



FALKLAND ISLANDS

Mortgages and Property Ordinance 1996

(ORDINANCE No. 25 OF 1996)

ARRANGEMENT OF PROVISIONS

Section

1. Short title and commencement
2. Interpretation
3. Mode of mortgaging freeholds (15 & 16 Geo.5 c.20, s. 85)
4. Mode of mortgaging leaseholds (15 & 16 Geo.5 c.20, s. 86)
5. Charges by way of legal mortgage (15 & 16 Geo.5 c.20, s. 87)
6. Realisation of freehold mortgages (15 & 16 Geo.5 c.20, s. 88)
7. Realisation of leasehold mortgages (15 & 16 Geo.5 c.20, s. 89)
8. Realisation of equitable charges by court (15 & 16 Geo.5 c.20 s. 90)
9. Sale of mortgaged property in action for redemption or foreclosure (15 & 16 Geo.5 c.20, s. 91)
10. Power to authorise land and minerals to be dealt with separately (15 & 16 Geo.5 c.20, s. 92)
11. Restrictions on consolidation of mortgages (15 & 16 Geo.5 c.20, s. 93)
12. Tacking and further advances (15 & 16 Geo.5 c.20, s. 94)
13. Obligation to transfer instead of reconveying, and as to right to take possession (15 & 16 Geo.5 c.20, s. 95)
14. Priorities as between mortgagees
15. Actions for possession by mortgagors (15 & 16 Geo.5 c.20, s. 98)
16. Leasing powers of mortgagor and mortgagee in possession (15 & 16 Geo.5 c.20, s. 99)

17. Powers of mortgagor and mortgagee in possession to accept surrenders of leases (15 & 16 Geo.5 c.20, s. 100)
18. Powers incident to estate or interest of mortgage (15 & 16 Geo.5 c.20, s. 101)
19. Regulation of exercise of power of sale (15 & 16 Geo.5 c.20, s. 103)
20. Conveyance on sale (15 & 16 Geo.5 c.20, s. 104)
21. Application of proceeds of sale (15 & 16 Geo.5 c.20, s. 105)
22. Provisions as to exercise of power of sale (15 & 16 Geo.5 c.20, s. 106)
23. Mortgagee's receipts, discharges etc. (15 & 16 Geo.5 c.20, s. 107)
24. Amount and application of insurance money (15 & 16 Geo.5 c.20, s. 108)
25. Appointment, powers, remuneration and duties of receiver (15 & 16 Geo.5 c.20, s. 109)
26. Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver (15 & 16 Geo.5 c.20, s. 110(1))
27. Effect of advance on joint account (15 & 16 Geo.5 c.20, s. 111)
28. Notice of trusts affecting mortgage debts (15 & 16 Geo.5 c.20, s. 113)
29. Transfers of mortgages (15 & 16 Geo.5 c.20, s. 114)
30. Reconveyances of mortgages by endorsed receipts (15 & 16 Geo.5 c.20, s. 115)
31. Cesser of mortgage terms (15 & 16 Geo.5 c.20, s. 116)
32. Forms
33. Additional powers of court in action by mortgagee for possession of dwelling-house (1970 c.31, ss. 36 & 39)
34. Supplementary to section 33 (cf 1973 c.15 s. 8)
35. Covenants to be implied on a disposition of property (1994 c.36 s. 1)
36. Right to dispose and further assurance (1994 c.36, s. 2(1) & (3))
37. Charges, incumbrances and third party rights (1994 c.36, s. 3)
38. Validity of lease (1994 c.36, s. 4)
39. Discharge of obligations where property is subject to rentcharge or leasehold land (1994 c.36, s. 5)
40. No liability under covenants in certain cases (1994 c.36, s. 6)
41. Annexation of benefit of covenants (1994 c.36, s. 7)
42. Supplementary (cf 15 & 16 Geo.5 c.20, s. 81 and 1994 c.36, s. 8(3))
43. Orders of court conclusive (15 & 16 Geo.5 c.20, s. 204)
44. Assumptions on sale of land by survivor of joint tenants (cf 1964 c.63, s. 1)
45. Deeds and their execution
46. Registration under the Land Charges Ordinance 1996 to be notice (15 & 16 Geo.5 c.20, s. 85)
47. Restrictions on constructive notice (15 & 16 Geo.5 c.20, s. 199)

- 48. Provisions as to notices (15 & 16 Geo.5 c.20, s. 196)
- 49. ... 50. Transitional: covenants in old form to apply in certain cases (cf 1994 c.36, s. 11)
- 51. Transitional: covenants in new form to apply in certain cases (cf 1994 c.36, s. 12)
- 52. Transitional: conversion of existing mortgages
- 53. Savings
- 54. Provisions in relation to the Crown
 - Schedule 1
 - Schedule 2 ...
 - Schedule 3



FALKLAND ISLANDS

Mortgages and Property Ordinance 1996

AN ORDINANCE To make new provision in relation to mortgages and the sale or other disposition of property in the Falkland Islands, to provide for new covenants for title to be implied on dispositions of property, to make new provision in relation to deeds and their execution and for connected purposes.

[DATE OF COMMENCEMENT: 5TH MAY 1997]

PART I INTRODUCTORY

1 Short title and commencement

This Ordinance may be cited as the Mortgages and Property Ordinance 1996 and shall come into force on such date as may be fixed by the Governor by notice published in the Gazette.

2 Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"bankruptcy" includes liquidation by arrangement and in relation to a corporation includes its winding up;

"building purposes" include the erecting and improving of, and the adding to, and the repairing of buildings;

"building lease" means a lease for building purposes or purposes connected therewith;

"conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest in property by any instrument, except a will and "convey" has a corresponding meaning;

"disposition" includes a conveyance and the creation of a term of years and "dispose of" has a corresponding meaning;

"estate owner" means the owner of a legal estate;

"freehold", in relation to land, means the estate in fee simple;

"hereditament" means any real property which on an intestacy occurring before 1st January 1926 might have devolved upon an heir;

"incumbrance" includes a legal or equitable mortgage and a trust for securing money;

"incumbrancer" has a meaning corresponding with that of incumbrance and includes every person entitled to the benefit of an incumbrance or to require payment or discharge of it;

"instrument" includes an instrument which is not a deed but does not include a statute unless the statute creates a settlement;

"land" includes land of any tenure, and mines or minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, incorporeal hereditaments, and an easement, right, privilege, or benefit in, over or derived from land; but not an undivided share in land;

"leasehold", in relation to land, means a term of years absolute;

"mining lease" means a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away or disposing of mines and minerals, or purposes connected therewith and includes a grant or licence for mining purposes;

"legal estates" means the estates, interests and charges in or over land (subsisting or created at law) which by any law of or applying in the Falkland Islands are authorised to subsist or be created as legal estates;

"legal mortgage" means a mortgage by demise or sub-demise or a charge by way of legal mortgage, and "legal mortgagee" has a corresponding meaning;

"mortgage" includes any charge or lien on any property for securing money or money's worth;

"mortgagee" includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgagee;

"mortgagee in possession" means a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property;

"mortgage money" means money or money's worth secured by a mortgage;

"mortgagor" includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right to the mortgaged property;

"notice" includes constructive notice;

"personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person;

"possession" includes receipt of rents and profits or the right to receive the same, if any; and **"income"** includes rents and profits;

"property" includes a thing in action, and any interest in real or personal property;

"purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property, and where the context so requires **"purchaser"** includes an intending purchaser and **"purchase"** has a meaning corresponding with that of purchaser;

"rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest;

"right of redemption", in relation to a mortgage, includes an option to repurchase only if the option in effect creates a right of redemption;

"term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

"term of years absolute" means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event but does not include a term of years which is not expressed to take effect within twenty-one years after its creation or any term of years which is not under the law of England capable of constituting a term of years absolute;

"trust for sale", in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; and

"valuable consideration" does not include a nominal consideration in money.

(2) In the construction of a covenant or proviso, or other provision, implied in any document by virtue of this Ordinance, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

PART II
MORTGAGES OF FREEHOLDS AND LEASEHOLDS

Introductory

3 Mode of mortgaging freeholds (15 & 16 Geo. 5 c.20, s. 85)

(1) A mortgage of a freehold shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge expressed to be by way of legal mortgage.

(2) Any purported conveyance of a freehold made after the coming into force of this Ordinance shall (to the extent of the estate of the mortgagor) operate as a demise of the land to the mortgagee for a term of years absolute, without impeachment for waste, but subject to cesser on redemption, in the following manner-

- (a) a first or only mortgagee shall take a term of three thousand years from the date of the mortgage;
- (b) a second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee.

In this subsection, any such purported conveyance includes an absolute conveyance with a deed of defeasance and any other assurance which, but for this subsection, would operate to vest the freehold in a mortgagee subject to redemption.

(3) This section applies whether or not the mortgage is expressed to be by way of trust for sale or otherwise.

(4) Every power to mortgage or lend money on mortgage of a freehold shall be construed as a power to mortgage the freehold, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.

4 Mode of mortgaging leaseholds (15 & 16 Geo. 5 c.20, s. 86)

(1) A mortgage of a leasehold shall only be capable of being effected at law either by a sub-demise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; and where a licence to sub-demise by way of mortgage is required, it shall not unreasonably be refused.

(2) Any purported assignment of a term of years absolute by way of mortgage made after the coming into force of this Ordinance shall (to the extent of the estate of the mortgagor) operate as a sub-demise of the leasehold land to the mortgagee for a term of years absolute, but subject to a cesser on redemption, in the following manner-

- (a) the term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned;

- (b) the term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned.

In this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the term of the mortgagor in a mortgage subject to redemption.

(3) This section applies whether or not the mortgage is made by way of sub-mortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise.

(4) Every power to mortgage for or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the term by sub-demise for a term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

5 Charges by way of legal mortgage (15 &16 Geo.5 c.20, s. 87)

(1) Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if-

- (a) where the mortgage is a mortgage of a freehold, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and
- (b) where the mortgage is a mortgage of a leasehold, a sub-term less by one day than the term vested in the mortgagor had thereby been created in favour of the mortgagee.

(2) Where an estate vested in a mortgagee immediately before the coming into force of this Ordinance has by virtue of this Ordinance been converted into a term of years absolute or sub-term, the mortgagee may, by declaration in writing to that effect signed by him, convert the mortgage into a charge by way of legal mortgage, and in that case the mortgage term shall be extinguished in the inheritance or in the head term as the case may be, and the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage term or sub-demise had remained existing.

Rights and powers of mortgagees

6 Realisation of freehold mortgages (15 & 16 Geo.5, c.20 s. 88)

(1) Where a freehold has been mortgaged by the creation of a 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 vest in the purchaser the freehold in the land conveyed 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 charges shall merge in or be extinguished as respects the land conveyed;

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

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple 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, if any, shall thereby be merged in the freehold, and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.

(3) Where any such mortgagee acquires a title under the Limitation Act 1980 in its application to the Falkland Islands, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.

(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 sub-demise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the freehold or acquire it by foreclosure, enlargement, or otherwise as aforesaid.

(6) This section applies to a mortgage whether created before or after the coming into force of this Ordinance, and to a mortgage term created by this Ordinance, but does not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the mortgage (being a valid mortgage) and the restrictions imposed by this Ordinance in regard to the effect and creation of mortgages were not in force, and all prior charges (if any) not being merely equitable charges had been created by demise or by charge by way of legal mortgage.

(7) The Magistrate's 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 £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

7 Realisation of leasehold mortgages (15 &16 Geo.5 c.20, s. 89)

(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 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 Act 1980, 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 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) 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 coming into force of this Ordinance, and to a mortgage term created by this Ordinance, 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 the 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.

In this subsection references to an apportionment include an equitable apportionment made without the consent of the lessor.

(6) The Magistrate's 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 £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

Powers of the courts

8 Realisation of equitable charges by the court (15 & 16 Geo.5 c.20 s. 90)

(1) Where an order for sale is made by the court in reference to an equitable mortgage on land (not secured by a legal term of years absolute or by a charge by way of legal mortgage) the court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land or create and vest in the mortgagee a legal term of years absolute or enable him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by deed by way of legal mortgage pursuant to this Ordinance, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

(2) This section applies to equitable mortgages made or arising before or after the coming into force of this Ordinance, but not to a mortgage which has been over-reached by the powers conferred by the Law of Property Act 1925 in its application to the Falkland Islands or otherwise.

(3) The Magistrate's 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 £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

9 Sale of mortgaged property in action for redemption or foreclosure (15 & 16 Geo. 5 c.20 s. 91)

(1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale and redemption in the alternative.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding that-

- (a) any other person dissents; or
- (b) the mortgagee or any person so interested does not appear in the action;

and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property, on such terms as it thinks fit, including the deposit in the court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms.

(3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give any such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5) This section applies to actions brought either before or after the coming into force of this Ordinance.

(6) In this section "mortgaged property" includes the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.

(7) For the purposes of this section the court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any incumbrances, as the court may think fit; or in the case of an equitable mortgage, may create and vest a mortgage term in a mortgagee to enable him to carry out the sale as if the mortgage had been made by deed by way of legal mortgage.

(8) The Magistrate's 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 £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

10 Power to authorise land and minerals to be dealt with separately (15 & 16 Geo.5 c.20, s. 92)

(1) Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the court may, on his application, authorise him and the persons deriving title under him to dispose-

- (a) of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting or carrying away of minerals;
- (b) of all or any mines or minerals, with or without the said rights or powers separately from the land;

and thenceforth the powers so conferred shall have effect as if the same were contained in the mortgage.

(2) The Magistrate's 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 £100,000 or such greater sum as may be prescribed by Order made by the Governor for the purposes of this section.

Restrictions on consolidation and tacking of advances

11 Restrictions on consolidation of mortgages (15 & 16 Geo.5 c.20, s. 93)

(1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

This subsection applies only if a contrary intention is not expressed in the mortgage deeds or one of them.

(2) Save as aforesaid, nothing in this Ordinance, in reference to mortgages affects any right of consolidation or renders inoperative a stipulation in relation to any mortgage made before or after the coming into force of this Ordinance reserving a right to consolidate.

12 Tacking and further advances (15 & 16 Geo.5 c.20, s. 94)

(1) After the coming into force of this Ordinance, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)-

- (a) if an arrangement has been made to that effect with the subsequent mortgagees;
- (b) if he had no notice of such subsequent mortgages at the time the further advance was made by him; or
- (c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make further advances.

This subsection applies whether or not the prior mortgage was made expressly for securing further advances.

(2) In relation to the making of further advances after the coming into force of this Ordinance, a mortgagee shall not be deemed to have notice of a mortgage merely by reason of the fact that it is registered as a deed under the Land Ordinance 1949 or is registered as a land charge under the Land Charges Ordinance 1996 if it was not so registered at the time when the original mortgage was created or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

[Revision w.e.f. 31/07/2017]

This subsection only applies where the prior mortgage was made expressly for securing a current account or other further advances.

(3) Save in relation to the making of further advances as aforesaid, the right to tack is hereby abolished, provided that nothing in this Ordinance shall affect any priority acquired before the coming into force of this Ordinance by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.

(4) This section applies to mortgages of land made before or after the coming into force of this Ordinance.

Rights of mortgagors to call for transfer

13 Obligation to transfer instead of reconveying, and as to right to take possession (15 & 16 Geo.5 c.20, s. 95)

(1) Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a reconveyance or surrender, he shall be entitled to require the mortgagee, instead of reconveying or surrendering, to assign the mortgage debt and to convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.

(2) The rights conferred by this section belong to and are capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer prevails over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer prevails over a requisition of a subsequent incumbrancer.

(3) The foregoing provisions of this section do not apply in the case of a mortgagee being or having been in possession.

(4) Nothing in this Ordinance affects prejudicially the right of a mortgagee of land whether or not his charge is secured by a legal term of years absolute to take possession of the land, but the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest.

(5) This section applies to mortgages made either before or after the coming into force of this Ordinance, and takes effect notwithstanding any stipulations to the contrary.

Priorities, actions for possession by mortgagees and leasing powers of mortgagors and mortgagees in possession

14 Priorities as between mortgagees

Every mortgage affecting a legal estate in land made after the coming into force of this Ordinance, whether legal or equitable, shall rank according to its date of registration as a land charge pursuant to the Land Charges Ordinance 1996.

15 Actions for possession by mortgagors (15 & 16 Geo.5 c.20, s. 98)

(1) A mortgagor for the time being entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to take possession or to enter into receipt of the rents and profits thereof, may sue for such possession, or for the recovery of such rents and profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

(2) This section does not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of any legal estate vested in him or otherwise.

(3) This section applies whether the mortgage was made before or after the coming into force of this Ordinance.

16 Leasing powers of mortgagor and mortgagee in possession (15 & 16 Geo.5 c.20, s. 99)

(1) A mortgagor of land while in possession shall, as against every incumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorised.

(2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have power to make from time to time any such lease as aforesaid.

(3) The leases which this section authorises are-

- (i) agricultural or occupation leases for any term not exceeding fifty years;
- (ii) building leases for any term not exceeding nine hundred and ninety-nine years;

(4) Every person making a lease under this section may execute and do all assurances necessary and proper in that behalf.

(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within the time therein specified not exceeding thirty days.

(8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9) Every such building lease shall be in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute within that time, on the land leased, an improvement for or in connection with building purposes.

(10) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagor or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.

(12) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any other such writing and to the provisions therein contained.

(14) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Ordinance, and with all the like incidents, effects and consequences, but the powers so reserved and conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(15) In the case of a mortgage of leasehold land, a lease granted under this section shall reserve a reversion of not less than one day.

(16) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(17) For the purposes of this section, "mortgagor" does not include an incumbrancer deriving title under the mortgagor.

(18) The powers of leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under his statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the receiver.

17 Powers of mortgagor and mortgagee in possession to accept surrenders of leases (15 & 16 Geo.5 c.20 s. 100)

(1) For the purpose only of enabling a lease authorised under section 16, or under any agreement made in pursuance of that section, or by the mortgage deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Ordinance, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines therein, and, on surrender of the lease so far as it comprises only part of the land or mines and minerals leased, the rent may be apportioned.

(2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Ordinance, power to accept from time to time any such surrender as aforesaid.

(3) On the surrender of a part only of the mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the rent to be reserved, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease.

(4) Where any consideration for the surrender, other than agreement to accept an authorised lease, is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

(5) No surrender shall by virtue of this section be rendered valid unless-

- (a) an authorised lease is granted of the whole of the land or mines and minerals comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender;
- (b) the term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and
- (c) Where the whole of the land mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and the new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.

(6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

(7) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(8) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(9) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Ordinance, and with all the like incidents, effects and consequences, but the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(10) For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

(11) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

Further powers of mortgagees

18 Powers incident to estate or interest of mortgage (15 & 16 Geo.5 c.20, s. 101)

(1) A mortgagee, where the mortgage is made by deed, shall by virtue of this Ordinance, have the following powers to the like extent as if they had in terms been conferred by the mortgage deed, but not further-

- (a) 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
- (b) a power, at any time after 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 in which 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;

- (c) a power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof;
- (d) 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, 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;
- (e) 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 use of land, or with respect to mines or minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing;
- (f) a power to sell the mortgaged property, or any part thereof, or all or any mines or minerals apart from the surface-
 - (i) with or without a grant or reservation of rights of way, rights of water, easements rights and privileges for or connected with buildings or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold; and
 - (ii) 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 of 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
 - (iii) with or without covenants by the purchaser to expend money on the land sold.

(2) The provisions of this Ordinance 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 Ordinance.

(3) 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.

(4) 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 Ordinance relating to the realisation of mortgages.

19 Regulation of exercise of power of sale (15 & 16 Geo.5 c.20, s. 103)

A mortgagee shall not exercise the power of sale conferred by this Ordinance unless and until-

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

- (b) some interest under the mortgage is in arrear and unpaid for two months after becoming due; or
- (c) there has been a breach of some provision contained in the mortgage deed or in this Ordinance, or in an enactment replaced by this Ordinance, and on the part of the mortgagor, or of some person concurring in, or making the mortgage, to be observed and performed, other than a covenant for the payment of the mortgage money or interest thereon.

20 Conveyance on sale (15 & 16 Geo.5 c.20, s. 104)

(1) A mortgagee exercising the power of sale conferred by this Ordinance shall have power, by deed, to convey the property sold, for such estate and interest therein as he is by this Ordinance authorised to sell or convey or may be the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage.

(2) Where a conveyance is made in the exercise of the power of sale conferred by this Ordinance or any enactment replaced by this Ordinance, the title of the purchaser shall not be impeached on the ground

- (a) that no case had arisen to authorise the sale; or
- (b) that due notice was not given; or
- (c) that leave of the court, when required, was not obtained; or
- (d) that the power was otherwise improperly or irregularly exercised;

and a purchaser is not, either before or after the conveyance, concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall be entitled to recover damages from the person exercising the power.

(3) A conveyance on sale by a mortgagee made after the coming into force of this Ordinance shall be deemed to have been made in exercise of the power of sale conferred by this Ordinance unless the contrary intention appears.

21 Application of proceeds of sale (15 & 16 Geo.5 c.20, s. 105)

The money which is received by the mortgagee arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this Ordinance of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

22 Provisions as to exercise of power of sale (15 & 16 Geo.5 c.20, s. 106)

- (1) The power of sale conferred by this Ordinance may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.
- (2) The power of sale conferred by this Ordinance does not affect the right of foreclosure.
- (3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Ordinance, or of any trust connected therewith or of any power or provision contained in the mortgage deed.

23 Mortgagee's receipts, discharges etc. (15 & 16 Geo.5 c.20, s. 107)

- (1) The receipt in writing of the mortgagee shall be sufficient discharge for any money arising under the power of sale conferred by this Ordinance, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.
- (2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Ordinance directed respecting money received by him arising from a sale under the power of sale conferred by this Ordinance, subject to the variation that the costs, charges and expenses payable shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

24 Amount and application of insurance money (15 & 16 Geo.5 c.20, s. 108)

- (1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power conferred by this Ordinance shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified the amount that would be required, in case of total destruction, to restore the property insured.
- (2) An insurance shall not, under the power conferred by this Ordinance, be effected by a mortgagee in any of the following cases-
 - (a) where there is a declaration in the mortgage deed that no insurance is required;
 - (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
 - (c) where the mortgage deed contains no stipulation respecting insurance, and insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Ordinance authorised to insure.
- (3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Ordinance, or any enactment replaced by this Ordinance, or an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Ordinance, or by any enactment replaced by this Ordinance, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money.

25 Appointment, powers, remuneration and duties of receiver (15 & 16 Geo.5 c.20, s. 109)

(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Ordinance shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Ordinance, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2) A receiver appointed under the powers conferred by this Ordinance, or any enactment replaced by this Ordinance, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.

(3) The receiver shall have the power to demand and recover all the income of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Ordinance.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five per cent on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the court thinks fit to allow, on an application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8) Subject to the provisions of this Ordinance as to the application of the insurance money, the receiver shall apply all money received by him as follows-

- (a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property;
- (b) in keeping down all annual sums and other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

- (c) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Ordinance, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and
- (d) in payment of the interest accruing due in respect of any principal money due under the mortgage; and
- (e) in or towards discharge of the principal money if so directed by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

26 Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver (15 & 16 Geo.5 c.20, s. 110(1))

Where the statutory or express power for a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor being adjudged a bankrupt, such power shall not without the leave of the court be exercised only on account of the adjudication.

Advances on joint account

27 Effect of advance on joint account (15 & 16 Geo. 5 c.20, s. 111)

(1) Where-

- (a) in a mortgage, or in an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account; or
- (b) a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly;

the mortgage money, or other money or money's worth for the time being due to those persons on the mortgage or obligation, shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of the severance of the joint account.

(2) This section applies if and so far as a contrary intention is not expressed in the mortgage, obligation, or transfer, and has effect subject to the terms of the mortgage, obligation or transfer, and to the provisions therein contained.

28 Notice of trusts affecting mortgage debts (15 & 16 Geo.5 c.20, s. 113)

(1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume unless the contrary is expressly stated in the instruments relating to the mortgage-

- (a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account;
- (b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof,

without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

(2) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

Transfers of mortgages

29 Transfers of mortgages (15 & 16 Geo.5 c.20, s. 114)

(1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee-

- (a) the right to demand, sue for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and
- (b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and
- (c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.

(2) In this section "transferee" includes his personal representatives and assigns.

(3) A transfer of mortgage may be made in the form contained in Schedule 1 to this Ordinance with such variations and additions, if any, as the circumstances may require.

(4) This section applies, whether the mortgage transferred was made before or after the coming into force of this Ordinance, but applies only to transfers made after the coming into force of this Ordinance.

(5) This section does not extend to a transfer of a bill of sale of chattels by way of security.

Discharge of mortgages

30 Reconveyances of mortgages by endorsed receipts (15 & 16 Geo.5 c.20, s. 115)

(1) Subject to subsection (2), a receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate, without any reconveyance, surrender or release-

- (a) where a mortgage takes effect by demise or sub-demise, as a surrender of the term, so as to determine the term or merge the same in the reversion immediately expectant thereon;
- (b) where the mortgage does not take effect by demise or sub-demise, as a reconveyance thereof to the extent of the interest which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;

and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

(2) Notwithstanding subsection (1), where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him unless-

- (a) it is otherwise expressly provided;
- (b) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

(3) Nothing in this section confers a right on a mortgagor to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer, and where there is no right to keep a mortgage alive, the receipt does not operate as a transfer.

(4) This section does not affect the right of any person to require a reassignment, surrender, release or transfer to be executed in lieu of a receipt.

(5) A receipt may be given in the form contained in Schedule 1 to this Ordinance with such variations and additions, if any as may be deemed expedient.

(6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee, subject to any interest which is paramount to the mortgage.

(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

(8) This section applies to a discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not, executed before or after the coming into force of this Ordinance, but only as respects discharges effected after such coming into force.

(9) In this section "mortgaged property" means the property remaining subject to the mortgage at the date of the receipt.

(10) A receipt delivered to the Registrar General for registration in the Deeds Registry and which, except that it is not endorsed on, written at the foot of or annexed to the legal charge or mortgage, complies with the requirements of subsection (1) of this section, shall have the same effect as a receipt which fully complies with the requirements of that subsection.

31 Cesser of mortgage terms (15 & 16 Geo.5 c.20, s. 116)

Without prejudice to the right of any person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, when the mortgage has been discharged, become a satisfied term and shall cease.

Forms of mortgage etc

32 Forms

Schedule 1 to this Ordinance shall have effect so as to prescribe forms which may be used, with such variations and additions, if any, as the circumstances may require as-

- (a) a mortgage of freeholds by demise;
- (b) a mortgage of leaseholds by sub-demise;
- (c) a charge of freeholds or leaseholds or both together by charge by way of legal mortgage;
- (d) a further charge of freeholds or leaseholds by way of legal mortgage;
- (e) a transfer of legal charge;
- (f) a receipt on discharge of a charge by way of legal mortgage or a mortgage;
- (g) a conveyance on sale;
- (h) a conveyance on sale, legal chargees or mortgagees concurring; and
- (i) a conveyance on sale by legal chargees or mortgagees.

Provisions as to actions by mortgagees for possession

**33 Additional powers of court in action by mortgagee for possession of dwelling-house
(1970 c.31, ss. 36 & 39)**

(1) Where the mortgagee under a mortgage of land which consists of or includes a dwelling-house brings an action in which he claims possession of the mortgaged property, not being an action for foreclosure in which a claim for possession of the mortgaged property is also made, the court may exercise any of the powers conferred on it by subsection (2) if it appears to the court that in the event of its exercising the power the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage.

(2) The court may-

- (a) adjourn the proceedings, or
- (b) on giving judgment, or making an order, for delivery of possession of the mortgaged property, or at any time before the execution of such judgment or order, may-
 - (i) stay or suspend execution of the judgment or order, or
 - (ii) postpone the date for delivery of possession,

for such period or periods as the court thinks reasonable.

(3) Any such adjournment, stay, suspension or postponement as is referred to in subsection (2) may be made subject to such conditions with regard to payment by the mortgagor of a sum secured by the mortgage or the remedying of any default as the court thinks fit.

(4) The court may from time to time vary or revoke any condition imposed by virtue of this section.

(5) This section shall have effect in relation to such an action as is referred to in subsection (1) begun before the commencement of this Ordinance unless in that action judgment has been given, or an order made, for delivery of possession of the mortgaged property and that judgment or order was executed before that date.

(6) In this section and in the following section, "dwelling-house" includes any building or part thereof which is used as a dwelling-house.

(7) The fact that part of the premises comprised in a dwelling-house is used as a shop or office or for business trade or professional purposes shall not prevent the dwelling-house from being a dwelling-house for the purposes of this section.

34 Supplementary to section 33 (cf 1973 c.15 s. 8)

(1) Where by a mortgage of land which consists of or includes a dwelling-house, or by any agreement between the mortgagee under such a mortgage and the mortgagor, the mortgagor is entitled or is to be permitted to pay the principal sum secured by instalments or otherwise to defer payment of it in whole or in part, but provision is also made for earlier payment in the event of any default by the mortgagor or of a demand by the mortgagee or otherwise, then for the purposes of the preceding section a court may treat as due under the mortgage on account of the principal sum secured and of interest on it only such amounts as the mortgagor would have expected to pay if there had not been such a provision for earlier payment.

(2) A court shall not by virtue of subsection (1) exercise the powers conferred by the preceding section unless it appears to the court not only that the mortgagor is likely to be able within a reasonable period to pay any amounts regarded (in accordance with subsection (1) of this section) as due on account of the principal sum secured, together with interest on those amounts, but also that he is likely by the end of that period to pay any further amounts that he would have been expected to be required to pay by then on account of that sum and interest on it if there had been no such provision as is referred to in subsection (1) of this section for earlier payment.

(3) Where subsection (1) of this section would apply to an action in which a mortgagee only claimed possession of the mortgaged property, and the mortgagee brings an action for foreclosure (with or without his claiming possession of the property) then the preceding section and subsections (1) and (2) of this section shall apply as they would apply if it were an action in which the mortgagee only claimed possession of the mortgaged property, except that-

- (a) paragraph (b) of subsection (2) of the preceding section shall apply only in relation to a claim for possession; and
- (b) subsection (5) of the preceding section shall not apply.

(4) This section shall have effect in relation to an action begun before commencement of this Ordinance if before that date judgment has not been given, nor an order made, in that action for delivery of possession of the mortgaged property and, where it is a question of subsection (3) above, an order nisi for foreclosure has not been made in that action.

PART III IMPLIED COVENANTS FOR TITLE

The covenants

35 Covenants to be implied on a disposition of property (1994 c.36 s. 1)

(1) In an instrument effecting or purporting to effect a disposition of property there shall be implied on the part of the person making the disposition, whether or not the disposition is for valuable consideration, such of the covenants specified in sections 36 to 39 as are applicable to the disposition.

(2) Of those sections-

- (a) sections 36, 37(1) and (2), 38 and 39 apply where dispositions are expressed to be made with full title guarantee; and
- (b) sections 36, 37(3), 38 and 39 apply where dispositions are expressed to be made with limited title guarantee.

(3) Sections 36 to 38 have effect subject to section 40 (no liability under covenants in certain cases) and sections 36 to 39 have effect subject to section 42(1) (limitation or extension of the covenants by instrument effecting the disposition).

36 Right to dispose and further assurance (1994 c.36, s. 2(1) & (3))

(1) If the disposition is expressed to be made with full title guarantee there shall be implied the following covenants-

- (a) that the person making the disposition has the right (with the concurrence of any other person conveying the property) to dispose of the property as he purports to, and
- (b) that that person will at his own cost do all that he reasonably can to give the person to whom he disposes of the property the title he purports to give.

(2) In the case of a disposition of an existing legal interest in land, the following presumptions apply, subject to the terms of the instrument, in ascertaining for the purposes of the covenants implied by this section what the person making the disposition purports to dispose of-

- (a) if it appears from the instrument that the interest is a leasehold interest, it shall be presumed that the disposition is of the property for the unexpired portion of the term of years created by the lease; and
- (b) in any other case, it shall be presumed that what is disposed of is the fee simple.

37 Charges, incumbrances and third party rights (1994 c.36, s. 3)

(1) If the disposition is expressed to be made with full title guarantee there shall be implied a covenant that the person making the disposition is disposing of the property free-

- (a) from all charges and incumbrances (whether monetary or not), and
- (b) from all other rights exercisable by third parties,

other than any charges, incumbrances or rights which that person does not and could not reasonably be expected to know about.

(2) In its application to charges, incumbrances and other third party rights subsection (1) extends to liabilities imposed and rights conferred by or under any enactment, except to the extent that such liabilities and rights are, by reason of-

- (a) being at the time of the disposition, only potential liabilities and rights in relation to the property, or
- (b) being liabilities and rights imposed or conferred in relation to property generally.

(3) If the disposition is expressed to be made with limited title guarantee there shall be implied a covenant that the person making the disposition has not since the last disposition for value-

- (a) charged or incumbered the property by means of any charge or incumbrance which subsists at the time the disposition is made, or granted third party rights in relation to the property which so subsists, or
- (b) suffered the property to be so charged or incumbered or subjected to any such rights,

and that he is not aware that anyone else has done so since the last disposition for value.

38 Validity of lease (1994 c.36, s. 4)

(1) Where the disposition is of leasehold land and is expressed to be made with full title guarantee or with limited title guarantee, the following covenants shall also be implied-

- (a) that the lease is subsisting at the time of the disposition, and
- (b) that there is no subsisting breach of a condition or of a tenant's obligation, and nothing which at that time would render the lease liable to forfeiture.

(2) If the disposition is the grant of an underlease, the references to "the lease" in subsection (1) of this section are references to the lease out of which the underlease is granted.

39 Discharge of obligations where property is subject to rentcharge or leasehold land (1994 c.36, s. 5)

(1) Where the disposal is a mortgage of property subject to a rentcharge, or of leasehold land, and is expressed to be made with title guarantee or with limited title guarantee, the following covenants shall also be implied.

(2) If the property is subject to a rentcharge, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the instrument creating the rentcharge that are for the time being enforceable with respect to the property by the owner of the rentcharge in his capacity as such.

(3) If the property is leasehold land, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the lease subject to the mortgage that are for the time being imposed on him in his capacity as tenant under the lease.

Effect of covenants

40 No liability under covenants in certain cases (1994 c.36, s. 6)

(1) The person making the disposition is not liable under the covenants implied by virtue of-

- (a) section 36 (1)(a) (right to dispose),
- (b) section 37 (charges, incumbrances and third party rights), or
- (c) section 38 (validity of lease),

in respect of any particular matter to which the disposition is expressly made subject.

(2) Furthermore that person is not liable under any of those covenants for anything (not falling within subsection (1))-

- (a) which at the time of the disposition is within the actual knowledge, or
- (b) which is a necessary consequence of facts that are then within the actual knowledge,

of the person to whom the disposition is made.

(3) For this purpose section 46 of this Ordinance (deemed notice by virtue of registration) shall be disregarded

41 Annexation of benefit of covenants (1994 c.36, s. 7)

The benefit of a covenant implied by this Part shall be annexed and incident to, and shall go with, the estate or interest of the person to whom the disposition is made, and shall be capable of being enforced by every person in whom the estate or interest is (in whole or part for the time being vested).

42 Supplementary (cf 15 & 16 Geo.5 c.20, s. 81 and 1994 c.36, s. 8(3))

(1) A covenant, and a contract executed as a deed, and a bond or obligation executed as a deed, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of every other person the right to sue on the covenant, contract, bond or obligation devolves, and where made after the commencement of this Ordinance shall be construed as being also made with each of them.

(2) Subsection (1)-

- (a) extends to a covenant implied by virtue of this Part;
- (b) has effect without prejudice to the operation, prior to the coming into force of this Ordinance, of any enactment to the like effect; and
- (c) applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation and to the provisions contained in the document in question.

(3) Where an instrument effecting or purporting to effect a disposition of property a person is expressed to direct the disposition, this Part applies to him as if he were the person making the disposition.

**PART IV
MISCELLANEOUS AND GENERAL**

Orders of court

43 Orders of court conclusive (15 & 16 Geo. 5 c.20, s. 204)

(1) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of such want or not.

(2) This section has effect-

- (a) without prejudice to the operation, prior to the commencement of this Ordinance, of any enactment having a like or similar effect;
- (b) with respect to any lease, sale or other act under the authority of the court, and purporting to be in pursuance of any statutory power notwithstanding any exception in the statute in question.

(3) This section applies to all orders made before or after the commencement of this Ordinance.

Sale by survivor of joint tenants

44 Assumptions on sale of land by survivor of joint tenants (cf 1964 c.63, s. 1)

(1) Subject to subsection (2) of this section, the survivor of two or more joint tenants shall in favour of a purchaser of a legal estate, be deemed to be solely and beneficially interested if the conveyance contains a statement that he is so interested.

(2) Subsection (1) of this section shall not apply if, at any time before the conveyance by the survivor-

- (a) a memorandum of severance (that is to say a note or memorandum signed by the joint tenants or one of them and recording that the joint tenancy was severed in equity on a date therein specified) has been registered in the deeds registry;
- (b) an order of adjudication in bankruptcy made against any of the joint tenants, or a petition for such an order, had been registered in the deeds register or in such other manner as may from time to time be required by the law of the Falkland Islands, being an order or petition of which the purchaser has notice, by virtue of the registration, on the date of a conveyance by the survivor.

(3) The foregoing provisions of this section shall apply with the necessary modifications in relation to a conveyance by the personal representative of the survivor of joint tenants as they apply in relation to a conveyance by such a survivor.

Deeds and contracts

45 Deeds and their execution

(1) Any rule of law which-

- (a) restricts the substances on which a deed may be written;
- (b) requires a seal for the valid execution of an instrument as a deed by an individual; or
- (c) requires authority by one person to another to deliver an instrument on his behalf to be given by deed,

is abolished.

(2) An instrument shall not be a deed unless-

- (a) it makes it clear on its face that it is intended to be a deed by the person making it, or as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and
- (b) it is validly executed as a deed by that person or, as the case may be, one or more of those parties.

(3) An instrument is validly executed as a deed by an individual if, and only if-

- (a) it is signed-
 - (i) by him in the presence of a witness who attests the signature;
 - (ii) at his direction and in his presence and the presence of two witnesses who each attest his signature; and
- (b) it is delivered as a deed by him or a person authorised to do so on his behalf,

but notwithstanding paragraph (a) of this subsection, a deed affecting land or an interest in land in the Falkland Islands shall not be validly executed unless it is witnessed in accordance with the requirements of section 8(1) of the Land Ordinance.

(4) In subsections (2) and (3) above "sign", in relation to an instrument, includes making one's mark on the instrument and "signature" is to be construed accordingly.

(5) Where a legal practitioner, or an agent or employee of a legal practitioner, in the course of or in connection with a transaction involving the disposition or creation of an interest in land, purports to deliver an instrument as a deed on behalf of a party to the instrument, it shall be conclusively presumed in favour of a purchaser that he is authorised to deliver the instrument.

(6) Where an instrument under seal that constitutes a deed is required for the purposes of an enactment made or passed before the commencement of this Ordinance, this section shall have effect as to signing, sealing or delivery of an instrument by an individual in place of any provision of that enactment as to signing, sealing or delivery.

(7) The references in this section to the execution of a deed by an individual do not include execution by a corporation sole and the reference in subsection (6) above to signing, sealing or delivery by an individual does not include signing sealing or delivery by such a corporation.

(8) Nothing in this section applies in relation to instruments delivered as deeds before the commencement of this Ordinance.

Provisions as to actual and constructive notice

46 Registration under the Land Charges Ordinance 1996 to be notice (15 & 16 Geo.5 c.20, s. 198)

(1) The registration of any instrument or matter in any register kept under the Land Charges Ordinance 1996 shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.

(2) This section operates without prejudice to the provisions of this Ordinance respecting the making of further advances by a mortgagee and applies only to instruments and matters required to be registered.

47 Restrictions on constructive notice (15 & 16 Geo.5 c.20, s. 199)

(1) A purchaser shall not be prejudicially affected by notice of-

- (a) any instrument or matter capable of registration under the provisions of the Land Charges Ordinance 1996, which is void or not enforceable against him under that Ordinance, by reason of the non-registration thereof;
- (b) any other instrument or matter or any fact or thing unless-
 - (i) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably have been made by him;
 - (ii) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the notice of a legal practitioner or other lawyer instructed by him or with his authority on his behalf, as such, or an other agent for him, as such, or would have come to the notice of any such person, as such, if such inquiries had been made as ought reasonably to have been made by such legal practitioner, other lawyer or other agent.

(2) Paragraph (b) of the preceding subsection shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision or restriction contained in any instrument under which his title is derived mediately or immediately, and such liability may be enforced in the same manner and to the same extent as if that paragraph had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Ordinance.

Notices

48 Provisions as to notices (15 & 16 Geo.5 c.20, s. 196)

- (1) Any notice required or authorised to be served or given by this Ordinance shall be in writing.
- (2) Any notice required or authorised by this Ordinance to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.
- (3) Any notice required or authorised by this Ordinance to be served shall be sufficiently served if it is left at the last-known place of abode or business in the Falkland Islands of the lessee, lessor mortgagee, mortgagor or other person to be served, or, in the case of a notice required or authorised to be served on a mortgagor, is affixed or left for him on the land or on any house or building comprised in the mortgage.
- (4) Any notice required or authorised by this Ordinance to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business, and if that letter is not returned through the post office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered or, in the case of a registered letter addressed to an address in Stanley, be available for collection by the addressee from the post office.
- (5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the coming into force of this Ordinance unless a contrary intention appears.
- (6) This section does not apply to notices served in proceedings in the court.

Repeals, transitional provisions and savings

49 . . .

[Revision w.e.f. 31/07/2017]

50 Transitional: covenants in old form to apply in certain cases (cf 1994 c.36, s. 11)

- (1) Notwithstanding its repeal by subsection(1) of the preceding section and Part 1 of Schedule 2 to this Ordinance, section 3(2) of the Lands Ordinance shall continue to apply in any case-
 - (a) where the Conveyance is made pursuant to a contract entered into before the coming into force of this Ordinance; and

- (b) the contract contains a term providing for a disposition to which that section would have applied if the disposition had been made before the coming into force of this Ordinance,

unless there has been an intervening disposition of the property expressed, in accordance with Part III of this Ordinance to be made with full title guarantee, and for the purposes of this subsection "intervening disposition" means a disposition after the coming into force of this Ordinance to, or to a predecessor in title of, the person by whom the disposition in question is made.

(2) Where in order for subsection (1) to apply it is necessary for certain matters to be apparent on the face of the instrument effecting the disposition, the contract shall be deemed to contain an implied term that they should so appear.

51 Transitional: covenants in new form to apply in certain cases (cf 1994 c.36, s. 12)

(1) This section applies to a contract for the disposition of property entered into before the coming into force of this Ordinance where the disposition is made after such coming into force and the preceding section does not apply because there has been an intervening disposition expressed, in accordance with Part III of this Ordinance, to be with full title guarantee.

(2) A contract which contains a term that the person making the disposition shall do so as beneficial owner shall be construed as requiring that person to do so by an instrument expressed to be made with full title guarantee.

(3) A contract which contains a term that the person doing so shall do so-

- (a) as settlor;
- (b) as trustee or mortgagee or personal representative,

shall be construed as requiring that person to do so by an instrument expressed to be made with limited title guarantee.

(4) Where this section applies and the contract provides that any of the covenants to be implied by virtue of section 3(2) or 4(2) of the Land Ordinance shall be implied in a modified form, the contract shall be construed as requiring a corresponding modification in the covenants to be implied by virtue of Part III of this Ordinance.

52 Transitional: conversion of existing mortgages

Schedule 3 of this Ordinance shall have effect so as to convert existing freehold mortgages into mortgages by demise and so as to convert existing leasehold mortgages into mortgages by sub-demise.

53 Further transitional provisions in relation to implied covenants

(1) The repeal by section 49(1) of and Schedule 2 of this Ordinance of section 3(2) and section 4(2) of the Land Ordinance shall not affect the enforcement of a covenant implied by virtue of either of them on a disposition made before the coming into force of this Ordinance.

(2) For the purposes of sections 50 and 51 (transitional provisions: implication of covenants in old form in certain cases and new form in others) as they apply in relation to a disposition of property in accordance with an option granted before the coming into force of this Ordinance and exercised after its coming into force, the contract for the disposition shall be deemed to have been entered into on the grant of the option.

The Crown

54 Provisions in relation to the Crown

(1) A recognisance, on behalf of the Crown or otherwise, whether entered into before or after the coming into force of this Ordinance, and an inquisition finding a debt due to the Crown, and any obligation or specialty made to or in favour of the Crown, whatever may have been its date, shall not operate as a charge on any interest in land, or on the unpaid purchase money for any land, unless a writ or order, for the purpose of enforcing it, has been registered under the provisions of the Land Charges Ordinance 1996.

(2) This Ordinance binds the Crown.

SCHEDULE 1 FORMS IN RELATION TO MORTGAGES AND CONNECTED MATTERS

(section 32)

FORM 1 First mortgage of freeholds by demise

THIS MORTGAGE is made the _____ day of _____ 1997

BETWEEN ARTHUR HOOPER of 123 High Street Stanley in the Falkland Islands Plumber ("the Mortgagor") of the one part and LENDING BANK LIMITED having its registered office at 99 Exchange Street Stanley aforesaid ("the Mortgagee") of the other part

WHEREAS the Mortgagor is seised for an estate in fee simple absolute in possession of the dwelling-house and premises described in the Schedule hereto and the Mortgagee has agreed to lend to the Mortgagor the sum of £50,000 upon the security of a first mortgage of the same and upon the terms and conditions hereafter appearing

NOW THIS DEED WITNESSETH-

1. In consideration of the sum of £50,000 now paid by the Mortgagee to the Mortgagor (the receipt of which sum the Mortgagor hereby acknowledges)

- (a) the Mortgagor demises unto the Mortgagee with full title guarantee ALL THAT the property described in the Schedule hereto TO HOLD the same unto the Mortgagee for a term of three thousand years from the date of this Mortgage but subject to cesser of the said term on payment by the Mortgagor to the Mortgagee of all principal interest and other money secured by this Mortgage
- (b) the Mortgagor covenants with the Mortgagee in manner hereinafter appearing

2. *[Add the requisite covenants to pay principal and interest and other moneys]*

3. *[Add other provisions desired e.g. covenant to insure, covenant not to lease or part with possession without consent of the mortgagee]*

EXECUTED as a Deed the day and year first before written etc.

4. *[Add Schedule]*

Note: It is tautological to recite that the Mortgagor is seised free from encumbrances: see the provisions of section 37 as to the covenant implied when a disposition is expressed to be made with full title guarantee.

FORM 2
First mortgage of leasehold by sub-demise

THIS MORTGAGE is made the day of 1997

BETWEEN MARY NORRIS of 21 Gladstone Road Stanley Falkland Islands Teacher ("the Mortgagor") of the one part and BRIAN DAZZLE of High Hills Farm Cape Fortunate East Falkland Concert Artist ("the Mortgagee") of the other part

WHEREAS-

1. By a Lease dated 12th July 1994 the Flat known as Flat 14 Dolphin Tower 12 Antarctic Street Stanley and more particularly described in the Schedule to this Legal Mortgage was demised by Adelie Developments Limited to Henry Murray for a term of 99 years from the 25th December 1993 at the rent and subject to the covenants on the part of the said Henry Murray in the said Lease contained

2. The said Lease was by deed of even date herewith assigned by the said Henry Murray to the Mortgagor

3. The Mortgagee has agreed to lend to the Mortgagor the sum of £20,000 upon the security of a first mortgage of the said Flat and upon the terms and conditions hereinafter appearing

NOW THIS DEED WITNESSETH-

1. In consideration of the sum of £20,000 now paid by the Mortgagee to the Mortgagor (the receipt whereof the Mortgagor hereby acknowledges)-

- (a) the Mortgagor sub-demises to the Mortgagee with full title guarantee ALL THAT the property described in the Schedule to this Legal Mortgage TO HOLD the same unto the Mortgagee for the term of 99 years less ten days from 25th December 1993 but subject to cesser of the said term on payment by the Mortgagor to the Mortgagee of all principal money interest and other money secured by this Mortgage
- (b) the Mortgagor covenants with the Mortgagee in manner hereinafter appearing.

2. *[Covenants to pay principal and interest and other moneys]*

3. *[Add other provisions desired, e.g. covenant to insure, covenant not to further sub-demise or part with possession without consent of the mortgagee, covenant to observe and perform the provisions of the Lease]*

EXECUTED as a Deed the day and year first before written

4. *[Add Schedule]*

FORM 3

Charge of freeholds or leaseholds or both together by way of legal mortgage

THIS LEGAL CHARGE is made the day of 1997

BETWEEN CHARLES COOPER of 31 New England Way Stanley in the Falkland Islands Shipwright ("the Chargor") of the one part and HENRY HIGGINS of 1 Pygmalion Close Stanley aforesaid University Professor ("the Chargee") of the other part

WHEREAS-

[Recite the title of the Chargor to the freehold or leasehold property or freehold and leasehold properties described in the Schedule (e.g. along lines following "WHEREAS" in Forms 1 and 2) and the agreement for the loan by the Chargee]

NOW THIS DEED WITNESSETH-

1. In consideration of the sum of £15,000 now paid by the Chargee to the Chargor (the receipt whereof the Chargor hereby acknowledges)-

- (a) the Chargor charges by way of legal mortgage with full title guarantee ALL THAT the property (or where more than one property is charged ALL THOSE the properties severally) described in the Schedule hereto with the payment to the Chargee of the principal money interest and other money hereinafter covenanted to be paid by the Chargor
- (b) the Chargor covenants with the Chargee in manner hereinafter appearing

2. *[Add the requisite covenants to pay principal, interest and other moneys]*

3. *[Add covenants any other covenants desired (e.g. to insure buildings and not to lease or part with possession)*

EXECUTED as a Deed the day and year first before written

4. *[Add Schedule]*

FORM 4
Further Charge by way of Legal Mortgage

THIS FURTHER CHARGE is made the day of 1998

BETWEEN CHARLES COOPER of 31 New England Way Stanley in the Falkland Islands Shipwright ("the Chargor") of the one part and HENRY HIGGINS of 1 Pygmalion Close Stanley aforesaid University Professor ("the Chargee") of the other part

WHEREAS this Further Charge is supplemental to a Legal Charge ("the Principal Deed") dated the day of 1997 and made between the same parties as are parties hereto and in the same order for securing the sum of £15,000 with interest thereon as therein provided on the property described in the Schedule to the Principal Deed

NOW THIS DEED WITNESSETH that in consideration of the further sum of £3,000 now paid by the Chargee to the Chargor (the receipt whereof the Chargor hereby acknowledges)-

- (a) the Chargor charges by way of legal mortgage with full title guarantee the premises comprised in the Principal Deed with the payment to the Chargee of the principal money and interest hereinafter covenanted to be paid as well as the principal money interest and other money secured by the principal deed
- (b) the Chargor covenants [add covenant to pay the further advance and interest]

EXECUTED as a Deed the day and year first before written

FORM 5
Transfer of Legal Charge

THIS TRANSFER of LEGAL CHARGE is made the day of 1997

BETWEEN ALFRED DOULTON of 23 Craddock Street Stanley in the Falkland Islands Chartered Accountant ("the Transferor") of the one part and MICHAEL MOORE of 16 Sturdee Road Stanley aforesaid Dentist ("the Transferee") of the other part

WHEREAS-

1. This deed is supplemental to a Legal Charge ("the Legal Charge") dated 12th October 1997 and made between Eliza Doolittle of the one part and the Transferor of the other part whereby the dwelling-house known as 3 Dustmen's Villas Cove Road Stanley aforesaid and more particularly described in the Schedule to the Legal Charge was charged by way of legal mortgage with the payment to the Transferor of the principal sum of £5,000 and interest and other money as provided by the Legal Charge

2. There is at the date hereof the said principal sum and £112.50 interest and no other money owing under the Legal Charge

NOW THIS DEED WITNESSETH that in consideration of the sum of £5,112.50 now paid to him by the Transferee (the receipt whereof the Transferor hereby acknowledges) the Transferor with full title guarantee hereby transfers to the Transferee the benefit of the Legal Charge

EXECUTED as a Deed the day and year first before written

FORM 6

Receipt on discharge of a Legal Charge or Mortgage (with additions where there is a Further Charge or Mortgage)

I NICHOLAS FENWICK of 7 Marigold Way Stanley in the Falkland Islands Auctioneer hereby acknowledge that I have this day of 1998 received the sum of £..... representing the [aggregate] [balance owing in respect of the] mortgage money secured by a [Legal Charge] [Mortgage] dated day of 1997 of the property known as 10 High Street Stanley aforesaid and more particularly described in the said [Legal Charge] [Mortgage] which was made between PHILIP HULL of 10 High Street Stanley of the one part and myself of the other part [and by a Further Legal Charge dated etc. or otherwise as required] together with all interest and costs the payment having been paid by [the said Philip Hull] [Colin Philips who stated to me that he paid the same out of a fund applicable to the discharge of the [Legal Charge] [Mortgage]]

NOTE: Where the Legal Charge or Mortgage is repaid by a person other than the Chargor or Mortgagor or some other person who is entitled to the immediate equity of redemption in the property charged or mortgaged the receipt may operate as a transfer unless (a) it is otherwise provided or (b) the money is paid off out of capital money under a settlement or money in the hands of a personal representative or trustee properly applicable to the discharge of the Legal Charge or Legal Mortgage and it is not provided that the receipt shall operate as a transfer: see section 30(2)

FORM 7

Form of conveyance on sale

THIS CONVEYANCE is made the day of 1997 B E T W E E N HENRY PHILIPS of 17 Ship Hill Stanley in the Falkland Islands Baker ("the Vendor") of the one part and RICHARD WARDLE of Goose Green East Falkland Shepherd ("the Purchaser") of the other part

WHEREAS the Vendor is seised for an estate in fee simple absolute in possession of the property hereinafter described and has agreed to sell the same to the Purchaser for the like estate at the price of £45,000

NOW THIS DEED WITNESSETH that in consideration of the said sum of £45,000 now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor hereby conveys to the Purchaser with full title guarantee ALL THAT piece of land having a frontage of fifty-two feet or thereabouts to the west side of Ship Hill Stanley and a depth therefrom on the north side of one hundred and twelve feet and on the south side of one hundred and ten feet (the said piece of land being for the purpose of delineation and not of limitation shown coloured pink on the plan annexed to this Conveyance and being part of the land comprised in Crown Grant Number 10027 dated 3rd February 1922 to one Alfred Bloggs) TOGETHER WITH the dwelling-house erected on the said piece of land or on some part or parts thereof and known as 17 Ship Hill Stanley TO HOLD the same unto the Purchaser in fee simple

EXECUTED as a Deed the day and year first before written

Note: It is tautological to recite that the Vendor is seised free from encumbrances: see section 37 as to the covenants implied when a person is expressed to convey with full title guarantee.

FORM 8
Conveyance on Sale, Legal Charges or Mortgagees concurring

THIS CONVEYANCE is made the day of 1999

B E T W E E N THOMAS ELPHINSTONE of 26 Stowe Road Stanley in the Falkland Islands Carpenter ("the Vendor") of the first part BRIAN CASH of 73 High Street Stanley aforesaid Plumber and PETER MONEY of 75 High Street Stanley Electrician ("the Mortgagees") of the second part and DONALD DRAKE of 19 Temperance Place Stanley Licensed Victualler of the third part

WHEREAS-

1. By a [Legal Charge] [Mortgage] dated 16th January 1997 the property hereinafter conveyed was [charged] [mortgaged] to the Mortgagees to secure the principal sum of £30,000 with interest at the rate of eight per cent per annum and other moneys as in the said [Legal Charge] [Mortgage] provided
2. There is at the date hereof the principal sum of £28,270 outstanding under the said [Legal Charge] [Mortgage] and £220 interest no other moneys being on the date hereof owing thereunder
3. The Vendor is seised of the property hereinafter conveyed for an estate in fee simple absolute in possession subject only to the said [Legal Charge] [Mortgage] and has agreed to sell the said property for the sum of £7,000 for the like estate but subject to the said [Legal Charge] [Mortgage] to the Purchaser and the Mortgagees have in consideration of the covenants by the Purchaser in favour of the Mortgagees and hereinafter contained agreed to concur in such sale and to release and discharge the Vendor from each and all of his obligations to the Mortgagees under the [Legal Charge] [Mortgage]

NOW THIS DEED WITNESSETH-

1. In consideration of the sum of £7000 paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) and of the covenants by the Purchaser with the Mortgagees the Vendor with the concurrence of the Mortgagees hereby with full title guarantee conveys to the Purchaser the land and premises known as 26 Stowe Road Stanley in the Falkland Islands and more particularly described in the Schedule hereto TO HOLD the same unto the Purchaser in fee simple SUBJECT to the hereinbefore recited [Legal Charge] [Mortgage].

2. (Covenants by Purchaser with Mortgagees henceforth to perform and observe obligations of Vendor under Legal Charge/Mortgage and release and discharge by Mortgagees of Vendor from any further obligation under the Legal Charge/Mortgage).

EXECUTED as a Deed the day and year first before written

3. [Add Schedule]

NOTE: In practice, where a Legal Charge/Mortgage has not been repaid before the Mortgagor wishes to sell the property, it is more likely that the Legal Charge/Mortgage will be redeemed contemporaneously with the sale and that, if the Mortgagees have agreed to lend money to the Purchaser, a new Legal Charge/ Mortgage will be entered into between the Purchaser and the Mortgagees.

FORM 9
Conveyance on sale by Legal Chargees or Mortgagees

THIS CONVEYANCE is made the day of 1999

BETWEEN JAMES COOK of 17 South Sandwich Street Stanley in the Falkland Islands Explorer and CHARLES DARWIN of 1 Evolution Place Stanley aforesaid Biologist ("the Vendors") of the one part and OSCAR WILDE of 9 Ernest Street Stanley aforesaid Author ("the Purchaser") of the other part

WHEREAS-

1. By a Conveyance dated 13 February 1997 the property hereinafter conveyed was conveyed to Charles Micawber in fee simple who by a Legal Charge of the same date Charged the said property to the Mortgagees to secure the principal sum of £50,000 and interest thereon at the rate of 10 per cent and such other sums as might become due under the provisions of the said Legal Charge

2. The Mortgagees are entitled to exercise the statutory power of sale under section 20 of the Mortgages and Property Ordinance 1996 and in exercise of that power have agreed with the Purchaser for the sale to him in fee simple of the property hereinafter conveyed at the price of £60,000

NOW THIS DEED WITNESSETH that in consideration of the sum of £60,000 now paid by the Purchaser to the Mortgagees (the receipt whereof the Mortgagees hereby acknowledge) the Mortgagees in exercise of the power of sale conferred on them by section 20 of the Mortgages and Property Ordinance 1996 and of all other powers enabling them hereby convey unto the Purchaser with limited title guarantee ALL THAT piece of land having a frontage of 45 feet to the west side of Dickens Street Stanley and a return frontage of 95 feet to the north side Copperfield Close Stanley as the same is for the purpose of identification only and not of limitation shown edged red on the plan drawn hereon TOGETHER with the dwelling-house erected on the said piece of land or on some part or parts thereof and known as 20 Dickens Street TO HOLD the same unto the Purchaser in fee simple discharged from all right of redemption and claims under the recited Legal Charge

EXECUTED as a Deed the day and year first before written

NOTE: The purchaser is not obliged to satisfy himself as to the matters mentioned in section 20(2) and consequently the above specimen Conveyance contains no recitals as to those matters.

SCHEDULE 2 . . .

[Revision w.e.f. 31/07/2017]

SCHEDULE 3 CONVERSION OF EXISTING MORTGAGES

(section 52)

1. Where on the commencement of this Ordinance land is subject to a mortgage, the legal estate affected shall vest in accordance with the provisions as to mortgages contained in this Schedule, if a right of redemption is subsisting at the commencement of this Ordinance.
2. All land which immediately before the commencement of this Ordinance was vested in a first or only mortgagee for an estate in fee simple in possession, whether legal or equitable, shall, from and after the commencement of this Ordinance vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.
3. The estate in fee simple which immediately before the commencement of this Ordinance was vested in any such mortgagee shall, from and after such commencement, vest in the mortgagor, trustee for sale, personal representative or other person of full age who, if all money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged at the commencement of this Ordinance, would have been entitled to have the fee simple conveyed to him, but subject to any mortgage term created by this Schedule or otherwise and to the money secured by any such mortgage or charge.
4. If a sub-mortgage by conveyance of the fee simple is subsisting immediately before the commencement of this Ordinance, the principal mortgage shall take the principal term created by paragraphs 2 or 3 of this Schedule (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so created, without impeachment of waste, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.
5. All leasehold land which immediately before the commencement of this Ordinance was vested in a first or only mortgagee by way of assignment of a term of years absolute shall, from and after the commencement of this Ordinance, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage, less the last ten days thereof, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the term assigned.

6. All leasehold land which immediately before the commencement of this Ordinance was vested in a second or subsequent mortgagee by way of assignment of a term of years absolute (whether legal or equitable) shall, from and after the commencement of this Ordinance, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before such second or subsequent mortgagee if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term assigned by the mortgage, but subject to the term or terms vested in such first or other prior mortgagee, and subject to a provision for cesser on redemption corresponding to the right of redemption which, at the commencement of this Ordinance, was subsisting with respect to the term assigned by the mortgagee.

7. The term of years absolute assigned by any such mortgage shall, from and after the commencement of this Ordinance, vest in the mortgagor, trustee for sale, personal representative or other person of full age who, if all money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Ordinance, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Schedule or otherwise and to the money secured by any such mortgage or charge.

8. If a sub-mortgage by assignment of a term is subsisting immediately before the commencement of this Ordinance, the principal mortgagee shall take the principal derivative term created by paragraphs 5 or 6 of this Schedule or the derivative term created by his mortgage (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so vested in the principal mortgagee, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

9. A mortgage affecting a legal estate made before the commencement of this Ordinance which was not protected by registration of the mortgage deed pursuant to the provisions of the Land Ordinance as to registration of deeds in force immediately before the commencement of this Ordinance shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

10. This Schedule applies whether the mortgage is made by way of trust for sale or otherwise.

11. Nothing in this Schedule shall affect priorities or the title of any mortgagee to or his rights over any fixtures or chattels personal comprised in the mortgage.