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c 239 Mortgages Act

Ontario

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CHAPTER 239

The Mortgages Act

1. In this Act,

Interpreta-
tion.

- (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. 1937, c. 155, 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 shall be bound to assign and convey accordingly.

Obligation
on mortgagee
to transfer
instead of
reconveying.
Imp. Act,
44 and 45 V.
c. 41, s. 15.

Idem.

Imp. Act,
45 and 46 V.
c. 39, s. 12.

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

Exception.

(3) This section shall not apply if the mortgagee is or has been in possession. R.S.O. 1937, c. 155, s. 2.

Right of
mortgagor to
inspect title
deeds.

Imp. Act,
44 and 45 V.
c. 41, s. 16.

3. Notwithstanding any stipulation to the contrary a mortgagor, as long as his right to redeem subsists, shall be 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. 1937, c. 155, s. 3.

Action for
possession
of land by
mortgagor.

4. 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. 1937, c. 155, s. 4.

Application
of insurance
money.

5.—(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.

Idem.

(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. 1937, c. 155, s. 5.

Imp. Act,
44 and 45 V.
c. 41, s. 23.

Covenants to
be implied;
Imp. Act,
44 and 45 V.
c. 41, s. 7.

6. 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,

- (a) in a conveyance by way of mortgage, the following on mortgage by beneficial owner; covenants by the person who conveys, and is expressed to convey as beneficial owner, namely,
- (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 Mortgages Act*, subject to the provisions of that Act; Rev. Stat. c. 362.

- (b) in a conveyance by way of mortgage of leasehold on mortgage of leaseholds, by beneficial owner. 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 unsundered, 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. 1937, c. 155, s. 6.

Implied covenants in mortgages are joint and several.

Imp. Act, 44 and 45 V. c. 41, s. 28.

7. 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. 1937, c. 155, s. 7.

Release of equity of redemption without merger of debt.

8.—(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.

Position of subsequent mortgagee.

(2) Where a prior mortgagee so acquires the equity of redemption of the mortgagor no subsequent mortgagee shall be 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.

Priority under registry.

(3) This section shall not affect any priority or claim any mortgagee may have under the registry laws. R.S.O. 1937, c. 155, s. 8.

9. 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 shall have 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 shall be as effectual as if the same had been made by the persons having the mortgagee's estate. R.S.O. 1937, c. 155, s. 9.

Powers of executors of mortgagee.

10.—(1) In this section, "court" means the Supreme Court. 1943, c. 28, s. 27.

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, shall effectually discharge the 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.

Effect of receipts of surviving mortgagee, etc.

(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.

Where mortgagee cannot be found.

(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.

Payment out of money paid into court.

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

Notice to mortgagee.

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 shall be 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. R.S.O. 1937, c. 155, s. 10 (1-6).

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. R.S.O. 1937, c. 155, s. 10 (7); 1942, c. 27, s. 1.

Registration of order discharging.

(9) Upon the registration of an order discharging a mortgage it shall have the same effect as the registration of a certificate of discharge signed by the mortgagee would have under *The Registry Act*. R.S.O. 1937, c. 155, s. 10 (8).

Rev. Stat., c. 336.

Defence of purchase for value without notice.

11. 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. 1937, c. 155, s. 11.

Exemption from liability to distress.

12. Notwithstanding any stipulation in the mortgage to the contrary, the right of a mortgagee to distrain for interest in arrear upon a mortgage shall be 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. 1937, c. 155, s. 12.

Limitation upon right to distrain.

13.—(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 shall be restricted to one year's arrears of such interest or rent.

When restriction to apply.

(2) This restriction shall 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 dis-

training or his attorney, bailiff, or agent before such lawful sale, claims the benefit of this restriction.

(3) When such notice is given the distrainor 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 there-
Duty of distrainor 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, shall be entitled to reimburse himself therefor out of the proceeds of the sale thereof. R.S.O. 1937, c. 155, s. 13.
Reimbursement of officer or assignee.

14. 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. 1937, c. 155, s. 14.
Notice of sale.

15.—(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 shall be entitled to make the same without any further payment of interest except to the date of payment.
Payment of principal upon default.

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice he shall thereafter be 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.
Exception.

(3) Nothing in this section shall affect or limit 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. 1937, c. 155, s. 15.
Saving.

16.—(1) Where any principal money or interest secured by a mortgage of freehold or leasehold property is not, under
Right to redeem after five years.

the terms of the mortgage, payable till 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 shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage. R.S.O. 1937, c. 155, s. 16 (1).

Exceptions. (2) This section shall 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. 1937, c. 155, s. 16 (2), *amended*.

Paying off mortgage when provision made for a lower rate for punctual payment.

17.—(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 shall be 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.

Mortgagor failing to pay according to 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 shall thereafter be 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. 1937, c. 155, s. 17.

Interpretation.

18.—(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.

Right of mortgagee to recover personal judgment.

(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 shall have the right to recover from the grantee the amount of the mortgage debt in respect to 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.

(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 shall thereupon forever cease 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 shall thereupon forever cease to have a right to recover from the original mortgagor; provided that where there is more than one original mortgagor this section shall 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. 1939, c. 28, s. 1.

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

(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. 1942, c. 27, s. 2, *amended*.

PART II

STATUTORY POWERS

20. Where any principal money is secured by mortgage of land, the mortgagee shall, at any time after the expiration of four months from the time when the principal money has become payable, according to the terms of the mortgage, or after any interest on the principal money has been in arrear for six months, or after any omission to pay any premium on any insurance which, by the terms of the mort-

Limit of
right of
action.

Interpre-
tation.

When no
action may
be brought.

Powers inci-
dent to mort-
gages after
default for
certain time.
Imp. Act,
44 and 45 v.
c. 41, s. 19
(1).

gage, ought to be paid by the mortgagor, have the following powers to the like extent as if they had been in terms conferred by the mortgage but not further, namely:

power of sale;

(a) a power to sell, or 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 re-sell the land, from time to time, in like manner without being answerable for any loss occasioned thereby;

power to insure.

(b) a power to insure and 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 shall be 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. 1937, c. 155, s. 18.

Receipts for purchase money sufficient discharges.

21. A receipt for purchase money given by the person exercising the power of sale conferred by section 20 shall be a sufficient discharge to the purchaser, who shall not be bound to see to the application of the purchase money. R.S.O. 1937, c. 155, s. 19.

Notice before sale.

22.—(1) No sale under the power conferred by section 20 shall be made until after two months notice in writing (Form 1) has been given to every subsequent encumbrancer, and to the mortgagor, either personally or at his usual or last place of residence in Ontario.

When to be given.

(2) The notice may be given at any time after any default in making a payment provided for by the mortgage.

Case of an infant.

(3) In case of the death of the person entitled subject to the mortgage, and of his interest passing to an infant, the notice shall be given to his personal representative as well as to the infant.

Service upon infant.

(4) The notice to the infant shall be served upon his guardian, and if he has no guardian upon the Official Guardian, and in every case upon the infant himself if over the age of 12 years. R.S.O. 1937, c. 155, s. 20.

Title of purchaser.

23. Where a conveyance has been made in professed exercise of the power of sale conferred by section 20 the title of

the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that such power had been improperly or irregularly exercised, or that such notice has not been given; but any person damnified by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power. R.S.O. 1937, c. 155, s. 21.

Imp. Act,
44 and 45 V.
c. 41, s. 21
(2).

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

Application
of purchase
money.

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, subject to the provisions of section 9 of *The Dower Act*, in payment of the amounts due to the subsequent encumbrancers according to their priorities,

Rev. Stat.,
c. 109.

and the residue shall be paid to the mortgagor. R.S.O. 1937, c. 155, s. 22.

25. The person exercising the power of sale shall have 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. 1937, c. 155, s. 23.

Conveyance
to the
purchaser.

26. At any time after the power of sale has become exercisable the person entitled to exercise the same shall be 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, shall be 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. 1937, c. 155, s. 24.

Right to title
deeds and
conveyance
of legal
estate.

Application
of Part II.

27. So much of this Part as confers a power to sell shall not apply in the case of a mortgage which contains a power of sale except as provided in section 28, and so much as confers a power to insure shall not apply in the case of a mortgage which contains a power to insure; nor shall any of the provisions of this Part apply to a mortgage which contains a declaration that this Part shall not apply thereto. R.S.O. 1937, c. 155, s. 25.

Mortgagee's
option as
to pro-
ceedings.
Rev. Stat.,
c. 362.

28.—(1) Where a mortgage made in pursuance of *The Short Forms of Mortgages Act* contains a power of sale in the form of words numbered 14 in Column One of Schedule B to that Act, the mortgagee may, in exercising the power, in lieu of taking the proceedings provided for by such form in Column Two of that Schedule, take proceedings under and have the benefit of the provisions of this Part, except that such power shall not be exercisable until after at least four months default and at least two months notice, or such longer periods as may by the power contained in such mortgage be fixed therefor, and this Part shall apply to a sale made under such power.

Idem.
Rev. Stat.,
c. 362.

(2) Where a mortgage purporting to be made in pursuance of *The Short Forms of Mortgages Act* contains a power of sale which provides for a sale without notice, the mortgagee may take proceedings to sell under and have the benefit of the provisions of this Part as fully and effectually as if the mortgage had not contained a power of sale. R.S.O. 1937, c. 155, s. 26.

PART III

GENERAL PROVISIONS AS TO POWER OF SALE

Contents
of notice.

29. A notice of exercising a power of sale shall state the amounts claimed to be due for principal, interest and costs respectively. R.S.O. 1937, c. 155, s. 27.

Restrictions
as to pro-
ceedings.

30.—(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 unless and 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.

(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 shall not apply to proceedings to stay waste or other injury to the mortgaged property. R.S.O. 1937, c. 155, s. 28. Exception.

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

(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. Costs, taxation of.

(5) The costs of the taxation shall be in the discretion of the taxing officer. R.S.O. 1937, c. 155, s. 29. Discretion as to.

FORM 1

(Section 22)

NOTICE OF SALE UNDER MORTGAGE

I hereby require you on or before the.....day of.....19....., (a day not less than two calendar months from the service of the notice, and not less than six months after the default), to pay off the principal money

and interest secured by a certain mortgage dated the.....day of19...., and expressed to be made between (*here state parties and describe mortgaged property*), which mortgage was registered on the..... day of.....19...., (*and if the mortgage has been assigned add: and has since become the property of the undersigned*). And I hereby give you notice that the amounts due on the said mortgage for principal, interest and costs respectively, are as follows: (*set the same forth*).

And unless the principal money, interest and costs are paid on or before the said.....day of.....19...., I shall sell the property comprised in the said mortgage under the authority of *The Mortgages Act*.

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

R.S.O. 1937, c. 155, Form I.
