



# Law of Property Act 1925

## 1925 CHAPTER 20 15 and 16 Geo 5

### PART III

#### MORTGAGES, RENTCHARGES, AND POWERS OF ATTORNEY

##### *Mortgages*

#### **101 Powers incident to estate or interest of mortgagee.**

- (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):
- (i) 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 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 re-sell, without being answerable for any loss occasioned thereby; and
  - (ii) 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 property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
  - (iii) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged property consists of an interest in income, or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof; and
  - (iv) 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,

*Status: Point in time view as at 01/10/2011.*

*Changes to legislation: Law of Property Act 1925, Section 101 is up to date with all changes known to be in force on or before 26 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

[<sup>F1</sup>(1A) Subsection (1)(i) is subject to section 21 of the Commonhold and Leasehold Reform Act 2002 (no disposition of part-units)]

(2) Where the mortgage deed is executed after the thirty-first day of December, nineteen hundred and eleven, the power of sale aforesaid includes the following powers as incident thereto (namely):—

(i) A power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing:

(ii) A power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface:—

(a) With or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold: and

(b) With or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers or working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold: and

(c) With or without covenants by the purchaser to expend money on the land sold.

(3) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any other 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.

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

(5) Save as otherwise provided, this section applies where the mortgage deed is executed after the thirty-first day of December, eighteen hundred and eighty-one.

(6) The power of sale conferred by this section includes such power of selling the estate in fee simple or any leasehold reversion as is conferred by the provisions of this Act relating to the realisation of mortgages.

#### **Textual Amendments**

**F1** S. 101(1A) added (27.9.2004) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), ss. 68, 181(1), [Sch. 5 para. 2](#); [S.I. 2004/1832](#), [art. 2](#)

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**Modifications etc. (not altering text)**

**C1** S. 101 excluded (28.6.1995) by 1995 c. iii, s. 10(3) (with s. 25)

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