



# Property Law (Mortgagees' Sales Forms and Fees) Regulations 2007

Anand Satyanand, Governor-General

## Order in Council

At Wellington this 3rd day of December 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 363 of the Property Law Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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## Regulations

### 1 Title

These regulations are the Property Law (Mortgagees' Sales Forms and Fees) Regulations 2007.

### 2 Commencement

These regulations come into force on 1 January 2008.

### 3 Interpretation

- (1) In these regulations, unless the context otherwise requires, **Act** means the Property Law Act 2007.
- (2) A reference in these regulations to a numbered form—
  - (a) is a reference to that numbered form as set out in the Schedule; but
  - (b) does not include any notes stated to be not part of that form.

### *Forms of notice of exercise of powers*

#### 4 Notice to mortgagor of mortgaged land of exercise of powers by reason of default

Every notice required by section 119 of the Act must be in form 1.

#### 5 Notice to mortgagor of mortgaged goods of exercise of powers by reason of default

Every notice required by section 128(1) of the Act must be in form 2.

#### 6 Notice to mortgagor of mortgaged goods of exercise of power of sale by reason of goods being at risk

Every notice required by section 128(2) of the Act must be in form 3.

*Fees for sale by vendor mortgagee through Registrar***7 Application fee**

The fee payable by the vendor mortgagee to the Registrar under section 194(1)(a) of the Act is \$1,200.

**8 Commission fees**

The minimum fee payable by the vendor mortgagee to the Registrar under section 194(1)(c) of the Act is \$300, and the maximum fee so payable is \$14,000.

**9 GST included**

The fees prescribed by regulations 7 and 8 are inclusive of goods and services tax.

*Revocation***10 Former regulations revoked**

The Property Law (Mortgagees' Sales) Regulations 1983 (SR 1983/44) are revoked.

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**Schedule  
Forms**

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**Form 1**

Notice to mortgagor of mortgaged land of exercise  
of powers by reason of default

*Section 119, Property Law Act 2007*

In the matter of section 119 of the Property Law Act 2007  
and

In the matter of Mortgage Instrument No: [*specify*], [*Land Registration District*] Registry (the **mortgage**)

**To** [*Mortgagor's full name and actual or last-known residential or business address*]

[*Mortgagee's or receiver's full name*], the mortgagee/receiver\* under the mortgage, gives notice that the consequence specified below will follow if each default specified below has not been, or cannot be, remedied on or before [*date*].<sup>1</sup>

\*Delete whichever is inapplicable.

Form 1—*continued***Default**

As at the date of this notice, you are in default under the mortgage in that—

- †(a) you have failed to pay [*specify each default of payment claimed, stating the amount, due date, and nature (for example, principal, interest, insurance premiums, etc) of each missed payment, and any other particulars necessary to adequately inform the mortgagor of the nature and extent of the default*]:
- †(b) you have failed to observe or perform the following express or implied covenant(s) in the mortgage: [*specify each default complained of with sufficient particularity to adequately inform the mortgagor of the nature and extent of the default, for example, failure to keep building(s) insured or in good repair*]:
- †(c) the following has occurred: [*specify any other event (other than the arrival of the due date) on the occurrence of which any amounts secured by the mortgage become payable, or may be called up as becoming payable, under any express or implied term in the mortgage*].

†Delete if inapplicable.

**Action required to remedy default**

<sup>2</sup>You are required to remedy the specified default(s), or to cause the default(s) to be remedied,—

- †(a) by payment of the sum of \$ [*amount*] †(which includes [*amount*], being the reasonable costs and disbursements of the mortgagee/receiver\* in preparing and serving this notice):
- †(b) by [*specify action required to remedy each default*].

†Delete if inapplicable.

\*Delete whichever is inapplicable.

Form 1—*continued***Consequence if default not remedied**

If each default has not been, or cannot be, remedied on or before [date],<sup>1</sup>—

- †(a) all amounts/the following selected amounts\* secured by the mortgage will become payable, namely: [*specify relevant amounts*]:
- †(b) all amounts/the following selected amounts\* secured by the mortgage may be called up as becoming payable, namely: [*specify relevant amounts*]:
- †(c) the following powers of the mortgagee/receiver\* will become exercisable:
  - †(i) the mortgagee's power to enter into possession of the mortgaged land:
  - †(ii) the receiver's power to manage the mortgaged land or demand and recover income from the mortgaged land:
  - †(iii) the mortgagee's/receiver's\* power to sell the mortgaged land.

†Delete if inapplicable.

\*Delete whichever is inapplicable.

**Important information for recipient of notice**

You are strongly recommended to consult a lawyer about this notice without delay.

Signed and dated at [place] on [date] by [full name], who is/who signed this notice on behalf of\* the mortgagee/receiver\*:

[Signature]

\*Delete whichever is inapplicable.

This notice is given by [*specify*], whose address for service is [address].

**Copy to** [*each person specified in section 121(1)(a) to (d) of the Property Law Act 2007<sup>3</sup> of whose name and address the mortgagee or receiver has actual notice*].

Form 1—*continued***Notes for mortgagee or receiver completing notice**

These notes are not part of the form.

- 1 Section 120(1)(c) of the Property Law Act 2007 requires the date specified to be a date—
  - (a) at least 20 working days after the date of service of the notice; or
  - (b) after any longer period for the remedying of the default specified by any term that is expressed or implied in any instrument.
  
- 2 If the default complained of is incapable of remedy, omit this paragraph and substitute: “The default is incapable of remedy.”
  
- 3 The persons specified in section 121(1)(a) to (d) of the Property Law Act 2007 are as follows:
  - (a) any former mortgagor;
  - (b) any covenantor;
  - (c) any mortgagee under a subsequent mortgage, and any holder of any subsequent encumbrance, over the mortgaged land if—
    - (i) the subsequent mortgage or other subsequent encumbrance is registered; or
    - (ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it;
  - (d) any person who has lodged a caveat under section 137 of the Land Transfer Act 1952, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat, against the title to the mortgaged land or any part of it.
  
- 4 A notice under section 118 (calling up of mortgage over any kind of property if interest has been accepted after expiry of term) of the Property Law Act 2007 may be given in the same document as the notice: Property Law Act 2007, sections 118(4) and 119(4).

## Form 2

Notice to mortgagor of mortgaged goods of exercise  
of powers by reason of default

*Section 128(1), Property Law Act 2007, and section 114(4), Personal  
Property Securities Act 1999*

In the matter of section 128(1) of the Property Law Act 2007  
and

In the matter of the mortgage over goods (the **security agreement**)  
dated *[date]* over the following mortgaged goods (the **collateral**):  
*[describe collateral]*.

**To** *[Mortgagor's full name and actual or last-known residen-  
tial or business address]*

*[Mortgagee's or receiver's full name]*, the mortgagee/receiver\*  
under the security agreement, gives notice—

- (a) that the consequence specified below will follow if each  
default specified below has not been, or cannot be, reme-  
died on or before *[date]*:<sup>1</sup>
- †(b) that the mortgagee/receiver\* has taken possession of the  
collateral, which is subject to the security interest that—
  - (i) was created or provided for in the security agree-  
ment; and
  - (ii) if perfected, was perfected on *[date and time]*.

\*Delete whichever is inapplicable.

†Delete if inapplicable.

**Default**

As at the date of this notice, you are in default under the secur-  
ity agreement in that—

- †(a) you have failed to pay *[specify each default of payment  
claimed, stating the amount, due date, and nature  
(for example, principal, interest, insurance premiums, etc)  
of each missed payment, and any other particulars neces-  
sary to adequately inform the mortgagor of the nature and  
extent of the default]*:
- †(b) the following has occurred: *[specify any other event (other  
than the arrival of the due date) on the occurrence of which  
any amounts secured by the security agreement become  
payable, or may be called up as becoming payable, under  
any express or implied term in the security agreement]*:

Form 2—*continued*

†(c) the details of any other default under the security agreement are [*details of default*].

†Delete if inapplicable.

**Action required to remedy default**

<sup>2</sup>You are required to remedy the specified default(s), or to cause the default(s) to be remedied,—

†(a) by payment of the sum of \$ [*amount*] †(which includes [*amount*], being the reasonable costs and disbursements of the mortgagee/receiver\* in preparing and serving this notice):

†(b) by [*specify action required to remedy each default*].

†Delete if inapplicable.

\*Delete whichever is inapplicable.

**Consequence if default not remedied**

If each default has not been, or cannot be, remedied on or before [*date*],<sup>1</sup>—

†(a) all amounts/the following selected amounts\* secured by the security agreement will become payable, namely: [*specify relevant amounts*]:

†(b) all amounts/the following selected amounts\* secured by the security agreement may be called up as becoming payable, namely: [*specify relevant amounts*]:

†(c) the following power of the mortgagee/receiver\* to sell the collateral will become exercisable: [*specify mortgagee's or receiver's power to sell*].

†Delete if inapplicable.

\*Delete whichever is inapplicable.

**Important information for recipient of notice**

- You are strongly recommended to consult a lawyer about this notice without delay.
- If you are the debtor, you may,—



Form 2—*continued*

- unless you have otherwise agreed in writing after default, in accordance with section 132(1) of the Personal Property Securities Act 1999, redeem the collateral in accordance with section 132 of the Personal Property Securities Act 1999. Your right has priority over any other person's right to redeem the collateral; or
  - unless you have otherwise agreed, reinstate the security agreement under section 133 of the Personal Property Securities Act 1999. Any right of reinstatement is subject, unless you have otherwise agreed, to section 134 of the Personal Property Securities Act 1999.
- If you are not a debtor, you may, subject to the debtor's prior right to redeem the collateral, and unless you have otherwise agreed in writing after default, in accordance with section 132(1) of the Personal Property Securities Act 1999, redeem the collateral in accordance with section 132 of the Personal Property Securities Act 1999.
  - If there is a question as to who is entitled to receive any surplus, the secured party (as defined in section 16(1) of the Personal Property Securities Act 1999) may pay the surplus into court under section 118 of the Personal Property Securities Act 1999.

Signed and dated at [*place*] on [*date*] by [*full name*], who is/who signed this notice on behalf of\* the mortgagee/receiver\*:

[*Signature*]

\*Delete whichever is inapplicable.

This notice is given by [*specify*], whose address for service is [*address*].

**Copy to** [*each person specified in section 130(1)(a) to (c) of the Property Law Act 2007<sup>3</sup> of whose name and address the mortgagee or receiver has actual notice*].

Form 2—*continued***Notes for mortgagee or receiver completing notice**

These notes are not part of the form.

- 1 Section 129(1)(c) of the Property Law Act 2007 requires the date specified to be a date—
  - (a) at least 10 working days after the date of service of the notice; or
  - (b) after any longer period for the remedying of the default specified by any term that is expressed or implied in any instrument.
- 2 If the default complained of is incapable of remedy, omit this paragraph and substitute: “The default is incapable of remedy.”
- 3 The persons specified in section 130(1)(a) to (c) of the Property Law Act 2007 are as follows:
  - (a) any former mortgagor;
  - (b) any covenantor;
  - (c) any mortgagee under a subsequent mortgage, and any holder of any subsequent encumbrance, over the mortgaged goods if—
    - (i) the subsequent mortgage or other subsequent encumbrance is registered; or
    - (ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it.
- 4 The parties to a security agreement may contract out of certain provisions of the Personal Property Securities Act 1999. If this has occurred, the notice needs to be altered accordingly.
- 5 A notice under section 118 (calling up of mortgage over any kind of property if interest has been accepted after expiry of term) of the Property Law Act 2007 may be given in the same document as the notice: Property Law Act 2007, sections 118(4) and 128(4).

## Form 3

Notice to mortgagor of mortgaged goods of exercise of  
power of sale by reason of goods being at risk

*Section 128(2), Property Law Act 2007, and section 114(4), Personal  
Property Securities Act 1999*

In the matter of section 128(2) of the Property Law Act 2007  
and

In the matter of the mortgage over goods (the **security agreement**)  
dated [*date*] over the following mortgaged goods (the **collateral**):  
[*describe collateral*].

**To** [*Mortgagor's full name and actual or last-known residen-  
tial or business address*]

[*Mortgagee's or receiver's full name*], the mortgagee/receiver\*  
under the security agreement, gives notice—

- (a) that, as at the date of this notice, the collateral is at risk on  
the grounds specified below:
- (b) that the mortgagee/receiver\* has taken possession of the  
collateral, which is subject to the security interest that—
  - (i) was created or provided for in the security agree-  
ment; and
  - (ii) if perfected, was perfected on [*date and time*]:
- (c) that, on or after [*date*],<sup>1</sup> the secured party (as defined in  
section 16(1) of the Personal Property Securities Act 1999)  
may exercise any power to sell the collateral, by reason of  
the collateral being at risk.

\*Delete whichever is inapplicable.

**Grounds on which goods are at risk**

As at the date of this notice, the collateral is at risk in that the secured  
party has the following reasonable grounds to believe that it has  
been or will be destroyed, damaged, endangered, disassembled,  
removed, concealed, sold, or otherwise disposed of contrary to the  
provisions of the security agreement: [*specify grounds*].

Form 3—*continued***Important information for recipient of notice**

- You are strongly recommended to consult a lawyer about this notice without delay.
- If you are the debtor, you may,—
  - unless you have otherwise agreed in writing after default, in accordance with section 132(1) of the Personal Property Securities Act 1999, redeem the collateral in accordance with section 132 of the Personal Property Securities Act 1999. Your right has priority over any other person's right to redeem the collateral; or
  - unless you have otherwise agreed, reinstate the security agreement under section 133 of the Personal Property Securities Act 1999. Any right of reinstatement is subject, unless you have otherwise agreed, to section 134 of the Personal Property Securities Act 1999.
- If you are not a debtor, you may, subject to the debtor's prior right to redeem the collateral, and unless you have otherwise agreed in writing after default, in accordance with section 132(1) of the Personal Property Securities Act 1999, redeem the collateral in accordance with section 132 of the Personal Property Securities Act 1999.
- If there is a question as to who is entitled to receive any surplus, the secured party may pay the surplus into court under section 118 of the Personal Property Securities Act 1999.

Signed and dated at *[place]* on *[date]* by *[full name]*, who is/who signed this notice on behalf of\* the mortgagee/receiver\*:

*[Signature]*

\*Delete whichever is inapplicable.

Form 3—*continued*

This notice is given by [*specify*], whose address for service is [*address*].

**Copy to** [*each person specified in section 130(1)(a) to (c) of the Property Law Act 2007<sup>2</sup> of whose name and address the mortgagee or receiver has actual notice*].

**Notes for mortgagee or receiver completing notice**

These notes are not part of the form.

- 1 Under section 128(2) of the Property Law Act 2007, a power to sell is exercisable only on or after a date not less than 10 working days after service of the notice.
- 2 The persons specified in section 130(1)(a) to (c) of the Property Law Act 2007 are as follows:
  - (a) any former mortgagor:
  - (b) any covenantor:
  - (c) any mortgagee under a subsequent mortgage, and any holder of any subsequent encumbrance, over the mortgaged goods if—
    - (i) the subsequent mortgage or other subsequent encumbrance is registered; or
    - (ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it.
- 3 The parties to a security agreement may contract out of certain provisions of the Personal Property Securities Act 1999. If this has occurred, the notice needs to be altered accordingly.
- 4 A notice under section 118 (calling up of mortgage over any kind of property if interest has been accepted after expiry of term) of the Property Law Act 2007 may be given in the same document as the notice: Property Law Act 2007, sections 118(4) and 128(4).

Martin Bell,  
for Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 January 2008, are made under the Property Law Act 2007 (the **Act**). They prescribe forms and fees relating to mortgagees' sales.

A default by the mortgagor of mortgaged land or goods may enable the mortgagee or receiver to exercise powers of sale of the land or goods, or powers of entry into possession, or powers of management, of the land. However, sections 119 and 128 of the Act prevent exercise of powers of that kind until after service on the mortgagee of notices of default and exercise of powers, etc. The forms of those notices are prescribed by *regulations 4 and 5*.

*Regulation 6* prescribes a similar notice to a mortgagor of mortgaged goods of the exercise of a power of sale by the mortgagee or receiver by reason of the goods being at risk.

Section 26 (use of prescribed forms) of the Interpretation Act 1999 provides that "a form is not invalid just because it contains minor differences from a prescribed form as long as the form still has the same effect and is not misleading".

*Regulations 7 and 8* prescribe an application fee, and minimum and maximum commission fees, for sales by a vendor mortgagee through a Registrar. The fees include goods and services tax.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 6 December 2007.

These regulations are administered by the Ministry of Justice.

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