



Law of Property Act 1925

1925 CHAPTER 20 15 and 16 Geo 5

PART III

MORTGAGES, RENTCHARGES, AND POWERS OF ATTORNEY

Mortgages

89 Realisation of leasehold mortgages.

- (1) Where a term of years absolute has been mortgaged by the creation of another term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale,—
- (a) the conveyance by him shall operate to convey to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court) the leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon
 - (b) the mortgage term, or the charge by way of legal mortgage and any subsequent mortgage term or charge, shall merge in such leasehold reversion or be extinguished unless excepted as aforesaid;

and such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested.

Where a licence to assign is required on a sale by a mortgagee, such licence shall not be unreasonably refused.

- (2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall, unless it otherwise provides, operate (without giving rise to a forfeiture for want of a licence to assign) to vest the leasehold reversion affected by the mortgage and any subsequent mortgage term in him, subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured, and thereupon the mortgage term and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall, subject to any express

Status: Point in time view as at 01/10/2011.

Changes to legislation: Law of Property Act 1925, Section 89 is up to date with all changes known to be in force on or before 13 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)

provision to the contrary contained in the order, merge in such leasehold reversion or be extinguished.

- (3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may by deed declare that the leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and the same shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly, and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall, subject to any express provision to the contrary contained in the deed, merge in such leasehold reversion or be extinguished.
- (4) Where the mortgage includes fixtures or chattels personal, any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.
- (5) In the case of a sub-mortgage by subdemise of a term (less a nominal period) itself limited out of a leasehold reversion, the foregoing provisions of this section shall operate as if the derivative term created by the sub-mortgage had been limited out of the leasehold reversion, and so as (subject as aforesaid) to merge the principal mortgage term therein as well as the derivative term created by the sub-mortgage and to enable the sub-mortgagee to convey the leasehold reversion or acquire it by foreclosure, vesting, or otherwise as aforesaid.
- (6) This section takes effect without prejudice to any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure, or title is made or acquired, and applies to a mortgage whether executed before or after the commencement of this Act, and to a mortgage term created by this Act, but does not apply where the mortgage term does not comprise the whole of the land included in the leasehold reversion unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, or the rent is of no money value or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected.

[^{F1}In this subsection references to an apportionment include an equitable apportionment made without the consent of the lessor.]

[^{F2}(7) The county court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed [^{F3}£30,000].]

Textual Amendments

- F1** Words added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)
- F2** [S. 89\(7\)](#) added by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), [Sch. 2 Pt. II para. 3\(1\)\(3\)](#)
- F3** Words in [s. 89\(7\)](#) substituted (1.7.1991) by [S.I. 1991/724](#), art. 2(8), [Sch. Pt.I](#) (with art. 12)

Modifications etc. (not altering text)

- C1** [S. 89](#) extended (1.7.1991) by [S.I. 1991/724](#), [art. 2\(4\)](#) (with art. 12)
- C2** [S. 89\(7\)](#) modified by [County Courts Act 1984 \(c. 28, SIF 34\)](#), [s. 24\(2\)\(c\)](#)

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