

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

*House of Representatives,
23rd August, 1939.*

Hon. Mr. Mason.

PROPERTY LAW AMENDMENT.

ANALYSIS.

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A BILL INTITULED

AN ACT to amend the Property Law Act, 1908. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority

5 of the same, as follows:—

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| 1 | 1. This Act may be cited as the Property Law Amendment Act, 1939, and shall be read together with and deemed part of the Property Law Act, 1908 (hereinafter referred to as the principal Act). | Short Title. |
| 10 | 2. The provisions of this Act shall apply with respect to mortgages of land subject to the Land Transfer Act, 1915, as well as to mortgages of other land. | See Reprint of Statutes, Vol. VII, p. 1077
Application of Act.
Ibid., p. 1162 |
| 15 | 3. (1) Subject to the provisions of this section, no power to sell land or to enter into possession of land conferred by any mortgage shall become or be deemed to have become exercisable, and no moneys secured by any mortgage of land shall become or be deemed | Restriction on exercise by mortgagee of his rights. |

to have become payable, by reason of any default (whether made before or after the passing of this Act) in the payment of any moneys so secured or in the performance or observance of any other covenant expressed or implied in the mortgage unless and until the mortgagee serves on the owner for the time being of the land subject to the mortgage a notice specifying the default complained of and a date on which the power will become exercisable or the moneys will become payable, as the case may be, and requiring the owner to remedy the default, and the owner fails to remedy the default before the date so specified. 5 10

(2) The date to be specified in the notice as aforesaid shall not be earlier than *one* month from the service of the notice nor earlier than the date on which the power would have become exercisable or the moneys would have become payable if this section had not been passed. A notice under this section may be served before the last-mentioned date. 15

(3) Where any land that is subject to the mortgage is also subject to any subsequent mortgage, and the mortgagee has actual notice of the name and address of the subsequent mortgagee, he shall forthwith after serving the notice on the owner serve a copy of the notice on the subsequent mortgagee. 20 25

(4) Where the notice relates to a power to enter into possession of any land the Court may in its discretion, upon the application of the mortgagee made *ex parte* or otherwise as the Court thinks fit, grant leave to the mortgagee to exercise the power at any time before the date specified in the notice, but not earlier than the date on which the power would have become exercisable if this section had not been passed. Leave may be granted under this subsection either unconditionally or upon or subject to such conditions as the Court thinks fit. 30 35

(5) If at any time after the *first* day of *January*, nineteen hundred and *forty*, the mortgagee exercises the power of sale conferred by any mortgage of land and the amount realized is less than the amount owing under the covenant to repay expressed or implied in the mortgage, no action to recover the 40

amount of the deficiency or any part thereof shall be commenced by the mortgagee against any person (not being the owner of the land subject to the mortgage at the time of the exercise of the power of sale) unless
5 the mortgagee, at least *one* month before the exercise of the power of sale, serves on that person notice of his intention to exercise the power of sale and to commence action against that person to recover the amount of the deficiency in the event of the amount
10 realized being less than the amount owing under the covenant to repay.

(6) The provisions of this section shall apply to mortgages executed either before or after the passing of this Act and shall have effect notwithstanding any
15 stipulation to the contrary.

(7) Nothing in this section shall be construed to affect any sale or entry into possession made before the passing of this Act, or any proceedings commenced before the passing of this Act for the recovery of
20 any moneys secured by a mortgage.

(8) Notwithstanding anything to the contrary in the foregoing provisions of this section, if before the passing of this Act any mortgagee for the time being entitled by reason of any default of the mortgagor
25 to exercise the power of sale conferred by his mortgage has made an application to a Registrar of the Supreme Court to conduct the sale of the whole or any part of the land that is subject to the mortgage, the sale may be proceeded with and completed as if this Act
30 had not been passed:

Provided that in any such case the sale shall not be proceeded with if, before the time fixed for the sale, the mortgagor remedies the default complained of by the mortgagee in his application to the
35 Registrar and pays to the mortgagee the expenses already incurred by him in connection with the intended sale and any moneys expended by him on or about the land subsequently to the time when he made his application to the Registrar; and for the purposes of
40 this provision the Registrar, on the application of the mortgagor, may, if he thinks fit, postpone the sale for any period not exceeding *one* month.

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(9) The provisions of this section shall be in addition to and not in derogation of the provisions of section seven of the Mortgagors and Lessees Rehabilitation Amendment Act, 1937.

(10) For the purposes of this section the term "owner" in relation to any land subject to a mortgage means the original mortgagor or, if his estate or interest in the land has been conveyed or transferred by operation of law or otherwise, means the person entitled to that estate or interest.

Power to authorize land and minerals to be dealt with separately by mortgagee. Cf. 15 Geo. V, c. 20, s. 92 (Imp.)

4. (1) Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the Court may, on his application, authorize him and the persons deriving title under him to dispose—

(a) Of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting, or carrying-away of minerals; or

(b) Of all or any mines and minerals, with or without the said rights or powers, separately from the land,—

and thenceforth the powers so conferred shall have effect as if they were contained in the mortgage.

(2) The provisions of this section shall apply to mortgages of land whether executed before or after the passing of this Act.

Power of sale in mortgage includes certain powers incident thereto. Cf. *ibid.*, s. 101 (2)

5. Subject to the provisions of section seven of this Act, every power of sale expressed or implied in a mortgage of land shall include the following powers as incident thereto, namely:—

(a) A power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged land or any part thereof, or on the purchaser and any land sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing:

(b) A power to sell the mortgaged land, or any part thereof, or all or any mines and minerals apart from the surface,—

5 (i) With or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the land remaining subject to the mortgage or any part thereof, or to any
10 land sold; and

(ii) With or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged land, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the land remaining unsold, or
15 any part thereof, or to any land sold; and

20 (iii) With or without covenants by the purchaser to expend money on the land sold.

6. Subject to the provisions of section *seven* of this Act, a mortgagee in possession of any land as mortgagee
25 shall have power to cut and sell timber and other trees on the land ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale to be completed within any time not exceeding twelve months from the making
30 of the contract.

Mortgagee in possession may cut and sell certain trees.
Cf. 15 Geo. V, c. 20, s. 101 (1) (Imp.)

7. (1) Subject to the provisions of this section, the *last two preceding* sections shall apply only to mortgages of land executed after the passing of this Act.

Application of last two sections.

35 (2) The said sections shall apply only if and as far as a contrary intention is not expressed in the mortgage, and shall have effect subject to the terms of the mortgage and to the provisions therein contained.

40 (3) Nothing in those sections shall authorize the registration under the provisions of the Land Transfer Act, 1915, of any instrument that would otherwise not be registrable.

See Reprint of Statutes, Vol. VII, p. 1162

Service of
notices.

8. (1) Any notice required or authorized by the principal Act to be served on any person shall be delivered to that person, and may be delivered to him either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in New Zealand. A notice so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered. 5

(2) If the person is absent from New Zealand, the notice may be delivered as aforesaid to his agent in New Zealand. If he is deceased, the notice may be delivered as aforesaid to his personal representative. 10

(3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representative, the notice shall be delivered in such manner as may be directed by an order of the Court. 15

(4) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any notice is to be delivered, or dispensing with the delivery thereof. 20

(5) This section does not apply to notices served in proceedings in the Court. 25

(6) This section applies only if and so far as a contrary intention is not expressed in any instrument, and shall have effect subject to the provisions of any instrument.

Repeal.

(7) This section is in substitution for section one hundred and sixteen of the principal Act, and that section is accordingly hereby repealed. 30