

Hon. Major Steward.

MORTGAGES OF LAND.

ANALYSIS.

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| Title. 1. Short Title. 1A. Interpretation. 2. Mortgages may be effected on forms as set out in First Schedule, and to imply all covenants and conditions as set forth in Second Schedule. 3. Registration. | 4. Amount of sum secured may be increased or reduced by indorsement. 5. Mortgage may be vacated by indorsement. Mode of signature. 6. Renewal or extension of currency of mortgage. 7. Transfer of mortgagee's interest. 8. Title not guaranteed by State. 9. Sections 4 to 7 to apply to all mortgages. Schedules. |
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A BILL INTITULED

AN ACT to provide that Mortgages of Land may be effected and dealt with without the Cost of Expensive Deeds or Instruments. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Mortgages of Land Act, 1900." Short Title.

10 1A. "Land" means and includes any estate or interest in real property. Interpretation.

2. (1.) Mortgages of land may be effected upon forms as set out in the First Schedule hereto, and. Mortgages may be effected on forms as set out in First Schedule, and to imply all covenants and conditions as set forth in Second Schedule.

15 (2.) In every mortgage executed under this Act there shall be implied except in so far as is otherwise expressed in the mortgage, every such mortgage shall be presumed to imply, and shall imply, all the covenants and conditions set forth in the Second Schedule hereto, except in so far as is otherwise expressed in such mortgage.

20 3. Any (1.) Every such mortgage, executed upon such form, if relating to land under "The Land Transfer Act, 1885," shall be registered in accordance with the provisions of that Act, or for all purposes whatsoever be deemed to be a memorandum of mortgage within the meaning and under the provisions of that Act. Registration.

25 (2.) Every such mortgage, if relating to land not under that Act, may be registered under "The Deeds Registration Act, 1868," shall, for all purposes whatsoever, be deemed to be a deed or instrument within the meaning of that Act, and a deed of conveyance of land by way of mortgage within the meaning of "The Property Law Consolidation Act, 1883," and may be registered under the former Act accordingly.

30 4. The amount secured by any mortgage may be increased or reduced by a memorandum, indorsed upon or annexed thereto, in the form or to the effect following, that is to say,— Amount of sum secured may be increased or reduced by indorsement.

"The principal sum intended to be secured by the within- [or above-] written [or annexed] mortgage is hereby increased [or reduced] to £

Dated this day of 19

"(Signed)

"A. B.,
Mortgagor.

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"Witness: E. F. [Occupation and address].

"(Signed)

"C. D.,
Mortgagee.

"Witness: E. F., G. H. Justice of the Peace [or Postmaster, or Solicitor, (adding place of abode)] [Occupation and address]."

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And such memorandum of increase or reduction shall be attested by a Justice of the Peace, a Postmaster, or a Solicitor, who shall specify his description and abode, and may be registered in like manner as the original mortgage.

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Struck out.

Mortgage may be vacated by indorsement.

5. A receipt in writing indorsed upon or annexed to any mortgage, in the form or to the effect following, that is to say,—

"I [or We] hereby acknowledge to have received all money intended to be secured by the within- [or above-] written [or annexed] memorandum of mortgage,"

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and executed by the person, firm, corporation, company, or society for the time being entitled to receive payment of the moneys secured by the mortgage mortgagee, shall vacate the mortgage or further charge or debt and vest the estate and interest of the mortgagee in the property therein comprised in the person for the time being entitled to the equity of redemption without any reconveyance :

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Struck out.

Mode of signature.

Such receipt if given by a person shall be signed by such person and attested by a Justice of the Peace, Postmaster, or Solicitor (whose description and place of abode shall be added); and if given by a corporation, company, or society shall be under the seal thereof (if any), or, if there is no seal, then shall be signed or executed in such manner as legal documents are authorised to be signed or executed by such corporation, company, or society, or its attorney or agent respectively, and may be registered. This section shall not prevent a mortgage being discharged by reconveyance.

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Renewal or extension of currency of mortgage.

6. The term or currency of any mortgage may be renewed or extended by a memorandum in writing indorsed thereon or attached thereto, and signed by the mortgagor and the mortgagee and attested as in the preceding section this Act provided; and such memorandum of renewal or extension may be registered in the same manner as is prescribed in the case of the registration of mortgages by section three of this Act.

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Transfer of mortgagee's interest.

7. The interest of a mortgagee in the property dealt with in any registered memorandum of mortgage may be transferred by a memorandum in writing, indorsed thereon or annexed thereto, in the form or to the effect following, that is to say,—

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"I, the within-mentioned A. B., in consideration of £ this day paid to me by C. D., of the receipt of which sum I do hereby acknowledge, hereby transfer to him [her or them] the

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estate or interest in respect to which I am registered proprietor, as set forth and described in the within-written [or annexed] security, together with all my rights, powers, estate, and interest therein.

5 "In witness whereof I have hereunto subscribed my name this day of

"A. B., Transferor.

"Witness: E. F. [Occupation and address].

"Accepted.—C. D., Transferee.

"Witness: G. H. [Occupation and address]."

10 "~~Signed by the above mentioned, in the presence of E. F., Justice of the Peace, [or Postmaster, or Solicitor (adding abode)], the day of~~

And such memorandum of transfer may be registered in the same manner as is prescribed in the case of the registration of mortgages by section *three* of this Act. And upon such memorandum of transfer being registered, the estate or interest of the transferor as set forth in such memorandum, with all rights, powers, and privileges thereto belonging or appertaining, shall pass to the transferee.

Struck out.

20 8. The fact that a mortgage is effected upon the form prescribed in the *First Schedule* to this Act shall not be deemed to imply any guarantee by the State of the title of the mortgagor.

Title not guaranteed by State.

25 9. The provisions of sections *four* to *seven* of this Act inclusive shall apply to all mortgages, whether effected under this Act or otherwise.

Sections 4 to 7 to apply to all mortgages.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

Memorandum of Mortgage under "The Mortgages Act, 1900":—

- (a.) Mortgagor:
- (b.) Estate:
- (c.) Land: [Area and particulars.]
- (d.) Reference to title in Register:
- (e.) Mortgagee:
- (f.) Principal sum:
- (g.) Date of advance:
- (h.) Rate of interest:
- (i.) How payable:
- (j.) How and when principal sum to be repaid.

And for the better securing to the said (e) the payment of the said principal sum, interest, and other moneys, I [or we] hereby mortgage to the mortgagee all my [or our] estate and interest in the said land above described.

As witness my hand [or our hands], this day of , 19 .

(k) Mortgagor.

Signed by the said (l) as mortgagor, in the presence of (m)
[Justice of the Peace, or Postmaster, or Solicitor]:
A. B.,
[Occupation and address].

NOTE A.—If the land mortgaged is under the Land Transfer Act, this instrument *must* be registered as a memorandum of mortgage, in accordance with the provisions of that Act. If the land mortgaged is not under the Land Transfer Act, this instrument may be registered under "The Deeds Registration Act, 1868."

Struck out.

NOTE B.—The fact that this memorandum of mortgage is executed on the form prescribed by "The Mortgages Act, 1900," does not imply any guarantee by the State of the title of the mortgagor.

Directions for filling up above Form.

- (a.) Here insert full name, residence, and occupation of mortgagor [*or* mortgagors], —as thus: “A.B., of Wellington, farmer.”
- (b.) Here insert “freehold in fee-simple” or “leasehold,” as the case may be.
- (c.) Here insert acreage, number of section and block, and name of survey district, city, town, or township in which the land is situated. If the land is not under the Land Transfer Act, give a full description, with plan.
- (d.) If the land is under the Land Transfer Act, here insert number and folio of register. If not under the Land Transfer Act, insert “Not under Land Transfer Act.”
- (e.) Here insert full name of mortgagee [*or* mortgagees].
- (f.) Insert amount.
- (g.) Fill in date.
- (h.) State rate agreed upon.
- (i.) Here insert “yearly,” “half-yearly,” “quarterly,” or otherwise, as the case may be.
- (j.) Here insert date and mode of payment agreed upon.
- (k.) Signature of mortgagor [*or* mortgagors].
- (l.) Name of mortgagor [*or* mortgagors].
- (m.) Signature of witness, stating place of abode and calling or description of witness.

SECOND SCHEDULE.

COVENANTS to be implied in every memorandum of mortgage executed in terms of the foregoing Schedule as binding on the mortgagor, his executors, administrators, and assigns, in favour of the mortgagee, his executors, administrators, and assigns:—

Firstly, that the mortgagor will pay the principal sum mentioned in the memorandum of mortgage, with interest thereon, in accordance with the provisions of such memorandum mortgage.

Secondly, that the mortgagor will forthwith insure, and, so long as any money remains owing on the security, will keep insured, all buildings and erections for the time being situate on the said land against loss or damage by fire, in the name of the mortgagee to their full insurable value, in some reputable insurance office in *New Zealand* to be approved by the mortgagee, and will duly and punctually pay all premiums and sums of money necessary for the purpose of keeping every such insurance on foot. And will, not later than the forenoon of the day on which any premium falls due, deliver or cause to be delivered the receipt therefor to the mortgagee, who shall also be entitled to the exclusive custody of all policies of insurance.

Thirdly, that the mortgagor will from time to time, so long as any money remains owing on the security, well and substantially repair, and keep in good and substantial repair and condition, all buildings or other improvements erected and made upon the said land: And, that the mortgagee may at all *reasonable* times be at liberty, by himself, his agents or servants, to enter upon the said land to view and inspect the said buildings and improvements.

Fourthly, that if the mortgagor fails or neglects to insure or keep insured the said buildings and erections as aforesaid, or to deliver or cause to be delivered any premium receipt as aforesaid, or to repair the said buildings and improvements, or to keep them in good and substantial repair and condition as aforesaid, then and in any such case, and as often as the same shall happen, it shall be lawful for but not obligatory on the mortgagee, at the cost and expense in all things of the mortgagor, to insure the said buildings or any of them in such sum as aforesaid, or in any less sum, or to pay such premium, or to repair the said buildings and improvements and keep them in good and substantial repair and condition.

Fifthly, that in the event of the said buildings and erections or any of them being destroyed or damaged by fire, all moneys received by the mortgagee under any insurance in respect of such destruction or damage shall be applied, at his sole option, either in or towards rebuilding or repairing the buildings and erections so destroyed or damaged, or in or towards payment of the principal, interest, and other moneys for the time being covered by the security, notwithstanding that the same or any of them may not have accrued due under the terms of the memorandum of mortgage.

Sixthly, that all moneys expended by the mortgagee in and about effecting or keeping on foot any insurance as aforesaid, or in repairing or keeping in repair any of the said buildings and improvements as aforesaid, or in attempting to exercise or enforce lawfully exercising or enforcing any power, right, or remedy in the memorandum

of mortgage contained or implied in favour of the mortgagee, shall be payable to him by the mortgagor on demand, and until paid shall be charged on the said land, together with interest at the rate agreed upon in the ~~memorandum~~ of mortgage, computed from the date or dates of such moneys being expended.

Seventhly, that the power of sale and incidental powers in that behalf conferred upon mortgagees by "The Land Transfer Act, 1885," or by "The Property Law Consolidation Act, 1883," as the case may be, shall be implied herein, with this modification: that they may be exercised without any notice or demand whatsoever if and whenever the mortgagor makes default for one calendar month in the full and punctual payment of any of the moneys secured by the ~~memorandum~~ of mortgage, in accordance with the respective covenants for payment thereof therein contained or implied, or if and whenever the mortgagor makes default in the faithful observance and performance of any other covenant or condition on his part therein contained or implied.

Eighthly, that if and whenever the mortgagor makes any such default as in the last-preceding covenant mentioned, it shall be lawful for the mortgagee to call up and compel payment of all principal, interest, and other moneys for the time being owing under the ~~memorandum~~ of mortgage, notwithstanding that the time or times therein appointed for the payment thereof respectively may not have arrived.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1900.