1927

145 Short Forms of Mortgages Act

Ontario
CHAPTER 145.

The Short Forms of Mortgages Act.

1. In this Act, Interpretation.

(a) "Land" shall include freehold tenements and "Land," hereditaments, whether corporeal or incorporeal, and any undivided part or share therein; (b) "Party" and "Parties" shall include a body politic or corporate as well as an individual. R.S.O. 1914, c. 117, s. 2.

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. 1914, c. 117, s. 3.

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. 1914, c. 117, s. 4.
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. 1914, c. 117, s. 5.

[See also The Conveyancing and Law of Property Act, Rev. Stat. c. 137.]

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 (here insert provisos, covenants or other provisions.) the receipt whereof is hereby acknowledged, 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).

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

R.S.O. 1914, c. 117, Sched. "A."

SCHEDULE B.

COLUMN ONE.

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

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 and assigns, all her dower, and right and title which, in the event of her surviving her 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 void on payment of of lawful money of Canada, with interest thereon at the rate of per centum per annum on the day and
COLUMNS ONE.

The mortgagor covenants with the said mortgagee, that is to say:

1. That the mortgagor, his heirs, executors and administrators, covenants, promise and agree, to and with the said mortgagee, his heirs, executors, administrators and assigns, in the manner following, that is to say: 

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

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

R.S.O. 1914, c. 117. Sehed. "B", part; 1927, c. 28, s. 9.

COLUMN TWO.

time and in the manner following, that is to say (terms of payment of principal and interest), without any deduction or abatement, and a n d performance of statute labour.

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, provisos or conditions, 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 also, that the said mortgagor now 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.

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 mentioned or intended so to be, with their and every of their appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents.

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 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 and assigns or any other person or persons whosoever.

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 or other charges or incumbrances 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 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,
COLUMN ONE.

with the appurtenances or any part thereof, by, 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 shall and will 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 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 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 also that the said mortgagor or his heirs, executors, administrators or assigns shall and will forthwith insure all the buildings on the said lands to the amount of not less than lawful money of Canada.

13. And the said mortgagor hath released, remised and for ever quitclaim, 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.
Provided, and it is hereby declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors, or administrators, shall make default in any payment of the said money or interest or any part of either of the same, according to the true intent and meaning of these presents, and of the proviso in that behalf, either personally or at his or their usual or last place of residence within this Province not less than one half hereinbefore contained, and may on notice enter on and lease or sell the said lands.

Provided always, and it is hereby declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors, or administrators, shall make default in any payment of the said money or interest or any part of either of the same, according to the true intent and meaning of these presents, and of the proviso in that behalf, either personally or at his or their usual or last place of residence within this Province not less than one half hereinbefore contained, and may on notice enter on and lease or sell the said lands.

Provided, and it is hereby declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors, or administrators, shall make default in any payment of the said money or interest or any part of either of the same, according to the true intent and meaning of these presents, and of the proviso in that behalf, either personally or at his or their usual or last place of residence within this Province not less than one half hereinbefore contained, and may on notice enter on and lease or sell the said lands.
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 the other former proviso and trusts included therein, 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 provisoes and trusts incident thereto had not been herein contained.
15. Provided, that the mortgagee may distrain for arrears of interest, in payment of any part of the said interest at any of the days or times hereinbefore limited for the payment thereof, it shall and may be lawful for the said mortgagee, his heirs, executors, or assigns, to distrain therefor upon the said lands, tenements, hereditaments and premises, or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise, of the said lands, tenements, hereditaments and premises, so 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 that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable.

17. Provided that until default of payment the mortgagee shall have quiet possession of the said lands.
COLUMN ONE.

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 there-of 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 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. 1914, c. 117, Sched. "B," part