

**CONVEYANCING (RECEIVERS) AMENDMENT
ACT, 1978, No. 61**

New South Wales



ANNO VICESIMO SEPTIMO

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Act No. 61, 1978.

An Act to amend the Conveyancing Act, 1919, and the Conveyancing (Amendment) Act, 1976, in relation to the appointment and powers of receivers in respect of mortgaged property and in relation to the power of a mortgagee or receiver to sell mortgaged property. [Assented to, 6th April, 1978.]

Conveyancing (Receivers) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short
title.

1. This Act may be cited as the "Conveyancing (Receivers) Amendment Act, 1978".

Commence-
ment.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act.

(2) Sections 4 and 5 and Schedules 1 and 2 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

3. This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE CONVEY-
ANCING ACT, 1919.

SCHEDULE 2.—AMENDMENTS TO THE CONVEY-
ANCING (AMENDMENT) ACT, 1976.

Amend-
ment of
Act No. 6,
1919.

4. The Conveyancing Act, 1919, is amended in the manner set forth in Schedule 1.

Amend-
ment of
Act No. 84,
1976.

5. The Conveyancing (Amendment) Act, 1976, is amended in the manner set forth in Schedule 2.

Conveyancing (Receivers) Amendment.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE CONVEYANCING ACT, 1919.

(1) Section 2, matter relating to Part VII, Division 3—

Omit “115”, insert instead “115A”.

(2) Section 115 (1)—

Omit the subsection, insert instead :—

(1) Except where otherwise expressly provided, this section applies only to a receiver appointed under the power in that behalf conferred by this Act.

(3) Section 115A—

After section 115, insert :—

115A. (1) In this section, “default”, in respect of a mortgage, means default in—

Appoint-
ment of
receivers.

- (a) the observance of a covenant, agreement or condition expressed or implied in the mortgage;
- (b) the payment, in accordance with the terms of the mortgage, of the principal, interest or other money the payment of which is secured by the mortgage; or
- (c) the payment, in accordance with the terms of the mortgage, of any part of that principal, interest or other money.

Conveyancing (Receivers) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE CONVEYANCING ACT, 1919—
continued.

(2) Notwithstanding anything contained in any other section of this Act or in any mortgage or other instrument—

- (a) a mortgagee under a mortgage, whether executed before or after the commencement of this section, is not entitled to appoint, whether under the power conferred by this Act or otherwise, a receiver in respect of the mortgaged property unless default has been made in respect of the mortgage;
- (b) subject to paragraph (a), a mortgagee under a mortgage executed before the commencement of this section is entitled to exercise the power to appoint a receiver conferred on him by this Act or otherwise as if section 111 (2) (b) and (c), (3) and (4) of this Act or, as the case may be, section 57 (2) (b) and (c), (3) and (4) of the Real Property Act, 1900, had not been enacted; and
- (c) a person purporting to have been appointed after the commencement of this section as a receiver in respect of the mortgaged property, whether by the mortgage or other instrument or otherwise, shall not be entitled to exercise, as a receiver, any powers in respect of the mortgaged property unless—
 - (i) default has been made in respect of the mortgage; and
 - (ii) that appointment was made by an instrument in writing which has been registered.

Conveyancing (Receivers) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONVEYANCING ACT, 1919—
continued.

(3) A receiver, however appointed, shall not exercise a power to sell any land the subject of the mortgage unless the mortgagee is entitled to exercise a power to sell that land.

(4) This section applies to mortgages and incumbrances under the Real Property Act, 1900.

SCHEDULE 2.

Sec. 5.

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976.

- (1) Section 109 (2) of the Conveyancing Act, 1919, as to be amended by section 4 of, and Schedule 3 (1) to, the Conveyancing (Amendment) Act, 1976—

Omit “on the due date”, insert instead “, in accordance with the terms of the mortgage.”.

- (2) Section 111 of the Conveyancing Act, 1919, as to be amended by section 4 of, and Schedule 3 (5) to, the Conveyancing (Amendment) Act, 1976—

(a) From subsection (2), omit “Subject to subsection (1)”, insert instead “Except in the case of a memorandum of mortgage or incumbrance referred to in subsection (1)”.

(b) From subsection (2), omit “the mortgaged property”, insert instead “land the subject of the mortgage”.

Conveyancing (Receivers) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—*continued.*

- (c) In subsection (2) (a) (i), after “covenant”, insert “, agreement or condition”.
- (d) From subsection (2) (a) (ii) and (iii), omit “on the due date” wherever occurring, insert instead “, in accordance with the terms of the mortgage,”.
- (e) From subsection (2), omit paragraph (b), insert instead :—
- (b) where—
- (i) the default relates to that payment; or
- (ii) the default does not relate to that payment and notice or lapse of time pursuant to this section has not been dispensed with by agreement expressed in the mortgage,
- a written notice that complies with subsection (3) has been served on the mortgagor in the manner authorised by section 170; and
- (f) In subsection (3) (b) (i), after “covenant” wherever occurring, insert “, agreement or condition”.
- (g) From subsection (3) (c), omit “the mortgagee in”.

Conveyancing (Receivers) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—*continued.*

- (h) From subsection (3) (d), omit “the mortgagee proposes to exercise his power of sale”, insert instead “it is proposed to exercise a power of sale in respect of the land the subject of the mortgage”.
 - (i) From subsection (5), omit “mortgaged property”, insert instead “land the subject of the mortgage”.
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