

REAL PROPERTY (FURTHER AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Real Property Act 1900 so as—

- (a) to omit obsolete references to duplicate registered dealings;
- (b) to enable a mortgage of land under the provisions of that Act to be postponed to another such mortgage which does not relate to exactly the same land;
- (c) to require a mortgagee to notify additional persons having registered interests or interests protected by caveats before the mortgagee exercises a power of sale or applies for a foreclosure order after default by the mortgagor;
- (d) to repeal the requirement that the Registrar-General advertise the intention to issue a foreclosure order, which requirement has been shown to be ineffective;
- (e) to enable the Registrar-General to require an applicant for a foreclosure order to make a further attempt to sell the land concerned; and
- (f) to make it clear that a foreclosure order terminates certain registered interests other than those of the mortgagor.

The Bill also makes a minor amendment to that Act for the purposes of statute law revision, contains savings related to the proposed amendments and amends the Conveyancing Act 1919 in a minor respect so as to require mortgagees of "old system title" land to notify additional persons before exercising a power of sale.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of amendments which will affect rights or impose additional obligations on persons on a day or days to be proclaimed by the Governor-in-Council. The amendment related to caveats will commence when the Real Property (Caveats) Amendment Act 1986 commences. All other amendments and provisions will commence on the date of assent to the proposed Act.

Clause 3 states that the Real Property Act 1900 is referred to as the Principal Act.

Clause 4 is a formal provision that gives effect to the Schedule of amendments.

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Clause 5 amends section 111 (Regulation of exercise of power of sale) of the Conveyancing Act 1919 so as to require a mortgagee or chargee to notify any other mortgagee or chargee under a mortgage or charge registered under that Act before exercising a power of sale after default under the mortgage or positive covenant concerned. The amendment parallels that proposed to be made to section 57 of the Principal Act and will apply to “old system title” land.

Clause 6 contains savings aimed at avoiding the necessity to repeat things done under provisions of the Principal Act before they are repealed and re-enacted in modified form by the proposed Act.

Schedule 1 (1)–(4) amend sections 32, 33, 36 and 38 of the Principal Act by omitting references to duplicate registered dealings so as to reflect current administrative practices at the Land Titles Office.

Schedule 1 (5) amends section 56A (Postponement of mortgages) of the Principal Act so that a mortgage may be postponed to another mortgage to the extent to which they relate to the same land or to a disposable part of the same land, even if they both also relate to other land.

Schedule 1 (6) amends section 57 (Procedure on default) of the Principal Act so as to require a mortgagee or covenant chargee under a mortgage or covenant charge to notify other registered mortgagees, chargees or covenant chargees before exercising a power of sale after default under the mortgage or positive covenant concerned. (A “covenant chargee” is a person having the benefit of a registered charge because of a default under a positive covenant.) Any caveator claiming an estate or interest under an unregistered mortgage affecting the land mortgaged or charged is also to be notified.

Schedule 1 (7) amends section 61 (Application for foreclosure order) of the Principal Act so as to require notice to be similarly given to other registered mortgagees, chargees or covenant chargees and to caveators before an application is made for a foreclosure order by a registered mortgagee or covenant chargee.

Schedule 1 (8) repeals and replaces section 62 (Order for, and effect of, foreclosure) of the Principal Act with the result that the Registrar-General will no longer have to advertise before issuing orders for foreclosure, because advertising has been found to be an ineffective practice. Instead, the Registrar-General will have the discretion to require the relevant land to be offered for sale again.

Under the proposed new section 62 it is also made clear that an order for foreclosure extinguishes rights of registered mortgagees, chargees or covenant chargees later in priority than the applicant for the order.

Schedule 1 (9) amends section 74H (Effect of caveat lodged under section 74F) of the Principal Act for the purpose of statute law revision so as to include a reference to positive covenants.
