

**Bills Committee on
Companies (Amendment) Bill 2002**

**Follow-up actions arising from the discussion
at the meetings on 20 and 12 March 2003**

Introduction

This paper sets out the outcome of the follow-up actions arising from the discussion at the meetings on 20 and 12 March 2003.

(A) 20 March 2003

(a) Chronology of Discussion on Existing Section 157I

2. A chronology of the discussion on the existing section 157I before its enactment in 1984 is at Annex A.

(b) Speech at Resumption of Second Reading Debate on the Bill

3. We agree to include in the speech to be delivered by the Secretary for Financial Services and the Treasury at the resumption of the Second Reading debate on the Bill the Administration's stance on section 157I and an undertaking that the drafting of section 157I would be looked at by the Administration in simplifying the drafting of the provisions regarding financial assistance to directors, in consultation with the Standing Committee on Company Law Reform.

**(c) Form M2 – Memorandum of Satisfaction or Release of Property
from Charge**

4. A copy of the revised Form M2 is at Annex B.

(d) Change of Company Name

5. So far, the Companies Registry (CR) has not received any complaint about a contravention of section 117(1) regarding a failure to file a copy of a special resolution relating to the change of a company name. Consequently, no prosecution action has been taken. If the CR were notified of any breach of the section, the CR would write to the company concerned, giving it 28 days to rectify the breach before prosecution is

initiated. The maximum punishment for a breach of the section is a maximum penalty of level 3 (i.e. \$10,000) and a maximum daily default fine of \$300. The same punishment is reinstated in the new section 22(1B) for a failure to notify the CR of the change of a company name.

(e) Submission of Printed Copy of Resolution or Agreement

6. The existing practice is that the CR accepts printed copies of resolutions or agreements produced by any printed or typewritten method provided that they comply with the CR's Requirements for Documents Guidelines which specify matters such as the format, size of paper and print. Hence, there should not be any difficulty for companies to comply with the requirements to submit printed copies of resolutions or agreements under the existing section 117. Following the implementation of the Integrated Companies Registry Information System, the CR would also accept electronic copies of resolutions or agreements. To prevent the submission of resolutions or agreements in handwritten form which would result in poor microfilmed or imaged records, it is preferable to retain the word "printed" in section 117.

(B) 12 March 2003

(f) Protection of the Interest of a Bona Fide Innocent Third Party

(g) Letter from the Real Estate Developers Association of Hong Kong regarding Section 157I

7. The question is whether and if so, how section 157I protects the interest of a bona fide innocent third party to whom a mortgagee has sold a property pursuant to a mortgage which is unenforceable by reason of section 157I(2). Legal advice is that if a mortgagee of a legal charge proceeds to sell the property, it is possible that the mortgagee cannot assign the legal estate in the land to the purchaser.¹ Moreover, even if the mortgagee can, it is uncertain whether the title of the purchaser will not be affected by the unenforceability of the mortgage.² For a mortgagee selling under an equitable mortgage, it is possible that the mortgagee can pass the

¹ The mortgagee of a legal mortgage does not have any estate in the land. See section 44(2) of the Conveyancing and Property Ordinance ("CPO") (copy at [Annex C](#)). The legal interest which it has is an encumbrance over the land, which carries with it a number of rights over the property that may be exercised should the mortgagor fail to repay the loan in accordance with the agreed terms. If section 53 of CPO (copy at [Annex D](#)) does not apply, there is a strong argument for saying that nothing will vest in the purchaser.

² It is arguable whether the wording of section 52 of CPO (copy at [Annex E](#)) is wide enough to cover the exercise of a power of sale under an unenforceable legal or equitable mortgage.

equitable interest that has been passed to him by the mortgagor to the subsequent purchaser.³ However, as in the case of a legal charge, it is not certain whether the title of the purchaser will not be affected by the unenforceability of the mortgage.⁴

8. Notwithstanding the position set out in paragraph 7 above, the question will not arise in reality for the following reasons -

- (a) it is very unlikely that the mortgagee and its legal advisers will run the risk of deceiving the court by concealing the fact that the mortgage is unenforceable when applying for an order of possession or order for sale⁵;
- (b) it is likely that the mortgagee will be aware of the fact that the mortgage is unenforceable at the time it sells the property. All mortgages contain a covenant to repay and if the borrower defaults, the mortgagee will and must give notice to the company requiring payment of the mortgage money before it proceeds to exercise its power of sale (para. 11(a) of Schedule 4 to CPO (copy at Annex F)). In reality, upon receipt of such notice, if the company is aware that the mortgage is unenforceable by virtue of section 157I(2), it will refuse payment on this ground and the mortgagee will be put on notice of this fact;
- (c) there is little reason why the mortgagee will proceed with the sale, well knowing that it will face legal action from the company for “wrongful” sale of the property and possibly from the purchaser for misrepresentation;
- (d) in almost all cases, banks in Hong Kong are advised to obtain an order for possession and an order for sale (or an order for sale subject to tenancy where there is a sitting tenant) whenever it seeks to exercise its power of sale;
- (e) solicitors acting for the intended purchaser usually demand a

³ The mortgagee of an equitable mortgage obtains an equitable interest in the land from the mortgagor.

⁴ See footnote 2 above.

⁵ Whilst a mortgagee may sell the property without having to give notice to the company or to apply for a court order (paragraph 8 of Schedule 4 to CPO (copy at Annex F), this will be quite rare in practice. For the majority of cases, it is necessary to obtain possession by court orders as most of the properties are occupied. Moreover, the purchaser will probably insist on a court order as evidence of a good title.

copy of such order from the mortgagee as evidence of good title;
and

- (f) in case of a mortgage of this nature (i.e. where the mortgagor is a company and provides security for a loan given to its director), a prudent solicitor acting for the purchaser will enquire from the mortgagee's solicitor whether the loan in question is or is not in contravention of section 157H.

9. As to assignees of the mortgage, if the original mortgagee does not have an exercisable power of foreclosure, possession, sale or appointment of receiver against the company, it can only assign what it has to the assignee. In other words, the assignee will be in no better position than the mortgagee and will not be able to enforce the mortgage against the company. The assignee may have an action for misrepresentation against the original mortgagee, depending on the facts and circumstances of the case.

Financial Services Branch
Financial Services and the Treasury Bureau
April 2003

Chronology of Discussion on Existing Section 157I

Date	Event
June 1962	Report of the Company Law Committee of the United Kingdom Board of Trade (the “Jenkins Committee Report”) issued. The Committee was established to review and report upon the provisions and working of the Companies Act, 1948 and to recommend changes in the law.
late 1962	The Companies Law Revision Committee (the “CLRC”) appointed in Hong Kong to review the Jenkins Committee Report and to make recommendations regarding the implementation in Hong Kong of the recommendations made in that Report.
24 June 1971	First Report of the CLRC published. The First CLRC Report led to the enactment of the Companies (Amendment) Ordinance 1972 (78 of 1972) and the enactment of the Securities Ordinance (Cap. 333) and the Protection of Investors Ordinance (Cap. 335).
12 April 1973	Second Report of the CLRC published. The Second CLRC Report led to the enactment of various amending Ordinances including the Companies (Amendment) (No. 4) Ordinance 1974 (80 of 1974), the Companies (Amendment) Ordinance 1978 (51 of 1978) and the Securities (Amendment) Ordinance 1978 (8 of 1978).
October 1977	Drafting began in Attorney General’s Chambers on a Bill to implement the outstanding recommendations contained in the Second Report of the CLRC including Chapter 7 of the Report which dealt with loans to directors. Paragraph 7.35 of the Report recommended that the provisions of section 190 of the 1948 UK Act, strengthened in accordance with the Jenkins Committee recommendations, should be adopted in Hong Kong but modified so as not to apply to transactions by a private company approved by it in general meeting.

- November 1977 United Kingdom Department of Trade published a White Paper on “The Conduct of Company Directors”. Paragraphs 8 to 15 of the paper dealt with loans to directors. Further amendments were made to the draft Bill taking into account this UK White Paper.
- November 1978 The Companies Bill 1978 was tabled in the United Kingdom House of Commons (Bill 2 of the 1978/1979 session). Clause 50 of that Bill dealt with the civil remedies for breach of provisions prohibiting loans to directors. This served as the basis for section 157I of the draft Hong Kong bill. The United Kingdom Bill was given second reading and referred to a standing committee but it was not enacted.
- 1980 The Companies Bill 1980 was tabled in the United Kingdom Parliament. The Bill was eventually enacted as the Companies Act, 1980, c. 22, on 1 May 1980. The 1980 Act enacted section 52 (civil remedies for breach of s. 49) which was essentially the same as the present section 341 of the Companies Act 1985.
- 18 July 1980 The draft Companies (Amendment) Bill 1980 was published in Special Supplement No. 5 to the Gazette for general information and for the purpose of consultation prior to introduction of the Bill into the Legislative Council. The time limit for public comments was 31 October 1980, which was later extended to February, 1981.
- 23 October 1980 “Company Law Reform 1980” conference held in Hong Kong to discuss the 1980 Draft Bill. Organized by the Hong Kong Law Journal. Attended by several hundred business executives, lawyers, accountants, company secretaries and other interested persons. Representatives of the Administration attended the conference.
- late 1980/early 1981 Ad-Hoc Group of the Unofficial Legislative Councillors (the “LegCo Ad-hoc Group”) was established to consider the 1980 Draft Bill prior to its introduction into the Legislative Council.

- to May 1981 Representations on 1980 Draft Bill and written comments by Registrar General referred to LegCo Ad-hoc Group.
- November 1981 to March 1982 LegCo Ad-hoc Group held meetings. These included 2 sessions with the Administration.
- March 1982 LegCo Ad-hoc Group issued summary of preliminary findings on the 1980 Draft Bill (LEGCO Paper No. 96/81-82). The group proposed 41 amendments and 7 deletions affecting more than 70 sections of the principal Ordinance, including the proposed section 157H. The preliminary findings of the LegCo Ad-hoc Group were later endorsed by the full Legislative Council.
- December 1982 to January 1983 Second round of deliberations by the LegCo Ad-hoc Group. Administration accepted amendments and deletions proposed by the LegCo Ad-hoc Group. It was agreed by the LegCo Ad-hoc Group and the Administration that all controversial issues on which agreement could not be reached would be withdrawn and referred to the proposed Standing Committee on Company Law Reform for further consideration. The Administration prepared a new draft of the Bill on that basis. Several items of the 1980 Draft Bill were removed. As a result of the LegCo Ad-hoc Group proposals, the draft section 157H was extensively revised. Revisions included excepting banks from the definition of “company” and adding an exception for the purchase by the director of his main residence. No substantive changes were made to the draft section 157I.
- 9 March 1983 The Companies (Amendment) Bill 1983 was introduced into the Legislative Council.
- March-April 1983 The LegCo Ad-hoc Group began its review of the Bill and submitted further questions to the Administration.
- 9 April 1983 UMELCO Office issued press calling for public views on the Bill.

- December 1983 to January 1984 LegCo Ad-hoc Group agreed with Administration on committee stage amendments. Minor amendment proposed for section 157H(7). No amendments proposed for section 157I.
- 25 January 1984 Second Reading. Committee stage amendments moved and passed. Third reading.
- 26 January 1984 Bill assented.
- 27 January 1984 Published in the Gazette as Ord. No. 6 of 1984.
- 31 August 1984 Companies (Amendment) Ordinance 1984 (6 of 1984) came into operation (L.N. 247 of 1984).



公司註冊處
Companies Registry

清償或財產解除押記備忘錄

Memorandum of Satisfaction or Release of Property from Charge

(公司條例第 85 條)
(Companies Ordinance s.85)

表格
Form **M2**

重要事項 Important Notes

- 填表前請參閱《填表須知》。
請用黑色墨水列印。
- Please read the accompanying notes before completing this form.
Please print in black ink.

公司編號 Company Number

1 公司名稱 Company Name

2 承按人或承押記人資料 Particulars of Mortgagee or Chargee

姓名 / 名稱 Name

(註 Notes 8 & 9)

轉換承按人或承押記人的日期
Date of Change of Mortgagee or Chargee

日 DD	月 MM	年 YYYY

3 解除押記的資料 Particulars of the Discharge

A 設定或證明該項押記的文書的描述

Description of the Instrument Creating or Evidencing the Charge

B 設定押記的日期

Date of Creation of the Charge

日 DD	月 MM	年 YYYY

C 解除押記的日期

Date of Discharge of the Charge

日 DD	月 MM	年 YYYY

(註 Note 3)

提交人的資料 Presentor's Reference

姓名 Name:

代號 Code:

地址 Address:

電話 Tel: 傳真 Fax:

電郵地址 E-mail Address:

檔號 Reference:

指明編號第 / 號 (/)
Specification No. / (/)

請勿填寫本欄 For Official Use

公司註冊處條碼
CR Barcode

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3 解除押記的資料 Particulars of the Discharge (續上頁 cont'd)

D 解除押記類別 Type of Discharge 請在有關空格內加 ✓ 號 Please tick the relevant box

- I 造成該項押記的債項已全部償付或清償。
The debt for which the charge was given has been paid or satisfied in whole.
- II 造成該項押記的債項已部分償付或清償，金額為：
The debt for which the charge was given has been paid or satisfied in part to the extent of :
- | 貨幣單位 Currency | 款額 Amount |
|---------------|-----------|
| | |
- III 全部供作押記的財產或業務已解除押記。
The whole property or undertaking charged has been released from the charge.
- IV 部分供作押記的財產或業務已解除押記。
Part of the property or undertaking charged has been released from the charge.
- V 全部供作押記的財產或業務已不再構成公司財產或業務的一部分。
The whole property or undertaking charged has ceased to form part of the company's property or undertaking.
- VI 部分供作押記的財產或業務已不再構成公司財產或業務的一部分。
Part of the property or undertaking charged has ceased to form part of the company's property or undertaking.

(註 Note 10)

E 與上述 D 項有關的財產或業務的描述

Description of the Property or Undertaking Related to Item D above

(如空位不足，請用續頁 A 填報 Use Continuation Sheet A if space is insufficient)

a 房地產 Landed Property

第 1 項財產 1st Property

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(請填報財產的地址 Please state the address of the property)

第 2 項財產 2nd Property

--

(請填報財產的地址 Please state the address of the property)

b 其他類別的押記財產 Other types of property

--

(請填報適當詳情 Please insert details as appropriate)

本通知書包括 _____ 張續頁 A。

This Notification includes _____ Continuation Sheet(s) A.

--

4 解除押記的證明書 Certificate of Discharge

承按人或承押記人證明書 Certification by Mortgagee or Chargee

本人謹此核證本表格所述的資料正確。

I hereby certify that the facts given in this form are correct.

簽署 Signed :

姓名 Name :

日期 Date :

(註 Note 4)

承按人 / 承押記人
(董事 / 秘書 / 授權代表*)
Mortgagee / Chargee
(Director / Secretary / Authorized Representative *)

日 DD / 月 MM / 年 YYYY

或 OR

公司證明書 Certification by Company

如承按人或承押記人未有簽署上述的證明書，公司必須在此部分填報下述資料。

This Part should be completed by the Company only if the above Certification has not been signed by the Mortgagee or Chargee.

本人謹此核證本表格所述的資料正確。現隨本表格提交下述文件，以證明第 3 項所述的押記已經解除。

I hereby certify that the facts given in this form are correct. The following document evidencing the discharge of the charge described in Section 3 is submitted.

文件的描述 Description of Document

日期 Date

(註 Note 5)

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日 DD 月 MM 年 YYYY

(本處會在登記本表格後將上述副本交回提交人。 The above-mentioned copy will be returned to the presenter after this form has been registered.)

簽署 Signed :

姓名 Name :

日期 Date :

(註 Note 4)

公司
(董事 / 秘書 / 授權代表*)
Company
(Director / Secretary / Authorized Representative *)

日 DD / 月 MM / 年 YYYY

* 請刪去不適用者 Delete whichever does not apply

公司編號 Company Number

與第 3D 項有關的財產或業務的描述 (第 3E 項)

Description of the Property or Undertaking Related to Section 3D (Section 3E)

公司條例(香港法例第 32 章)

第 85 條提交的

清償或財產解除押記備忘錄

填表須知 — 表格 M2

附註

引言

1. 如一項在公司註冊處登記的押記已經解除，該押記的承按人或承押記人或有關公司(即該押記的按揭人或押記人)可以將此事通知公司註冊處處長。本表格是用以發出此項通知。
2. 請劃一以中文或英文填報各項所需資料。此外，所選用的語文必須與第 3A 項所述的押記在登記時所填報的《按揭或押記詳情》表格 M1 所用的語文相同。如以中文填報，請用繁體字。公司註冊處不接納手寫的表格。
3. 請填報提交人的資料。除非有特別事項需要公司註冊處注意，否則毋須另加附函。

簽署

4. 本表格可由承按人或承押記人或公司的董事、秘書或授權代表簽署。如承按人或承押記人屬法人團體，本表格必須由一名董事、秘書或授權代表簽署。如承按人或承押記人屬個人，則本表格必須由承按人或承押記人親自簽署或由其授權代表簽署。公司註冊處不接納未簽妥的表格，並會退回提交人。

證明文件

5. 如本表格由公司的董事、秘書或授權代表簽署，請在有關的空格內填報解除押記的證明文件的資料，並將該文件連同本表格一併提交。如本表格由承按人或承押記人簽署，則毋須提交證明文件。

費用

6. 本表格必須連同正確的註冊費用一併提交，否則公司註冊處不會接納，並會退回提交人。有關繳付正確費用的詳情，請參閱《主要服務收費表》資料小冊子。
7. 如以郵寄方式遞交表格，請連同一張港幣劃線支票繳付所需費用。支票抬頭請註明「公司註冊處」。請勿郵寄現金。

承按人或承押記人資料 (第 2 項)

8. 如曾經轉換承按人或承押記人，請在有關的空格內填報現時的承按人或承押記人開始享有該項押記權利的日期。
9. 如本表格由公司的董事、秘書或授權代表簽署，公司須提交轉換承按人或承押記人的證明文件。該證明文件須由承按人或承押記人的董事、秘書或授權代表簽署。如承按人或承押記人屬個人，則本表格必須由承按人或承押記人親自簽署或由其授權代表簽署。本項要求並不適用於根據香港法例的任何條例作出的按揭或押記轉讓。

與第 3D 項有關的財產或業務的描述 (第 3E 項)

10. 如解除押記的類別屬第 3D I 或 II 項，請在有關的空格內簡略描述供作押記的財產或業務。如解除押記的類別屬第 3D III, IV, V 或 VI 項，則請描述解除押記或已不再構成公司財產或業務一部分的財產或業務。

收集個人資料聲明

收集目的

1. 依據《公司條例》任何規定所提供的個人資料，公司註冊處只會作為下列一項或一項以上用途： -
 - (a) 實施該條例；
 - (b) 執行該條例的有關條文；
 - (c) 讓公眾查閱指明表格內的個人資料；及
 - (d) 為任何人提供載有這些個人資料的文件副本，但須收取費用。

獲轉交資料的人士

2. 透過公司註冊處各款指明表格收集的個人資料，會在公司註冊處的公眾登記冊中披露，供公眾查閱。

MEMORANDUM OF SATISFACTION
OR RELEASE OF PROPERTY FROM CHARGE
Required by Companies Ordinance (Cap. 32)
Section 85

Notes for Completion of Form M2

Introduction

1. Either a Mortgagee or Chargee or a Company (i.e. the mortgagor or chargor of a charge) may notify the Registrar of Companies of the discharge of a registered charge of the Company. This form should be used for the notification.
2. Please fill in all particulars and complete all items consistently in either Chinese or English **AND** in the same language used in the 'Mortgage or Charge Details' Form M1 registered in respect of the charge stated in Section 3A of this form. In the case of Chinese, traditional Chinese characters should be used. Please note that handwritten forms will be rejected by the Companies Registry.
3. Please complete the Presentor's Reference. Unless the presentor needs to raise a specific issue for the attention of the Companies Registry, no covering letter is required.

Signature

4. This form can either be signed by the Mortgagee or Chargee **OR** the Director, Secretary or Authorized Representative of the Company. If the Mortgagee or Chargee is a body corporate, this form must be signed by a Director, Secretary or an Authorized Representative. If the Mortgagee or Chargee is an individual, this form must be signed by the Mortgagee or Chargee personally or by his or her Authorized Representative. A form which is not properly signed will be rejected by the Companies Registry.

Evidence

5. If this form is signed by the Director, Secretary or Authorized Representative of the Company, please fill in the particulars of the document evidencing the discharge in the box provided and submit that document together with this form. If this form is signed by the Mortgagee or Chargee, documentary evidence relating to the discharge is not required.

Fee

6. This form must be submitted with the correct registration fee. A form which is not submitted with the correct fee will be rejected by the Companies Registry. Please refer to the information pamphlet on 'Price Guide to Main Services' for the correct fee payable.
7. If this form is delivered by post, please send a crossed cheque in Hong Kong Dollars payable to 'Companies Registry'. Please do not send cash.

Particulars of Mortgagee or Chargee (Section 2)

8. If there has been a change of Mortgagee or Chargee, please fill in the date on which the current Mortgagee or Chargee became entitled to the charge in the box provided.
9. If this form is signed by a Director, Secretary or Authorised Representative of the Company, the Company should submit the document evidencing the change in the Mortgagee or Chargee signed by its Director, Secretary or Authorised Representative or, if the Mortgagee or Chargee is an individual, by the Mortgagee or Chargee or by his or her Authorised Representative. This requirement does not apply in the case of the transfer or assignment of a mortgage or charge which has been effected pursuant to an Ordinance of the Laws of Hong Kong.

Description of the Property or Undertaking Related to Section 3D (Section 3E)

10. If the type of discharge falls within Items I or II of Section 3D, please briefly describe the charged property or undertaking in the boxes provided. If the type of discharge falls within Items III, IV, V or VI of Section 3D, please describe the property or undertaking which has been released from the charge or has ceased to form part of the company's property or undertaking.

Personal Information Collection Statement

Purpose of Collection

1. Personal data provided pursuant to any requirement in the Companies Ordinance ("the Ordinance") will be used by the Companies Registry for one or more of the following purposes:-
 - (a) to administer the Ordinance;
 - (b) to enforce relevant provisions of the Ordinance;
 - (c) to make information contained in personal data provided in a specified form available for public inspection; and
 - (d) to provide copies of any documents containing such personal data to any person subject to payment of a fee.

Classes of Transferees

2. The personal data collected by means of the Companies Registry's Specified Forms will be disclosed in the Companies Registry's public registers for public inspection.

雙語法例資料系統
Bilingual Laws Information System

English 繁體 簡體 繁體 Gif 簡體 Gif

Previous section of
enactment

Next section of
enactment

Switch language

Back to the List of
Laws

Section of Enactment

▼
Chapter: 219 Title: CONVEYANCING AND Gazette Number:
PROPERTY ORDINANCE
Section: 44 Heading: **Mortgage of legal estate** Version Date: 30/06/1997

PART V

MORTGAGES

- (1) After the commencement of this section, a mortgage of a legal estate, including any second or subsequent mortgage of that legal estate, may be effected at law only by a charge by deed expressed to be a legal charge.
- (2) Under a mortgage effected by a legal charge, the mortgagor and the mortgagee shall, subject to this Ordinance, have the same protection, powers and remedies (including but not limited to those relating to foreclosure and the equity of redemption but excluding the power of the mortgagee to enter into possession before any default by the mortgagor) as if the mortgage had been effected by way of assignment of the legal estate before the commencement of this section.
- (3) Upon the commencement of this section, a mortgage of a legal estate effected by way of assignment of the legal estate before the commencement of this section shall be deemed, for the purposes of this Ordinance, to be reassigned and discharged and replaced by a legal charge in the same terms and having the same validity and priority, subject to this Ordinance, as the mortgage which it replaces.
- (4) Subsection (3) does not affect-
- (a) the mortgagee's right to the possession of any documents; or
 - (b) any rights or obligations, under any guarantee, suretyship or otherwise, ancillary to the mortgage replaced under that subsection.
- (5) Subject to any agreement between the mortgagor and the mortgagee, where the mortgaged land is mortgaged by way of legal charge, the mortgagor may execute a second or subsequent charge against the mortgaged land by a legal charge.
- (6) Unless the contrary intention is expressed, the mortgagee under the first mortgage of a legal estate shall be entitled to possession of the deeds of title relating to the mortgaged land.
- (7) This section does not affect any mortgage, including a mortgage by sub-demise, effected before the commencement of this section which is not replaced under subsection (3).
- (8) This section does not affect any mortgage, charge or lien arising under any Ordinance or by operation of law.
- (9) This section does not affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land.

Previous section of
enactment

Next section of
enactment

Switch language

Back to the List of
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Chapter:	219	Title:	CONVEYANCING AND PROPERTY ORDINANCE	Gazette Number:	
Section:	53	Heading:	Sale by mortgagee	Version Date:	30/06/1997

(1) Where a mortgagee or receiver sells under an express or statutory power of sale, the assignment shall operate- (Amended 31 of 1988 s. 18)

- (a) to assign to the purchaser the mortgagor's estate in that land, subject to any other mortgage having priority to the mortgage under which the sale is made; and
- (b) to discharge that land from the mortgage under which the sale is made and any subsequent mortgage.

(2) Where a mortgagee obtains an order of foreclosure absolute, that order shall (unless it otherwise provides) operate-

- (a) to assign to the mortgagee the mortgagor's estate in the mortgaged land, subject to any other mortgage having priority to the mortgage under which the foreclosure order was obtained; and
- (b) to discharge that land from the mortgage under which the foreclosure order was obtained and any subsequent mortgage.

[cf. 1925 c. 20 s. 89 U.K.]

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Chapter: 219 Title: CONVEYANCING AND PROPERTY ORDINANCE Gazette Number:
Schedule: 4 Heading: POWERS OF MORTGAGEE AND RECEIVER Version Date: 30/06/1997

[section 51]

1. To insure the mortgaged land or any part thereof for any sum not exceeding its full reinstatement value, and any money paid for such insurance shall be a charge on the mortgaged land in addition to the mortgage money, with the same priority, with interest at the same rate as the mortgage money; and the mortgagee shall account to the mortgagor for all money received by him on an insurance effected on the mortgaged land.
2. To take possession of the mortgaged land and, for that purpose, to take any legal proceedings.
3. To do all things necessary or desirable to preserve, maintain and manage the mortgaged land.
4. To lease, surrender and accept the surrender of leases of, the mortgaged land.
5. To exercise any powers or rights incidental to the ownership of the mortgaged land.
6. To settle, adjust, refer to arbitration, compromise and arrange any claim, demand or dispute relating to the mortgaged land.
7. To bring, prosecute, enforce, defend, compromise and abandon any claim, action, suit or proceeding in relation to the mortgaged land.
8. To sell and assign the mortgaged land, subject to any prior estates, interests and rights to which the mortgaged land is subject, but free from the mortgage and all other estates, interests and rights to which the mortgage has priority, in such manner and subject to such lawful conditions as the mortgagee or receiver thinks fit; with power to vary or rescind any contract for sale, buy in at any auction and to resell without being answerable to the mortgagor for any loss occasioned.
9. To do all things necessary or desirable for realizing the mortgaged land.
10. In the case of any equitable mortgage over the mortgagor's interest in the mortgaged land and in any agreement of purchase of that land-
 - (a) to comply and require compliance in all respects with that agreement;
 - (b) to accept the assignment of the mortgagor;
 - (c) to execute a legal charge over that land in favour of the mortgagee in such

form and containing such covenants and provisions as the mortgagee may require; and

(d) to sign, seal, execute, deliver, perfect and do all other deeds, instruments, acts and things which may be required or which the mortgagee or receiver shall think fit for carrying out any obligation imposed on the mortgagor under the mortgage or for carrying into effect any sale, lease, charge or dealing by the mortgagee or receiver or for giving to the mortgagee the full benefit of that charge. (Amended 31 of 1988 s. 29)

11. The powers mentioned in paragraphs 2 to 9 shall not be exercisable unless-

(a) notice requiring payment of the mortgage money has been served on the mortgagor, or on one of the several mortgagors, and default has been made in payment of the mortgage money or part thereof for one month after such service; or

(b) interest under the mortgage is in arrear and unpaid for one month after becoming due; or

(c) there has been a breach of a provision, express or under this Ordinance, of the mortgage other than a covenant for payment of the mortgage money and interest.

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