



**THE PROPERTY LAW (MORTGAGEES' SALES) REGULATIONS
1983**

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 21st day of
March 1983

Present:

THE RIGHT HON. D. MACINTYRE PRESIDING IN COUNCIL

PURSUANT to section 104AA of the Property Law Act 1952 (as inserted by section 7 of the Property Law Amendment Act 1982 and renumbered by section 2 (2) of the Property Law Amendment Act (No. 2) 1982), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Property Law (Mortgagees' Sales) Regulations 1983.

(2) These regulations shall come into force on the 1st day of April 1983.

2. Notice of default by mortgagor prescribed—Every notice given under and for the purposes of section 92 of the Property Law Act 1952 shall be in the form set out in the Schedule to these regulations.

SCHEDULE

Reg. 2

FORM OF NOTICE OF DEFAULT TO MORTGAGOR

IN THE MATTER of section 92 of the Property Law Act 1952

AND

IN THE MATTER of Memorandum of Mortgage Number

. Registry

To: [Full name and last-known residential or business address of mortgagor]

DEFAULT

[Full name of mortgagee], being the mortgagee under the above-mentioned memorandum of mortgage, hereby gives you notice that you are in default under the mortgage as follows:

*1. 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 such other particulars as are necessary to adequately inform the mortgagor of the nature and extent of the default.]

The total amount now in arrear is \$

*2. You have failed to observe or comply with the following 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.]

REMEDY

¹You are hereby required to remedy the said default(s)—

* (a) By payment of the sum of \$

* (b) By [Specify what action is required to remedy each default.]

CONSEQUENCES

²If you do not remedy each default before the day of 19 the mortgagee will have the right to sell the land described in the mortgage or to enter into possession of that land, and all money secured by the mortgage will become due and payable.

Dated at this day of 19

.....

[Signed by or on behalf of the mortgagee.]

This notice is given by, whose address for service is

COPY TO [Each subsequent mortgagee and caveator of whose name and address the mortgagee has actual notice.]

*Delete whichever does not apply.

SCHEDULE—*continued*

NOTES

- ¹If the default complained of is incapable of remedy, omit this paragraph and substitute the words "The said default is incapable of remedy".
- ²If the default complained of is incapable of remedy, omit the words "If you do not remedy each default before", and substitute the words "On and after".

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

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

Section 92 of the Property Law Act 1952 (as originally enacted) provided that, in the event of default by a mortgagor under a mortgage, the mortgagee's remedies of sale and entry into possession of the land became exercisable only after the mortgagee had given to the mortgagor a notice of the default complained of. In the notice, the mortgagee was required to call upon the mortgagor to remedy the default and warn him that, if he failed to do so by a specified date, the mortgagee's remedies would become exercisable.

Section 4 of the Property Law Amendment Act 1982 removes most of these specific requirements and, instead, requires the notice to be in the prescribed form. These regulations prescribe that form. However, that provision, in effect, allows variations of the form so long as the mortgagor is adequately informed of the alleged default, the need to remedy it (where possible), and the consequences of not doing so, and is not prejudiced by the variation.

The changes do not affect the right of the mortgagee under section 92 (3) of the Act to combine this notice with that required under section 90 where the mortgagee proposes to call up and compel payment of the principal sum after he has accepted interest following the expiry of the term of the mortgage.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 24 March 1983.

These regulations are administered in the Department of Justice.