sale of the property and has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify such person with respect to the mortgage. R.S.O. 1970, c. 279, s. 20.

Relief
before
action

21.—(1) Notwithstanding any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,

- (a) at any time before sale under the mortgage; or
- (b) before the commencement of an action for the enforcement of the rights of the mortgagee or of any person claiming through or under him,

the mortgagor may perform such covenant or pay the amount due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the mortgagee, and thereupon he is relieved from the consequences of such default.

Statement
of arrears,
expenses,
etc.

(2) The mortgagor may, by a notice in writing, require the mortgagee to furnish him with a statement in writing,

- (a) of the amount of the principal or interest with respect to which the mortgagor is in default; or
- (b) of the nature of the default or the non-observance of the covenant,

and of the amount of any expenses necessarily incurred by the mortgagee.

(3) The mortgagee shall answer a notice given under subsection (2) within fifteen days after he receives it, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, any rights that he may have to enforce the mortgage shall be suspended until he has complied with subsection (2). R.S.O. 1970, c. 279, s. 21. Idem

22.—(1) Notwithstanding any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable, in an action for enforcement of the rights of the mortgagee or of any person claiming through or under him, the mortgagor, upon payment into court of the sum of \$100 to the credit of the action as security for costs, may apply to the court and, conditional upon performance of such covenant or upon payment of the money due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and upon payment of the costs of the action, the court, Relief after action commenced

(a) shall dismiss the action if judgment has not been recovered; or

(b) may stay proceedings in the action, if judgment has been recovered and if no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place.

(2) Notwithstanding clause (1) (b), where judgment has been recovered and recovery of possession of the land has taken place, the court may stay proceedings in the action upon the application of a person added as a party in the master's office, made under subsection (1) within ten days after service of notice of the judgment has been made upon him. Idem

(3) Where proceedings have been stayed under clause (1) (b) or under subsection (2) and default again occurs under the mortgage, the court upon application may remove the stay. R.S.O. 1970, c. 279, s. 22. Subsequent default

PART II

STATUTORY POWERS

23. Where any principal money is secured by mortgage of land, the mortgagee, at any time after the expiration of three months from the time of default in the payment of any Powers incident to mortgages after default

moneys due under the mortgage or after any omission to pay any premium of insurance that by the terms of the mortgage ought to be paid by the mortgagor, has the following powers to the like extent as if they had been in terms conferred by the mortgage:

Power of sale

1. A power to sell, or to concur with any other person in selling, the whole or any part of the mortgaged property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to buy in at an auction and to rescind or vary contracts for sale, and to resell the land, from time to time, in like manner without being answerable for any loss occasioned thereby.

Power to insure

2. A power to insure and to keep insured against loss or damage by fire any building or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance are a charge on the mortgaged property, in addition to the mortgage money and with the same priority and with interest at the same rate as the mortgage money. R.S.O. 1970, c. 279, s. 23.

Receipts for purchase money sufficient discharges

24. A receipt for purchase money given by the person exercising the power of sale conferred by section 23 is a sufficient discharge to the purchaser, who is not bound to see to the application of the purchase money. R.S.O. 1970, c. 279, s. 24.

Notice before sale

25.—(1) No sale under the power conferred by section 23 shall be made until after forty-five days notice in writing in Form 1 has been given to the persons and in the manner provided by Part III.

Idem

(2) The notice may be given at any time after fifteen days default in making any payment provided for by the mortgage. R.S.O. 1970, c. 279, s. 25.

Application of purchase money

26. The money arising from the sale shall be applied by the person receiving the same as follows:

Firstly, in payment of all the expenses incident to the sale or incurred in any attempted sale;

Secondly, in discharge of all interest and costs then due in respect of the mortgage under which the sale was made;

Thirdly, in discharge of all the principal money then due in respect of the mortgage; and

Fourthly, in payment of the amounts due to the subsequent encumbrancers according to their priorities,

and the residue shall be paid to the mortgagor. R.S.O. 1970, c. 279, s. 26.

27. The person exercising the power of sale has power to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein of the mortgagor and of which he had power to dispose. R.S.O. 1970, c. 279, s. 27.

Conveyance
to the
purchaser

28. At any time after the power of sale has become exercisable, the person entitled to exercise the same is entitled to demand and recover from the mortgagor all deeds and documents in his possession or power relating to the mortgaged property, or to the title thereto, which he would have been entitled to demand and recover if the property had been conveyed, appointed, surrendered or assigned to and was then vested in him for all the estate and interest of the mortgagor and of which he had power to dispose, and where the legal estate is outstanding in a trustee the mortgagee, or any purchaser from him, is entitled to call for a conveyance of the legal estate to the same extent as the mortgagor could have called for such a conveyance if the mortgage had not been made. R.S.O. 1970, c. 279, s. 28.

Right to title
deeds and
conveyance
of legal
estate

29. So much of this Part as confers a power to sell does not apply in the case of a mortgage that contains a power of sale, and so much as confers a power to insure does not apply in the case of a mortgage that contains a power to insure; nor do any of the provisions of this Part apply to a mortgage that contains a declaration that this Part does not apply thereto. R.S.O. 1970, c. 279, s. 29.

Application
of Part II

PART III

NOTICE OF EXERCISING POWER OF SALE

30.—(1) A mortgagee shall not exercise a power of sale unless a notice of exercising the power of sale in Form 1 has been given by him to the following persons, other than the persons having an interest in the mortgaged property prior to that of the mortgagee and any other persons subject to whose rights the mortgagee proposes to sell the mortgaged property:

Notice of
power of
sale

R.S.O. 1980,
c. 230

1. Where the mortgaged property is registered under the *Land Titles Act*, to every person appearing by the register of title and by the index of executions to have an interest in the mortgaged property.

R.S.O. 1980,
c. 445

2. Where the *Registry Act* applies to the mortgaged property, to every person appearing by the abstract index and by the index of writs received for execution by the sheriff of the county or district in which the mortgaged property is situate to have an interest in the mortgaged property.

3. Where there is a statutory lien against the mortgaged property in favour of the Crown or any other public authority and where the mortgagee exercising the power of sale has written notice of the lien, to the Crown or other public authority claiming the lien.

4. Where the mortgagee has actual notice in writing of any other interest in the mortgaged property and where such notice has been received prior to the giving of notice exercising the power of sale, to the person having such interest.

Interpre-
tation

(2) In subsection (1), the expressions “register of title” and “abstract index” include instruments received for registration before 4.30 p.m. on the day immediately prior to the day on which a notice of exercising the power of sale is given. R.S.O. 1970, c. 279, s. 30.

When notice
may be
given and
power
exercised

31. Where a mortgage by its terms confers a power of sale upon a certain default, notice of exercising the power of sale shall not be given until the default has continued for at least fifteen days, and the sale shall not be made for at least thirty-five days after the notice has been given. R.S.O. 1970, c. 279, s. 31.

Manner
of giving
notice,
general
rules

32.--(1) A notice of exercising a power of sale shall be given by personal service or by registered mail addressed to the person to whom it is to be given at his usual or last known place of address, or, where the last known place of address is that shown on the registered instrument under which he acquired his interest, to such address, or by leaving it at one of such places of address, or, where the mortgage provides for personal service only, by personal service, or, where the mortgage provides a specific address, to such address.

Execution
creditors

(2) Where a person to be given a notice of exercising a power of sale is an execution creditor, the notice may

be given in the manner provided in subsection (1) by addressing it to the solicitor who issued the execution or, where there is no solicitor, to the execution creditor.

(3) ~~Where a~~ person to be given a notice of exercising a power of sale is a mechanics' lien claimant, the notice may be given in the manner provided in subsection (1) by addressing it to the solicitor who filed the claim for lien, but, where there is no solicitor and no address for service is shown on the claim for lien and the mortgagee has no actual knowledge of the lien claimant's address, no notice need be given to such lien claimant. Mechanics' lien creditors

(4) Where a person to be given a notice of exercising a power of sale is under a disability, the notice shall be deemed to have been effectually given if given in accordance with subsection (1). Persons under disability

(5) Where a person to be given a notice of exercising a power of sale has died, the notice shall be deemed to have been effectually given if given by registered mail in accordance with subsection (1), and, subject to paragraph 4 of subsection 30 (1), shall be deemed to be effectual notice to all persons who have any interest in the deceased's estate. R.S.O. 1970, c. 279, s. 32. Deceased persons

33. A notice of exercising a power of sale shall, if given by registered mail, be mailed in Ontario, and such a notice shall be deemed to have been given on the day on which it was mailed. R.S.O. 1970, c. 279, s. 33. When notice by mail effective

34. Subject to the *Land Titles Act* and except where an order is made under section 38, a statutory declaration by the mortgagee, his solicitor or agent as to default, a statutory declaration proving service, including production of the post office receipt of registration, if any, and a statutory declaration by the mortgagee or his solicitor that the sale complies with this Part and, where applicable, with Part II, is conclusive evidence of compliance with this Part and, where applicable, with Part II, sufficient to give a good title to the purchaser. R.S.O. 1970, c. 279, s. 34. Statutory declarations conclusive R.S.O. 1980, c. 230

35. Where a notice has been given in professed compliance with this Part and, where applicable, with Part II, the title of the purchaser is not liable to be impeached on the ground that the provisions of this Part or, where applicable, Part II respecting default and the provisions of this Part respecting notice, have not been complied with, Impeachment of title

but any person damnified thereby has his remedy against the person exercising the power of sale. R.S.O. 1970, c. 279, s. 35.

Abridge-
ment of
time

36. Nothing in this Part shall be deemed to abridge,

- (a) the period of default after which notice exercising a power of sale may be given where the period of default provided by the mortgage is greater than the period of default mentioned in section 31; or
- (b) the period of time after notice has been given after which the mortgaged premises may be sold where the period of time provided by the mortgage is greater than the period of time mentioned in section 31. R.S.O. 1970, c. 279, s. 36.

Notice
rules
paramount

37. Notwithstanding any agreement to the contrary or any provision contained in any mortgage or any provision of this or any other Act, sections 30, 31, 32, 33, 34 and 35 apply to any power of sale in a mortgage, and sections 30, 32, 33, 34 and 35 apply to the power of sale conferred by section 23. R.S.O. 1970, c. 279, s. 37.

Exercise of
power of
sale without
notice

38.—(1) Where a mortgage by its terms confers a power of sale upon a certain default and such default has continued for fifteen days, or where there has been at least three months default under a mortgage with respect to which a power of sale is conferred by section 23, a mortgagee may apply *ex parte* to the judge of the county or district court of the county or district in which the mortgaged property or any part thereof is situate, or to the Master of the Supreme Court, for leave to exercise power of sale without notice.

Idem

(2) Upon an application under subsection (1), the judge or master, as the case may be, shall, having regard to the circumstances, either grant leave to exercise the power of sale without notice or with such notice to such persons, in such manner and within such time as he considers proper. R.S.O. 1970, c. 279, s. 38.

Part III
does not
apply to
bond
mortgages

39. This Part does not apply to a mortgage given by a corporation to secure bonds or debentures. R.S.O. 1970, c. 279, s. 39.

PART IV

GENERAL PROVISIONS AS TO POWER OF SALE

40.—(1) Where, pursuant to any condition or proviso contained in a mortgage, there has been made or given a demand or notice either requiring payment of the money secured by the mortgage, or any part thereof, or declaring an intention to proceed under and exercise the power of sale therein contained, no further proceeding and no action either to enforce the mortgage, or with respect to any clause, covenant or provision therein contained, or to the mortgaged property or any part thereof, shall, until after the lapse of the time at or after which, according to such demand or notice, payment of the money is to be made or the power of sale is to be exercised or proceeded under, be commenced or taken until an order permitting the same has been obtained from a judge of the county or district court of the county or district in which the mortgaged property or any part thereof is situate, or from a judge of the Supreme Court.

Restrictions
as to pro-
ceedings

(2) The order may be obtained *ex parte* or upon such notice as the judge may direct upon such proof as satisfies the judge that it is reasonable and equitable that the proposed action or proceeding should be permitted.

Proof on
which order
may be
granted

(3) This section does not apply to proceedings to stay waste or other injury to the mortgaged property. R.S.O. 1970, c. 279, s. 40.

Exception

41.—(1) Where such demand or notice requires payment of all money secured by or under a mortgage, the person making such demand or giving such notice is bound to accept and receive payment of the same if made as required by the terms of such demand or notice.

Payment
made in
terms of
notice

(2) If there is a dispute as to the costs payable by the person by or on whose behalf such payment is either made or tendered, such costs shall, on three clear days notice to such person by the person claiming the same, be taxed and ascertained by the clerk of the county or district court, or by the local master of the county or district in which the mortgaged property or any part thereof is situate.

Payment or
tender of
costs

(3) Where the time limited by the demand or notice requiring payment expires before the taxation of the costs has been completed, the amount due apart from the costs claimed may be paid, and payment of the amount

Compliance
with
demand

allowed for costs within ten days after the issue of a certificate of taxation shall be deemed a compliance with the demand or notice.

Costs,
taxation

(4) A mortgagee's costs of and incidental to the exercise of a power of sale, whether under this Part or otherwise, may, without an order, be taxed by one of the taxing officers of the Supreme Court at Toronto or by a local master having jurisdiction in the county or district in which the mortgaged property or any part of it is situate at the instance of any person interested.

Discretion
as to costs

(5) The costs of the taxation shall be in the discretion of the taxing officer. R.S.O. 1970, c. 279, s. 41.

FORM 1

(Sections 25 (1) and 30 (1))

NOTICE OF SALE UNDER MORTGAGE

Take notice that default has been made in payment of the moneys due under a certain mortgage dated theday of....., 19..., made between (*here state parties and describe mortgaged property*) which mortgage was registered on the.....day of....., 19..., in the registry division, etc. (*and, if the mortgage has been assigned, add: and which mortgage was assigned to the undersigned on the..... day of....., 19...*).

And I hereby give you notice that the amount now due on the mortgage for principal money, interest (*if so, add: taxes, insurance premiums, or other matters*) and costs, respectively, are as follows:

(*Set out items claimed to be due*)

And unless the said sums are paid on or before the..... day of....., 19... (*a day not less than forty-five days from the service of the notice where the power of sale is exercised under Part II, or a day not less than thirty-five days from the service of the notice where Part III applies*), I shall sell the property covered by the said mortgage under the provisions contained in it (*or if so: under Part II of the Mortgages Act*).

This notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

Dated the.....day of....., 19...

(Signed)
Mortgagee

