

PART I.

MORTGAGES.

Interpretation.
1919, No. 8, sec. 2.

3. In this Part of this Act, unless inconsistent with the context,—
“Rate of interest,” in cases where a mortgage provides for
acceptance of a lower rate upon punctual payment or upon
other conditions, means such lower rate : 5

“Mortgage” means any deed, memorandum, of mortgage,
instrument, or agreement whereby security for payment of
moneys or for the performance of any contract is granted
over land or chattels or any interest therein respectively ; 10
and includes any instrument of security granted over or in
respect of any policy for securing a life insurance, endowment,
or annuity :

“Mortgagor” means the person liable under the provisions of
a mortgage, and includes any person who has guaranteed 15
the performance by the mortgagor of any covenant, condition,
or agreement expressed or implied in the mortgage, whether
such guarantee is expressed in the mortgage or in any other
instrument :

“Mortgagee” means the person entitled to the benefit of the 20
security of any mortgage :

“Trade mortgage” means a mortgage securing to any bank,
trading company, or merchant the balance of the account
current of a customer of such bank, trading company, or
merchant, whether such mortgage is granted by the customer 25
or by any surety for the customer.

Application of this
Part.
Ibid., sec. 3.

4. This Part of this Act shall apply to all mortgages except—

(a.) Trade mortgages ;

(b.) Securities for loans granted under the Repatriation Act, 1918 ;
and 30

(c.) Mortgages executed after the twenty-fourth day of October,
nineteen hundred and nineteen, being the date of the com-
mencement of the Mortgages Extension Act, 1919.

Extension of Part
to agreements for
sale and to leases
with purchasing
clause.

Ibid., sec. 10.

5. (1.) Except as otherwise provided in subsection *four* of this
section, the provisions of this Part of this Act shall extend and apply, 35
with the necessary modifications, to agreements for the sale and
purchase of land made before the twenty-fourth day of October, nineteen
hundred and nineteen, being the date of the commencement of the
Mortgages Extension Act, 1919, and to leases of land containing an
optional or compulsory purchasing clause granted before that date. 40

(2.) For the purposes of this Part of this Act an agreement for sale
and purchase of land shall be deemed to be a mortgage of such land to
secure payment of the unpaid purchase-money and interest thereon and
fulfilment of the conditions set forth in the agreement.

(3.) For the purposes of this Part of this Act a lease of land contain- 45
ing a purchasing clause shall be dealt with in all respects as if the lessor
were mortgagee and the lessee were mortgagor of the land, and as if the
rent reserved by the lease were interest and the agreed purchase-money
were principal moneys secured. The term of the lease shall, if necessary,
be extended for the purpose of giving effect to this provision. 50

(4.) The provisions of this section shall not extend or apply to—

(a.) Any agreement for the sale and purchase of land entered into
pursuant to the Workers' Dwellings Act, 1910 ; or

(b.) Any agreement for the sale and purchase of a leasehold interest in land unless freehold land is comprised with leasehold in the agreement.

6. It shall not be lawful for a mortgagee under a mortgage to which this Part of this Act applies, at any time before the thirtieth day of June, nineteen hundred and *twenty-two*,—

Restriction of powers of mortgagee under a mortgage to which this Part applies.

(a.) To call up or demand payment from any mortgagor of the principal sum or any part of the principal sum secured by any such mortgage :

Cf 1919, No. 8, sec. 4.

10 (b.) To exercise any power of sale or entry into possession conferred by any such mortgage or by statute :

(c.) Without the leave of a Judge of the Supreme Court, to commence any action or proceeding for breach of any covenant, agreement, or condition expressed or implied in any such mortgage other than a covenant, agreement, or condition for the payment of interest.

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7. (1.) Where the principal sum secured by a mortgage is already due or falls due before the thirtieth day of June, nineteen hundred and *twenty-five*, the mortgagor may at any time before the thirty-first day of March, nineteen hundred and *twenty-two*, deliver to or send in a registered letter addressed to the Public Trustee a notice in the Form No. 1 in the *First* Schedule to this Act of his desire that the mortgage shall be extended. /

Mortgagor desiring extension of mortgage may give notice to Public Trustee.

25 (2.) Together with, or within fourteen days after, the delivery or posting of such notice, the mortgagor shall pay to the Public Trustee a fee computed as follows :—

Fee payable with such notice.

(a.) If the principal sum secured by the mortgage does not exceed four hundred pounds, a fee of *ten* shillings :

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(b.) If such principal sum exceeds four hundred pounds, but does not exceed two thousand pounds, a fee at the rate of *three* shillings for every one hundred pounds or portion of one hundred pounds constituting such principal sum :

(c.) If such principal sum exceeds two thousand pounds, the fee prescribed by paragraph (b) hereof, together with an additional fee of *two* shillings for every one hundred pounds or portion of one hundred pounds in excess of two thousand pounds.

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(3.) A notice under this section shall have no effect unless the fee is paid in the manner and within the time prescribed by this section, unless the Public Trustee extends (as he is hereby authorized to extend) the time hereby limited for the payment thereof.

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(4.) The Public Trustee shall not send to the mortgagee a notification as required by the *next succeeding* section of this Act, unless and until the fee has been duly paid and received.

(5.) A mortgagor sending or delivering such notice shall be deemed thereby to offer to pay to the mortgagee as from the first day of January, nineteen hundred and *twenty-two*, until the extended due date of his mortgage interest on the days appointed by the mortgage for payment of interest, at the rate of *six and a half* per centum per annum if the rate provided by the mortgage does not exceed *six and a half* per centum per annum ; and also to offer to observe and perform during the extended term all the covenants and conditions of his mortgage other than covenants

Notice deemed to imply certain covenants.

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or conditions for the earlier repayment of the principal sum or any part or parts thereof; and also to offer to repay instalments of the principal sum in the manner and within the times hereinafter in this Act defined. If the mortgage is consequently extended as provided by this Act, such offer shall operate as covenants by the mortgagor, his executors, administrators and assigns, and by every other mortgagor named in the mortgage, his executors, administrators and assigns (whether such last-mentioned mortgagor has or has not joined in the notice) with the mortgagee, his executors, administrators and assigns, and may be enforced by the mortgagee against every mortgagor and against any person who has guaranteed the performance by the mortgagor of all or any of the covenants or agreements of the mortgage.

Service of notice on mortgagee or his agent.

8. (1.) The Public Trustee, on receipt of a notice from a mortgagor under the *last preceding* section and of the required fee, shall forthwith cause to be delivered or posted by registered letter to the mortgagee a notification in the Form No. 2 in the *First Schedule* to this Act.

(2.) If the mortgagee is absent from New Zealand, or if his address in New Zealand is unknown, the service or posting of the notification upon any attorney or agent of the mortgagee in New Zealand shall be sufficient.

(3.) If there is no attorney or agent in New Zealand known to the Public Trustee to have authority to receive such notification on behalf of the mortgagee, such notification may be served upon any solicitor of the Public Trust Office.

(4.) The fact of service of such notification by the Public Trustee upon such solicitor shall be conclusive evidence that such service was authorized by this section.

(5.) Notwithstanding service upon a Public Trust Office solicitor the Public Trustee may thereafter at the request of the mortgagee or of any person authorized by the mortgagee in that behalf, permit the mortgagee or such person to proceed in any manner in which a mortgagee is by this Act empowered to proceed, but only within the times by this Act limited.

(6.) Where service of the notification is made upon a Public Trust Office solicitor, it shall be the duty of the Public Trustee to consider whether there are any reasonable grounds for objecting to the extension required by the mortgagor, and if he finds that such reasonable grounds exist, to direct the Public Trust Office solicitor to lodge an objection thereto, and to appear in support of such objection on behalf of the mortgagee. The discretion of the Public Trustee under this subsection shall be absolute and uncontrolled.

Mortgagee may lodge objection with Public Trustee.

9. The mortgagee may, within one calendar month after the notification to him has been delivered, posted, or served, deliver or post by registered letter addressed to the Public Trustee, an objection in writing in the Form No. 3 in the *First Schedule* to this Act.

If no objection lodged, mortgage extended subject to conditions herein specified.

10. (1.) If the mortgagee fails so to deliver or post such objection within the time aforesaid, the due date for the repayment of the principal sum secured by the mortgage (save only as by this section is provided) shall be extended to the thirtieth day of June, nineteen hundred and *twenty-five*, subject to the conditions hereinafter specified.

(2.) The conditions of such extension shall be—

Conditions of extension.

(a.) That the mortgagor shall regularly pay to the mortgagee, on the dates defined in the mortgage, interest on the principal sum or such part thereof as for the time being remains unpaid at the rate of *six and a half* per centum per annum, unless the rate of interest provided by the mortgage exceeds *six and a half* per centum per annum, in which case the required payment shall be at the greater rate :

(b.) That the mortgagor shall also pay to the mortgagee in the year commencing on the first day of January, nineteen hundred and *twenty-three*, in reduction of the principal sum, an amount equal to *five* per centum of the principal sum, and in each succeeding year an amount equal to *ten* per centum of the principal sum, and shall make such payments by equal half-yearly instalments on or within seven days after the first days of January and July in each year, the first of such instalments to be paid on or within seven days after the first day of January, nineteen hundred and *twenty-three*.

11. (1.) If the mortgagee delivers or posts an objection as aforesaid, he shall, together with or within fourteen days after the delivery or posting of such objection, pay to the Public Trustee a fee of *two* pounds if the principal sum secured by the mortgage does not exceed one thousand pounds, and in every other case *two* pounds, with an additional fee of *one* shilling for every one hundred pounds or portion of one hundred pounds by which the principal sum exceeds two thousand pounds. The objection shall have no effect unless the proper fee is paid in the manner and within the time prescribed by this section.

Fee payable when objection lodged.

(2.) On due payment of the fee the Public Trustee shall in the case of a mortgage of land—

Reference of objection to Land Board.

(a.) Notify the mortgagor of the objection :

(b.) Send copies of the mortgagor's notice and of the mortgagee's objection to the Land Board of the land district within which the land is situate. If the mortgage includes lands in more than one land district, the Public Trustee shall, in his absolute discretion, determine to which Land Board such copies shall be sent.

(3.) The Land Board, on receipt of the said copies, shall, in the prescribed manner, appoint a time and place for hearing and determining the matter of the objection.

(4.) Any three members of the Land Board shall be a quorum for the purpose of such hearing and determination.

(5.) The Land Board shall not be bound by any rules of evidence, and may proceed in the matter of such hearing and determination in any manner it thinks fit, and may accept written statements in lieu of hearing either party ; and its procedure shall not be subject to review by any Court.

(6.) The Land Board may take into consideration—

Cf. 1919, No. 8, sec. 6.

(a.) The effect of the continuance of the mortgage upon the security thereby afforded to the mortgagee :

(b.) The inability of the mortgagor to redeem the property either from his own moneys or by borrowing at a reasonable rate of interest :

- (c.) The conduct of the mortgagor in respect of any breaches by him of the covenants of the mortgage :
- (d.) Any hardship that would be inflicted on the mortgagee by the continuance of the mortgage or upon the mortgagor by the enforcement thereof :
- (e.) Any other circumstance which the Land Board may deem relevant.

Powers of Land Board in dealing with objection.

12. The Land Board may—

- (a.) Disallow the objection ; or
- (b.) Allow the objection in whole, in which case the mortgagee shall not be restrained from the exercise of any power or right after the thirtieth day of June, nineteen hundred and *twenty-two* ; or
- (c.) Allow the objection in part, and in such case may fix a date earlier than the thirtieth day of June, nineteen hundred and *twenty-five*, as the date to which the mortgage shall be extended, and may require payments in reduction of principal to be made by the mortgagor of larger annual amounts than the amounts hereinbefore defined, and may enforce other conditions of any nature in addition to or in lieu of the conditions defined in section *ten* hereof.

Determination of Land Board to be notified to Public Trustee, and to be final.

13. The determination of the Land Board shall be notified to the Public Trustee in the prescribed form. It shall take effect according to its tenor, and shall be final and conclusive ; and shall not be subject to appeal to, or review by, any Court.

Registration of memorandum of extension.

14. (1.) The Public Trustee shall cause to be registered at the proper Registry of Deeds or at the proper Land Transfer Registry, as the case may require, a memorandum in the prescribed form. All Registrars are hereby required, without fee, to register and enter such memorandum as a registrable instrument against the land the subject of the mortgage, or the agreement for sale and purchase, or the lease, as the case may be, anything in any Act to the contrary notwithstanding.

(2.) Such memorandum in a case where no objection has been lodged by the mortgagee shall be a memorandum that the notice by the mortgagor has been duly lodged under this Act, and that no objection has been received thereto.

(3.) Such memorandum in a case where an objection has been lodged by the mortgagee shall be a memorandum of the determination of the Land Board.

Extension of mortgage of chattels.

15. (1.) Where a mortgage is of chattels, but the same principal sum or any part of one principal sum is also secured by a mortgage of land to the same mortgagee, the mortgage of chattels shall be subject to extension for the same term, in the same manner, and by the same procedure as the mortgage of land, and the memorandum hereinbefore directed to be entered on the Register of Deeds shall also be entered without fee in the appropriate register under the Chattels Transfer Act, 1908.

(2.) Where a mortgage of chattels does not secure any part of the principal sum secured by a mortgage of land any objection by the mortgagee to a notice under this Part of this Act lodged by the mortgagor shall be determined by the Public Trustee or by any officer of the Public Trust Office to whom the Public Trustee may refer such matter for determination. The provisions of this Part of this Act relating to

the hearing and determination of objections by a Land Board in the case of mortgages of land shall apply, with the necessary modifications, to the hearing and determination of an objection under this subsection. The memorandum shall be entered without fee in the appropriate register under the Chattels Transfer Act, 1908.

16. Every mortgagee may, after the thirtieth day of June, nineteen hundred and *twenty-two*, enforce by action any covenant or condition expressed or implied in his mortgage or expressed or implied under the provisions of this Part of this Act other than a covenant for the payment of the principal sum secured by the mortgage.

Enforcement by action of covenants and conditions of mortgage.

17. It shall not be lawful for a mortgagee to exercise any power of sale or of entry into or of taking possession of land or chattels conferred upon the mortgagee expressly or by implication by a mortgage or by any law, or to cause to be taken in execution any such land or chattels under any judgment, before the thirtieth day of June, nineteen hundred and *twenty-five*, unless—

Restrictions on exercise by mortgagee of powers of sale or entry, &c.

(a.) The mortgagor has failed to duly give a notice and pay the fees required by this Part of this Act within the time limited by this Act for that purpose; or

(b.) Such notice having been duly given but having been objected to by the mortgagee, the objection has been allowed wholly; or

(c.) Such notice having been duly given and objected to, the objection has been duly allowed in part to the extent of fixing a date for the extension of the mortgage earlier than the said thirtieth day of June, nineteen hundred and *twenty-five*, in which case the restrictions imposed upon the exercise of the powers of such mortgagee by this section shall cease to have effect on such earlier date; or

(d.) With the previous leave of the Supreme Court, which leave the Court is hereby empowered to grant in its discretion, upon application by summons in Chambers, wherever the Court determines that the conduct of the mortgagor, or the condition of or management of or dealing with the mortgaged property, has been such as to render it just and equitable that the restrictions imposed upon the powers of the mortgagee by this Part of this Act or any of such restrictions should be removed.

18. The provisions of this Part of this Act shall apply to the Crown.

Application to Crown.

PART II.

DEPOSITS.

19. In this Part of this Act, unless inconsistent with the context,—

Interpretation.
1921, No. 1, sec. 3.

“Bank” means and includes the Post Office Savings-bank, and any savings-bank established by statute in New Zealand, and any bank carrying on business in New Zealand and authorized by law to issue bank-notes:

“Borrower” means and includes any firm of partners, company, or association, whether corporate or unincorporate (other than a bank) who or which at the commencement of this Act holds moneys upon contract of deposit, and also includes any public body authorized expressly or impliedly by law

to receive moneys on deposit where such public body, on the twenty-first day of March, nineteen hundred and *twenty-one* (being the date of the commencement of the Mortgages Extension Amendment Act, 1921), held moneys upon contract of deposit :

- “ Contract of deposit ” means any contract or agreement, written or verbal, express or implied, relating to the receipt of money by a borrower made prior to the said twenty-first day of March, nineteen hundred and *twenty-one*, upon the terms that the same shall be repaid either at a fixed date or by instalments or at call, and bearing interest until repayment at an agreed rate, except that no contract or agreement shall be a contract of deposit for the purposes of this Part of this Act if—
- (a.) Such contract or agreement is expressed in a mortgage ; or
 - (b.) Such contract or agreement is expressed in debentures issued in series by an incorporated company or by a public body ; or
 - (c.) The borrower has, as part of the contract of deposit or as collateral thereto, made and delivered to the lender any negotiable bill of exchange or promissory note for further evidencing or securing the repayment of such money or any part thereof ; or
 - (d.) If the money was received in the course of a mercantile current account :

In cases where the agreed term of a contract of deposit had expired at any time prior to the said twenty-first day of March, nineteen hundred and *twenty-one*, but the moneys originally deposited continued to be held by the borrower up to the said date, with or without an agreed rate of interest, such moneys are deemed to be held by the borrower upon contract of deposit for all the purposes of this Part of this Act :

- “ Due date ” means the date (if any) fixed by a contract of deposit for the repayment of the principal sum deposited or any part thereof. Where the principal sum is repayable by instalments the due date, in respect of any instalment, means the date for repayment of that instalment. Where the principal sum is repayable at call the due date means the date of the commencement of this Act :

“ Lender ” means any person, firm, company, or association who or which has lent money to a borrower on a contract of deposit.

Due date of money lent on contract of deposit extended.

20. (1.) Subject to the conditions herein defined,—
- (a.) Where the principal sum or the aggregate of all the principal sums due by any one borrower to any one lender upon contract or contracts of deposit does not exceed one thousand pounds, the due date of such contract or contracts of deposit is hereby extended to the thirty-first day of December, nineteen hundred and *twenty-two*.
 - (b.) Where the principal sum or the aggregate of all the principal sums due by any one borrower to any one lender upon contract or contracts of deposit exceeds one thousand pounds,

the due date of such contract or contracts of deposit is hereby extended to the thirtieth day of June, nineteen hundred and *twenty-three*.

(2.) Every such extension is hereby declared to be a provision in relief of the borrower upon the conditions herein defined, and no borrower shall be entitled to plead this Part of this Act or claim the benefits thereof unless he duly and punctually complies with such conditions.

Extension to be in relief of the borrower.

21. The conditions of extension to be observed by the borrower are that—

Conditions of extension.

(a.) The borrower shall pay to the lender upon the sum or sums held by the borrower upon contract or contracts of deposit, or upon such part or parts thereof as remain so held, interest at the rate of *six and a half* per centum per annum on or within seven days after each day on which interest is payable under the contract; and that

(b.) Unless the lender has notified in writing to the borrower that the lender does not desire repayment by instalments, the borrower shall repay to the lender instalments of the principal sum held upon contract or contracts of deposit as follows:—

Where the total sum held upon contract or contracts of deposit does not exceed one thousand pounds *ten* per centum thereof on or within seven days after the first day of each of the months of January, April, July, and October, nineteen hundred and *twenty-two*, and the balance of *sixty* per centum on the thirty-first day of December, nineteen hundred and *twenty-two*:

Where such total sum exceeds one thousand pounds, *seven and a half* per centum thereof on or within seven days after the first day of each of the months of January, April, July, and October, nineteen hundred and *twenty-two*, and of each of the months of January and April, nineteen hundred and *twenty-three*, and the balance of *fifty-five* per centum on the thirtieth day of June, nineteen hundred and *twenty-three*.

22. Unless a borrower fails to duly and punctually comply with the said conditions the lender shall not be entitled to demand or sue for the principal sum named in a contract of deposit until the expiration of the period to which the due date is extended by this Act.

If conditions complied with, lender not entitled to demand deposit before extended date.

40 PART III.

REPEALS.

23. (1.) The enactments mentioned in the *Second* Schedule hereto are hereby repealed.

Repeals.
Cf. 1919, No. 8,
sec. 15.

(2.) All proceedings pending at the commencement of this Act under any enactment hereby repealed may be continued and completed as if this Act had not been passed, and all leave heretofore granted by the Supreme Court under any such enactment or hereafter granted by the Supreme Court in any such pending proceedings shall enure for the purposes of this Act as if granted thereunder.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

Form No. 1.

NOTICE BY MORTGAGOR OF HIS DESIRE TO HAVE MORTGAGE EXTENDED.

(Under the Mortgages and Deposits Extension Act, 1921.)

To the Public Trustee, Wellington,—

I HEREBY give notice, pursuant to the provisions in that behalf of section 7 of the Mortgages and Deposits Extension Act, 1921, that I desire to have the mortgage hereinafter referred to extended as provided in the said Act.

I enclose herewith the sum of _____ shillings, being the fee prescribed by the said Act in respect of this notice [or, as the case may be, I agree to pay the sum of _____ shillings, being the fee prescribed by the said Act in respect of this notice, within fourteen days after the date of this notice].

Mortgage to which Notice applies.

Name and Description of Mortgagor.	Name and Description of Mortgagee.	Principal Sum secured by Mortgage.	Property charged in Mortgage.	Particulars as to Registration of Mortgage.

Dated at _____ this _____ day of _____, 19 _____.

[Signature of Mortgagor].

Form No. 2.

NOTICE BY PUBLIC TRUSTEE TO MORTGAGEE OF RECEIPT OF MORTGAGOR'S APPLICATION FOR EXTENSION OF MORTGAGE.

(Under the Mortgages and Deposits Extension Act, 1921.)

To [Name and description of mortgagee].

TAKE NOTICE that the within-named mortgagor has duly notified his desire to have the within-named mortgage extended pursuant to the provisions in that behalf of the Mortgages and Deposits Extension Act, 1921.

Mortgage to which Notice applies.

Name and Description of Mortgagor.	Name and Description of Mortgagee.	Principal Sum secured by Mortgage.	Property charged in Mortgage.	Particulars as to Registration of Mortgage.

Dated at _____ this _____ day of _____, 19 _____.

[Signature of Public Trustee].

Form No. 3.

OBJECTION BY MORTGAGEE TO EXTENSION OF MORTGAGE.

(Under the Mortgages and Deposits Extension Act, 1921.)

To the Public Trustee, Wellington.

TAKE NOTICE that I object to an extension under the Mortgages and Deposits Extension Act, 1921, of the mortgage hereinafter referred to.

I enclose herewith the sum of £ , being the fee prescribed by the said Act in respect of this objection [or, as the case may be, I agree to pay the sum of £ , being the fee prescribed by the said Act in respect of this objection, within fourteen days after the date of the objection].

Name and Description of Mortgagor.	Name and Description of Mortgagee.	Principal Sum secured by Mortgage.	Property charged in Mortgage.	Particulars as to Registration of Mortgage.

Dated at this day of , 19 .

[Signature of Mortgagee].

SECOND SCHEDULE.

1919, No. 8.—The Mortgages Extension Act, 1919.

1921, No. 1.—The Mortgages Extension Amendment Act, 1921: Except section 4.

By Authority: MARCUS F. MARKS, Government Printer, Wellington.—1921.