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**CHAPTER 138****CONVEYANCING AND LAW OF PROPERTY**

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## CHAPTER 138

### CONVEYANCING AND LAW OF PROPERTY

**An Act for simplifying and improving the practice of conveyancing; and for vesting in mortgagees and others various powers commonly conferred by provisions inserted in mortgages and other instruments; and for amending in various particulars the law of property; and for other purposes.**

*[Commencement 23rd August, 1909]*

*7 of 1909  
28 of 1914  
8 of 1955  
26 of 1956  
72 of 1957  
58 of 1959  
28 of 1960  
4 of 1961  
43 of 1961  
46 of 1964  
24 of 1965  
27 of 1973  
5 of 2002*

#### PART I PRELIMINARY

1. This Act may be cited as the Conveyancing and Law of Property Act. Short title.
2. In this Act, unless the context otherwise requires — Interpretation.
  - “bankruptcy” includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and “bankrupt” has a meaning corresponding with that or bankruptcy;
  - “building purposes” includes the erecting and the improving of, and the adding to, and the repairing of buildings; and a “building lease” is a lease for building purposes or purposes connected therewith;
  - “conveyance” includes assignment, appointment, lease, settlement and other assurance, and covenant of surrender, made by deed, on a sale, mortgage, demise or settlement of any property, or on any other dealing with or for any property; and “convey” has a meaning corresponding with that of conveyance;
  - “court” means the Supreme Court;

Ch. 60.

“incumbrance” includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and “incumbrancer” has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof;

“declaration” means a declaration made under the Oaths Act;

“income,” in relation to land, includes rents and profits, and “possession” includes receipt of income;

“instrument” includes deed, will and Act;

“lease” includes an agreement for a lease where the lessee has become entitled to have his lease granted; and “under-lease” includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted; and “under-lessee” includes any person deriving title under or from an under-lessee;

“mortgage” includes any charge on any property for securing money or money’s worth; and “mortgage money” means money or money’s worth secured by a mortgage; and “mortgagor” includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest or right, in the mortgaged property; and “mortgagee” includes any person from time to time deriving title under the original mortgagee; and “mortgagee in possession” is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into, and is in possession of the mortgaged property;

“property” includes real and personal property and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest;

“purchaser” includes a lessee or mortgagee, and an intending purchaser, lessee or mortgagee, or other person, who, for valuable consideration,

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takes or deals for any property; and “purchase” has a meaning corresponding with that of purchaser; but “sale” means only a sale properly so called;

“rent” includes yearly or other rent, toll, duty, royalty or other reservation, by the acre, or otherwise; and “fine” includes premium or fore-gift, and any payment, consideration or benefit in the nature of a fine, premium or fore-gift;

“Schedule” means a Schedule to this Act;

“securities” includes stocks, funds and shares;

“solicitor” means a counsel and attorney for the time being authorised to practise as a counsel and attorney of the court;

“will” includes codicil;

“writing” includes print; and words referring to any instrument, copy, extract, abstract or other document include any such instrument, copy, extract, abstract or other document being in writing or in print, or partly in writing and partly in print.

## PART II SALES AND OTHER TRANSACTIONS

### *Contracts for Sale*

3. (1) Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold. Contracts for sale.

(2) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(3) Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts or declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of truth of such facts, matters and descriptions.

*72 of 1957, s. 2.;*  
*28 of 1960, s. 2.*

Ch. 142.

(4) A purchaser of land shall not be entitled to require a title to be deduced for a period of more than thirty years, or for a period extending further back than a grant or lease by the Crown or a certificate of title granted by the court in accordance with the provisions of the Quieting Titles Act, whichever period shall be the shorter.

(5) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection or inquiry, with respect to any such deed, will or document, or the title prior to that time, notwithstanding that any such deed, will or other document, or that prior title is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will or other documents so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by acknowledgement, enrolment or otherwise.

(6) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(7) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and



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further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(8) On a sale of any property, the expenses of the production and inspection of all Acts, records, proceedings of courts, deeds, wills, probates, letters of administration and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying and producing all certificates, declarations, evidences and information not in the vendor's possession, and all attested, stamped, office or other copies or abstracts of, or extracts from, any Acts or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(9) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(10) The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

(11) Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

(12) Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

(13) On a sale of property a stipulation shall be implied that the purchaser shall be entitled to the benefit of any insurance against fire which may be then subsisting thereon in favour of the vendor.

(14) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(15) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(16) This section applies only to sales made after the commencement of this Act.

(17) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

Vendor or purchaser may obtain decision of court.

4. (1) A vendor or purchaser of land in The Bahamas, or his representatives respectively, may at any time or times and from time to time apply in a summary way to the court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract, (not being a question affecting the existence or validity of the contract) and the court shall make such order upon the application as to it shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

(2) This section applies to contracts made either before or after the commencement of this Act.

#### *Discharge of Incumbrances on Sale*

Discharge of incumbrances on sale.

5. (1) Where land subject to any incumbrance, whether immediately payable or not, is sold by the court, or out of court, the court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in

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securities of the Government of The Bahamas, or of the United Kingdom, the court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reason thinks fit to require a larger additional amount.

(2) Thereupon, the court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

(3) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

#### *General Words*

**6.** (1) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, hedges, ditches, walls, fences, ways, waters, watercourses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

General words in conveyance of land, etc.

(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses

or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, tanks, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, houses or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings conveyed, or any of them, or any part thereof.

(3) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(4) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the conveyance gives to him to the land expressed to be conveyed, or as conveying to him any property, right or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(5) This section applies only to conveyances made after the commencement of this Act.

#### *Covenants for Title*

Covenants for title to be implied.

7. (1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:

On conveyance for value by beneficial owner; Right to convey; Quiet enjoyment; Freedom from incumbrance; Further assurance.

(a) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely) —

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That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in manner in which, it is expressed to be conveyed; and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received and held, occupied, enjoyed and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under or in trust for the person who so conveys, or any person conveying by his direction, or by, through or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates incumbrances, claims and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under or in trust for the person who so conveys, or by, through or under any person conveying by his direction, or by, through or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or

rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under or in trust for the person who so conveys, or by, through or under any person conveying by his direction, or by, through, or under anyone through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required,

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage);

- (b) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely) —

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or

On conveyance of leaseholds for value, by beneficial owner; Validity of lease.

grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance,

(in which covenant a purchase for value shall be not deemed to include a conveyance in consideration of marriage);

- (c) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely) —

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed, to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person

On mortgage by beneficial owner;  
Right to convey;  
Quiet enjoyment;  
Freedom from incumbrances;  
Further assurance.

having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required;

On mortgage of leaseholds by beneficial owner; Validity of lease; Payment of rent and performance of covenants.

- (d) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed and is in full force, unforfeited and unsurrendered, and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe and perform, or cause to be paid, observed and performed all the rents reserved by, and all the



covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims, and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance of non-performance of such covenants, conditions and agreements, or any of them;

- (e) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely) —

On settlement;  
For further  
assurance  
limited.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required;

- (f) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the court, which covenant shall be deemed to extend to every such person's own acts only (namely) —

On conveyance  
by trustee or  
mortgagee;  
Against  
incumbrances.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or

any part thereof, is or may be impeached, charged, affected or incumbered in title, estate or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(6) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

(7) This section applies only to conveyances made after the commencement of this Act.

*Execution of Purchase Deed*

**8.** (1) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

Rights of purchaser as to execution.

(2) This section applies only to sales made after the commencement of this Act.

*Production and Safe Custody of Title Deeds*

**9.** (1) Where a person retains possession of documents and gives to another an acknowledgement in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgement) that acknowledgement shall have effect as in this section provided.

Acknowledgement of right to production and undertaking for safe custody of documents.

(2) An acknowledgement shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgement, unless prevented from so doing by fire or other inevitable accident.

(3) The obligations imposed under this section by an acknowledgement are to be performed from time to time at the request in writing of the person to whom an acknowledgement is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest or right

through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgement relates.

(4) The obligations imposed under this section by an acknowledgement are —

- (a) an obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorised in writing; and
- (b) an obligation to produce the documents or any of them at any trial, hearing or examination in any court, or in the execution of any commission, or elsewhere in The Bahamas, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and
- (c) an obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgement shall be paid by the person requesting performance.

(6) An acknowledgement shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7) Any person claiming to be entitled to the benefit of an acknowledgement may apply to the court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

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(8) An acknowledgement shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the document safe, whole, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10) Any person claiming to be entitled to the benefit of such an undertaking may apply to the court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12) The rights conferred by an acknowledgement or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgement or undertaking, and shall have effect subject to the terms of the acknowledgement or undertaking, and to any provisions therein contained.

(13) This section applies only if and as far as a contrary intention is not expressed in the acknowledgement or undertaking.

(14) This section applies only to an acknowledgement or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

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**PART III**  
**LEASES, FORFEITURES**

Rent and benefit of lessee's covenants to run with reversion.

**10.** (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2) This section applies only to leases made after the commencement of this Act.

Obligation of lessor's covenants to run with reversion.

**11.** (1) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2) This section applies only to leases made after the commencement of this Act.

Apportionment of conditions on severance.

**12.** (1) Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the several parts of the

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reversionary estate as severed, and shall be in force with respect to the terms whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) This section applies only to leases made after the commencement of this Act.

**13.** (1) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

On sub-demise title to leasehold reversion not to be required.

(2) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3) This section applies only to contracts made after the commencement of this Act.

**14.** (1) Where a lease is made under a power contained in a settlement, will, Act or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

Contract for lease not part of title to lease.

(2) This section applies to leases made either before or after the commencement of this Act.

**15.** In all leases containing a covenant, condition or agreement against assigning, underletting or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

No fine to be exacted for licence to assign.

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*Forfeiture*

Restrictions on  
and relief against  
forfeiture of  
leases.

**16.** (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach. Lessee may apply for relief.

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or for forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief, may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.

Cost of waiver  
and forfeiture in  
case of  
bankruptcy or  
execution.

(3) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any) all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor by writing under his hand, or from which the lessee is relieved, under the provisions of this Act.

Power of court to  
protect  
underlessees on  
forfeiture of  
superior leases.

(4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof either in the lessor's action (if any) or in



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any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case shall think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sublease.

(5) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee-farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

Interpretation.

(6) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act.

Application of section.

(7) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(8) This section does not extend to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest.

43 of 1961, s. 2.

(9) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(10) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

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## PART IV MORTGAGES

Obligation on mortgagee to transfer instead of re-conveying.

**17.** (1) Where a mortgagor is entitled to redeem he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third persons, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly. Re-conveyance on mortgage.

(2) The right given by this section to a mortgagor shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Application of section.

(3) This section does not apply in the case of a mortgagee being or having been in possession.

(4) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Power for mortgagor to inspect title deeds.

**18.** (1) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Restriction on consolidation of mortgages.

**19.** (1) A mortgagor, seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(3) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

*Leases by Mortgagors and Mortgagees*

**20.** (1) A mortgagor of land while in possession shall, as against every incumbrancer, have by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorised.

Leasing powers of mortgagor and mortgagee in possession.

(2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease aforesaid.

(3) The leases which this section authorises are —

- (a) an agricultural or occupational lease for any term not exceeding twenty-one years; and
- (b) a building lease for any term not exceeding ninety-nine years.

(4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connection with building purposes.

(10) In any such building lease a nominal or other rent less than the rent ultimately payable may be made payable for the first five years, or any less part of the term.

(11) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences, unless a contrary intention is expressed in the mortgage deed.

(15) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining or adopting the agreement.

(17) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

*Sale, Insurance, Receiver, Timber*

**21.** (1) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely) —

Powers incident to estate or interest of mortgagee.

- (a) a power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby;
- (b) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money;

Sale.

Insurance.

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Receiver. (c) a power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof;

Timber. (d) a power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract:

Provided that the power hereby given shall not include the power to cut or sell any fruit bearing trees.

(2) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects and consequences as if such variations or extensions were contained in this Act.

(3) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4) This section applies only where the mortgage deed is executed after the commencement of this Act.

Regulation of  
exercise of power  
of sale.

**22.** A mortgagee shall not exercise the power of sale conferred by this Act, unless and until —

- (1) notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or
- (2) some interest under the mortgage is in arrear and unpaid for two months after becoming due; or
- (3) there has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

**23.** (1) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage.

Conveyance,  
receipt, etc., on  
sale.

(2) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(4) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6) The mortgagee, his executors, administrators or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged

property an estate, interest or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

Mortgagee's  
receipts,  
discharges, etc.

**24.** (1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges and expenses payable shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Amount and  
application of  
insurance money.

**25.** (1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely) —

- (a) where there is a declaration in the mortgage deed that no insurance is required;
- (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
- (c) where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorised to insure.



(3) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

**26.** (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

Appointment, powers, remuneration and duties of receiver.

(2) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time, by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the moneys received by him, any building, effects or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8) The receiver shall apply all money received by him as follows (namely) —

- (a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property; and
- (b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (c) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (d) in payment of the interest accruing due in respect of any principal money due under the mortgage,

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

#### *Action respecting Mortgage*

Sale of mortgaged property in action for foreclosure or redemption.

**27.** (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale or redemption, in the alternative.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so

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interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum fixed by the court, to meet the expenses of sale and to secure performance of the terms.

(3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrances.

(5) This section applies to actions brought either before or after the commencement of this Act.

## PART V STATUTORY MORTGAGE

**28.** (1) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part 1 of the First Schedule, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

Form of  
statutory  
mortgage in  
Schedule.  
First Schedule.

(2) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed —

(a) covenants with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely) —

(i) that the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half yearly payments, the first thereof

to be made at the end of six months from the day stated for payment of the mortgage money; and

- (ii) that the mortgagor will pay all rates and taxes payable in respect of the mortgaged property, before the latter becomes liable to forfeiture or sale under any Act relating to a tax on real property, or house property tax, and will if called upon so to do by the mortgagee produce to the latter within ten days after demand or within such shorter period as may exist before the property becomes liable as aforesaid, a receipt for rates or taxes;

- (b) a proviso to the effect following (namely) —

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

**29.** (1) A transfer of statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A) and (B) and (C) given in Part 2 of the First Schedule as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely) —

- (a) there shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due, thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee;

Forms of  
statutory transfer  
of mortgage.

First Schedule.

(b) all the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3) If the deed of transfer is made in the form (B), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely) —

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4) If the deed of transfer is made in the form (C), it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also a statutory mortgage, and the provisions of this section shall have effect in relation thereto, accordingly.

**30.** In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

Implied covenants, joint and several.

**31.** A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part 3 of the First Schedule, with such variations and additions, if any, as circumstances may require.

Form of reconveyance of statutory mortgage. First Schedule.

Effect of  
endorsement by  
mortgagee on  
payment of  
mortgage debt.

*26 of 1956, s. 2;*  
*58 of 1959, s. 2.*

**32. (1)** Whenever the person entitled to receive payment of any money secured by mortgage upon any property shall endorse upon the deed of mortgage or upon any transfer thereof or shall attach to the deed of mortgage or to any transfer thereof an acknowledgement under his hand, attested by one witness, of the payment of the mortgage debt in full, or any less sum in satisfaction thereof, such acknowledgement shall vacate the mortgage and operate as a discharge of the mortgage debt and shall vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption without any re-conveyance; and if the said mortgage has been recorded in the Registry of Records, the Registrar-General shall on production of such acknowledgement, verified by the oath of any person, record by affixing, stamping or punching a suitable device on the first folio of the record of the said mortgage the fact that such mortgage is satisfied, and shall grant a certificate under his hand and seal, which certificate shall also be recorded and shall be received in evidence in all courts and proceedings without any further proof, and which entry shall have the effect of clearing the register of record of such mortgage:

*24 of 1965, s. 2.*

Ch. 308.

Provided that whenever the person entitled to receive payment of any money secured by any such mortgage is a company or corporation (including a foreign company registered under the Companies Act) such acknowledgement may be signed by any person purporting to be a director, officer, or duly appointed attorney of such company or corporation in the presence of some other person who shall sign such acknowledgement as a witness to the due execution thereof and the requirements of this section as to verification shall be satisfied by the oath of such director, officer or attorney or by the oath of such witness.

*24 of 1965, s. 3.*

(2) The proviso to subsection (1) shall apply to all acknowledgements made and done either before or after the 18th day of May, 1965<sup>1</sup>:

Provided that notwithstanding anything contained in this Act, an acknowledgement endorsed upon a deed of mortgage or upon any transfer thereof before the 18th day of May, 1965, this Act shall be deemed to have been duly

<sup>1</sup> Date of commencement of Act No. 24 of 1965.

executed in the case of a foreign company registered under the Companies Act if it bears a seal purporting to be a seal of the company or of any branch or office thereof within The Bahamas used under the authority of the directors or other managing body or local manager thereof.

Ch. 308.

**PART VI**  
**TRUST AND MORTGAGE ESTATES ON DEATH**

*5 of 2002, s. 37.***33. ....<sup>1</sup>**Repealed by Act  
5 of 2002

**PART VII**  
**MARRIED WOMEN**

*5 of 2002, s. 37.*

**34.** (1) Notwithstanding that a married woman is restrained from anticipation, the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

Power of court to  
bind interest of  
married woman.

(2) This section applies only to judgments or orders made after the commencement of this Act.

**35.** (1) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

Power of  
attorney of  
married woman.

(2) This section applies to conveyances made before or after the commencement of this Act.

<sup>1</sup> Before its repeal by Act 5 of 2002 (Administration of Estates Act, now Ch. 108 in the Rev. Ed. 2000), section 33 provided as follows —

(1) “Where an estate or interest of inheritance or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time in like manner as if the same were a chattel real vesting in them or in him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased’s personal representatives or representatives from time to time, with all the like incidents, but subject to all the like rights, equities and obligations, as if the same were a chattel real vesting in them or him; and for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2) This section applies only in cases of death after the commencement of this Act.”

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**PART VIII**  
**CONSTRUCTION AND EFFECT OF DEEDS AND**  
**OTHER INSTRUMENTS**

Use of word  
“grant”  
unnecessary.

**36.** (1) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2) This section applies to conveyances made before or after the commencement of this Act.

Conveyance by a  
person to  
himself, etc.

**37.** (1) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(2) This section applies only to conveyances made after the commencement of this Act.

Words of  
limitation in fee  
or in tail.  
*4 of 1961, s. 2.*

**38.** (1) In a deed it shall be sufficient, in the limitation of an estate in fee simple to an individual, to use the words in fee simple, without the word heirs, and in the limitation of an estate in fee simple to a company, to use the words in fee simple without the word assigns; and in the limitation of an estate in fee simple to a corporation sole, to use the words in fee simple without the word successors; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body or heirs female of the body.



(2) This section applies only to deeds executed after the commencement of this Act.

**39.** (1) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

Powers simply collateral.

(2) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

**40.** (1) Any estate or interest in land, whether in possession, reversion or remainder, may be conveyed by a simple deed, whether such deed operates under the Statute of Uses or not.

Conveyance by simple deed.

(2) This section applies to deeds executed either before or after the commencement of this Act.

**41.** (1) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of endorsement on the previous deed, or contained a full recital thereof.

Construction of supplemental or annexed deed.

(2) This section applies to deeds executed either before or after the commencement of this Act.

**42.** (1) A receipt for consideration money or securities in the body of a deed shall be sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being endorsed on the deed.

Receipt on deed sufficient.

(2) This section applies only to deeds executed after the commencement of this Act.

**43.** (1) A receipt for consideration money or other consideration in the body of a deed or endorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

Receipt in deed or endorsed, evidence for subsequent purchaser.

(2) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or endorsed, authority for payment to solicitor.

**44.** (1) Where a solicitor produces a deed, having in the body thereof or endorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

Sufficiency of forms.  
Second Schedule.

**45.** Deeds in the form of and using the expressions in the forms given in the Second Schedule, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

Covenants to extend to heirs, etc.

**46.** (1) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators and assigns, and shall have effect as if executors, administrators and assigns were expressed.

(3) This section applies only to covenants made after the commencement of this Act.

Covenants to bind heirs, etc.

**47.** (1) A covenant and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed.

(2) This section extends to a covenant implied by virtue of this Act.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and shall have effect subject to the terms of the covenant, contract, bond or obligation, and to the provisions therein contained.

(4) This section applies only to a covenant, contract, bond or obligation made or implied after the commencement of this Act.

**48.** (1) A covenant and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond or obligation devolves.

Effect of covenant with two or more jointly.

(2) This section extends to a covenant implied by virtue of this Act.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and shall have effect subject to the covenant, contract, bond or obligation, and to the provisions therein contained.

(4) This section applies only to a covenant, contract, bond or obligation made or implied after the commencement of this Act.

**49.** (1) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

Effect of advance on joint account, etc.

(2) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

Grants of easements, etc., by way of use.

**50.** (1) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty or privilege for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use and enjoy the same accordingly.

(2) This section applies only to conveyances made after the commencement of this Act.

Provision for all the estate, etc.

**51.** (1) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have, in, to or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to or on the same.

(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3) This section applies only to conveyances made after the commencement of this Act.

## PART IX NOTICE

Restriction on constructive notice.

**52.** (1) A purchaser shall not be prejudicially affected by notice of any instrument, fact or thing unless —

- (a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Act.

## PART X ADOPTION OF ACT

**53.** (1) The powers given by this Act to any person, and the covenants, provisions, stipulations and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations and words, to be given by or to be contained in any such instrument, or to be adopted in connection with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connection with any such contract or transaction, to negative the giving, inclusion, implication or application of any of those powers, covenants, provisions, stipulations or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

Protection of  
solicitor and  
trustee adopting  
Act.

(2) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations or words, is improper.

(3) Where the solicitor is acting for trustees, executors or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4) Where such persons are acting without a solicitor, they shall also be protected in like manner.

## PART XI DISPOSITION OF CROWN LANDS

Minister may  
dispose of Crown  
Lands.

**54.** (1) Any power that immediately before the 10th day of July, 1973, was under section 24 of the Bahama Islands Constitution Order, 1969, vested in the Governor of the Bahama Islands —

*27 of 1973, s. 2.*

- (a) to make grants and dispositions of any lands or other immovable property in the said Islands or any interests in such property that were vested in Her Majesty or the Governor on behalf of Her Majesty as the property of the Crown for the beneficial interest of the said Islands, or
- (b) to exercise in relation to such property or interests any other powers lawfully exercisable by Her Majesty,

shall be vested in the Minister, so however, that, wherever the employment of the Public Seal would have been required under that section, the official seal of the Minister shall be employed instead.

(2) In this section “Minister” means the Minister responsible for Crown Lands.

## PART XII MISCELLANEOUS

Regulations  
respecting  
notices.

**55.** (1) Any notice required or authorised by this Act to be served shall be in writing.

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that

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designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn or unascertained.

(3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last known place of abode or business in The Bahamas of the lessee, lessor, mortgagee, mortgagor or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage.

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business, and if that letter is not returned through the post office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) This section does not apply to notices served in proceedings in the court.

**56.** The Rules Committee under section 75 of the Supreme Court Act may make rules for the purpose generally of carrying out the objects of this Act.

Rules.  
*46 of 1964, Sch.*  
Ch. 53.

**57.** (1) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service whether the purchaser has notice of any such want or not.

Orders of court  
conclusive.

(2) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

**FIRST SCHEDULE (Section 28)****STATUTORY MORTGAGE****PART 1***Deed of Statutory Mortgage*

THIS INDENTURE made by way of statutory mortgage the ..... day of ..... 19 ..... between *A.* of [etc.] of the one part and *M.* of [etc.] of the other part

WITNESSETH in consideration of the sum of \$ ..... now paid to *A.* by *M.* of which sum *A.* hereby acknowledges the receipt *A.* as mortgagor and as beneficial owner hereby conveys to *M.* All that [etc.]

To hold to and to the use of *M.* in fee simple for securing payment on the ..... day of ..... 19 ..... of the principal sum of \$ ..... as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness, etc.

*Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.*

**PART 2 (Section 29)****(A)***Deed of Statutory Transfer, Mortgagor not Joining*

THIS INDENTURE made by way of statutory transfer of mortgage the ..... day of ..... 19 ..... between *M.* of [etc.] of the one part and *T.* of [etc.] of the other part supplemental to an indenture made by way of statutory mortgage dated the ..... day of ..... 19 ..... and made between [etc.]

WITNESSETH that in consideration of the sum of \$ ..... now paid to *M.* by *T.* being the aggregate amount of \$ ..... mortgage money and \$ ..... interest due in respect of the said mortgage of which sum *M.* hereby acknowledges the receipt *M.* as mortgagee hereby conveys and transfers to *T.* the benefit of the said mortgage.

In witness, etc.



**(B)***Deed of Statutory Transfer, a Covenantor Joining*

THIS INDENTURE made by way of statutory transfer of mortgage the ..... day of ..... 19 .... between *A.* of [etc.] of the first part *B.* of [etc.] of the second part and *C.* of [etc.] of the third part supplemental to an indenture made by way of statutory mortgage dated the ..... day of ..... 19 .... and made between [etc.].

WITNESSETH that in consideration of the sum of \$ ..... now paid to *A.* by *C.* being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum *A.* hereby acknowledges the receipt *A.* as mortgagee with the concurrence of *B.* who joins herein as covenantor hereby conveys and transfers to *C.* the benefit of the said mortgage.

In witness, etc.

**(C)***Statutory Transfer and Statutory Mortgage Combined*

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the ..... day of ..... 19 .... between *A.* of [etc.] of the first part *B.* of [etc.] of the second part and *C.* of [etc.] of the third part supplemental to an indenture made by way of statutory mortgage dated the ..... day of ..... 19 .... and made between [etc.]

WHEREAS the principal sum of \$ ..... only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon

AND WHEREAS *B.* is seised in fee simple of the land comprised in the said mortgage subject of that mortgage

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of \$ ..... now paid to *A.* by *C.* of which sum *A.* hereby acknowledges the receipt and *B.* hereby acknowledges the payment and receipt as aforesaid\* *A.* as mortgagee hereby conveys and transfers to *C.* the benefit of the said mortgage

AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as mortgagee and according to his estate and by direction of *B.* hereby conveys and *B.* as beneficial owner hereby conveys and confirms to *C.* All that [etc.] To hold to and to the use of *C.* in fee simple for securing payment on the ..... day of ..... 19 .... of† the sum of \$ ..... as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness, etc.

[Or, in case of further advance, after aforesaid at <sup>3</sup> insert and

<sup>3</sup> Variations as noted above.

also in consideration of the further sum of \$ ..... now paid by *C.* to *B.* of which sum *B.* hereby acknowledges the receipt, *and after* of at † *insert* the sums of \$ ..... and \$ ..... making together .....].

*\*\*\*Variations to be made, as required, in case of the deed being made by endorsement, or in respect of any other thing.*

### **PART 3 (Section 31)**

#### *Deed of Statutory Re-conveyance of Mortgage*

THIS INDENTURE made by way of statutory re-conveyance of mortgage the ..... day of ..... 19 ..... between *C.* of [etc.] of the one part and *B.* of [etc.] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the ..... day of ..... 19 ..... and made between [etc.]

WITNESSETH that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest *C.* hereby acknowledges the receipt *C.* as mortgagee hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture. To hold to and to the use of *B.* in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, etc.

*\*Variations as noted above.*

### **SECOND SCHEDULE (Section 45)**

#### **SHORT FORMS OF DEEDS**

##### **1 — Mortgage**

THIS INDENTURE OF MORTGAGE made the ..... day of ..... 19 ..... between *A.* of [etc.] of the one part and *B.* of [etc.] and *C.* of [etc.] of the other part WITNESSETH that in consideration of the sum of \$ ..... paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account of which, sum *A.* hereby acknowledges the receipt *A.* hereby covenants with *B.* and *C.* to pay to them on the ..... day of ..... 19 ....., the sum of \$ ....., with interest thereon in the meantime at the rate of [*four*] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to *B.*

and *C.* interest thereon at the same rate by equal half-yearly payments on the ..... day of ..... and the ..... day of ..... AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as beneficial owner hereby conveys to *B.* and *C.* All that [etc.] To hold to and to the use of *B.* and *C.* in fee simple subject to the proviso for redemption following (namely) that if *A.* or any person claiming under him shall on the ..... day of ..... 19 ..... pay to *B.* and *C.* the sum of \$ ..... and interest thereon at the rate aforesaid then *B.* and *C.* or the person claiming under them will at the request and cost of *A.* or the persons claiming under him re-convey the premises to *A.* or the persons claiming under him AND *A.* hereby covenants with *B.* as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness, etc.

## 2 — Further Charge

THIS INDENTURE made the ..... day of ..... 19 ..... between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the ..... day of ..... 19 ..... and made between the same parties for securing the sum of \$ ..... and interest at [*four*] per centum per annum on property at [etc.] WITNESSETH that in consideration of the further sum of \$ ..... paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of \$ ..... and the interest thereon hereinbefore covenanted to be paid as well as the sum of \$ ..... and interest secured by the same indenture.

In witness, etc.

## 3 — Conveyance on Sale

THIS INDENTURE made the ..... day of ..... 19 ..... between *A.* of [etc.] of the first part *B.* of [etc.] of the second part and *M.* [*etc.*] or the third part WHEREAS by an indenture dated [etc.] and made between [etc.] the lands hereinafter mentioned were conveyed by *A.* to *B.* and *C.* in fee simple by way of mortgage for securing \$ ..... and interest and by a supplemental indenture dated [etc.] and made between the same parties those lands were charged by *A.* with the payment to *B.* and *C.* of the further sum of \$ ..... and interest thereon AND WHEREAS a principal sum of \$ ..... remains due under the two before-mentioned indentures

but all interest thereon has been paid as *B.* and *C.* hereby acknowledge NOW THIS INDENTURE WITNESSETH that in consideration of the sum of \$ ..... paid by the direction of *A.* to *B.* and *C.* and of the sum of \$ ..... paid to *A.* those two sums making together the total sum of \$ ..... paid by *M.* for the purchase of the fee simple of the lands hereinafter mentioned of which sum of \$ ..... *B.* and *C.* hereby acknowledge the receipt and of which total sum of \$ ..... *A.* hereby acknowledges the payment and receipt in manner before-mentioned *B.* and *C.* as mortgagees and by the direction of *A.* as beneficial owner hereby convey and *A.* as beneficial owner hereby conveys and confirms to *M.* All that [etc.] To hold to and to the use of *M.* in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures [*Add, if required, And A.* hereby acknowledges the right of *M.* to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof].

In witness, etc.

(The Schedule above referred to.)

[*To contain list of documents retained by A.*]

#### 4 — Short Form of Conveyance

THIS INDENTURE made the ..... day of ..... 19 .... between *A. B.* of (hereinafter called the grantor) and *C. D.* of (hereinafter called the grantee) WITNESSETH that in consideration of the sum of \$ ..... paid to him by the grantee, the receipt whereof the grantor hereby acknowledges, the grantor as beneficial owner hereby conveys to the grantee. All that [*insert boundaries and description of the land conveyed*] To hold to and to the use of the grantee in fee simple. In witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.