

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,
19th September, 1901.

[AS AMENDED BY THE LEGISLATIVE COUNCIL.]

Hon. Sir J. G. Ward.

MORTGAGES OF LAND.

ANALYSIS.

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| <ul style="list-style-type: none"> Title. 1. Short Title. 2. Interpretation. 3. Form of mortgage. Covenants and conditions implied. 4. Registration. | <ul style="list-style-type: none"> 5. Amount of mortgage may be increased or reduced by indorsement. 6. Renewal or extension of currency of mortgage. 7. Transfer of mortgagee's interest. 8. Sections 5 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.

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, 1901."

Short Title.

2. In this Act, if not inconsistent with the context, "land" includes any estate or interest in real property.

Interpretation.

3. (1.) Mortgages of land may be effected upon forms as set out in the *First* Schedule hereto.

Form of mortgage

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

Covenants and conditions implied.

4. (1.) Every such mortgage, if relating to land under "The Land Transfer Act, 1885," shall for all purposes be deemed to be a memorandum of mortgage within the meaning of that Act.

Registration.

(2.) Every such mortgage, if relating to land under "The Deeds Registration Act, 1868," shall, for all purposes, 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.

5. The amount secured by any mortgage may be increased or reduced by a memorandum, indorsed thereon or annexed thereto, in the form set out in the *Third* Schedule hereto, and such memorandum of increase or reduction may be registered in like manner as the original mortgage.

Amount of mortgage may be increased or reduced by indorsement.

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, and such memorandum of renewal or extension may be registered in the same manner as is prescribed by section *four* hereof in the case of the registration of mortgages. 5

Transfer of mortgagee's interest.

7. (1.) The interest of a mortgagee in the property dealt with in any registered mortgage may be transferred by a memorandum in writing, indorsed thereon or annexed thereto, in the form set out in the *Fourth* Schedule hereto. 10

(2.) Such memorandum of transfer may be registered in the same manner as is prescribed by section *four* hereof in the case of the registration of mortgages; and upon such memorandum of transfer being registered, the estate or interest of the transferor as set forth in the memorandum, with all rights, powers, and privileges thereto belonging or appertaining, shall pass to the transferee. 15

Sections 5 to 7 to apply to all mortgages.

8. The provisions of sections *five* to *seven* hereof shall apply to all mortgages, whether effected under this Act or otherwise.

SCHEDULES.

FIRST SCHEDULE.

MORTGAGE UNDER "THE MORTGAGES OF LAND ACT, 1901."

- (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)

A. B.,

[*Occupation and address.*]

[NOTE.—If the land mortgaged is under the Land Transfer Act, this instrument may 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."]

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. [*In mortgages to co-operative building societies and other societies where no interest is charged, this line may be struck out.*]

(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 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 mortgage, with interest thereon, in accordance with the provisions of such 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 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 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 lawfully exercising or enforcing any power, right, or remedy in the 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 mortgage, computed from the date or dates of such moneys being expended.

Struck out.

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 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 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.

New clause.

Seventhly, that where the mortgagor makes default for the space of two months in payment of the principal sum and interest, or in the observance of any other covenant expressed or implied in the mortgage, and at least one month's notice in writing of his intention to do so has been given by the mortgagee to the mortgagor,

or is left upon the said land or at the usual or last known place of abode in the colony of the mortgagor, the mortgagee may sell the said land, or any part thereof, either altogether or in lots, by public auction or by private contract, or partly by either of such modes of sale, and subject to such conditions as the mortgagee thinks fit, and may exercise such other incidental powers in that behalf as are conferred upon mortgagees by "The Land Transfer Act, 1885," or by "The Property Law Consolidation Act, 1883," as the case may be.

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 mortgage, notwithstanding that the time or times therein appointed for the payment thereof respectively may not have arrived.

Ninthly, That the mortgagor will forthwith insure and, so long as any moneys remain owing on the security, will keep insured the mortgagee against any worker's charge under "The Workers' Compensation for Accidents Act, 1900," on the said land obtaining priority over the mortgage, in the name of the mortgagee; such policy or policies in either case to be expressed to be an absolute indemnity of the mortgagee against such risk: And will, seven days at least before the same becomes due, pay all premiums and other moneys necessary for keeping such insurance on foot, and will forthwith deliver to the mortgagee the policy or policies of such insurance or insurances, and from time to time the receipt for every such premium:

Tenthly, That if the mortgagor fails to insure or keep insured the mortgagee against any worker's charge as aforesaid, it shall be lawful for but not obligatory on the mortgagee to pay all such sums of money as may be requisite to effect such policy or policies as, in the opinion of the mortgagee, are necessary for the purpose of insuring the mortgagee against any worker's charge obtaining priority over the mortgage, and to pay all such sums as may be necessary for the purpose of effecting such insurance, or paying the premium thereon or any renewal premium in respect thereof: And the mortgagor will, whenever called upon to do so (but not at intervals of less than three months), supply a list of all wages paid by the mortgagor in connection with the said land:

Eleventhly, The mortgagor will forthwith, without any demand, pay to the mortgagee all sums of money expended by the mortgagee in paying and satisfying any such worker's charge as aforesaid, or in effecting such insurance, or paying the said premium or renewal premiums thereon, with interest for the same respectively at the rate agreed on in the mortgage, computed from the time or respective times of the mortgagee's paying the same until repayment thereof, and in the meantime such sums of money, with interest at the rate aforesaid, shall be added to the sum expressed to be secured by the mortgage.

THIRD SCHEDULE.

INDORSEMENT OF INCREASE OR REDUCTION OF MORTGAGE DEBT.

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 .

Witness: E. F.,
[Occupation and address].
Witness: G. H.,
[Occupation and address].

A. B.,
Mortgagor.
C. D.,
Mortgagee.

FOURTH SCHEDULE.

TRANSFER OF MORTGAGE.

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

In witness whereof I have hereunto subscribed my name this day of , 19 .

Witness: E. F.,
[Occupation and address].
Witness: G. H.,
[Occupation and address].

A. B.,
Transferor.
Accepted. C. D.,
Transferee.