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c 374 Short Forms of Mortgages Act

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CHAPTER 374

The Short Forms of Mortgages Act

1. In this Act,

(a) "land" includes freehold tenements and hereditaments, whether corporeal or incorporeal, and any undivided part or share therein;

(b) "party" and "parties" include a body politic or corporate as well as an individual. R.S.O. 1950, c. 362, s. 1.

2.—(1) Where a mortgage of land, made according to the form set forth in Schedule A, or any other mortgage of land expressed to be made in pursuance of this Act or referring thereto, contains any of the forms of words contained in Column One of Schedule B, and distinguished by any number therein, the mortgage has the same effect as if it contained the form of words in Column Two of Schedule B distinguished by the same number as is annexed to the form of words used in the mortgage; but it is not necessary in any such mortgage to insert any such number.

(2) Where a blank occurs in any of the forms in Column Two the form shall be read as if it were filled in with the words that supply the place of the blank in the corresponding form in Column One. R.S.O. 1950, c. 362, s. 2.

3.—(1) Parties who use any of the forms in the first column of Schedule B may substitute for the word "mortgagor" or "mortgagee" any name or other designation, and in every such case a corresponding substitution shall be taken to be made in the corresponding forms in the second column.

(2) Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

(3) Such parties may introduce into or annex to any of the forms in the first column any express exceptions from or other express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column. R.S.O. 1950, c. 362, s. 3.
4. Any such mortgage, or part of such mortgage that fails to take effect by virtue of this Act is nevertheless as effectual to bind the parties thereto as if this Act had not been passed. R.S.O. 1950, c. 362, s. 4.

SCHEDULE A

FORM OF MORTGAGE

This Indenture, made the...day of, nine hundred and, in pursuance of The Short Forms of Mortgages Act, between (here insert the names of parties and recitals, if any), Witnesseth, that in consideration of of lawful money of Canada, now paid by the said mortgagee to the said mortgagor, the receipt whereof is hereby acknowledged, the said mortgagor doth grant and mortgage unto the said mortgagee, his heirs, executors, administrators and assigns for ever, all (parcels).

(Here insert provisos, covenants or other provisions)

In witness whereof the said parties hereto have hereunto set their hands and seals.

R.S.O. 1950, c. 362, Sched. A.

SCHEDULE B

COLUMN ONE

1. And the said wife of the said mortgagor hereby bars her dower in the said lands.

2. Provided this mortgage to be void on payment of lawful money of Canada, with interest at per cent as follows: and taxes and performance of statute labour.

COLUMN TWO

1. And the said wife of the said mortgagor for and in consideration of the sum of one dollar of lawful money of Canada, to her in hand paid by the said mortgagee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said mortgagee, his heirs, executors, administrators, successors and assigns, all her dower, and right and title which, in the event of her surviving her said husband, she might or would have to dower, in, to, or out of the lands and premises hereby conveyed or intended so to be.

2. Provided always and these presents are upon this express condition that if the said mortgagor, his heirs, executors, administrators, successors or assigns, or any of them, do and shall well and truly pay or cause to be paid unto the said mortgagee, his executors, administrators, successors or assigns the just and full sum of (amount of principal money) of lawful money of Canada with interest thereon at the rate of (rate of interest) per cent per annum on the day and time and in the manner following, that is to say (terms of payment of principal and interest), without any deduction or abatement, and do and shall also pay any taxes, rates, levies, charges or assessments upon the said lands or in respect thereof no matter by whom
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<td>or by what authority imposed which the said mortgagee, his executors, administrators, successors or assigns shall have paid or shall have been rendered liable to pay, and do and shall also pay all such other sums as the said mortgagee, his executors, administrators, successors or assigns may be entitled to by virtue of these presents, then these presents and everything in the same shall be absolutely null and void; but nothing in this proviso or these presents shall make the mortgagor, his heirs, executors, administrators, successors or assigns liable to pay to the mortgagee, his executors, administrators, successors or assigns any tax, rate or charge imposed upon the mortgagee, his heirs, executors, administrators, successors or assigns in respect of the income derived by him or them in respect of the mortgage money or in respect of the devolution of the interest of the said mortgagee in the said lands or mortgage money.</td>
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3. The said mortgagor covenants with the said mortgagee:

4. That the mortgagor will pay the mortgage money and interest, and observe the above proviso.

5. That the mortgagor has a good title in fee simple to the said lands.

6. And that he has the right to convey the said

3. And the said mortgagor doth hereby, for himself, his heirs, executors, administrators and successors covenant, promise and agree to and with the said mortgagee, his heirs, executors, administrators, successors and assigns, in manner following, that is to say:

4. That the said mortgagor, his heirs, executors, administrators and successors or some or one of them shall and will well and truly pay or cause to be paid unto the said mortgagee, his executors, administrators, successors or assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, at the days and times and in the manner above limited for payment thereof, and shall and will in everything well, faithfully and truly do, observe, perform, fulfil and keep all and singular the provisions, agreements and stipulations in the said above proviso particularly set forth, according to the true intent and meaning of these presents, and of the said above proviso.

5. And also, that the said mortgagor, at the time of the sealing and delivery hereof, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the lands, tenements, hereditaments and all and singular other the premises hereinbefore described, with their and every of their appurtenances and of and in every part and parcel thereof without any manner of trusts, reservations, limitations, provisions or conditions, except those contained in the original grant thereof from the Crown or any other matter or thing to alter, charge, change, encumber or defeat the same.

6. And also, that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or hereinbefore
7. And that on default the mortgagee shall have quiet possession of the said lands.

8. Free from all encumbrances.

9. And that the said mortgagor will execute such further assurances of the said lands as may be requisite.

7. And also, that from and after default shall happen to be made of or in the payment of the said sum of money, in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then, and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators, successors and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of him the said mortgagor, his heirs, executors, administrators, successors or assigns or any other person or persons whomsoever.

8. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments and premises or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, executions and recognizances, and of and from all manner of other charges or encumbrances whatsoever.

9. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned, or the interest thereof, or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then and in every such case the said mortgagor, his heirs, executors, administrators, successors and assigns and all and every other person or persons whosoever having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with the appurtenances or any part thereof, by, from, under or in trust for him the said mortgagor, his heirs, executors, administrators, successors or assigns shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the
10. And that the said mortgagor will produce the title deeds enumerated hereunder, and allow copies to be made at the expense of the mortgagee.

11. And also that the said mortgagor hath not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or encumbered in title, estate or otherwise howsoever.

12. And also that the said mortgagor or his heirs, executors, administrators, successors or assigns shall and will forthwith insure unless already insured, and during the continuance of this security...
13. And the said mortgagor doth release to the said mortgagee all his claims upon the said lands subject to the said proviso.

14. Provided, that the said mortgagee on default of payment for
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| may on notice enter on and lease or sell the said lands. | according to the true intent and meaning of these presents, and of the proviso in that behalf herein-before contained, and shall have thereafter elapsed without such payment being made (of which default, as also of the continuance of the said principal money and interest, or some part thereof, on this security, the production of these presents shall be conclusive evidence), it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators, successors or assigns, after giving written notice to the said mortgagor, his heirs, executors, administrators, successors or assigns, of his or their intention in that behalf, either personally or at his or their usual or last place of residence within this Province not less than previous, without any further consent or concurrence of the said mortgagor, his heirs, executors, administrators, successors or assigns, to enter into possession of the said lands, tenements, hereditaments and premises hereby conveyed, or mentioned or intended so to be, and to receive and take the rents, issues and profits thereof, and whether in or out of possession of the same, to make any lease or leases thereof, or of any part thereof as he or they shall think fit, and also to sell and absolutely dispose of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, or any part or parts thereof, with the appurtenances, by public auction or private contract, or partly by public auction and partly by private contract, as to him or them shall seem meet, and to convey and assure the same when so sold unto the purchaser or purchasers thereof, his or their heirs, successors or assigns, or as he or they shall direct and appoint and to execute and do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid, and the said mortgagee, his heirs, executors, administrators, successors or assigns shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid unless the same shall happen by reason of his or their wilful neglect or default; and it is hereby further agreed between the parties to these presents, that, until such sale or sales shall be made as aforesaid, the said mortgagee, his heirs, executors, administrators, successors or assigns shall and will stand and be possessed of and interested in the rents and profits of the said lands, tenements, hereditaments and premises, in case he or they shall take possession of the same on any default as aforesaid, and after such sale or sales shall stand and be possessed of and interested in the moneys to arise and be produced by such sale or sales, or which shall be received by the mortgagee, his heirs, executors, administrators, successors or assigns, by reason of any insurance upon the said premises or any part thereof, upon trust in the first place to pay and satisfy the costs and charges of preparing for and making sales, leases and conveyances as aforesaid, and all other costs and charges, damages and expenses which the said mortgagee, his heirs, executors, administrators, successors or assigns, shall bear, sustain, or be put to for taxes, rents,
Provided

15. Provided that the mortgagee may distrain for arrears of interest.
16. Provided that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable.

16. Provided always, and it is hereby further expressly declared and agreed by and between the parties to these presents, that if any default shall at any time happen to be made of or in the payment of the interest money hereby secured or mentioned or intended so to be, or any part thereof, then and in such case the principal money hereby secured or mentioned, or intended so to be, and every part thereof, shall forthwith become due and payable in like manner and with the like consequences and effects to all intents and purposes whatsoever, as if the time herein mentioned for payment of such principal money had fully come and expired, but that in such case the said mortgagor, his heirs, executors, administrators, successors or assigns, shall on payment of all arrears under these presents, with lawful costs and charges in that behalf, at any time before any judgment in the premises recovered or within such time as, by the practice of the Supreme Court, relief therein could be obtained be relieved from the consequences of non-payment of so much of the money secured by these presents, or mentioned, or intended so to be, as may not then have become payable by reason of lapse of time.

17. Provided also, and it is hereby further expressly declared and agreed by and between the parties to these presents, that until default shall happen to be made of or in the payment of the said sum of money hereby secured or mentioned, or intended so to be, or the interest thereof, or any part of either of the same, or the doing, observing, performing, fulfilling or keeping some one or more of the provisions, agreements or stipulations herein set forth, contrary to the true intent and meaning of these presents, it shall and may be lawful to and for the said mortgagor, his heirs, executors, administrators, successors and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues and profits thereof to his and their own use and benefit, without let, suit, hindrance, interruption, or denial of or by the said mortgagee, his heirs, executors, administrators, successors or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for him, her, them or any or either of them.

1960, c. 112, s. 1.