1937

c 160 Short Forms of Mortgages Act

Ontario
CHAPTER 160.

The Short Forms of Mortgages Act.

1. In this Act, "Land" shall include freehold tenements and hereditaments, whether corporeal or incorporeal, and any undivided part or share therein; "Party" and "parties" shall include a body politic or corporate as well as an individual. R.S.O. 1927, c. 145, 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, such mortgage shall have 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 such mortgage; but it shall not be necessary in any such mortgage to insert any such number.

(2) Where a blank occurs in any of the forms in Column Two such form shall be read as if it were filled in with the words which supply the place of the blank in the corresponding form in Column One. R.S.O. 1927, c. 145, s. 2.

3.—(1) Parties who use any of the forms in the first column of Schedule B may substitute for the words "mortgagor" or "mortgagee" any name or other designation, and in every such case corresponding substitutions 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. 1927, c. 145, s. 3.

4. Any such mortgage, or part of such mortgage, which fails to take effect by virtue of this Act shall nevertheless be as effectual to bind the parties thereto as if this Act had not been passed. R.S.O. 1927, c. 145, s. 4.

(Note.—See also The Conveyancing and Law of Property Act, Rev. Stat. c. 152.)

SCHEDULE A.
Form of Mortgage.

This Indenture, made the day of one thousand 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 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 provisions, covenants or other provisions.)

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

R.S.O. 1927, c. 145, Sched. A.

SCHEDULE B.

COLUMN ONE. COLUMN TWO.

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

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 and assigns, all her dower 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 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 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 centum per annum on the day and time and in the manner...
COLUMB. COLUMN TWO.

centum as follows, 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 or
by what authority imposed which the said mort-
gagee, his executors, administrators 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 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 or assigns liable
to pay to the mortgagee, his executors, adminis-
trators or assigns any tax, rate or charge imposed
upon the mortgagee, his executors, administrators
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.

3. The said mort-
gagor covenants
with the said
mortgagee.

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

4. That the
mortgagor will pay
the mortgage
money and inter-
est, and observe
the above proviso.

4. That the said mortgagor, his heirs, executors,
administrators 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 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 provi-
sions, 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. That the
mortgagor has a
good title in fee
simple to the said
lands.

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, provisoes or condi-
tions, except those contained in the original grant
thereof from the Crown or any other matter or
thing to alter, charge, change, incumber or defeat
the same.
6. And that he has the right to convey the said lands to the said mortgagee.

7. And that on default the mortgagee shall have quiet possession of the said lands.

8. Free from all incumbrances.

9. And that the said mortgagor will execute such further assurances of the said lands as may be requisite.
from, under or in trust for him the said mortgagor, his heirs, executors, administrators, or assigns shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns, make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances, and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the said lands, tenements, hereditaments and premises, with the appurtenances, unto the said mortgagee, his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs, executors, administrators or assigns, or his or their counsel learned in the law shall or may be lawfully and reasonably devised, advised, or required, but so as no person who shall be required to make or execute such assurances shall be compelled, for the making or executing thereof, to go or travel from his usual place of abode.

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.

10. And also, that the said mortgagor, his heirs, executors, administrators, and assigns shall and will, unless prevented by fire or inevitable accident, produce the title deeds enumerated hereunder, and allow copies to be made at the expense of the mortgagee

11. And that the said mortgagor has done no act to incumber the said lands.

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 incumbered in title, estate or otherwise howsoever.
12. And that the said mortgagor will and will forthwith insure unless already insured, and during the continuance of this security keep insured against loss or damage by fire, in such proportions upon each building as may be required by the said mortgagee, his heirs, executors, administrators or assigns, the messuages and buildings erected on the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, in the sum of lawful money of Canada, at the least, in some insurance office to be approved of by the said mortgagee, his heirs, executors, administrators or assigns, and pay all premiums and sums of money necessary for such purpose, as the same shall become due, and will on demand assign, transfer and deliver over unto the said mortgagee, his heirs, executors, administrators or assigns, the policy or policies of insurance, receipt or receipts thereto appertaining; and if the said mortgagee, his heirs, executors, administrators or assigns, shall pay any premiums or sums of money for insurance of the said premises or any part thereof, the amount of such payment shall be added to the debt hereby secured, and shall bear interest at the same rate from the time of such payments, and shall be payable at the time appointed for the then next ensuing payment of interest on the said debt.

13. And the said mortgagor hath released, remised and for ever quit claim, and by these presents doth release, remise, and for ever quit claim unto 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 any part of either of the same, according to the true intent and meaning of these presents, and of the proviso in that behalf hereinbefore 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 or assigns, after giving written notice to the said mortgagor, his heirs, executors, administrators 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 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, 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 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, 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 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 or assigns, shall bear, sustain, or be put to for taxes, rents, insurances and repairs, and all other costs and charges which may be incurred in and about the execution of any of the trusts in him or them hereby reposed, and in the next place to pay and satisfy the principal sum of money and interest hereby secured or mentioned or intended so to be or so much thereof as shall remain due and unsatisfied up to and inclusive of the day whereon the said principal sum shall be paid and satisfied; and after full payment and satisfaction of all such sums of money and interest as aforesaid upon this further trust that the said mortgagee, his heirs, executors, administrators or assigns, do and shall pay the surplus, if any, to the said mortgagor, his heirs, executors, administrators or assigns, or as he or they shall direct and appoint, and shall also, in such event, at the request, costs and charges in the law of the said mortgagor, his heirs, executors, administrators or assigns, convey and assure unto the said mortgagor, his heirs, executors, administrators or assigns, or to such person or persons as he or they shall direct and appoint, all such parts of the said lands, tenements, hereditaments and premises as shall remain unsold for the purposes aforesaid, freed and absolutely discharged of and from all estate, lien, charge and incumbrance whatsoever by the said mortgagee, his heirs, executors, administrators or assigns, in the meantime, but so as no person who shall be required to make or execute any such assurances, shall be compelled for the making thereof to go or travel from his usual place of abode: Provided always, and it is hereby further declared and agreed by and between the parties to these presents, that notwithstanding the power of sale and other the powers and provisions contained in these presents, the said mortgagee, his heirs, executors, administrators or assigns, shall have and be entitled to his right of foreclosure of the equity of redemption of the said mortgagor, his heirs, executors, administrators and assigns in the said lands, tenements, hereditaments and premises as fully and effectually as he or they might have exercised and enjoyed the same in case the power of sale, and the other former provisos and trusts incident thereto had not been herein contained.

15. Provided that the mortgagee may distrain for arrears of interest.
much of such interest as shall, from time to time, be, or remain in arrear and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent.

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 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. And 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 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 mortgagor, his heirs, executors, administrators 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.

R.S.O. 1927, c. 145, Sched. B.