

**Reprint
as at 20 June 2011**



Property Law Act 2007

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Commencement see section 2

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Justice.

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1 Title

This Act is the Property Law Act 2007.

2 Commencement

This Act comes into force on 1 January 2008.

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to restate, reform, and codify (in part) certain aspects of the law relating to real and personal property.

4 Interpretation

In this Act, unless the context otherwise requires,—

acceleration clause means an express or implied term in an instrument which provides that, if there is a default, any amounts secured by a mortgage become payable (or may be called up as becoming payable) earlier than would be the case if there had not been a default

access lot, in sections 298 and 315 and in relation to a subdivision, means a separate allotment—

- (a) in the subdivision; and
- (b) that was created to provide access—
 - (i) from all or any of the other allotments of the subdivision; and
 - (ii) to an existing road or street

account receivable has the same meaning as in the Personal Property Securities Act 1999

address, in relation to a person, means the actual or last-known place of residence or business of the person

administrator has the same meaning as in the Administration Act 1969

at risk has the same meaning as in section 109(2) of the Personal Property Securities Act 1999

bankrupt—

- (a) means a person who is adjudged bankrupt; and
- (b) includes a deceased person's estate administered under Part 6 of the Insolvency Act 2006

company has the same meaning as in the Companies Act 1993

consumer goods has the same meaning as in the Personal Property Securities Act 1999

conveyance includes any deed of assignment, appointment, lease, settlement, or other assurance by deed of any property

co-owner means a tenant in common or a joint tenant

court, in relation to any matter, means the court before which the matter falls to be determined

covenant means a promise expressed or implied in—

- (a) an instrument; or
- (b) a short-term lease not made in writing

covenantor, in relation to a mortgage,—

- (a) means a person, other than the mortgagor, who has agreed to pay money or perform obligations secured by the mortgage; and
- (b) includes a guarantor

creditor includes—

- (a) a person who is a creditor within the meaning of section 240 of the Companies Act 1993; and
- (b) a person who can prove a debt under the Insolvency Act 2006

current mortgagor, in relation to mortgaged property, means a mortgagor who is currently the owner of the property

debenture, except in the term **mortgage debenture**, means a secured or unsecured debenture

deed, in relation to land under the Land Transfer Act 1952, includes an instrument having the effect of a deed under that Act

default means—

- (a) a failure—
 - (i) to pay on the due date any amounts secured by an instrument; or
 - (ii) to perform or observe any other express or implied covenant in an instrument; or
- (b) any other event (other than the arrival of the due date) on the occurrence of which any amounts secured by an instrument become payable, or may be called up as becoming payable, under any express or implied term in the instrument

deficiency, in relation to a sale of land or goods under a power of sale expressed or implied in a mortgage, means any amount by which the amount received on the sale and available to a mortgagee in accordance with section 185 is less than the amount secured by the mortgage and then owing to the mortgagee

director,—

- (a) in relation to a company, means any person occupying the position of director of the company, by whatever name called; and
- (b) in relation to a body corporate other than a company or a corporation sole, includes a person occupying a position in the body corporate that is comparable with that of a director of a company; or
- (c) in relation to a corporation sole, means the holder of the office constituted as the corporation sole

discharge sum means the sum nominated by a vendor mortgagee under section 189

disposition—

- (a) means any sale, mortgage, transfer, grant, partition, exchange, lease, assignment, surrender, disclaimer, appointment, settlement, or other assurance; and
- (b) includes the creation of—
 - (i) an easement, *profit à prendre*, or any other interest in property; and

- (ii) a trust in the lifetime of the settlor or by will, and a devise, bequest, or appointment by will in respect of property; but
- (c) in subpart 6 of Part 6, has the meaning given to that term by section 345(2)

encumbrance includes a mortgage, a trust securing the payment of money, or a lien

former mortgagor, in relation to mortgaged property, means a person who has ceased to be the owner of the property, but remains personally liable to the mortgagee for the payment of any amounts or the performance of any obligations secured by the mortgage

goods has the same meaning as in the Personal Property Securities Act 1999

income, in relation to land, includes rents and profits

instrument—

- (a) means any use of words, figures, or symbols (for example, an agreement, contract, deed, grant, or memorandum, or some other document that is certified, executed, or otherwise approved by or on behalf of a party or parties, or a judgment, order, or process of a court) that—
 - (i) creates, evidences, modifies, or extinguishes legal or equitable rights, interests, or liabilities (without being lodged, filed, or registered under an enactment, or after being so lodged, filed, or registered, or both); and
 - (ii) is in a visible and tangible form and medium (for example, in handwriting, print, or both), or is in an electronic form in accordance with the Electronic Transactions Act 2002 or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; and
- (b) includes any instrument as defined in section 2 of the Land Transfer Act 1952; and
- (c) includes any covenant expressed or implied (under this or any other enactment) in, and any variation of, any instrument as defined in paragraph (a) or (b); but

- (d) does not include an enactment (though it may be in a form prescribed by one, or have covenants or terms implied in it under one, or both)

inventory has the same meaning as in the Personal Property Securities Act 1999

joint tenants, in Part 4, includes tenants in common

land includes all estates and interests, whether freehold or chattel, in real property

land not under the Land Transfer Act 1952 means land other than land referred to in section 10 of that Act

land under the Land Transfer Act 1952 means all land referred to in section 10 of that Act

lease means a lease of property, whether registered or unregistered, and includes a short-term lease and an agreement to lease

lessee means a person who enters into a lease as lessee, and includes a person who has accepted a transfer or assignment of a lease

lessor—

- (a) means a person who enters into a lease as lessor; but
- (b) if there has been a transfer or assignment of the reversion expectant on the lease, means a person who has accepted the transfer or assignment

mortgage includes—

- (a) any charge over property for securing the payment of amounts or the performance of obligations; and
- (b) any registered mortgage; and
- (c) any mortgage arising under a mortgage debenture

mortgage debenture means an instrument creating a charge on property of a body corporate that comprises all, or substantially all, of the assets of the body corporate

mortgagee—

- (a) means a person to whom a mortgage is given as mortgagee; but
- (b) if the mortgage has been assigned, means the assignee of the mortgage for the time being

mortgagee in possession—

- (a) means a mortgagee who has exercised a power to enter into possession of mortgaged land or goods in accordance with section 137; and
- (b) includes a mortgagee who is treated, under section 140, as a mortgagee in possession of accounts receivable; and
- (c) in sections 87, 152 to 154, 168 to 171, 175, and 185, includes a mortgagee who—
 - (i) exercised a power to enter into possession of mortgaged land or goods before 1 January 2008; and
 - (ii) is, immediately before that date, still in possession of the land or goods

mortgagor means a person who is the owner of property that is subject to a mortgage

new value has the same meaning as in the Personal Property Securities Act 1999

occupier, in relation to land,—

- (a) in subparts 4 and 5 of Part 5, subparts 2 and 3 of Part 6, and Schedule 5, means—
 - (i) a person—
 - (A) who is in occupation of the land under a lease, or a licence to occupy the land in consideration of rent or a payment in the nature of rent, for a term of not less than 10 years certain or a renewal, for a term of any length, of such a lease or licence, or under a lease validated under section 212; or
 - (B) who remains in occupation of the land, with the consent of the lessor, after the term of a lease or licence referred to in subsubparagraph (A), or any renewal of it, has expired; or
 - (ii) if there is no occupier within the meaning of subparagraph (i) but there is a mortgagee in possession, means the mortgagee in possession; or

- (iii) if there is no occupier within the meaning of subparagraph (i) or (ii) but a receiver appointed by the mortgagee is exercising powers to manage the land or demand and recover income from it, means the receiver; but
 - (iv) does not include any other person for the time being occupying the land:
- (b) in subpart 1 of Part 6, has the meaning given to that term by paragraph (a), except that the reference to a lease or licence for a term of not less than 10 years certain is to be read—
 - (i) in relation to land of an applicant, as a reference to a lease or licence for a term of not less than 1 year certain; and
 - (ii) in relation to neighbouring land, as a reference to a lease or licence for a term of any length:
- (c) in subpart 4 of Part 6, has the meaning given to that term by paragraph (a), except that the reference to a lease or licence for a term of not less than 10 years certain is to be read as a reference to a lease or licence for a term of not less than 1 year certain

Official Assignee has the same meaning as in the Insolvency Act 2006

overseas company means a body corporate that is incorporated outside New Zealand

owner,—

- (a) in subparts 4 and 5 of Part 5 and in Part 6, in relation to land, means—
 - (i) the holder of an estate in fee simple or a life interest in the land; or
 - (ii) the holder of a licence to occupy the land within the meaning of section 121A of the Land Transfer Act 1952; or
 - (iii) the holder of a deferred payment licence under section 65 of the Land Act 1948; and
- (b) in relation to a public reserve, includes the local authority, trustees, or persons having control of the reserve

periodical payment—

- (a) means a payment (whether described as rent, rentcharge, salary, pension, bonus, dividend, interest, outgoing, or otherwise) that—
 - (i) is payable by a person to another person (whether or not in respect of a fixed or ascertainable period); and
 - (ii) is in the nature of income (and not in the nature of an instalment of a purchase price, repayment of capital, or capital gain) in the hands of the recipient; but
- (b) does not include an annual sum payable to a person entitled to it under a policy of assurance of any description

person bound means, in relation to an easement, a positive covenant, or a restrictive covenant burdening land, an owner or occupier of the land against whom the easement or covenant is enforceable

person entitled means, in relation to an easement, a positive covenant, or a restrictive covenant benefiting land, an owner or occupier of the land who is entitled to enforce the easement or covenant

person entitled to redeem, in relation to mortgaged property,—

- (a) means a person with an interest in the mortgaged property and entitled to redeem it; and
- (b) includes the current mortgagor, any former mortgagor, and any covenantor

positive covenant means a covenant, including an express or implied covenant in an easement, under which the covenantor undertakes to do something in relation to the covenantor's land that would beneficially affect the value of the covenantee's land or the enjoyment of the covenantee's land by any person occupying it

property—

- (a) means everything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property; and
- (b) includes any estate or interest in property; and

- (c) in subpart 6 of Part 6, has the extended meaning given to that term in section 345(2)

proprietor, in sections 298 and 315 and in relation to an access lot, means a registered proprietor of—

- (a) 1 or more undivided shares in the access lot; and
- (b) 1 or more of the allotments served by the access lot

Public Trust has the same meaning as in the Public Trust Act 2001

purchase money security interest has the same meaning as in the Personal Property Securities Act 1999

receiver—

- (a) means a receiver, or a manager, or a receiver and manager of any property (with or without power to sell any of the property in receivership) appointed—
 - (i) by or under any deed or agreement; or
 - (ii) by a court in the exercise of a power conferred on the court or in the exercise of its inherent jurisdiction; but
- (b) does not include a mortgagee in possession or the agent of a mortgagee in possession

redeem, in relation to mortgaged property, includes the right to have the property discharged from a mortgage over the property

registered,—

- (a) in relation to an instrument concerning land under the Land Transfer Act 1952,—
 - (i) means registered under that Act; and
 - (ii) includes registered under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002;
- (b) in relation to an instrument concerning land that is not under the Land Transfer Act 1952, means registered under the Deeds Registration Act 1908;
- (c) in relation to an instrument concerning a ship, means—
 - (i) registered in the New Zealand Register of Ships established under the Ship Registration Act 1992; or

- (ii) recorded in a financing statement registered in the personal property securities register kept under the Personal Property Securities Act 1999; or
- (iii) both:
- (d) in relation to an instrument concerning quota within the meaning of the Fisheries Act 1996, means registered under that Act:
- (e) in relation to an instrument concerning management rights or spectrum licences within the meaning of the Radiocommunications Act 1989, means registered under that Act:
- (f) in relation to an instrument concerning a policy within the meaning of section 41 of the Life Insurance Act 1908, means registered under that Act:
- (g) in relation to an instrument concerning personal property other than property referred to in paragraphs (c) to (f), means recorded in a financing statement registered in the personal property securities register kept under the Personal Property Securities Act 1999

Registrar,—

- (a) in sections 24, 108, 164, 176, 178, 183, 187 to 194, 196, 197, 199, and 200, means the Registrar of the High Court:
- (b) in sections 111(1) and 116, means the Registrar of the court before which the matter falls to be determined:
- (c) in sections 156, 165, 167, and 173,—
 - (i) in relation to a company or an overseas company, means the Registrar of Companies appointed in accordance with section 357(1) of the Companies Act 1993:
 - (ii) in relation to a society registered under the Industrial and Provident Societies Act 1908, means the Registrar of Industrial and Provident Societies:
 - (iii) in relation to a society registered under the Incorporated Societies Act 1908, means the Registrar of Incorporated Societies:
 - (iv) in relation to a friendly society or a credit union registered under the Friendly Societies and

Credit Unions Act 1982, means the Registrar of Friendly Societies and Credit Unions:

- (v) in relation to any other body corporate registered under an enactment, means a person discharging the powers, functions, and duties of a registrar under that enactment

Registrar-General means the Registrar-General of Land

rentcharge means a rent secured by a mortgage over land

restrictive covenant means—

- (a) a covenant, including a covenant expressed or implied in an easement, under which the covenantor undertakes to refrain from doing something in relation to the covenantor's land which, if done, would detrimentally affect the value of the covenantee's land or the enjoyment of that land by any person occupying it; or
- (b) a restrictive covenant in gross expressed or implied in an easement

security interest has the same meaning as in the Personal Property Securities Act 1999

short-term lease has the meaning given to that term by section 207

signed, in relation to a body corporate, means—

- (a) executed by the body corporate as provided in section 9(4); or
- (b) signed on behalf of the body corporate by a person acting under its express or implied authority

structure,—

- (a) in Part 6, means any building, driveway, path, retaining wall, fence, plantation, or other improvement; and
- (b) in subpart 2 of Part 6, has the extended meaning given to that term by section 321

superior lease means a lease in respect of which a sublease is entered into

territorial authority, in relation to land, means the territorial authority (within the meaning of the Local Government Act 2002) of the district in which the land is situated

vehicular right of way means an easement—

- (a) entitling the owner or occupier of the land benefited by the easement to pass with vehicles over the land burdened by the easement; and
- (b) created by—
 - (i) an instrument registered under the Land Transfer Act 1952; or
 - (ii) a contract or arrangement that is otherwise enforceable at law or in equity against the person bound

vendor mortgagee means a mortgagee who applies to the Registrar under section 188 to conduct the sale of mortgaged land

working day means a day of the week other than—

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December and ending with 2 January in the following year; and
- (c) the day observed as the anniversary of any province in which an act is to be done.

Compare: 1952 No 51 s 2

5 Meaning of certain references

- (1) For the purposes of this Act, a person who acquires, claims, or derives title to property through another person includes a person—
 - (a) to whom an estate or interest in land passes under section 41 of the Land Transfer Act 1952; and
 - (b) who succeeds to the estate or interest in the land previously held by the other person, either directly or after the estate or interest has passed to 1 or more intermediate successors.
- (2) For the purposes of this Act, a will comes into operation on the death of the person who made the will.
- (3) For the purposes of this Act, an obligation that is not made in writing comes into operation at the time at which the obligation is entered into.

6 Attorney or agent may act

- (1) Anything that must or may be done by or to a person under this Act may be done by or to the person's attorney or agent if it is within the attorney's or agent's authority.
- (2) This section applies subject to sections 12, 353, and 359.

7 Act binds the Crown

This Act binds the Crown.

8 Application

- (1) This Act applies to the land, other property, and instruments specified in subsection (2) to the extent that the law of New Zealand applies to the land, other property, and instruments.
- (2) The land, other property, and instruments are—
 - (a) land in New Zealand;
 - (b) other property whether in or outside New Zealand;
 - (c) instruments whether—
 - (i) executed in or outside New Zealand; and
 - (ii) coming into operation before, on, or after 1 January 2008.
- (3) This Act does not apply to Māori customary land within the meaning of Te Ture Whenua Maori Act 1993.
- (4) If a provision of this Act is inconsistent with a provision in another enactment, the provision in the other enactment prevails.
- (5) Without limiting subsection (4), this Act applies subject to—
 - (a) the Land Transfer Act 1952; and
 - (b) the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (6) This section applies subject to any other provision of this Act or of another enactment providing otherwise.

8A Act subject to application of Cape Town Convention and Aircraft Protocol

- (1) Subparts 6 and 7 of Part 3 and all other provisions of this Act are subject to section 106 of the Civil Aviation Act 1990 (which provides for the primacy of the provisions of the Cape Town Convention and the Aircraft Protocol) and the rest of

Part 12 of the Civil Aviation Act 1990 (which implements the Cape Town Convention and the Aircraft Protocol).

- (2) In this section,—

Aircraft Protocol has the same meaning as in section 104(1) of the Civil Aviation Act 1990

Cape Town Convention has the same meaning as in section 104(1) of the Civil Aviation Act 1990.

Section 8A: inserted, on 1 November 2010, by section 14(1) of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Part 2

General rules relating to dispositions, instruments, transactions, and property

Subpart 1—Deeds, powers of appointment, disclaimers, and powers of attorney

9 Deed must be in writing, executed, and delivered

- (1) A deed must be—
- (a) in writing; and
 - (b) executed in accordance with this section; and
 - (c) delivered in accordance with this section.
- (2) An individual executes a deed if—
- (a) he or she signs the deed; and
 - (b) his or her signature is witnessed in accordance with subsection (7).
- (3) A body corporate executes a deed if—
- (a) the deed is signed in the name of the body corporate by—
 - (i) the director of the body corporate if it has only 1 director; or
 - (ii) not fewer than 2 directors of the body corporate if it has 2 or more directors; or
 - (iii) 1 director or other person or member of a specified class of person if the body corporate's constitution authorises a deed to be signed in that way; and

- (b) in the case of a deed signed under paragraph (a)(i) or (iii), the signature is witnessed in accordance with subsection (7).
- (4) A body corporate executes a deed if it executes the deed as provided in any other enactment relating to the execution of a deed by the body corporate.
- (5) A body corporate not incorporated by or under the law of New Zealand may execute a deed other than in accordance with subsections (3) and (4) if the mode of execution would be authorised by the law of the place in which the body corporate is incorporated were the deed executed in that place and governed by that law.
- (6) The Crown executes a deed if—
 - (a) it is signed on behalf of the Crown by 1 or more Ministers of the Crown or other officers or employees of the Crown of Her Majesty the Queen in right of New Zealand having express or implied authority to sign the deed on behalf of the Crown; and
 - (b) in the case of a deed signed by only 1 person under paragraph (a), the signature is witnessed in accordance with subsection (7).
- (7) A witness—
 - (a) must not be a party to the deed; and
 - (b) must sign the deed; and
 - (c) if signing in New Zealand, must add—
 - (i) the name of the city, town, or locality where he or she ordinarily resides; and
 - (ii) his or her occupation or description.
- (8) No particular form of words is required for the purposes of subsection (7)(c).
- (9) A deed is binding when—
 - (a) delivered by—
 - (i) the person to be bound by it; or
 - (ii) another person having express or implied authority to deliver it on behalf of the person intended to be bound by it; and
 - (b) either—

- (i) it is apparent from the circumstances that the person to be bound by the deed intended to be bound by it; or
- (ii) if the binding force of the deed is subject to the fulfilment of 1 or more conditions, when each condition is fulfilled.

Compare: 1952 No 51 ss 4, 5

10 When deed comes into force

A deed that has been delivered comes into force,—

- (a) if the deed specifies a date for that purpose, on that date; or
- (b) if the deed does not specify a date for that purpose,—
 - (i) on delivery, if the deed is delivered unconditionally; or
 - (ii) on the occurrence of the circumstance in which the person bound by the deed contemplated that it would come into force, if the deed is delivered subject to conditions.

11 Alterations after deed executed

- (1) The rule of law that a deed becomes invalid if there is a material alteration after its execution is abolished.
- (2) Subsection (1) does not validate an alteration if it is invalid for another reason.

12 Attorney executing deed

An attorney executing a deed must be appointed by deed.

13 Contracts and other obligations entered into by bodies corporate

- (1) This section applies to any contract or other obligation entered into by a body corporate if—
 - (a) the body corporate is incorporated by or under the law of New Zealand; or
 - (b) the contract or other obligation is entered into in New Zealand; or
 - (c) the proper law of the contract or other obligation is the law of New Zealand.

- (2) A contract or other obligation may be entered into as follows:
 - (a) an obligation (which, if entered into by an individual, would under New Zealand law be required to be by deed) may be entered into by deed or instrument executed in accordance with section 9(3), (4), or (5):
 - (b) an obligation (which, if entered into by an individual, would under New Zealand law be required to be in writing) may be entered into on behalf of the body corporate in writing by a person acting under the body corporate's express or implied authority:
 - (c) an obligation (which, if entered into by an individual, would not under New Zealand law be required to be in writing) may be entered into on behalf of the body corporate in writing or orally by a person acting under the body corporate's express or implied authority.
- (3) This section prevails over any other enactment.

14 Construction of supplementary or annexed deed

A deed expressed to be supplementary to a previous deed or directed to be read as an annex to a previous deed must be read, and has effect, as if it were endorsed on the previous deed or contained a full recital of the previous deed.

Compare: 1952 No 51 s 8

15 Receipt for consideration in body of deed

- (1) A receipt for consideration in the body of a deed has the same effect as if the receipt had been endorsed on the deed.
- (2) Subsection (1) applies to avoid doubt.
- (3) Any rule of law inconsistent with subsection (1) is abolished.

Compare: 1952 No 51 s 6

16 Powers of appointment

- (1) An appointment to be made by deed or writing (but not a will) is valid if it is executed in accordance with the requirements for the execution of a deed.

- (2) Subsection (1) applies even though the instrument conferring the power of appointment requires some additional or other formality.

Compare: 1952 No 51 ss 9, 11

17 Disclaimer of land

A disclaimer of land is not valid unless it is made by deed or by order of a court.

Compare: 1952 No 51 s 12

18 Specific performance of voluntary promises made by deed

- (1) A court—

- (a) may make an order for the specific performance of a voluntary promise made by deed; but
- (b) must not refuse to do so because there was no valuable consideration for the promise.

- (2) Subsection (1) applies to deeds coming into operation only on or after 1 January 2008.

19 Powers of attorney

- (1) Anything done by or to an attorney on behalf of the donor of a power of attorney has the same effect as if it had been done by or to the donor if—

- (a) it is within the attorney's powers; and
- (b) it is done while the power of attorney is in force.

- (2) Subsection (1) applies subject to subsection (3) and section 12.

- (3) An instrument executed by an attorney on behalf of the donor of a power of attorney must—

- (a) be made in the name of the donor; and
- (b) state that it is being executed on the donor's behalf by the donor's attorney; and
- (c) otherwise be executed by the attorney in the same manner as would be required if the attorney were a party to the instrument.

Compare: 1952 No 51 s 134

20 Power of attorney continues in force until notice of revocation received

- (1) A power of attorney continues in force until notice of an event revoking the power is received by the attorney.
- (2) Subsection (1) applies unless the power of attorney provides otherwise.
- (3) A person dealing with an attorney may rely on a certificate of non-revocation of the power of attorney in the form set out in Schedule 1 as conclusive proof of the non-revocation of the power of attorney as at the date of the certificate if—
 - (a) the person—
 - (i) is dealing with the attorney in good faith; and
 - (ii) does not have actual notice of an event revoking the power of attorney; and
 - (b) the certificate—
 - (i) is signed by—
 - (A) the attorney; or
 - (B) if the attorney is a body corporate, a director or officer of the body corporate or a person acting on behalf of the body corporate in another capacity; and
 - (ii) is given immediately before, or at any time after, the doing of a thing by the attorney.
- (4) A person who knowingly gives a false certificate under subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
- (5) If the power of attorney is an enduring power of attorney within the meaning of Part 9 of the Protection of Personal and Property Rights Act 1988,—
 - (a) section 103C of that Act applies to it instead of subsections (1) to (4); but
 - (b) if a certificate of non-revocation of the power of attorney was given in respect of the enduring power of attorney before the commencement of section 18 of the Protection of Personal and Property Rights Amendment Act 2007, subsections (1) to (4) of this section apply to the certificate instead of section 103C of the Protection of Personal and Property Rights Act 1988.

Compare: 1952 No 51 ss 135, 139

Section 20(5): added, on 25 September 2008, by section 26 of the Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90).

21 Irrevocable powers of attorney

- (1) Subsections (2) and (3) apply in favour of a purchaser.
- (2) An irrevocable power of attorney given for valuable consideration is not revoked by notice of an event that would otherwise revoke the power of attorney if the notice is received when the power of attorney cannot be revoked.
- (3) An irrevocable power of attorney not given for valuable consideration is not revoked by notice of an event that would otherwise revoke the power of attorney if the notice is received during—
 - (a) the period of 1 year after the date of the instrument; or
 - (b) any shorter period for which the instrument is expressed to be irrevocable.
- (4) In this section,—

event includes the death, mental deficiency, or bankruptcy of the donor of a power of attorney

irrevocable power of attorney means a power of attorney that is expressed in the instrument by which it is given to be—

 - (a) irrevocable; or
 - (b) irrevocable for a fixed time

purchaser includes a lessee or mortgagee, or other person who, for valuable consideration, takes or deals for any property.

Compare: 1952 No 51 ss 136, 137

22 Person between 18 and 20 years may do certain things

- (1) A person who is 18 years old or older but under 20 years old may do 1 or more of the following:
 - (a) execute a deed;
 - (b) appoint an attorney to do any act or thing that the person himself or herself can do;
 - (c) accept appointment, or act, as an attorney.
- (2) Anything done by a person under subsection (1) has the same effect as if the person were 20 years old.

Compare: 1952 No 51 s 134A

23 Construction of instruments

- (1) In an instrument, unless the context otherwise requires,—
month means a calendar month
person, or any term descriptive of a person, includes a body corporate.
- (2) In an instrument, unless the context otherwise requires,—
(a) words denoting a gender include every other gender:
(b) words in the singular include the plural, and words in the plural include the singular.

Compare: 1952 No 51 ss 13, 70

Subpart 2—Writing required in certain cases

24 Contracts for disposition of land not enforceable unless in writing

- (1) A contract for the disposition of land is not enforceable by action unless—
(a) the contract is in writing or its terms are recorded in writing; and
(b) the contract or written record is signed by the party against whom the contract is sought to be enforced.
- (2) In this section, **disposition** does not include—
(a) a short-term lease; or
(b) a sale of land by order of a court or through the Registrar.

Compare: 1956 No 23 s 2

25 Writing required for certain dispositions of interests in land

- (1) A disposition of any of the following must be in writing and signed by the person making the disposition:
(a) an existing interest in land acquired by taking possession of the land:
(b) an existing legal or equitable interest in land:
(c) an existing equitable interest in a mixed fund consisting partly of land and partly of other property.
- (2) A trust must be created in writing and signed by the settlor if—
(a) it relates to land; and
(b) it is to take effect in the lifetime of the settlor.

- (3) This section does not apply to a short-term lease.
- (4) This section does not affect—
 - (a) the creation or operation of a resulting, implied, or constructive trust; or
 - (b) the making or operation of a will; or
 - (c) the disposition of any interest in land by operation of law.

Compare: 1952 No 51 s 49A

26 Doctrine of part performance not affected

Sections 24 and 25 do not affect the operation of the law relating to part performance.

27 Contracts of guarantee must be in writing

- (1) This section applies to contracts of guarantee coming into operation on or after 1 January 2008.
- (2) A contract of guarantee must be—
 - (a) in writing; and
 - (b) signed by the guarantor.
- (3) Subsection (2) does not require the consideration for a contract of guarantee to be in writing or to appear by necessary implication from a writing.
- (4) In this section, **contract of guarantee** means a contract under which a person agrees to answer to another person for the debt, default, or liability of a third person.

Compare: 1956 No 23 ss 2, 3

Subpart 3—Sales and other similar transactions

Sale and purchase of land

28 Restriction on vendor's right to cancel agreement, etc, if purchaser in possession

- (1) This section applies—
 - (a) to any right—
 - (i) to cancel an agreement for the sale and purchase of land; and

- (ii) that is exercisable by the vendor because of a breach of the agreement by the purchaser; and
- (b) only after the purchaser has, under the agreement, entered into possession of the land.
- (2) The vendor may exercise the right to cancel the agreement—
 - (a) only if subsection (3) has first been complied with; and
 - (b) only in 1 of the 2 ways specified in subsection (4).
- (3) This subsection has been complied with if—
 - (a) the vendor serves on the purchaser a notice that complies with section 29; and
 - (b) at the expiry of the period specified in that notice, the breach complained of has not been remedied.
- (4) The 2 ways (referred to in subsection (2)(b) and in section 29(2)(b)) of exercising the right to cancel the agreement are—
 - (a) by obtaining from a court an order for possession of the land (in which case the agreement is cancelled from the making of, or from a later time specified for the purpose in, the order); or
 - (b) by re-entering the land peaceably (and without committing forcible entry under section 91 of the Crimes Act 1961).

Compare: 1952 No 51 s 50

29 Requirements for vendor's notice to purchaser

- (1) The notice required by section 28(3)(a) must adequately inform the purchaser of the following matters relating to the remedying of the breach complained of by the vendor:
 - (a) the nature and extent of the breach; and
 - (b) whether the vendor considers that the breach is capable of being remedied by the taking of 1 or more of the steps in paragraphs (c) to (e) and, if so, which of them the vendor considers is capable (alone or in combination) of remedying the breach; and
 - (c) if the vendor considers that the breach is capable of being remedied (wholly or in part) by the payment of amounts owing under the agreement, the amounts that the vendor considers the purchaser must pay to remedy (wholly or in part) the breach; and

- (d) if the vendor considers that the breach is capable of being remedied by the purchaser doing or stopping from doing any thing, any thing which the vendor considers the purchaser must do or stop doing to remedy (wholly or in part) the breach; and
 - (e) if the vendor considers that the breach is capable of being remedied (wholly or in part) by the purchaser paying reasonable compensation, the amount of compensation that the vendor considers reasonable to remedy (wholly or in part) the breach.
- (2) The notice required by section 28(3)(a) must also adequately inform the purchaser of the following matters:
 - (a) the period (which must be at least 12 working days after the date of service of the notice, and which must be specified in the notice whether or not the vendor considers that the breach is capable of being remedied) within which the purchaser must remedy the breach if it is capable of being remedied; and
 - (b) that the vendor may seek to cancel the agreement in 1 of the 2 ways specified in section 28(4) if, at the expiry of the period referred to in paragraph (a), the breach has not been, or cannot be, remedied; and
 - (c) the effect of sections 30 and 31; and
 - (d) the purchaser's right to apply to a court for relief against cancellation of the agreement under section 33, and the advisability of seeking legal advice on the exercise of that right.

Compare: 1952 No 51 s 50

30 Defects that do not invalidate vendor's notice or prevent purchaser offering reasonable compensation

The notice required by section 28(3)(a) is not invalid, and does not prevent the purchaser from offering an amount as reasonable compensation for the breach, solely because all or any of the following apply to the notice:

- (a) the notice does not, or may not, specify that the breach is capable of being remedied by the payment of reasonable compensation:

- (b) the notice specifies, or may specify, an amount of compensation that is unreasonable:
- (c) the notice specifies that the breach would be capable of being remedied by the payment of reasonable compensation, but does not also specify the amount that the vendor considers reasonable.

Compare: 1952 No 51 s 50

31 Section 28 does not prevent or limit claims for damages

Section 28 does not prevent a vendor from claiming, or affect the amount which the vendor may claim by way of, damages for the breach of—

- (a) an agreement for the sale and purchase of land; or
- (b) any other duty to the vendor that the purchaser may be under independently of the agreement.

Compare: 1952 No 51 s 50

32 Instruments have no effect so far as they conflict with section 28, 29, 30, or 31

A term has no effect if it—

- (a) is expressed or implied in an instrument; and
- (b) conflicts with section 28, 29, 30, or 31.

Compare: 1952 No 51 s 50

33 Relief against cancellation of agreement for sale of land

- (1) A purchaser may apply to a court for relief against cancellation of an agreement for the sale and purchase of land only if—

- (a) the purchaser has, under the agreement, entered into possession of the land; and
- (b) the vendor has served on the purchaser a notice that complies with section 29; and
- (c) the vendor has, after serving that notice, applied to a court for an order for possession of the land, or peaceably re-entered the land.

- (2) The application may be made either in the proceeding on the vendor's application for an order for possession (the **possession order proceeding**), or in a separate proceeding brought for the purpose by the purchaser—

- (a) before an order for possession has been made in the possession order proceeding; or
 - (b) if the vendor has peaceably re-entered the land, within 3 months after the date on which the vendor re-entered the land.
- (3) The court may, on the application, grant any relief against cancellation, on any conditions, it thinks fit.
- (4) In particular, the court may grant relief under this section even though either or both of the following apply:
 - (a) the cancellation is for breach of an essential term of the agreement:
 - (b) the breach is not capable of being remedied.

Compare: 1952 No 51 s 50

34 Section 33 replaces all other jurisdiction to grant relief

No relief against the cancellation of an agreement for the sale and purchase of land can be granted otherwise than under the powers given by section 33.

35 Application for relief not to constitute admission

- (1) An application under section 33 must not, in itself, be taken as an admission by the purchaser that—
 - (a) there has been a breach of the agreement by the purchaser:
 - (b) because of the breach of that kind, the vendor has the right to cancel the agreement:
 - (c) a notice has been duly served on the purchaser in accordance with section 28(3)(a):
 - (d) at the time when the vendor applied to a court for an order for possession of the land or peaceably re-entered the land, the period specified in the notice for the remedying of the breach (if it was capable of being remedied) had expired.
- (2) A court may grant relief under section 33 without determining all or any of the things in subsection (1).

Compare: 1952 No 51 s 50

36 Instruments have no effect so far as they conflict with section 33 or 34

A term has no effect if it—

- (a) is expressed or implied in an instrument; and
- (b) conflicts with section 33 or 34.

Compare: 1952 No 51 s 50

37 Purchaser may apply for order requiring refund of deposit, etc, in respect of certain agreements

- (1) This section applies to an agreement for the sale and purchase of land if—
 - (a) it comes into operation after 31 December 2007; and
 - (b) a court has not ordered, and no court would order, the specific performance of it by the purchaser; but
 - (c) the purchaser is not entitled to cancel it.
- (2) The purchaser may apply to a court for relief under this section in respect of the agreement.
- (3) On the application, the court may make an order doing all or any of the following in respect of the agreement:
 - (a) cancelling it;
 - (b) requiring the vendor to refund the deposit and any other amounts (including interest) paid by the purchaser under it;
 - (c) declaring that the purchaser has a lien on the land to which it relates to secure payment by the vendor of any amounts ordered under this section to be refunded to the purchaser.

38 Court awarding damages against purchaser must take into account relief granted under section 37

- (1) The granting of relief under section 37 in respect of an agreement for the sale and purchase of land does not deprive the vendor of any right to claim damages from the purchaser for the failure to perform the agreement.
- (2) However, a court awarding damages against the purchaser for the failure to perform the agreement must take into account any relief granted under section 37.

39 Agreements have no effect so far as they conflict with section 37 or 38

A term has no effect if it—

- (a) is expressed or implied in an agreement to which section 37 or 38 applies; and
- (b) conflicts with section 37 or 38.

40 Purchaser of lease must treat lease conditions as having been observed if vendor produces copy of rent receipt

- (1) This section applies to an agreement for the sale and purchase of a leasehold estate or interest in land if the vendor produces for the purchaser a copy of a receipt for the payment of the instalment of rent under the lease or sublease last due before the time of settlement.
- (2) The purchaser must, in the absence of evidence to the contrary and unless the agreement provides otherwise, treat the copy of the receipt as establishing that the following have been done so far as they are required to be done up to the time of settlement:
 - (a) the vendor has paid all rent due under the lease and has performed and observed all covenants and conditions of the lease; and
 - (b) if the sale is of an interest under a sublease, all rent due under every superior lease has been paid and all covenants and conditions of every superior lease have been performed and observed.

Compare: 1952 No 51 s 52(b)(v)

41 Vendor must ensure register not limited as to title (whether or not register is also limited as to parcels)

- (1) This section applies to an agreement for the sale and purchase of land comprised in a register that—
 - (a) was created before the making of the agreement; and
 - (b) is limited as to title under Part 12 of the Land Transfer Act 1952 (whether or not the register is also limited as to description of parcels under section 191 of that Act).
- (2) The vendor must, before the time of settlement, and unless the agreement provides otherwise,—
 - (a) do all acts (for example, prove all matters and comply with all requisitions by the Registrar-General) neces-

sary to cause the register to cease to be limited as to title (whether or not the register remains limited as to description of parcels); and

- (b) meet the expenses of complying with paragraph (a), including payment of any fee prescribed under the Land Transfer Act 1952.

Compare: 1952 No 51 s 54

Miscellaneous provisions

42 Auction sales of property other than goods

- (1) This section applies to the sale by auction of every kind of property other than goods.
- (2) If the property is put up for sale by auction in lots, each lot must be treated as the subject of a separate contract of sale, unless the contrary is proved.
- (3) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly, by or on behalf of the vendor.
- (4) The vendor, or 1 person on the vendor's behalf, may bid at the auction, but only if a right to bid by or on behalf of the vendor is expressly reserved by or on behalf of the vendor.
- (5) A sale by auction is complete when the auctioneer (by the fall of the hammer, or in some other customary manner) announces its completion.
- (6) A bid may be retracted by the bidder who made it at any time before the auction is complete.
- (7) If a sale by auction is not notified to be subject to a right to bid by or on behalf of the vendor,—
 - (a) the vendor must not bid or employ a person to bid at the sale on the vendor's behalf; and
 - (b) the auctioneer must not knowingly take a bid from the vendor or a person acting on the vendor's behalf.
- (8) The purchaser may treat as fraudulent a sale that contravenes subsection (7).

Compare: 1908 No 168 s 59; 1952 No 51 s 51

43 Later title not invalid because of defect in court order

- (1) This section applies to a person who acquires property, for valuable consideration and without fraud or notice of fraud, from some other person who became entitled to the property under an order of a court.
- (2) The person's title to the property is not, and does not become, invalid solely because of a defect (whether known to the person or not) in either or both of the following:
 - (a) the court's jurisdiction or power to make that order;
 - (b) the procedure followed in the making of that order.

Compare: 1952 No 51 s 59

44 Certain instruments authorise payment to practitioner instead of party for whom practitioner acts

- (1) This subsection applies to an electronic instrument—
 - (a) prepared for registration after payment of money or the giving of other consideration for a contract; and
 - (b) that contains a certification that complies with section 164A(3) of the Land Transfer Act 1952; but
 - (c) only if that certification is given by a practitioner acting for the party who, under that contract, is entitled to give a receipt for the payment of that money or the giving of that other consideration.
- (2) On the production, through an electronic workspace facility, of an electronic instrument to which subsection (1) applies, the person liable under the contract to pay or give the money or other consideration may, without further authority than the instrument, pay or give the money or other consideration to the practitioner who gave the certification.
- (3) This subsection applies to a paper instrument—
 - (a) that contains, or has written on it, a receipt for the payment of money or the giving of other consideration for a contract; but
 - (b) only if that instrument or receipt is signed by a person entitled to give a receipt for the payment of that money or the giving of that other consideration.
- (4) On the production by a practitioner of an instrument to which subsection (3) applies, the person liable to pay the money or give the other consideration referred to in the receipt may,

without further authority than the instrument, pay or give to the practitioner that money or consideration.

(5) In this section,—

electronic instrument and **electronic workspace facility** have the same meanings as in section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

paper instrument has the same meaning as in section 2 of the Land Transfer Act 1952

practitioner means—

- (a) a practitioner as defined in section 6 of the Lawyers and Conveyancers Act 2006; or
- (b) a landbroker licensed by the Registrar-General under section 229 of the Land Transfer Act 1952.

Compare: 1952 No 51 s 56

Subpart 4—Apportionment of periodical payments between vendors and purchasers

45 Apportionments in respect of time

- (1) This section applies to a periodical payment in respect of a fixed or ascertainable period (whether the payment is reserved or made payable under an instrument or not).
- (2) The payment must be regarded as accruing from day to day, and is apportionable in respect of time accordingly, as to both—
 - (a) the liability to make the payment; and
 - (b) the right to receive it.
- (3) Subsection (2) does not apply if a contrary intention is expressed in an instrument.

Compare: 1952 No 51 s 145

46 Payment and recovery of apportioned part of periodical payment

- (1) An apportioned part of a periodical payment is payable and recoverable,—
 - (a) for a continuing right to a payment, only when the entire payment becomes payable and recoverable:

- (b) for a payment the continuing right to which has ceased because of death, re-entry, or another cause, only when the entire payment would have become payable and recoverable if the continuing right to the payment had not ceased.
- (2) A person entitled to an apportioned part of a periodical payment—
 - (a) has, when the entire payment becomes payable and recoverable, the same remedies for recovering the apportioned part as would have been available in respect of the entire payment; but
 - (b) must bear a proportionate part of any allowance which should properly be made in respect of the entire payment.
- (3) Subsection (2) is subject to section 47(2).
Compare: 1952 No 51 ss 146, 147

47 Apportionment of rent from property

- (1) Rent from property, if payable in advance in respect of a period, is apportionable as between the parties to—
 - (a) a transfer or assignment of the property; or
 - (b) a transfer or assignment of the right to occupy or use the property.
- (2) A proceeding for the recovery of rent reserved out of, or charged upon, land may be brought only by the person who, if the rent had not been apportioned, would have been entitled to the entire rent, but that person is liable for the apportioned part to the person entitled to it under the apportionment.
- (3) **Rent**, in this section, includes—
 - (a) a rentcharge; and
 - (b) a payment in the nature of rent under a lease or a licence to occupy or use any property.
- (4) Subsection (2) overrides section 46(2).
Compare: 1952 No 51 s 147

Subpart 5—Assignment of things in action

48 Interpretation

In this subpart, unless the context otherwise requires,—

absolute, in relation to an assignment, means—

- (a) not conditional; or
- (b) not by way of charge only

assignment means an instrument effecting or relating to an assignment

debt includes an obligation to—

- (a) pay money;
- (b) deliver or transfer property;
- (c) do or not do any other thing

debt owing includes an obligation that is due to be performed

debtor means a person (including a trustee) who is under an obligation to pay a debt

payment of a debt includes the performance of an obligation that is not an obligation to pay money

thing in action—

- (a) means a right to receive payment of a debt; and
- (b) includes part of a thing in action.

49 Application of subpart

- (1) This subpart applies to an assignment of a thing in action made only on or after 1 January 2008.
- (2) A thing in action that is not capable of being assigned cannot be assigned under this subpart.
- (3) However, subsection (2) applies subject to section 53.
- (4) This subpart does not affect the application of section 18.
- (5) If only part of a thing in action is assigned, the rights and obligations under this subpart of the assignor, the assignee, and the debtor relate only to the part assigned.

50 How thing in action assigned

- (1) The absolute assignment in writing of a legal or equitable thing in action, signed by the assignor, passes to the assignee—
 - (a) all the rights of the assignor in relation to the thing in action; and
 - (b) all the remedies of the assignor in relation to the thing in action; and
 - (c) the power to give a good discharge to the debtor.

- (2) Subsection (1) applies whether or not the assignment is given for valuable consideration.
- (3) Subsection (1) applies subject to—
 - (a) section 51; and
 - (b) any equities in relation to the thing in action that arise before the debtor has actual notice of the assignment and would, but for subsection (1), have priority over the rights of the assignee.
- (4) The priority of an assignment to which subsection (1) applies and which is not given for valuable consideration is to be determined as if the assignment had been given for valuable consideration.
- (5) A legal or equitable thing in action is to be treated as having been assigned in equity (whether the assignment is oral or in writing) if—
 - (a) the assignee has given valuable consideration for the assignment; or
 - (b) the assignment is complete.
- (6) Subsection (5)—
 - (a) prevails over any rule of equity to the contrary; but
 - (b) applies subject to sections 24 and 25.
- (7) An assignment to which subsection (5) applies is complete when the assignor has done everything that needs to be done by the assignor to transfer to the assignee (whether absolutely, conditionally, or by way of charge) the rights of the assignor in relation to the thing in action.
- (8) Subsection (7) applies even though some other thing may remain to be done, without the intervention or assistance of the assignor, in order to confer title to the rights on the assignee.

Compare: 1952 No 51 s 130

51 Further consequences of assignment of thing in action

- (1) This section applies to a thing in action assigned in accordance with section 50(1) or in equity.
- (2) Payment of all or part of the debt to the assignor by a debtor who does not have actual notice of the assignment discharges the debtor to the extent of the payment.

- (3) The debt owing by a debtor who has actual notice of the assignment is payable to the assignee.
- (4) However, the debt is payable to another assignee if,—
 - (a) before discharge, the debtor receives actual notice of the assignment of the same thing in action to the other assignee; and
 - (b) the rights of the other assignee in relation to the thing in action have priority over the rights of the first assignee.
- (5) A debtor may interplead in any proceeding brought against the debtor for the payment of the debt, or apply to a court for an order determining the entitlement to any right in relation to a thing in action, if the debtor has actual notice—
 - (a) that an assignment of the thing in action is disputed by the assignee or anyone claiming under the assignor; or
 - (b) that there are other opposing or conflicting claims in relation to the thing in action.

Compare: 1952 No 51 s 130

52 Further provisions about assignments

- (1) The registration of an assignment under an enactment does not, of itself, give actual notice of the assignment to the debtor.
- (2) Subsection (1) overrides anything to the contrary in the enactment under which the assignment is registered.
- (3) Joint debtors have actual notice of the assignment of a thing in action or of any matter referred to in section 51 if any of them has actual notice of the assignment or matter.
- (4) The assignor must be joined in any proceeding brought by the assignee against the debtor if—
 - (a) only part of a thing in action has been assigned in accordance with section 50(1); or
 - (b) there has been an assignment only in equity of all or part of a thing in action.
- (5) For the purposes of subsection (4), an assignor may be joined in proceedings—
 - (a) when the proceedings are brought or subsequently; and
 - (b) if subsequently, whether before or after the expiry of the limitation period within which the proceedings must be

brought in order to avoid a limitation defence applying to a claim made in the proceedings.

Compare: 1952 No 51 s 130

Section 52(5)(b): amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

53 Assignment of amounts payable in future

An assignment of an amount that will or may be payable in the future under a right already possessed by the assignor (whether the right arises before, on, or after 1 January 2008) is to be treated as an assignment of a thing in action.

Subpart 6—Other transactions

54 Effect of no registration clause

- (1) This section applies to an instrument (whether coming into operation before, on, or after 1 January 2008) if—
 - (a) it creates a lease of land, a mortgage over land, an easement, a *profit à prendre*, or a contract for the grant of an easement or a *profit à prendre*; and
 - (b) it contains a no registration clause; and
 - (c) in the absence of a no registration clause, it would create an equitable interest in land capable of being enforced under the doctrine in *Walsh v Lonsdale* (1882) 21 Ch D 9.
- (2) The following provisions apply to an instrument:
 - (a) it is to be treated for all purposes as creating an equitable interest in land; but
 - (b) a court may not order the registration of the lease, mortgage, easement, or *profit à prendre* to which the instrument relates.
- (3) Subsection (2) applies to avoid doubt.
- (4) In this section, **no registration clause** means—
 - (a) a provision that a lessee, mortgagee, or grantee of an easement or *profit à prendre* is not entitled to a registered lease, mortgage, easement, or *profit à prendre* (as the case may be); or
 - (b) a provision to like effect.

55 Tenants in common may declare that they are joint tenants

- (1) Two or more persons beneficially entitled to property as tenants in common may, by deed, declare that they are joint tenants of the property.
- (2) A declaration made under subsection (1) takes effect on and from the date of the declaration.

Compare: 1952 No 51 s 48

56 Person may dispose of property to himself, herself, or itself

- (1) A person may dispose of an estate or interest in property to himself, herself, or itself, alone or jointly with some other person.
- (2) A disposition to which subsection (1) applies is enforceable in the same manner as a disposition to another person.

Compare: 1952 No 51 s 49

**Subpart 7—Abolition and modification of
common law rules relating to property**

57 Feudal incidents of estate in fee simple abolished

- (1) A Crown grant of land, or a certificate of title or computer register having the force and effect of a Crown grant of land, whether issued before, on, or after 1 January 2008, for an estate in fee simple confers on the person named in the Crown grant or the certificate of title or computer register a right of freehold tenure (free and common socage) without any incident of tenure for the benefit of the Crown.
- (2) An estate in fee simple is transferable, and has always been transferable, without the permission of the Crown or the need to make any payment to the Crown.
- (3) An instrument purporting to create, transfer, or assign an estate in fee simple in any land subject to the reservation to the person executing the instrument of an estate in fee simple (subinfeudation) continues to create, transfer, or assign an estate in fee simple without any such reservation.

58 Abolition of obsolete estates and rules

- (1) The following may not be created or done:
 - (a) estates tail and estates by wrong:
 - (b) the making of a forfeiture by any conveyance:
 - (c) the passing of the legal estate in any land by the following means:
 - (i) a covenant to stand seized:
 - (ii) livery of seisin:
 - (iii) a contract for the sale and purchase of land.
- (2) In an instrument coming into operation on or after 1 January 1953, words which, before that date, would have created an estate tail are to be treated as creating an estate in fee simple.
- (3) Words in an instrument which, but for the abolition of the rule of law known as the rule in Shelley's case (by section 5(1)(a) of the Property Law Amendment Act 1951 and section 22 of the Property Law Act 1952), would have operated to give a person an interest in fee simple are to be treated as words of purchase and not of limitation.

Compare: 1952 No 51 ss 15–17, 22

59 Future estates and interests

- (1) Estates and interests in property may be created that take effect at a future time.
- (2) Subsection (1) applies subject to the rule against perpetuities and the Perpetuities Act 1964.

Compare: 1952 No 51 ss 18, 19

60 Doctrine of interesse termini abolished

- (1) The legal doctrine of interesse termini is abolished.
- (2) A lessee acquires an estate in the land at the time fixed for the commencement of the lease, whether or not the lessee enters into possession of the land at that time.
- (3) Subsection (2) applies subject to section 41 of the Land Transfer Act 1952.
- (4) Subsection (3) does not limit section 8.

61 Life estate in leasehold estate

An estate for life may be created in relation to a leasehold estate in land.

Compare: 1952 No 51 s 19

62 Creation and disposition of estates and interests in property

- (1) Every estate, interest, or right in property that can be created or disposed of may be created or disposed of by an individual—
 - (a) during the individual's lifetime; or
 - (b) by will.
- (2) However, subsection (1) does not make a joint tenancy severable by will.

Compare: 1952 No 51 ss 18, 19, 21

63 Contingent remainders and interests

- (1) A contingent remainder or contingent interest in land may follow a leasehold estate in the land.
- (2) A contingent remainder or contingent interest in land, expressed to take effect on the ending of a preceding estate in the land, does not become void because the preceding estate ends before the occurrence of the event or the fulfilment of the condition on which the contingent remainder or contingent interest depends.
- (3) Different estates in land vested in the same person do not merge if the estates are separated by the contingent remainder or contingent interest in the land of some other person.
- (4) In this section, **contingent remainder** or **contingent interest** means a remainder or interest that depends on—
 - (a) a future event that may or may not occur; or
 - (b) a condition that may or may not be fulfilled.

Compare: 1952 No 51 s 20

64 When gifts over cease to be capable of taking effect

- (1) This section applies if—
 - (a) a person (**person A**) is entitled to an estate or interest in land; and

- (b) the estate or interest is subject to a gift over to another person (**person B**) if person A has no issue or no issue of a specified class (whether at any specified time or within any specified period).
- (2) The gift over ceases to be capable of taking effect as soon as there is issue, or a member of the specified class of issue, who attains the age of 20 years.
- (3) Subsection (2) applies even if the issue may subsequently fail.
- (4) In this section, **gift over** includes a gift over expressed to take effect on the ending of an estate or interest preceding that of the person whose estate or interest is the subject of the gift over.

Compare: 1952 No 51 s 23

65 Meaning of heirs and similar words

- (1) This section applies—
 - (a) to an instrument coming into operation on or after 1 January 1953; but
 - (b) subject to the terms of the instrument.
- (2) Subsection (3) applies to an instrument conferring an estate or interest in property on—
 - (a) the heir or heirs of a person; or
 - (b) the next of kin of a person; or
 - (c) the next of kin of a person to be determined in accordance with the Administration Act 1969; or
 - (d) the family of a person; or
 - (e) the relatives of a person.
- (3) The instrument is to be treated as conferring the estate or interest on the persons who, on the intestacy of the person referred to in subsection (2), would take beneficially under the Administration Act 1969, and in the same shares.
- (4) Subsection (5) applies to an instrument conferring an estate or interest in property on the heir or heirs of the body of a person.
- (5) The instrument is to be treated as conferring the estate or interest on the person who would take beneficially on the intestacy of the person referred to in subsection (4) in accordance with a direction under the Administration Act 1969 to hold the per-

son's property for the issue of the intestate on the statutory trusts.

- (6) Subsection (7) applies to an instrument conferring an estate or interest in property on—
 - (a) the male heir or heirs of a person or of the body of a person; or
 - (b) the female heir or heirs of a person or of the body of a person.
- (7) The instrument is to be treated as conferring the estate or interest on the male or female issue of the person (as the case may be) who would take beneficially on the intestacy of the person in accordance with a direction under the Administration Act 1969 to hold the person's property for the issue of the intestate on the statutory trusts.

Compare: 1952 No 51 ss 37, 38

66 Future interests to carry accumulated income

- (1) This section applies to an interest in property—
 - (a) created by an instrument coming into operation on or after 1 January 1953; and
 - (b) taking effect at a future time.
- (2) The interest in the property carries the income from the property that accumulates during the period—
 - (a) beginning on the later of the following dates:
 - (i) the date on which the instrument comes into operation; or
 - (ii) the date on which the operation of any preceding interest ends; and
 - (b) ending on the close of the day before the date on which the future interest takes effect.
- (3) This section applies subject to the instrument making some other provision for the disposition of income during that period.

Compare: 1952 No 51 s 35

67 Vendor has no lien

A vendor of land has no legal or equitable lien over the land because of unpaid purchase money.

Compare: 1952 No 51 s 28

68 Voluntary waste or equitable waste by life tenant or lessee

- (1) A life tenant or a lessee of land is liable in damages for the tort of voluntary waste and the tort of equitable waste to the person entitled to the reversion or remainder expectant on the estate for life or the lease.
- (2) Subsection (1) applies unless the liability is excluded by an express or implied term of the grant of the estate for life or the lease.
- (3) However, liability for equitable waste—
 - (a) is not excluded by the exclusion of waste or voluntary waste; but
 - (b) is excluded only if expressly excluded.

69 Voluntary or equitable waste by co-owner

A co-owner of land is liable in damages to the other co-owners of the land for any loss arising from an act or omission that would be the tort of voluntary waste or of equitable waste if done or omitted by a life tenant or lessee.

70 Permissive waste abolished

The tort of permissive waste is abolished.

71 Release of part of land from rentcharge

- (1) This section applies if an encumbrance over land securing a rentcharge is released in relation to part of the land.
- (2) The rentcharge remains secured by the encumbrance over the residue of the land.
- (3) If the owner of the residue is not the owner of the part released and has not consented to the release, the owner of the residue is entitled (in relation to the rentcharge) to the same contribution from the owner of the part released as would have been payable by that owner if there had been no release.

Compare: 1952 No 51 s 31

72 Body corporate may hold property as joint tenant

- (1) If a body corporate has power to acquire and hold property, the body corporate may acquire and hold property as a joint tenant with 1 or more individuals or other bodies corporate.

- (2) If a body corporate is a joint tenant of property, its interest as joint tenant devolves on the surviving joint tenant in the following cases:
 - (a) in the case of a company, if it is removed from the New Zealand register:
 - (b) in the case of an overseas company registered under Part 18 of the Companies Act 1993, if it is removed from the overseas register:
 - (c) in any other case, if it ceases to exist.
- (3) This section—
 - (a) overrides section 324 of the Companies Act 1993; but
 - (b) does not apply to a company removed from the New Zealand register under section 355 of the Companies Act 1993.

Compare: 1952 No 51 s 32

73 Release and disclaimer of powers

- (1) This section—
 - (a) applies to a power to deal with or dispose of property whether or not the person who can exercise the power has an interest in the property to which the power relates; but
 - (b) does not apply to the power if it is a power in the nature of a trust.
- (2) The person who can exercise a power may—
 - (a) release the power by deed or contract; or
 - (b) disclaim the power by deed.
- (3) The release of a power extinguishes the power.
- (4) If a power is disclaimed—
 - (a) the person who disclaimed the power may not exercise or join in the exercise of the power; but
 - (b) any other person who can exercise the power, and who has not disclaimed it, may continue to exercise the power.
- (5) Subsection (4)(b) applies subject to the terms of the instrument creating the power.

Compare: 1952 No 51 s 34

74 Power to appoint among different objects

- (1) If an instrument creates a power to appoint property among several objects, the power may be exercised—
 - (a) to exclude some or all of those objects:
 - (b) to appoint shares of different sizes to 1 or more of them.
- (2) Subsection (1) applies subject to the terms of the instrument creating the power.

Compare: 1952 No 51 s 40

Part 3

Mortgages

Subpart 1—General provisions

75 Application of Part

- (1) This Part (except as provided in section 76) applies in accordance with section 8 to every mortgage that comes into operation before, on, or after 1 January 2008.
- (2) Subsection (1) applies subject to any other provision of this Act or of another enactment providing otherwise.

76 Application of sections 79, 92, 94, 95, and 96

- (1) Sections 79 and 95(1) and (2) apply to every mortgage over land that comes into operation on or after 1 January 2008.
- (2) Section 92 applies to every mortgage over property that comes into operation on or after 1 January 2008 (subject to section 89(4)).
- (3) Section 94 applies to every mortgage over property that comes into operation before 1 January 2008 (subject to section 89(4)).
- (4) Section 95(3) to (5) apply to every registered mortgage over land under the Land Transfer Act 1952 that comes into operation before 1 January 2008.
- (5) Section 96 applies to every mortgage over goods that comes into operation on or after 1 January 2008 (subject to sections 77 and 96(3)).

77 Non-application of Part to security interests in consumer goods

Nothing in subparts 3 to 8 applies to security interests in consumer goods to which the Credit (Repossession) Act 1997 applies.

78 Provisions of Part are supplementary, but subject, to Personal Property Securities Act 1999 in relation to mortgages over personal property

- (1) If a provision of this Part applies to a mortgage that creates or provides for a security interest to which the Personal Property Securities Act 1999 applies, the provision is supplementary to the Personal Property Securities Act 1999.
- (2) However, if the provision is inconsistent with a provision in the Personal Property Securities Act 1999, the provision in the Personal Property Securities Act 1999 prevails.
- (3) This section does not limit section 8.

Subpart 2—Form and effect of mortgages

79 Mortgage over land to take effect as charge

- (1) A mortgage over land, whatever its form,—
 - (a) takes effect as a charge; and
 - (b) does not operate as a transfer of the estate or interest charged.
- (2) Subsection (1) does not apply if the mortgage is created by a registered transfer instrument.

80 No mortgage over land by deposit of instruments of title

A mortgage over land is not created by the deposit of the instruments of title relating to the land, whether or not the deposit is accompanied by a memorandum of the intent with which the deposit is made.

Compare: 1952 No 51 s 77

81 Right of mortgagor to bring proceeding against mortgagee

- (1) A mortgagor of land may bring a proceeding against the mortgagee without first offering to redeem the mortgaged land.

- (2) Subsection (1) applies despite anything to the contrary expressed or implied in the mortgage.

Compare: 1952 No 51 s 80B(2)

82 Effect of advance on joint account

- (1) This section applies if—
- (a) an instrument provides that all or part of the amounts secured by a mortgage over property or owing under an unsecured obligation have been advanced by, or are owing to, 2 or more persons as amounts belonging to them on joint account; or
 - (b) a mortgage or unsecured obligation is given to, or acquired by, 2 or more persons jointly and not in shares.
- (2) The amounts or other benefits for the time being due to the persons under the mortgage or obligation belong to them, and continue to belong to them, on joint account.
- (3) The written receipt for all amounts or other benefits for the time being due under the mortgage or obligation is a complete discharge if it is given by—
- (a) the survivors or the last survivor of the persons referred to in subsection (1)(a) or (b); or
 - (b) the administrator of the last survivor of those persons; or
 - (c) the assignee of the survivors or of the last survivor of those persons.
- (4) Subsection (3) applies even if the payer has notice of the severance of the joint account.
- (5) The persons referred to in subsection (3) may exercise the powers conferred by the mortgage or obligation to the same extent and with the same effect as if the mortgagees or obligees had exercised the powers.
- (6) This section has effect subject to any contrary intention expressed or implied in an instrument.

Compare: 1952 No 51 s 80

*Discharge, assignment, and variation of
mortgages*

83 Discharge of mortgage

- (1) A mortgage over property may be wholly or partially discharged by an instrument that—
 - (a) is endorsed on, or attached to, the mortgage instrument, or the existence of which is recorded on or with the mortgage instrument; and
 - (b) is executed by the mortgagee in the same manner as a deed is required to be executed; and
 - (c) states that the mortgagee discharges the property from the mortgage wholly or in part, or words to that effect.
- (2) A mortgage over land under the Land Transfer Act 1952 may also be wholly or partially discharged by a mortgage discharge instrument that is registered under that Act.
- (3) A mortgage discharge instrument that is duly executed under subsection (1) or registered under subsection (2)—
 - (a) operates as if it were a deed; and
 - (b) transfers or releases to the current mortgagor the interest of the mortgagee in the mortgaged property to the extent specified in the instrument.

Compare: 1952 No 51 s 79(1)(a), (2), (4)

84 Assignment of mortgage

- (1) The interest of a mortgagee under a mortgage over property may be assigned by an instrument that—
 - (a) is endorsed on, or attached to, the mortgage instrument, or the existence of which is recorded on or with the mortgage instrument; and
 - (b) is executed by the mortgagee in the same manner as a deed is required to be executed; and
 - (c) states that the mortgagee assigns to the assignee all the amounts and all the benefits of any other obligations secured by the mortgage, and all rights, powers, and remedies of the mortgagee under the mortgage, and the whole of the mortgagee's interest in the mortgaged property, or words to that effect.

- (2) The interest of a mortgagee under a mortgage over land under the Land Transfer Act 1952 may also be assigned by a transfer instrument that is registered under that Act.
- (3) An instrument that is duly executed under subsection (1) or registered under subsection (2) operates as if it were a deed and transfers to the assignee—
 - (a) the debt; and
 - (b) the benefits of any other obligations secured by the mortgage; and
 - (c) the interest of the mortgagee in the mortgaged property; and
 - (d) all rights, powers, and remedies of the mortgagee under the mortgage.

Compare: 1952 No 51 s 79(1)(b), (2), (5)

85 Variation of mortgage

- (1) The principal amount secured by a mortgage over property may be reduced or increased by an instrument that—
 - (a) complies with subsection (5); and
 - (b) is executed,—
 - (i) in the case of a reduction, by the mortgagee; or
 - (ii) in the case of an increase, by the current mortgagor; and
 - (c) states that the principal amount intended to be secured by the mortgage is reduced or increased, as the case may be, to the amount or in the manner specified in the instrument, or words to that effect.
- (2) The rate of interest payable under a mortgage over property may be reduced or increased by an instrument that—
 - (a) complies with subsection (5); and
 - (b) is executed,—
 - (i) in the case of a reduction, by the mortgagee; or
 - (ii) in the case of an increase, by the current mortgagor; and
 - (c) states that the rate of interest payable under the mortgage is reduced or increased, as the case may be, to the rate or sum or in the manner specified in the instrument, or words to that effect.

- (3) The term or currency of a mortgage over property may be shortened, extended, or renewed by an instrument that—
 - (a) complies with subsection (5); and
 - (b) is executed by the current mortgagor and by the mortgagee; and
 - (c) states that the term or currency of the mortgage is shortened, extended, or renewed, as the case may be, to the date or in the manner specified in the instrument, or words to that effect.
- (4) The covenants, conditions, and powers expressed or implied in a mortgage over property may be varied, negated, or added to by an instrument that—
 - (a) complies with subsection (5); and
 - (b) is executed by the current mortgagor and by the mortgagee; and
 - (c) states that the covenants, conditions, and powers expressed or implied in the mortgage are varied in the manner specified in the instrument, or words to that effect.
- (5) For the purposes of subsections (1) to (4), a mortgage variation instrument must—
 - (a) be endorsed on, or attached to, the mortgage instrument, or have its existence recorded on or with the mortgage instrument; and
 - (b) be executed in the same manner as a deed is required to be executed.
- (6) A mortgage over land under the Land Transfer Act 1952 may also be varied by a mortgage variation instrument that is registered under that Act.

Compare: 1952 No 51 s 79(1)(c)–(f), (3)

86 Effect of mortgage variation instrument

A mortgage variation instrument that is duly executed under section 85(1) to (5) or registered under section 85(6)—

- (a) operates as if it were a deed; and
- (b) varies the mortgage in accordance with the terms of the instrument.

*Advances for protection and realisation of
security*

87 Mortgage secures advances for protection and realisation of security

- (1) A mortgage over property secures all amounts reasonably paid or advanced at any time by the mortgagee—
- (a) for the protection, insurance, maintenance, preservation, or repair of the mortgaged property; or
 - (b) to remedy any default by the mortgagor in respect of any other mortgage or encumbrance over the property, to the extent that it has priority over the mortgagee's mortgage; or
 - (c) for the payment of rates or other outgoings; or
 - (d) to meet the expenses of the mortgagee in entering into possession, or in doing anything that a mortgagee in possession is required or entitled to do; or
 - (e) with a view to the realisation of the security (including any additional amount referred to in section 120(2) or 129(2)).
- (2) A mortgage over property secures all interest on any amounts paid or advanced for all or any of the purposes referred to in subsection (1) at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage.

88 Priority extends to advances for protection and realisation of security

The priority of a mortgage over property, in relation to any subsequent mortgage over the property, extends to all amounts paid or advanced for all or any of the purposes referred to in section 87(1) and to the interest referred to in section 87(2).

Priority for further advances

89 Priority of security for advances after subsequent mortgage comes into operation

- (1) The priority of a mortgage over property (the **prior mortgage**), in relation to any subsequent mortgage over the property, does not extend to advances made under the prior mort-

gage after the subsequent mortgage comes into operation, except—

- (a) as provided in sections 88 and 90 to 94; or
 - (b) in accordance with an instrument that is executed by the mortgagee under the prior mortgage and the mortgagee under the subsequent mortgage.
- (2) The priority of the security for amounts advanced under a variation of a mortgage that comes into operation on or after 1 January 2008 must, for the purposes of section 88, this section, and sections 90 to 94, be determined as if the variation were a separate mortgage.
 - (3) Any rule of law permitting the tacking of further advances so as to obtain priority except in accordance with sections 90 to 94 is abolished.
 - (4) Nothing in this section or in sections 90 to 94 applies to a security interest to which the Personal Property Securities Act 1999 applies.

90 Advance of specified principal amount after subsequent mortgage

- (1) This section applies if—
 - (a) a mortgage over property (the **prior mortgage**) secures a specified principal amount (whether or not the mortgage also secures further advances, or further advances up to a stated priority limit); and
 - (b) all or any part of the specified principal amount is advanced after a subsequent mortgage over that property comes into operation.
- (2) The priority of the prior mortgage, in relation to the subsequent mortgage, extends to the whole of the specified principal amount.
- (3) In this section, **specified principal amount** does not include any part of the amount that has been repaid to the mortgagee and re-advanced.

Compare: 1952 No 51 s 80A(1)

91 Priority extends to further advances if mortgagee does not have actual notice of subsequent mortgage or is obliged to make further advances

If a mortgage over property secures a further advance by way of financial accommodation, the priority of the mortgage, in relation to any subsequent mortgage over the property, extends to the further advance if, when the further advance is made,—

- (a) the mortgagee does not have actual notice of the existence of the subsequent mortgage; or
- (b) the mortgagee has actual notice of the existence of the subsequent mortgage, but—
 - (i) is under an obligation to make the further advance; and
 - (ii) does not, at the time of entering into the obligation, have actual notice of the existence of the subsequent mortgage.

Compare: 1952 No 51 s 80A(2)

92 Priority extends to further advances up to stated priority limit

- (1) If a mortgage over property secures further advances by way of financial accommodation up to a stated priority limit, the priority of the mortgage, in relation to any subsequent mortgage over the property, extends to every such further advance, up to the stated priority limit.
- (2) Subsection (1) applies whether or not the mortgagee had actual notice of the existence of the subsequent mortgage when the further advance was made.
- (3) A stated priority limit may be expressed—
 - (a) in the currency of any country; and
 - (b) as an amount plus interest, or as an amount without more (in which case the amount expressed includes interest).
- (4) Unless a stated priority limit expressly includes amounts paid or advanced by the mortgagee for any of the purposes referred to in section 87,—
 - (a) amounts paid or advanced for any of those purposes and the interest referred to in section 87(2) must not be

taken into account in determining whether or not further advances exceed the stated priority limit; and

- (b) the priority of the mortgage, in relation to any subsequent mortgage, extends to all amounts paid or advanced for any of those purposes and to the interest referred to in section 87(2), even if the effect of the payment or advance or interest is to take the total of the amounts secured by the mortgage over the stated priority limit.

Compare: 1952 No 51 s 80A(2), (3)

93 Interpretation for purposes of sections 91 and 92

In sections 91 and 92—

further advance by way of financial accommodation means a further advance made—

- (a) to the mortgagor or any other person; or
- (b) to pay amounts, provide credit, or meet any other indebtedness (actual, future, or contingent) secured by the mortgage, whether directly or by way of guarantee, and whether or not advanced under a contractual obligation, and whether advanced to the mortgagor or to some other person; or
- (c) under any guarantee, indemnity, or bond given by the mortgagee at the request of the mortgagor, whether for the acts or omissions of the mortgagor or of some other person; or
- (d) under a contractual obligation by the mortgagee to pay amounts owing under a bill of exchange, promissory note, draft, order, or other negotiable instrument or under a letter of credit drawn, accepted, paid, endorsed, discounted, or established at the request of the mortgagor, whether or not it has arrived at maturity, and whether for the benefit of the mortgagor or some other person; or
- (e) by way of re-advancement of amounts secured by the mortgage and repaid to the mortgagee

stated priority limit means an amount expressly stated in a relevant mortgage instrument as the maximum amount for

which the mortgage has priority, in relation to any subsequent mortgage.

94 Transitional provisions for further advances

- (1) Section 92 does not affect the priority of a mortgage over property that comes into operation before 1 January 2008, so far as it extends to further advances expressly secured by—
 - (a) the mortgage; or
 - (b) any variation of the mortgage that comes into operation before that date.
- (2) Subsection (1) applies whether the further advances are made before, on, or after 1 January 2008.
- (3) The priority of the security for further advances made on or after 1 January 2008 under a mortgage or variation of mortgage referred to in subsection (1) must be determined as if section 80A of the Property Law Act 1952 had not been repealed by this Act.

**Subpart 3—Covenants, conditions, and
powers implied in mortgages**

95 Covenants implied in mortgages over land

- (1) Every mortgage over land contains the implied covenants, conditions, and powers set out in Part 1 of Schedule 2 to the extent that they are relevant in the circumstances.
- (2) Subsection (1) applies unless a contrary intention is expressed (whether in the mortgage or otherwise) in accordance with section 279(2).
- (3) Every registered mortgage over land under the Land Transfer Act 1952 that comes into operation before 1 January 2008 contains an implied power of the mortgagee, upon the mortgagor's default, to enter into possession of the mortgaged land.
- (4) The power under subsection (3) may be exercised only—
 - (a) after the expiry of the period specified in the notice required by section 119 or with the leave of a court granted under section 126; and
 - (b) in accordance with subpart 6.
- (5) Subsection (4) is subject to sections 127 and 175.

Compare: 1952 No 51 s 78; 1952 No 52 s 106

96 Covenants implied in mortgages over goods (except inventory)

- (1) Every mortgage over goods contains the implied covenants, conditions, and powers set out in Part 2 of Schedule 2.
- (2) Subsection (1) applies unless a contrary intention is expressed (whether in the mortgage or otherwise) in accordance with section 279(2).
- (3) However, subsection (1) does not apply to the extent that the mortgage is over inventory.

Subpart 4—Redemption of mortgages

97 Equity of redemption

- (1) The current mortgagor or any other person entitled to redeem mortgaged property may redeem it in accordance with this subpart at any time before it has been sold, under a power of sale, by the mortgagee or a receiver.
 - (2) The mortgagee must, on payment to the mortgagee of all amounts and the performance of all other obligations secured by the mortgage, at the expense of the current mortgagor or other person seeking to redeem the mortgaged property, discharge the property from the mortgage in accordance with section 83.
 - (3) Subsection (2) does not apply if a request is made to the mortgagee under section 102 for the mortgage to be transferred.
- Compare: 1952 No 51 s 81(1), (5)

98 Amounts secured include interest for unexpired portion of term

- (1) This section applies if—
 - (a) the term of a mortgage has not expired; and
 - (b) the mortgagee—
 - (i) is not in possession of the mortgaged property; and
 - (ii) has not appointed a receiver; and
 - (iii) has not taken any other steps to realise the security (except giving notice under section 119 or 128).

- (2) For the purposes of section 97, the amounts secured by the mortgage include interest on the principal amount secured by the mortgage for the unexpired portion of the term.

Compare: 1952 No 51 s 81(2), (4)

99 Mortgagor or other person seeking to redeem must give notice or pay interest in certain circumstances

- (1) The current mortgagor or other person seeking to redeem the mortgaged property after the expiry of the term of the mortgage, or of any further term for which the mortgage has been renewed or extended, must—

- (a) either—
- (i) give the mortgagee not less than 60 working days' written notice of the intention to redeem; or
 - (ii) pay to the mortgagee 3 months' interest at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage; and
- (b) pay to the mortgagee all other amounts secured by the mortgage.

- (2) Subsection (1) does not apply if the mortgagee—

- (a) is in possession of the mortgaged property; or
- (b) has appointed a receiver; or
- (c) has taken any other steps to realise the security (except giving notice under section 119 or 128).

Compare: 1952 No 51 s 81(3)

100 Requirement to pay interest subject to credit contract legislation

Sections 98 and 99 are subject to—

- (a) Parts 2 and 5 of the Credit Contracts and Consumer Finance Act 2003; and
- (b) Part 1 of the Credit Contracts Act 1981 (as applied by section 143 of the Credit Contracts and Consumer Finance Act 2003).

101 Terms in instrument of no effect if less favourable

Any term that is expressed or implied in an instrument and that is inconsistent with sections 97 to 99 has no effect to the extent that it is less favourable to the current mortgagor or other person entitled to redeem the mortgaged property.

102 Request to mortgagee to transfer mortgage

- (1) The current mortgagor or any other person who is entitled to redeem the mortgaged property may, at any time (except a time when the mortgagee is in possession of the property), request the mortgagee to transfer the mortgage to a nominated person (except the current mortgagor).
- (2) A mortgagee under a subsequent mortgage or the holder of any other subsequent encumbrance may make a request under subsection (1) despite any intermediate interest.
- (3) A request made under subsection (1) by a person other than the current mortgagor prevails over a request made by the current mortgagor.
- (4) If 2 or more requests are made under subsection (1) by persons other than the current mortgagor, the request of the person whose interest has priority prevails.

Compare: 1952 No 51 ss 82, 83

103 Mortgagee must transfer mortgage after receiving request

The mortgagee must, after receiving a request made under section 102, transfer the mortgage to the nominated person on—

- (a) payment to the mortgagee of all amounts that would have been payable if the discharge of the mortgage had been sought under sections 97 to 101; and
- (b) the performance of all other obligations secured by the mortgage.

Compare: 1952 No 51 ss 82, 83

104 Right to inspect instruments of title

The current mortgagor or other person entitled to redeem the mortgaged property may, on request, at a reasonable time, and on payment of any reasonable costs, inspect and make copies

of, or extracts from, the instruments of title for the property that are in the custody or under the control of the mortgagee.

Compare: 1952 No 51 s 84

105 Restriction on consolidation

The current mortgagor or other person entitled to redeem the mortgaged property may redeem it without paying any amounts owing under any separate mortgage over other property in favour of the same mortgagee that was entered into by the current mortgagor or by any former mortgagor.

Compare: 1952 No 51 s 85

106 Instruments have no effect so far as they conflict with section 102, 103, 104, or 105

A term has no effect if it—

- (a) is expressed or implied in an instrument; and
- (b) conflicts with section 102, 103, 104, or 105.

Compare: 1952 No 51 ss 82–85

107 Application for order of court directing sale of mortgaged property

- (1) A person specified in subsection (2) may apply to a court for an order directing the sale of mortgaged property in any proceeding—
 - (a) concerning the mortgage or the mortgaged property; or
 - (b) brought for the purpose of obtaining the order.
- (2) The persons are—
 - (a) the current mortgagor;
 - (b) a former mortgagor;
 - (c) a covenantor;
 - (d) another person entitled to redeem the mortgaged property.
- (3) An application under this section must, unless the court orders otherwise, be served—
 - (a) on the mortgagee; and
 - (b) on any receiver appointed for the property; and
 - (c) on the mortgagee under any other mortgage, and the holder of any other encumbrance, over the mortgaged property (whether or not it has priority over

the mortgage in question) if that mortgage or other encumbrance—

- (i) is registered; or
- (ii) is unregistered, but the person applying to the court under this section has actual notice of it; and
- (d) in the case of mortgaged land, on any person who has lodged a caveat under section 137 of the Land Transfer Act 1952, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat, against the title to the land or any part of it; and
- (e) on every person, except the applicant, who would have been entitled to apply to the court under subsection (1).

Compare: 1952 No 51 s 86(1), (2)

108 Court may make order directing sale of mortgaged property

- (1) A court may, on an application under section 107, make an order directing the sale of the mortgaged property.
- (2) An order may be made under this section—
 - (a) without allowing time for the redemption of the property in accordance with sections 97 to 101; and
 - (b) without first determining the priority of any mortgages or other encumbrances over the property; and
 - (c) even if a person who has an interest in the property or in the mortgage—
 - (i) is not before the court; or
 - (ii) opposes the making of the order.
- (3) The court may make an order under this section on any conditions the court thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of the sale or to secure the performance of any other condition of the order.
- (4) The court may order that the sale be conducted by any party to the proceeding or by the Registrar.

Compare: 1952 No 51 s 86(2)–(4)

109 Redemption when mortgagee cannot be found, etc

- (1) A mortgage over property may be discharged by a court under sections 110 and 111 or by Public Trust under section 112 if—
- (a) a person who is entitled to receive, or has received, payment of the amounts secured by the mortgage is out of the jurisdiction, cannot be found, or is dead; or
 - (b) it is uncertain who is entitled to receive payment of the amounts secured by the mortgage.
- (2) If a mortgage is discharged under sections 110 to 112, an amount eventually shown to be payable to the person entitled to receive payment of the amounts secured by the mortgage, over and above the amount received by that person, continues to be a debt owing by the current mortgagor, any former mortgagor, and any covenantor as if it were owing under a deed.
- (3) This section does not relieve any person of the obligation to comply with section 115 (if that section applies).

Compare: 1952 No 51 s 87(1), (5)

110 Redemption by order of court

A court may, in a circumstance referred to in section 109(1), make—

- (a) all or any of the following orders on the application of the current mortgagor or any other person entitled to redeem the mortgaged property:
 - (i) an order to determine, in the manner that the court thinks fit, the amounts secured by the mortgage that would have been payable if the discharge of the mortgage had been sought under sections 97 to 101;
 - (ii) an order that the total amount determined under subparagraph (i) be paid into court;
 - (iii) an order declaring that all amounts secured by the mortgage have been paid in full;
- (b) an order that the amount paid into court be paid to a person who is entitled to receive payment of the amounts secured by the mortgage if—
 - (i) the person applies for an order under this paragraph; and

- (ii) the court is satisfied that the instruments of title relating to the mortgaged property have been delivered to the current mortgagor or other person entitled to redeem the mortgaged property or have otherwise been satisfactorily accounted for.

Compare: 1952 No 51 s 87(1), (3)

111 Certificates and orders operate as discharge of mortgage

- (1) A certificate by the Registrar that the amount ordered to be paid into court under section 110 was so paid, or a sealed copy of an order of a court declaring that all amounts secured by the mortgage have been paid in full, has effect as if it were a duly executed mortgage discharge instrument under section 83.
- (2) If the mortgage referred to in subsection (1) is over land and is registered under the Land Transfer Act 1952,—
 - (a) the Registrar-General must, on the registration of the certificate or order referred to in subsection (1), make an entry in the register relating to the certificate or order; and
 - (b) when an entry is made in the register under paragraph (a), the mortgage is discharged.
- (3) If the mortgage referred to in subsection (1) is over a ship and is registered under the Ship Registration Act 1992,—
 - (a) a Registrar of Ships must, on production of the certificate or order referred to in subsection (1), make an entry in the New Zealand Register of Ships to the effect that the mortgage has been discharged; and
 - (b) an entry made under paragraph (a) has the same effect as an entry made under section 45 of the Ship Registration Act 1992.
- (4) If the mortgage referred to in subsection (1) is over quota within the meaning of the Fisheries Act 1996 and is registered under that Act,—
 - (a) the chief executive within the meaning of that Act must, on production of the certificate or order referred to in subsection (1), make an entry in the appropriate register to the effect that the mortgage has been discharged; and
 - (b) an entry made under paragraph (a) has the same effect as an entry made under section 146 of that Act.

- (5) If the mortgage referred to in subsection (1) is over management rights or a spectrum licence within the meaning of the Radiocommunications Act 1989 and is registered under that Act,—
- (a) the Registrar of Radio Frequencies must, on production of the certificate or order referred to in subsection (1), make an entry in the Register of Radio Frequencies to the effect that the mortgage has been discharged; and
 - (b) an entry made under paragraph (a) has the same effect as an entry made under section 86 of that Act.
- (6) If the mortgage referred to in subsection (1) is over a policy within the meaning of section 41 of the Life Insurance Act 1908 and is registered under that Act,—
- (a) the secretary within the meaning of that Act must, on production of the certificate or order referred to in subsection (1), act under section 51 of that Act; and
 - (b) when the secretary acts under paragraph (a), the mortgage is discharged under sections 50 and 51 of that Act.
- (7) If the mortgage referred to in subsection (1) is over personal property and is registered under the Personal Property Securities Act 1999, the certificate or order referred to in subsection (1), on production to the Registrar of Personal Property Securities, has effect as if it—
- (a) were a financing change statement discharging the registration of the financing statement; and
 - (b) had been registered under section 160 of the Personal Property Securities Act 1999.

Compare: 1952 No 51 s 87(2), (4)

112 Redemption by payment to Public Trust

- (1) Public Trust must, in a circumstance referred to in section 109(1) and on the application of the current mortgagor or any other person entitled to redeem the mortgaged property, act in accordance with subsection (2) if Public Trust is satisfied that—
- (a) the applicant has paid to Public Trust all amounts secured by the mortgage that would have been payable if the discharge of the mortgage had been sought under sections 97 to 101; or

- (b) all amounts secured by the mortgage have been paid in full.
- (2) For the purposes of subsection (1), Public Trust must—
 - (a) execute a mortgage discharge instrument for the mortgage in accordance with section 83(1); or
 - (b) in the case of mortgaged land, register a mortgage discharge instrument for the mortgage.
- (3) A mortgage discharge instrument duly executed or registered by Public Trust under this section—
 - (a) has effect as if it were a discharge duly executed or registered by the mortgagee; and
 - (b) is conclusive proof that all conditions entitling Public Trust to act under this section have been satisfied.

Compare: 1952 No 51 s 87(5), (6)

113 Instruments of title must be delivered on production of Public Trust's receipt or certificate

A person in possession of the instruments of title for mortgaged property must deliver them to the current mortgagor or any other person entitled to redeem the mortgaged property on—

- (a) the production by the mortgagor or person of—
 - (i) Public Trust's receipt for all amounts secured by the mortgage that would have been payable if the discharge of the mortgage had been sought under sections 97 to 101; or
 - (ii) Public Trust's certificate that all amounts secured by the mortgage have been paid in full; and
- (b) payment of all proper charges (if any).

Compare: 1952 No 51 s 87(7), (8)

114 Public Trust not liable if acts reasonably and in good faith

- (1) If Public Trust, in discharging a mortgage under section 112, acts reasonably and in good faith, Public Trust is not liable to any person for any loss so caused.
- (2) The onus of proving that Public Trust has not acted reasonably and in good faith is on the person alleging it.

Compare: 1952 No 51 s 87(9)

115 Court may order discharge of mortgage if periodical payments secured are otherwise provided for

- (1) This section applies if a mortgage over property secures the payment to any person of a periodical payment, other than interest on the amounts secured by the mortgage.
- (2) A court may, on the application of the current mortgagor or any other person entitled to redeem the mortgaged property, make an order directing or allowing the payment into court of a specified amount that, in the opinion of the court, is sufficient to constitute a fund that will produce enough income to meet any periodical payment secured by the mortgage as it falls due.
- (3) In determining the specified amount under subsection (2), the court must—
 - (a) assume that the fund will be invested as a trustee is entitled and required to invest trust funds under Part 2 of the Trustee Act 1956; and
 - (b) make reasonable provision, in addition to the amount sufficient for the purpose specified in subsection (2), for the contingency of further costs, expenses, and interest, and any other contingency except the depreciation of any investment.
- (4) The court may, after giving notice to every person who is entitled to receive a periodical payment secured by the mortgage, make further orders directing the application or distribution of the income or the capital of the fund.

Compare: 1952 No 51 s 151

116 Certificate operates as discharge of mortgage

- (1) A certificate by the Registrar that the amount specified in an order under section 115 has been paid into court has effect as if it were a duly executed mortgage discharge instrument for the mortgage under section 83.
- (2) Section 111(2) to (7) apply to a certificate under subsection (1) as if it had been given under section 111.

Subpart 5—Restrictions on exercise of mortgagees' powers

117 Foreclosure abolished

Any rule of law entitling a mortgagee to foreclose the equity of redemption in mortgaged property is abolished.

Compare: 1952 No 51 s 89

118 Mortgagee accepting interest after expiry of term not to call up without notice

- (1) This section applies if—
 - (a) the term of a mortgage over property, or any period for which the term has been renewed or extended, has expired; and
 - (b) the principal amount secured by the mortgage has not been repaid; and
 - (c) the mortgagee has, after the date of expiry, accepted interest on the principal amount (except by entering into possession of the property or appointing a receiver) for a period not shorter than 3 months after that date; and
 - (d) the mortgagor has observed all covenants under the mortgage instrument except the covenant to repay the principal amount on the due date.
- (2) The mortgagee must not call up as payable the principal amount unless—
 - (a) the mortgagee has served on the current mortgagor a notice of the intention to do so at the expiry of the period specified in the notice; and
 - (b) that period has expired.
- (3) The period specified in the notice under subsection (2) must not be shorter than 60 working days after the date of service of the notice.
- (4) A notice under subsection (2) may be given in the same document as a notice under section 119 or 128.

Compare: 1952 No 51 s 90

119 Notice must be given to current mortgagor of mortgaged land of exercise of powers, etc

- (1) No amounts secured by a mortgage over land are payable by any person under an acceleration clause, and no mortgagee or receiver may exercise a power specified in subsection (2), by reason of a default, unless—
 - (a) a notice complying with section 120 has been served (whether by the mortgagee or receiver) on the person who, at the date of the service of the notice, is the current mortgagor; and
 - (b) on the expiry of the period specified in the notice, the default has not been remedied.
- (2) The powers are—
 - (a) the mortgagee's power to enter into possession of mortgaged land;
 - (b) the receiver's power to manage mortgaged land or demand and recover income from mortgaged land;
 - (c) the mortgagee's or receiver's power to sell mortgaged land.
- (3) Subsection (1) is subject to sections 125 and 126.
- (4) A notice required by this section may be given in the same document as a notice under section 118.

Compare: 1952 No 51 s 92(1)

120 Form of notice under section 119

- (1) The notice required by section 119 must be in the prescribed form and must adequately inform the current mortgagor of—
 - (a) the nature and extent of the default; and
 - (b) the action required to remedy the default (if it can be remedied); and
 - (c) the period within which the current mortgagor must remedy the default or cause it to be remedied, being not shorter than 20 working days after the date of service of the notice, or any longer period for the remedying of the default specified by any term that is expressed or implied in any instrument; and
 - (d) the consequence that if, at the expiry of the period specified under paragraph (c), the default has not been, or cannot be, remedied,—

- (i) the amounts secured by the mortgage and specified in the notice will become payable; or
 - (ii) the amounts secured by the mortgage and specified in the notice may be called up as becoming payable; or
 - (iii) the powers of the mortgagee or receiver specified in the notice will become exercisable; or
 - (iv) more than 1 of those things will occur.
- (2) A notice required by section 119 may specify that the action required to remedy the default includes the payment (whether to the mortgagee or receiver) of a specified amount, being the reasonable costs and disbursements (whether of the mortgagee or receiver) in preparing and serving the notice.
Compare: 1952 No 51 s 92(1A), (2)

121 Copy of notice under section 119 must be served on former mortgagor, covenantor, subsequent mortgagee, and caveator

- (1) A copy of the notice served under section 119 must, as soon as possible, be served (whether by the mortgagee or receiver) on the following persons if either the mortgagee or receiver has actual notice of the name and address of the person:
 - (a) any former mortgagor:
 - (b) any covenantor:
 - (c) any mortgagee under a subsequent mortgage, and any holder of any other subsequent encumbrance, over the mortgaged land if—
 - (i) the subsequent mortgage or other subsequent encumbrance is registered; or
 - (ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it; and
 - (d) any person who has lodged a caveat under section 137 of the Land Transfer Act 1952, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat, against the title to the mortgaged land or any part of it.
- (2) A failure to comply with this section does not prevent—

- (a) any amounts secured by the mortgage from becoming payable; or
 - (b) the exercise of the mortgagee's power to enter into possession of the mortgaged land; or
 - (c) the exercise of the receiver's power to manage the mortgaged land or demand and recover income from it; or
 - (d) the exercise of the mortgagee's or receiver's power to sell the mortgaged land.
- (3) However, if there is a failure to comply with this section, the mortgagee is liable in damages for any loss arising from that failure.

Compare: 1952 No 51 s 92(4), (4A)

122 Notice of intention to recover deficiency in relation to mortgages over land

- (1) This section applies if, under a mortgage over land,—
- (a) the mortgagee or receiver proposes, by reason of a default, to exercise a power to sell the mortgaged land; and
 - (b) the mortgagee proposes to recover any deficiency on the sale from a former mortgagor or a covenantor.
- (2) The mortgagee or receiver must serve notice of the intentions referred to in subsection (1) on the former mortgagor or covenantor concerned at least 20 working days before the exercise of the power of sale.
- (3) Subsection (2) applies whether or not the former mortgagor or covenantor has been served with a copy of the notice required under section 118 or 119.
- (4) A failure to serve a notice under subsection (2) on a former mortgagor or a covenantor does not prevent—
- (a) the mortgagee or receiver from exercising the power of sale; or
 - (b) the mortgagee from recovering any deficiency from the former mortgagor or covenantor.
- (5) However, a former mortgagor or a covenantor who is prejudiced by a failure to serve a notice under subsection (2) is, to the extent of the prejudice, released from liability to the mortgagee for the deficiency.

Compare: 1952 No 51 s 92(6)

123 Instruments have no effect so far as they conflict with section 119, 120, 121, or 122

A term has no effect if it—

- (a) is expressed or implied in an instrument; and
- (b) conflicts with section 119, 120, 121, or 122.

Compare: 1952 No 51 s 92(7)

124 Conditional sale of land permitted before expiry of notice

- (1) For the purposes of sections 119 to 122, a mortgagee or receiver does not exercise a power to sell mortgaged land, by reason of a default, by entering into a contract to sell, or granting an option to purchase, the land if the contract or option is conditional on the default not being remedied by the expiry of the period specified in a notice served under section 119.
- (2) Subsection (1) applies whether the contract is entered into, or the option is granted, before or after the service of the notice referred to in section 119 or 122.

Compare: 1952 No 51 s 92(1AA)

125 Notice not required before exercising certain powers under mortgage debenture

- (1) If a mortgage over land arises under a mortgage debenture,—
 - (a) a receiver may exercise any power, conferred by any term that is expressed or implied in the mortgage debenture, to manage the mortgaged land or demand and recover income from it without a notice being served on the current mortgagor under section 119; and
 - (b) amounts secured by the mortgage debenture may become payable under an acceleration clause without a notice being served on the current mortgagor under section 119.
- (2) Subsection (1) applies whether or not there is a collateral mortgage over the land securing the same amounts.

126 Court may grant leave to enter into possession of land, etc

- (1) A court may grant leave to a mortgagee to exercise any power to enter into possession of the mortgaged land, or to a receiver appointed under a mortgage over land to manage the mort-

gaged land or demand and recover income from it, by reason of a default,—

- (a) without a notice having been served on the current mortgagor under section 119; or
 - (b) after a notice under that section has been served on the current mortgagor, but before the expiry of the period specified in the notice for the remedying of the default.
- (2) The court may grant leave under this section on any conditions the court thinks fit.

Compare: 1952 No 51 s 92(5)

127 Transitional provisions for notices given or served before commencement of Act

- (1) If, before 1 January 2008, a mortgagee has given a notice in accordance with section 90 of the Property Law Act 1952,—
- (a) section 118 does not prevent the mortgagee from calling up as payable the principal amount on or after that date in accordance with the notice; and
 - (b) section 90 of the Property Law Act 1952 continues to apply in relation to the notice as if it had not been repealed by this Act.
- (2) If, before 1 January 2008, a mortgagee has served a notice in accordance with section 92(1) of the Property Law Act 1952,—
- (a) section 119 does not prevent—
 - (i) the mortgagee from exercising a power to enter into possession of the mortgaged land, or to sell the mortgaged land, on or after that date in accordance with the notice; or
 - (ii) any amounts secured under the mortgage from becoming or being deemed to have become payable on or after that date in accordance with the notice; and
 - (b) section 92 of the Property Law Act 1952 continues to apply in relation to the notice as if it had not been repealed by this Act.
- (3) If, before 1 January 2008, a mortgagee has served a notice under section 92(6) of the Property Law Act 1952,—

- (a) section 122 does not prevent the mortgagee from recovering a deficiency on or after that date in accordance with the notice; and
- (b) section 92 of the Property Law Act 1952 continues to apply in relation to the notice as if it had not been repealed by this Act.

128 Notice must be given to current mortgagor of mortgaged goods of exercise of powers

- (1) No amounts secured by a mortgage over goods are payable by any person under an acceleration clause, and no mortgagee or receiver may exercise any power to sell the mortgaged goods, by reason of a default, unless—
 - (a) a notice complying with section 129 has been served (whether by the mortgagee or receiver) on the person who, at the date of the service of the notice, is the current mortgagor; and
 - (b) on the expiry of the period specified in the notice, the default has not been remedied.
- (2) No mortgagee or receiver may exercise any power to sell the mortgaged goods, by reason of the goods being at risk, unless, not less than 10 working days before selling the goods, a notice in the prescribed form has been served (whether by the mortgagee or receiver) on the person who, at the date of the service of the notice, is the current mortgagor.
- (3) Subsections (1) and (2) are subject to sections 135 and 136.
- (4) A notice required by this section may be given in the same document as a notice under section 118.

129 Form of notice under section 128(1)

- (1) The notice required by section 128(1) must be in the prescribed form and must adequately inform the current mortgagor of—
 - (a) the nature and extent of the default; and
 - (b) the action required to remedy the default (if it can be remedied); and
 - (c) the period within which the current mortgagor must remedy the default or cause it to be remedied, being not shorter than 10 working days after the date of service of the notice, or any longer period for the remedying

- of the default specified by any term that is expressed or implied in any instrument; and
- (d) the consequence that if, at the expiry of the period specified under paragraph (c), the default has not been, or cannot be, remedied,—
- (i) the amounts secured by the mortgage and specified in the notice will become payable; or
 - (ii) the amounts secured by the mortgage and specified in the notice may be called up as becoming payable; or
 - (iii) the power, specified in the notice, of the mortgagee or receiver to sell the goods will become exercisable; or
 - (iv) more than 1 of those things will occur.
- (2) A notice required by section 128(1) may specify that the action required to remedy the default includes the payment (whether to the mortgagee or receiver) of a specified amount, being the reasonable costs and disbursements (whether of the mortgagee or receiver) in preparing and serving the notice.

130 Copy of notice under section 128 must be served on former mortgagor, covenantor, and subsequent mortgagee

- (1) A copy of the notice served under section 128 must, as soon as possible, be served (whether by the mortgagee or receiver) on the following persons if either the mortgagee or receiver has actual notice of the name and address of the person:
- (a) any former mortgagor;
 - (b) any covenantor;
 - (c) any mortgagee under a subsequent mortgage, and any holder of any other subsequent encumbrance, over the mortgaged goods if—
 - (i) the subsequent mortgage or other subsequent encumbrance is registered; or
 - (ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it.
- (2) A failure to comply with this section does not prevent—
- (a) any amounts secured by the mortgage from becoming payable; or

- (b) the exercise of a power to sell the mortgaged goods.
- (3) However, if there is a failure to comply with this section, the mortgagee is liable in damages for any loss arising from that failure.

131 Instruments have no effect so far as they conflict with section 128, 129, or 130

A term has no effect if it—

- (a) is expressed or implied in an instrument; and
- (b) conflicts with section 128, 129, or 130.

132 Notice of intention to recover deficiency in relation to mortgages over goods

- (1) This section applies if, under a mortgage over goods,—
 - (a) the mortgagee or receiver proposes to exercise a power to sell the mortgaged goods; and
 - (b) the mortgagee proposes to recover any deficiency on the sale from a former mortgagor or a covenantor.
- (2) The mortgagee or receiver must serve notice of the intentions referred to in subsection (1) on the former mortgagor or covenantor concerned at least 10 working days before the exercise of the power of sale.
- (3) Subsection (2) applies whether or not the former mortgagor or covenantor has been served with a copy of the notice required under section 118 or 128.
- (4) However, subsection (2)—
 - (a) is subject to section 135; and
 - (b) does not apply if a court has, under section 136, granted leave to claim a deficiency without serving a notice under this section.
- (5) A failure to serve a notice under subsection (2) on a former mortgagor or a covenantor does not prevent—
 - (a) the mortgagee or receiver from exercising the power of sale; or
 - (b) the mortgagee from recovering any deficiency from that former mortgagor or covenantor.
- (6) However, a former mortgagor or a covenantor who is prejudiced by a failure to serve a notice under subsection (2) is, to

the extent of the prejudice, released from liability to the mortgagee for the deficiency.

133 Instruments have no effect so far as they conflict with section 132

A term has no effect if it—

- (a) is expressed or implied in an instrument; and
- (b) conflicts with section 132.

134 Conditional sale of goods permitted before expiry of notice

- (1) For the purposes of sections 128 to 132, a mortgagee or receiver does not exercise a power to sell mortgaged goods, by reason of a default, by entering into a contract to sell, or granting an option to purchase, the goods if the contract or option is conditional on the default not being remedied by the expiry of the period specified in a notice served under section 128(1).
- (2) Subsection (1) applies whether the contract was entered into, or the option was granted, before or after the service of the notice referred to in section 128 or 132.

135 Notice concerning goods not required in certain cases

- (1) Sections 128 and 132 do not apply if—
 - (a) the goods may perish within 10 working days of the mortgagee taking possession of the goods; or
 - (b) the mortgagee or receiver believes on reasonable grounds that the goods will decline substantially in value if the goods are not disposed of immediately; or
 - (c) the cost of care and storage of the goods is disproportionately large in relation to the value of the goods; or
 - (d) the goods consist of inventory; or
 - (e) the mortgage over goods arises under a mortgage debenture (whether or not there is a collateral mortgage over those goods securing the same amounts); or
 - (f) after the mortgagee takes possession of the goods, every person entitled to receive notice under section 128 or 132 (or both) consents in writing to the immediate sale of the goods.

- (2) If a mortgage is over goods and some, but not all, of those goods are described in subsection (1),—
 - (a) the mortgagee or receiver may exercise a power to sell the goods described in subsection (1) without complying with section 128; and
 - (b) the mortgagee may recover a deficiency on that sale without complying with section 132.

136 Court may grant leave to exercise power of sale of goods or to claim deficiency

- (1) A court may grant leave to the mortgagee or receiver under a mortgage over goods to exercise any power under the mortgage to sell the mortgaged goods—
 - (a) without a notice having been served on the current mortgagor as required by section 128; or
 - (b) in the case of a default, after a notice under that section has been served on the current mortgagor but before the expiry of the period specified in the notice for the remedying of the default.
- (2) A court may grant leave to the mortgagee under a mortgage over goods to claim a deficiency from a former mortgagor or covenantor without a notice having been served on the former mortgagor or covenantor as required by section 132.
- (3) The court may grant leave under this section on any conditions the court thinks fit.

Subpart 6—Mortgagees in possession

Entry into possession

137 Exercise of power to enter into possession

- (1) If a mortgagee becomes entitled under a mortgage, after compliance with subpart 5, to exercise a power to enter into possession of mortgaged land or goods, the mortgagee may exercise that power by—
 - (a) entering into or taking physical possession of the land or goods peaceably and without committing forcible entry under section 91 of the Crimes Act 1961; or
 - (b) asserting management or control over the land or goods by requiring a lessee or occupier of the land, or a lessee

- or bailee of the goods, as the case may be, to pay to the mortgagee any rent or profits that would otherwise be payable to the current mortgagor; or
- (c) applying to a court for an order for possession of the land or goods.
- (2) A mortgagee may do all or any of the things referred to in subsection (1) before or after taking any steps to exercise any power to sell the mortgaged land or goods.
- (3) Subsection (1)(a) is subject to section 138.
- (4) Unless the context otherwise requires, a reference in this subpart to land or goods includes a reference to land and goods.
- Compare: 1952 No 52 s 106

138 Mortgagee may not enter into or take physical possession if mortgagee has consented to lease

- (1) If a mortgagee has consented to a lease of all or part of the mortgaged land or goods, the mortgagee may not, in accordance with section 137(1)(a), enter into or take physical possession of any land or goods that are subject to the lease, except in the exercise of a power conferred by section 147.
- (2) Subsection (1) applies whether the consent was given, or the lease was entered into, before or after—
- (a) the mortgagee entered into the mortgage; or
- (b) the default occurred; or
- (c) the goods became at risk.

Compare: 1952 No 52 s 106

139 When mortgagee becomes mortgagee in possession

- (1) A mortgagee who exercises a power to enter into possession of mortgaged land or goods in accordance with section 137 becomes a mortgagee in possession of the land or goods on the earlier of—
- (a) the date on which the mortgagee enters into, or takes, physical possession of the land or goods; or
- (b) the date on which the mortgagee first receives any income from the land or goods as mortgagee in possession; or

- (c) the date of the mortgagee's application to the court for the order if—
 - (i) the mortgagee applies to the court for an order for possession of the land or goods; and
 - (ii) the court, in response to the mortgagee's application, makes the order.
- (2) A reference to the date or time of entry into possession of land or goods by a mortgagee in possession has a corresponding meaning.
- (3) Despite subsections (1) and (2), sections 156, 162, and 163 apply to a mortgagee who becomes a mortgagee in possession under subsection (1)(c) of this section—
 - (a) as if the references in sections 156(1) and 162(1) to the mortgagee's entering into possession were references to the making of the order for possession of the land or goods by the mortgagee; and
 - (b) as if the references in sections 156(1)(b) and (c) and 163(1)(a) to the date of entry into possession were references to the date of the making of that order.

Section 139(1)(c): substituted, on 7 July 2010, by section 4(1) of the Property Law Amendment Act 2010 (2010 No 76).

Section 139(3): added, on 7 July 2010, by section 4(2) of the Property Law Amendment Act 2010 (2010 No 76).

140 Mortgagees in possession of accounts receivable

- (1) For the purposes of this Part, a mortgagee under a mortgage over accounts receivable who is entitled to receive payment of accounts receivable must be treated as becoming a mortgagee in possession of the accounts receivable on the date on which the mortgagee first requires payment from any debtor.
- (2) A reference to the date or time of entry into possession of accounts receivable by a mortgagee in possession has a corresponding meaning.

Powers and obligations of mortgagees in possession

141 Mortgagee in possession of leasehold estate or interest in land or of leased goods

- (1) A mortgagee in possession of a mortgaged leasehold estate or interest in land is liable to the person for the time being entitled to the reversion of the leasehold estate or interest for the observance and performance of all covenants of the lessee (including the payment of rent).
- (2) A mortgagee in possession of mortgaged leased goods is liable to the lessor of the goods for the observance and performance of all covenants of the lessee (including the payment of rent).
- (3) However, the liability under this section—
 - (a) arises only for a failure to observe and perform those covenants that occurs while the mortgagee is in possession of the leasehold estate or interest in land or of the leased goods; and
 - (b) is limited to the amount of the income received from the leasehold estate or interest in land, or the leased goods, by the mortgagee as mortgagee in possession.

Compare: 1952 No 52 s 110

142 Mortgagee in possession of land may enter into lease

- (1) A mortgagee in possession of mortgaged land may, as lessor, enter into a lease of all or any part of the land.
- (2) Subsection (1) is subject to compliance with sections 143 to 146.
- (3) A mortgagee in possession may execute all assurances and do all other things necessary to enter into a lease of land in accordance with this section and sections 143 to 146.

Compare: 1952 No 51 s 91(1), (3)

143 Terms and conditions of lease entered into by mortgagee in possession

- (1) A mortgagee in possession must, when entering into a lease of mortgaged land,—
 - (a) have reasonable regard for the interests of the current mortgagor, any former mortgagor, any covenantor, any

- mortgagee under a subsequent mortgage, and the holder of any other subsequent encumbrance; and
- (b) take reasonable care to obtain the best rent reasonably available at the time of entering into the lease.
- (2) A lease of land entered into by a mortgagee in possession must, except with the consent of the current mortgagor or of a court,—
- (a) be for a term not exceeding—
 - (i) 2 years, in the case of a tenancy to which the Residential Tenancies Act 1986 applies; or
 - (ii) 15 years (including all renewal terms), in any other case; and
 - (b) contain the terms and conditions that are reasonable and appropriate, having regard to the interests of the current mortgagor, any former mortgagor, any covenantor, any mortgagee under a subsequent mortgage, and the holder of any other subsequent encumbrance, on the one hand, and the mortgagee on the other; and
 - (c) provide that the lease takes effect in possession not later than 6 months after the date on which it is entered into.
- (3) A mortgagee in possession of a leasehold estate or interest in land must not enter into a sublease of that estate or interest for a term longer than the balance of the term of the superior lease.
- (4) A lease or sublease of land entered into by a mortgagee in possession for a term longer than that permitted by subsection (2)(a) or (3), as the case may be, must be taken to be a valid lease or sublease for the maximum term for which that lease could have been entered into under the relevant provision.

Compare: 1952 No 51 s 91(4), (5), (10)

144 Extent to which lease of land entered into by mortgagee in possession is binding on certain persons

- (1) A lease of land entered into by a mortgagee in possession—
- (a) is not binding on a person holding any other encumbrance over the land to the extent that the encumbrance has priority over the mortgagee's mortgage, unless that person has consented to the lease:

- (b) is binding on a person holding a subsequent encumbrance over the land:
 - (c) is binding on the current mortgagor to the extent provided in subsection (2).
- (2) When a mortgagee who has entered into a lease of land has withdrawn from possession of that land, the current mortgagor, or any person to whom the land has been transferred, assigned, or transmitted, is bound by the lessor's covenants and is entitled to enforce the lessee's covenants under the lease.
Compare: 1952 No 51 s 91(2)

145 Mortgagee in possession may enter into lease of mortgaged land together with other land

- (1) A mortgagee in possession may enter into a lease, at a single rent, of all or part of the mortgaged land together with other land that is the subject of any collateral security from the current mortgagor or any former mortgagor to the mortgagee.
- (2) The mortgagee must, in a case referred to in subsection (1), fairly and equitably apportion all expenses and rents between the properties.
- (3) However, any failure by the mortgagee to make an apportionment under subsection (2) does not affect the lessee or the lessee's interest.

Compare: 1952 No 51 s 97

146 Registrar-General or other person need not inquire whether occasion has arisen authorising mortgagee to enter into lease

- (1) The Registrar-General or any other person need not inquire whether or not an occasion has arisen authorising a mortgagee to enter into a lease of land in accordance with sections 142 to 145.
- (2) No action lies under section 172 of the Land Transfer Act 1952 for any loss, damage, or deprivation caused by the improper exercise by a mortgagee of a power conferred by sections 142 to 145.

Compare: 1952 No 51 s 91(13)

147 Mortgagee in possession of land may exercise powers under lease

- (1) A mortgagee in possession of mortgaged land that is subject to a lease may do the following as though the mortgagee were for the time being entitled to the reversion of the land:
 - (a) exercise all the powers of the lessor;
 - (b) enforce by legal proceedings in the name of the mortgagee all rights and remedies of the lessor.
- (2) Subsection (1) applies—
 - (a) whether the lease was entered into by the mortgagee or by the current mortgagor or by any other person; and
 - (b) whether the lease was entered into before or after the mortgagee entered into possession.

Compare: 1952 No 51 s 91(11), (14); 1952 No 52 s 108(1)

148 Mortgagee in possession may manage land, goods, or accounts receivable

A mortgagee in possession of mortgaged land, goods, or accounts receivable may—

- (a) demand and recover, by legal proceedings or otherwise, any income due from the land, goods, or accounts receivable; and
- (b) issue receipts for income recovered; and
- (c) manage the land, goods, or accounts receivable; and
- (d) obtain from the current mortgagor at a reasonable time any information or assistance that the current mortgagor is required to give under section 159; and
- (e) exercise any right of the current mortgagor to inspect books, documents, or information that relate to the land, goods, or accounts receivable and are in the possession or control of a person other than the current mortgagor.

Compare: 1993 No 122 s 14

149 Mortgagee in possession of land may harvest crops and timber

- (1) A mortgagee in possession of mortgaged land may—
 - (a) harvest and sell any crop growing on the land; and

- (b) cut and sell timber and other trees on the land that are ready for cutting and were not planted or left standing for shelter or ornament; and
 - (c) make a contract with any person for a purpose referred to in paragraph (a) or (b).
- (2) A contract made for the purposes of subsection (1) must provide that it must be performed—
 - (a) within 12 months from the date of the contract; or
 - (b) within a longer period that a court may by order approve.
- (3) This section is subject to sections 100 and 101 of the Personal Property Securities Act 1999.
Compare: 1952 No 51 s 95

150 Mortgagee in possession may protect or repair mortgaged land or goods

- (1) A mortgagee in possession of mortgaged land or goods may take any proper and necessary measures for the protection, insurance, maintenance, preservation, or repair of the land or goods.
- (2) A mortgagee in possession of mortgaged land or goods is not under any duty to take the measures referred to in subsection (1), except so far as the cost of those measures can be met from income from the land or goods received as mortgagee in possession.

151 Mortgagee in possession of land liable for waste

A mortgagee in possession of mortgaged land is liable in damages to the following persons for loss arising from any act or omission of the mortgagee that would be the tort of voluntary waste if done or omitted by a lessee:

- (a) the current mortgagor;
- (b) any former mortgagor;
- (c) any covenantor;
- (d) any mortgagee under a subsequent mortgage;
- (e) the holder of any other subsequent encumbrance.

152 Application of income received by mortgagee in possession

- (1) A mortgagee in possession of mortgaged land, goods, or accounts receivable must apply all income from the land, goods, or accounts receivable received as mortgagee in possession as follows:
- (a) first, to the payment of all amounts (if any) referred to in subsection (2), together with interest on those amounts at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage;
 - (b) secondly, to the payment of amounts secured by any other mortgage, encumbrance, or security interest over the property to the extent that it has priority over the mortgagee's mortgage and so far as payment is then due;
 - (c) thirdly, to the repayment of all amounts (if any) paid or advanced by the mortgagee for the purpose referred to in paragraph (b), together with interest on those amounts at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage;
 - (d) fourthly, to the payment of amounts secured by the mortgage so far as payment is then due (and to the extent that those amounts have not been paid under paragraphs (a) to (c));
 - (e) fifthly, to the payment of amounts secured by any subsequent mortgage, subsequent encumbrance, or subsequent security interest over the property so far as payment is then due if—
 - (i) the subsequent mortgage, subsequent encumbrance, or subsequent security interest is registered; or
 - (ii) the subsequent mortgage, subsequent encumbrance, or subsequent security interest is unregistered, but the mortgagee has actual notice of it;
 - (f) sixthly, to the payment of any surplus to the current mortgagor.
- (2) The amounts are amounts reasonably paid or advanced at any time by the mortgagee—

- (a) for the protection, insurance, maintenance, preservation, or repair of the mortgaged land, goods, or accounts receivable; or
 - (b) for the payment of rates or other outgoings; or
 - (c) to meet the expenses of the mortgagee in entering into possession, or in doing anything that a mortgagee in possession is required or entitled to do; or
 - (d) with a view to the realisation of the security (including any additional amount referred to in section 120(2) or 129(2)); or
 - (e) to meet the expenses of carrying on a business that the mortgagee is entitled to carry on as a mortgagee in possession (for example, to pay for inventory).
- (3) For the purposes of—
- (a) subsection (1)(b), if there is more than 1 mortgage, encumbrance, or security interest referred to in that paragraph, payment must be made under that paragraph of amounts secured by each in the order of its priority;
 - (b) subsection (1)(e), if there is more than 1 mortgage, encumbrance, or security interest referred to in that paragraph, payment must be made under that paragraph of amounts secured by each in the order of its priority.
- (4) Subsection (1) is subject to section 153.
- (5) This section and section 153—
- (a) apply to income received as mortgagee in possession that is applied on or after 1 January 2008; but
 - (b) do not apply if section 104PPA of the Property Law Act 1952 continues to apply under section 154.

153 Preferential claims

- (1) This section applies to a mortgagee in possession if—
- (a) the mortgage created a security interest that—
 - (i) is over all or any part of an individual's, a company's, or an overseas company's accounts receivable and inventory or all or any part of either of them; and
 - (ii) is not a perfected purchase money security interest; and

- (iii) is not a perfected security interest arising from a transfer of accounts receivable for new value; and
- (b) at the time when the mortgagee entered into possession,—
 - (i) in the case of a current mortgagor that is an individual, the individual was not a bankrupt; or
 - (ii) in the case of a current mortgagor that is a company, the company was not in liquidation; or
 - (iii) in the case of a current mortgagor that is an overseas company, the overseas company was not being liquidated under section 342 of the Companies Act 1993.
- (2) A mortgagee in possession who receives income from or sells accounts receivable or inventory that are subject to the mortgage must apply the income, or the proceeds arising from the sale, as follows before applying the income, or the proceeds arising from the sale, in accordance with section 152(1)(b) to (f) or 185(1)(b) to (f) (as the case may be):
 - (a) first, to the payment of all amounts (if any) referred to in section 152(2)(a) to (d) or 185(2) (as the case may be), together with interest on those amounts at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage:
 - (b) secondly, to the payment of amounts secured by any perfected purchase money security interest over the accounts receivable or inventory concerned, or any perfected security interest arising from a transfer of accounts receivable for new value over the accounts receivable concerned, to the extent that it has priority over the mortgagee's mortgage and, in the case of the application of income, so far as payment is then due:
 - (c) thirdly, to the payment of preferential claims to the extent and in the order of priority specified in Schedule 7 (except clauses 1(1) and 2(1)(b)) of the Companies Act 1993:
 - (d) fourthly, to the payment of all amounts (if any) referred to in section 152(2)(e), together with interest on those amounts at the agreed rate (if any) at which interest is

- payable on the principal amount secured by the mortgage.
- (3) For the purposes of subsection (2)(a), if an amount referred to in section 152(2) or 185(2)—
- (a) is payable partly in relation to the accounts receivable or inventory concerned and partly in relation to other property,—
 - (i) the amount must be fairly and equitably apportioned between the accounts receivable or inventory and the other property; and
 - (ii) the proportion relating to the accounts receivable or inventory must be taken into account; and
 - (iii) the proportion relating to the other property must be disregarded;
 - (b) is payable only in relation to property other than the accounts receivable or inventory concerned, the amount must be disregarded;
 - (c) is not payable in relation to any particular property, only a fair and equitable proportion of the amount must be taken into account.
- (4) For the purposes of subsection (2)(c), Schedule 7 (except clauses 1(1) and 2(1)(b)) of the Companies Act 1993 applies, with all necessary modifications, as if—
- (a) references to a liquidator were references to a mortgagee to which this section applies; and
 - (b) references to the commencement of the liquidation were references to the date on which the mortgagee became a mortgagee to which this section applies; and
 - (c) references to a company being put into or being in liquidation were references to the mortgagee becoming a mortgagee to which this section applies; and
 - (d) in the case of a mortgagor that is an individual, references to a company were references to an individual; and
 - (e) in the case of a mortgagor that is an overseas company, references to a company were references to an overseas company.
- (5) In this section,—

- (a) **perfected purchase money security interest** means a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999:
 - (b) **perfected security interest arising from a transfer of accounts receivable for new value** means a security interest that has been perfected under the Personal Property Securities Act 1999 at the time when the mortgagee entered into possession and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).
- (6) This section is subject to section 154.
Compare: 1952 No 51 s 104PPA

154 Transitional provisions relating to preferential claims

- (1) The provisions of section 104PPA of the Property Law Act 1952, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a company's property that was subject to a floating charge that, before that commencement, became a fixed or specific charge.
- (2) The provisions of section 104PPA of the Property Law Act 1952, as in force immediately before 1 January 2008, continue to apply to a mortgagee that was, immediately before that date, subject to those provisions.
- (3) If subsection (1) or (2) applies, the mortgagee in possession who receives income from or sells the property concerned must apply the income, or the proceeds arising from the sale, in accordance with those subsections and otherwise as if this Act had not been enacted.

155 Mortgagee in possession to account to current mortgagor

- (1) A mortgagee in possession of mortgaged land, goods, or accounts receivable must account to the current mortgagor, and to every person holding a subsequent encumbrance over the land, goods, or accounts receivable, for all income received

from the land, goods, or accounts receivable as mortgagee in possession and for its application or payment under sections 152 to 154.

- (2) The income received from the land, goods, or accounts receivable by the mortgagee as mortgagee in possession includes—
 - (a) all income from the land, goods, or accounts receivable actually received by the mortgagee as mortgagee in possession; and
 - (b) an allowance for the amount of all income that the mortgagee would have received from the land, goods, or accounts receivable as mortgagee in possession but for the wilful misconduct of the mortgagee; and
 - (c) if the mortgagee in possession of mortgaged land has the personal occupation of all or part of the land, an allowance for an amount that is a fair occupation rent for that land, as between the current mortgagor and the mortgagee.
- (3) For the purposes of subsection (2)(c), a mortgagee must not be taken as having the personal occupation of land by reason only of the fact that the mortgagee entered into or took physical possession of the land with the object of—
 - (a) doing anything in connection with the land that a mortgagee in possession is required or entitled to do under section 148, 149, or 150; or
 - (b) facilitating the sale of the land (but, in this case, the mortgagee must show that the sale was not unreasonably delayed).
- (4) In an accounting under this section, interest must be calculated with half-yearly rests, or, if rests at a shorter or a longer interval are provided for by the mortgage, then with rests at that interval.

156 Notice of entry into possession of mortgaged land or goods

- (1) A mortgagee, on entering into possession of mortgaged land or goods,—
 - (a) must immediately give—
 - (i) written notice of that fact to the current mortgagor; and
 - (ii) public notice of that fact; and

- (b) must, within 5 working days after the date of entry into possession, send a copy of the public notice to the following persons if the mortgagee has actual knowledge of the name and address of the person:
 - (i) every former mortgagor:
 - (ii) every covenantor:
 - (iii) every mortgagee under a subsequent mortgage, and every holder of any other subsequent encumbrance, over the mortgaged land or goods:
 - (iv) every person who has lodged a caveat under section 137 of the Land Transfer Act 1952, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat, against the title to the mortgaged land or any part of it; and
 - (c) must, if the current mortgagor is a body corporate registered under an enactment, send a copy of the public notice to the Registrar within 5 working days after the date of entry into possession.
- (2) A notice given under subsection (1) must include—
 - (a) the mortgagee's full name:
 - (b) the date on which the mortgagee entered into possession of the mortgaged land or goods:
 - (c) a brief description of the mortgaged land or goods:
 - (d) the address of the registered office of the mortgagee if the mortgagee is a body corporate, or the address of the mortgagee's residence if the mortgagee is an individual, or an address specified by the mortgagee as an address to which communications relating to the mortgaged land or goods may be addressed.
- (3) If a mortgagee fails to comply with this section, the mortgagee, and, if the mortgagee is a body corporate, every director of the mortgagee, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1952 No 51 s 104DD

157 Address to which notice to current mortgagor must be sent

- (1) The notice required by section 156 must be sent to the current mortgagor—
- (a) at the address of the mortgagor's place of business; or
 - (b) if the mortgagor has more than 1 place of business, at the address of the mortgagor's principal place of business; or
 - (c) if the mortgagor is a body corporate registered under an enactment and has no place of business or that place of business is not known, at the address of the mortgagor's registered office; or
 - (d) if the mortgagor is an individual and has no place of business or that place of business is not known, at the address of the mortgagor's residence.
- (2) However, if the current mortgagor is an overseas company, the notice required by section 156 must be sent to the mortgagor—
- (a) at the address of the mortgagor's place of business; or
 - (b) if the mortgagor has more than 1 place of business, at the address of the mortgagor's principal place of business.

158 Public notice

In section 156, **public notice** means notice published—

- (a) in at least 1 issue of the *Gazette*; and
- (b) in at least 1 issue of a newspaper circulating in the following areas of New Zealand:
 - (i) the area in which the mortgaged land or goods are situated; and
 - (ii) the area in which is situated the current mortgagor's place of business, registered office, or residence to which the notice to the current mortgagor required by section 156 must be addressed under section 157.

Compare: 1952 No 51 s 104EE

159 Current mortgagor to make information available and give reasonable assistance to mortgagee in possession

- (1) The current mortgagor of mortgaged land, goods, or accounts receivable, and, if the current mortgagor is a body corporate, every director of the body corporate, must—
 - (a) make available to a mortgagee in possession all books, documents, and information relating to the mortgaged land, goods, or accounts receivable; and
 - (b) if required to do so by the mortgagee, verify by statutory declaration that the books, documents, and information are complete and correct; and
 - (c) give the mortgagee any other assistance that the mortgagee may reasonably require; and
 - (d) if the current mortgagor is a body corporate that has a common seal, make the common seal available for use by the mortgagee.
- (2) A court may, on the application of a mortgagee in possession, make an order requiring the current mortgagor, and, if the current mortgagor is a body corporate, any director of the body corporate, to comply with subsection (1).

Compare: 1952 No 51 s 104FF

160 Accounting records

- (1) A mortgagee in possession of mortgaged land, goods, or accounts receivable must at all times keep accounting records that correctly record and explain the receipts, expenditure, and other transactions relating to the land, goods, or accounts receivable.
- (2) The accounting records must be retained for not less than 6 years after the mortgagee has withdrawn from possession of the land, goods, or accounts receivable.

Compare: 1952 No 51 s 104GG

161 Mortgagee in possession must keep money relating to land, goods, or accounts receivable separate from other money

A mortgagee in possession of mortgaged land, goods, or accounts receivable must keep money relating to the land, goods,

or accounts receivable separate from other money held by or under the control of the mortgagee.

Compare: 1952 No 51 s 104HH

162 First report by mortgagee in possession

- (1) A mortgagee who enters into possession of mortgaged land or goods must, not later than 2 months after entering into possession of the land or goods, prepare a report about the land or goods.
- (2) The report required by subsection (1) must include the following particulars and details so far as the mortgagee is aware of them:
 - (a) particulars of the land or goods:
 - (b) particulars of the debts and liabilities to be satisfied from the land or goods:
 - (c) the names and addresses of creditors with an interest in the land or goods:
 - (d) particulars of any other mortgage or encumbrance over the land or goods held by any other creditor (including the date on which it was created):
 - (e) particulars of any failure of the current mortgagor to comply with section 159:
 - (f) details of the events leading up, and giving rise, to the right of the mortgagee to enter into possession of the land or goods:
 - (g) details of any land leased by the mortgagee, as lessor, under sections 142 to 145:
 - (h) details of any land or goods sold by the mortgagee under subpart 7:
 - (i) details of any proposal for the mortgagee, as lessor, to lease the land under sections 142 to 145 or for the mortgagee to sell the land or goods under subpart 7:
 - (j) details of any amounts likely to be available for payment to other creditors of the current mortgagor:
 - (k) any other prescribed information.
- (3) A mortgagee may omit from the report details of any proposal for the sale of the mortgaged land or goods, or the lease of the mortgaged land, if the mortgagee considers that their in-

clusion would materially prejudice the exercise of the mortgagee's rights or powers.

- (4) If a mortgagee fails to comply with this section, the mortgagee, and, if the mortgagee is a body corporate, every director of the body corporate, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1952 No 51 s 104II

163 Further reports by mortgagee in possession

- (1) A mortgagee in possession of mortgaged land or goods, or a person who was a mortgagee in possession of mortgaged land or goods, must prepare a report or a further report summarising the state of affairs with respect to the land or goods not later than 2 months—
- (a) after the end of each period of 6 months after the date of entry into possession; and
 - (b) after the date on which the mortgagee withdraws from possession.
- (2) The report or further report required by subsection (1) must include—
- (a) an accounting, as required by section 155, for the period since the date of entering into possession or since the date of the most recent report under this section, whichever date is the later; and
 - (b) details of any land leased by the mortgagee, as lessor, under sections 142 to 145, since the date of entering into possession or since the date of the most recent report under this section, whichever date is the later; and
 - (c) details of any land or goods sold by the mortgagee under subpart 7, since the date of entering into possession or since the date of the most recent report under this section, whichever date is the later; and
 - (d) details of any proposal for the mortgagee, as lessor, to lease the land under sections 142 to 145 or for the mortgagee to sell the land or goods under subpart 7; and
 - (e) details of any amounts likely to be available for payment to other creditors of the current mortgagor; and
 - (f) any other prescribed information.

- (3) A mortgagee may omit from the report details of any proposal for the sale of the mortgaged land or goods, or the lease of the mortgaged land, if the mortgagee considers that their inclusion would materially prejudice the exercise of the mortgagee's rights or powers.
- (4) If a mortgagee or other person fails to comply with this section, the mortgagee or person, and, if the mortgagee or person is a body corporate, every director of the body corporate, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1952 No 51 s 104JJ

164 Extension of time for preparing reports

The Registrar may, on the application of a mortgagee or other person who is required to prepare a report under section 162 or 163, extend the period within which the report must be prepared.

Compare: 1952 No 51 s 104KK

165 Persons entitled to receive reports

- (1) A mortgagee or other person required to prepare a report under section 162 or 163 must send a copy of it—
 - (a) to the current mortgagor, at the address of the current mortgagor's place of business, registered office, or residence to which the notice to the current mortgagor required by section 156 must be addressed under section 157; and
 - (b) to the following persons if the mortgagee or other person has actual knowledge of the name and address of the person:
 - (i) every former mortgagor;
 - (ii) every covenantor;
 - (iii) every mortgagee under a subsequent mortgage, and every holder of any other subsequent encumbrance, over the mortgaged land or goods;
 - (iv) every person who has lodged a caveat under section 137 of the Land Transfer Act 1952, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat,

against the title to the mortgaged land or any part of it.

- (2) A mortgagee or other person required to prepare a report under section 162 or 163 must, within 15 working days after receiving a written request for a copy of the report from any of the following persons, and on payment of the reasonable costs of making and sending the copy, send a copy of the report to the person requesting it:
 - (a) a creditor of the mortgagor;
 - (b) if the current mortgagor is a body corporate, a director of the body corporate;
 - (c) a former mortgagor;
 - (d) a covenantor;
 - (e) any other person with an interest in all or part of the land or goods.
- (3) If the current mortgagor is a body corporate registered under an enactment, the mortgagee or other person who prepares a report under section 162 or 163 must, within 5 working days after preparing the report, send a copy of the report to the Registrar.
- (4) If a mortgagee or other person fails to comply with this section, the mortgagee or person, and, if the mortgagee or person is a body corporate, every director of the body corporate, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1952 No 51 s 104LL

166 Persons entitled to inspect reports

A person to whom a report must be sent on request under section 165 is entitled to inspect the report during normal business hours at—

- (a) the mortgagee's registered office, residence, or address notified under section 156(2)(d); or
- (b) at any other place of business of the person who prepared the report, at any time after the expiration of 5 working days after that person receives a request that the report be made available for inspection at that place.

Compare: 1952 No 51 s 104MM

167 Duty to notify breaches of other Acts

- (1) This section applies if—
- (a) the current mortgagor is a company or an overseas company; and
 - (b) a mortgagee or other person who is required to prepare a report under section 162 or 163 considers that the company or overseas company, or any director of the company or overseas company, has committed an offence that is material to the possession of the mortgaged land or goods by the mortgagee against—
 - (i) the Crimes Act 1961; or
 - (ii) the Securities Act 1978; or
 - (iii) the Companies Act 1993; or
 - (iv) the Financial Reporting Act 1993; or
 - (v) the Takeovers Act 1993.
- (2) The mortgagee or other person who is required to prepare a report under section 162 or 163 must report the fact referred to in subsection (1)(b) to the Registrar.
- (3) A report made under subsection (2), and any communications between the mortgagee or other person and the Registrar relating to that report, are protected by absolute privilege.
- (4) If a mortgagee or other person fails to comply with this section, the mortgagee or person, and, if the mortgagee or person is a body corporate, every director of the body corporate, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1952 No 51 s 104NN

*Withdrawal from possession***168 Withdrawal of mortgagee from possession**

- (1) A mortgagee who has exercised a power to enter into possession of mortgaged land, goods, or accounts receivable must be taken to have withdrawn from possession of all or any part of the land, goods, or accounts receivable on the earlier of—
- (a) the date on which the mortgagee or a court appoints a receiver for all or that part of the land, goods, or accounts receivable; or

- (b) the date on which a mortgagee under any mortgage having priority over the mortgagee's mortgage enters into possession of, or appoints a receiver for, all or that part of the land, goods, or accounts receivable; or
 - (c) the date of an order of a court under section 170, consenting to the mortgagee's withdrawal from possession, or under section 171, directing the mortgagee to withdraw from possession; or
 - (d) the date on which the mortgagee withdraws from possession of all or that part of the land, goods, or accounts receivable after their redemption or sale; or
 - (e) the date on which the mortgagee withdraws from possession of all or that part of the land, goods, or accounts receivable with the consent of all persons who have an interest in that land or those goods or accounts receivable.
- (2) A mortgagee in possession of mortgaged land, goods, or accounts receivable may not withdraw from possession on or after 1 January 2008 except as provided in subsection (1).

169 Mortgagee who has withdrawn from possession not entitled to receive income after withdrawal

- (1) A mortgagee who has withdrawn from possession is not entitled to receive any income from the mortgaged land, goods, or accounts receivable that comes in after that withdrawal (whether that income has accrued for a period before that withdrawal or a period after that withdrawal).
- (2) However, if any income referred to in subsection (1) is actually received by a mortgagee who has withdrawn from possession, the mortgagee must account for it under section 155.
- (3) If, in an accounting under section 155, a mortgagee in possession of mortgaged land, goods, or accounts receivable has given credit for amounts not actually received by the mortgagee and, after the mortgagee's withdrawal from possession, those amounts are actually received by or for the benefit of the current mortgagor, those amounts are a debt owing by the current mortgagor to the mortgagee.

170 Withdrawal with consent of court

- (1) A court may, on the application of a mortgagee in possession, make an order consenting to the mortgagee's withdrawal from possession of all or part of the mortgaged land, goods, or accounts receivable if the court is satisfied that,—
 - (a) as at the date on which the application is heard, the mortgagee has substantially performed all the obligations and carried out all the duties of a mortgagee in possession—
 - (i) under this subpart; or
 - (ii) in the case of a person who became a mortgagee in possession of mortgaged property before 1 January 2008, under the Property Law Act 1952; and
 - (b) there is no other good reason why the consent should not be given.
- (2) An application under this section must be served on the current mortgagor (unless the court orders otherwise).
- (3) The court may make an order under this section on any conditions the court thinks fit.

171 Withdrawal by direction of court

- (1) A court may, on the application of a specified person, make an order directing a mortgagee in possession to withdraw from possession of the whole, or any part, of the land, goods, or accounts receivable if the court is satisfied that—
 - (a) the purpose of the mortgagee's entry into possession of the land, goods, or accounts receivable has been fulfilled; or
 - (b) circumstances no longer justify the mortgagee remaining in possession of the land, goods, or accounts receivable.
- (2) In subsection (1), **specified person** means—
 - (a) the current mortgagor; or
 - (b) any other person who has an interest in the mortgaged land, goods, or accounts receivable and is entitled to redeem them.
- (3) A copy of an application under this section must be served on the mortgagee (unless the court orders otherwise).

- (4) The court may make an order under this section on any conditions the court thinks fit.
- (5) An order under this section does not affect any other mortgage or encumbrance over the mortgaged land, goods, or accounts receivable.

Compare: 1952 No 51 s 104PP

172 Restriction on re-entry into possession after withdrawal

A mortgagee who withdraws from possession of mortgaged land, goods, or accounts receivable in a manner referred to in section 168(1) may not again enter into possession of that land or those goods or accounts receivable except if the mortgagee becomes entitled to do so, after compliance with subpart 5, by reason of,—

- (a) in the case of land, a default occurring after the mortgagee withdrew from possession; or
- (b) in the case of goods or accounts receivable, a default occurring, or the goods or accounts receivable becoming at risk, after the mortgagee withdrew from possession.

173 Notice that mortgagee has withdrawn from possession

- (1) If the current mortgagor is a body corporate registered under an enactment, a mortgagee who withdraws from possession of all or part of the mortgaged land or goods must, not later than 5 working days after the date of withdrawal, send or deliver notice in writing of the withdrawal to the Registrar.
- (2) Subsection (1) does not apply to a mortgagee who withdrew from possession of the land or goods before 1 January 2008.
- (3) If a person fails to comply with this section, the person, and, if the person is a body corporate, every director of the body corporate, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1952 No 51 s 104OO

*Protection for directors***174 Defences available to directors in proceedings for offences under this subpart**

It is a defence to a director of a body corporate who is charged with an offence under this subpart if that director proves that—

- (a) the body corporate took all reasonable and proper steps to ensure that the relevant requirement would be complied with; or
- (b) he or she took all reasonable steps to ensure that the body corporate complied with the relevant requirement; or
- (c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the body corporate complied with the relevant requirement.

Compare: 1952 No 51 s 104QQ

*Application of various provisions to mortgagees who entered into possession before 1 January 2008***175 Application of various provisions to mortgagees who entered into possession before commencement of Act**

If a person became a mortgagee in possession of mortgaged property before 1 January 2008,—

- (a) sections 137 to 151 and 155 to 167 do not apply; and
- (b) sections 91 and 95 to 97 of the Property Law Act 1952, Part 7A of that Act, and sections 106 and 108(1) of the Land Transfer Act 1952 continue to apply as if those provisions had not been repealed by this Act.

Subpart 7—Mortgagees' power of sale*Exercise of power of sale***176 Duty of mortgagee exercising power of sale**

- (1) A mortgagee who exercises a power to sell mortgaged property, including exercise of the power through the Registrar under section 187, or through a court under section 200, owes a duty of reasonable care to the following persons to obtain the best price reasonably obtainable as at the time of sale:
 - (a) the current mortgagor:

- (b) any former mortgagor:
 - (c) any covenantor:
 - (d) any mortgagee under a subsequent mortgage:
 - (e) any holder of any other subsequent encumbrance.
- (2) A mortgagee who exercises a power to sell mortgaged property may not become the purchaser of the mortgaged property except in accordance with section 196 or an order of a court made under section 200.
- Compare: 1952 No 51 s 103A

177 No defence or indemnity

- (1) It is not a defence to a proceeding against a mortgagee for a breach of the duty imposed by section 176 that the mortgagee was acting as the agent of, or under a power of attorney from, the current mortgagor or any former mortgagor.
- (2) A mortgagee is not entitled to compensation or indemnity from the mortgaged property or from the current mortgagor, any former mortgagor, or any covenantor for any liability arising from a breach of the duty imposed by section 176.
- (3) This section applies despite anything to the contrary in any instrument or in any rule of law.
- Compare: 1952 No 51 s 103B

178 Powers incidental to power of sale

- (1) If, under a mortgage and subpart 5, a mortgagee or receiver becomes entitled to exercise a power to sell mortgaged property, the sale—
- (a) may relate to the whole or any part of the property:
 - (b) may be subject to, or free of, any mortgage or other encumbrance having priority over the mortgagee's mortgage:
 - (c) may be in 1 lot or in separate lots:
 - (d) in the case of mortgaged land, may be by way of subdivision or otherwise:
 - (e) may, except in the case of a sale of land through the Registrar under section 187, be by public auction or by private contract:
 - (f) may, except in the case of a sale of land through the Registrar under section 187, be with or without reserve:

- (g) may be for a purchase price payable in 1 sum or by instalments:
 - (h) may be subject to any other conditions that the mortgagee or receiver thinks fit.
- (2) The mortgagee or receiver may cancel a contract for the sale of the mortgaged property and resell the property without being liable for any loss on resale.
- (3) Subsection (2) is subject to section 19 of the Receiverships Act 1993 or section 176(1), as the case requires.

Compare: Law of Property Act 1925, 15 Geo 5, c 20 s 101 (UK)

179 Mortgagee may adopt agreement for sale and purchase

- (1) If, at any time during which the mortgagee is entitled to exercise a power to sell mortgaged property, the whole or any part of the property is subject to an agreement for sale and purchase entered into by the current mortgagor or any former mortgagor, the mortgagee may elect, by notice served on the purchaser, to adopt the agreement for sale and purchase.
- (2) On making an election under subsection (1),—
 - (a) the mortgagee has all the rights and powers in relation to the purchaser that the current mortgagor would have had as vendor of the property; and
 - (b) the mortgagee may execute all assurances and do all other things necessary to effect the transfer or assignment of the property; and
 - (c) the mortgagee must account for the proceeds of the sale as though the property had been sold by the mortgagee.
- (3) The mortgagee's powers under subsection (2)(b) include, in the case of a mortgage over land under the Land Transfer Act 1952, the power to do either or both of the following as if the land had been sold by the mortgagee:
 - (a) execute a transfer instrument that may be registered under section 105 of that Act;
 - (b) register a transfer instrument under that Act.
- (4) The adoption of an agreement for the sale and purchase of property by a mortgagee does not affect any liability in respect of the agreement of the current mortgagor, or any for-

mer mortgagor, who entered into or is otherwise bound by the agreement.

180 Court may authorise land and minerals to be dealt with separately

- (1) A court may, on the application of the mortgagee or receiver, make an order conferring on the mortgagee or receiver either or both of the powers specified in subsection (2) if the court is satisfied that it is convenient to sell mortgaged land separately from mines or minerals but the power of sale conferred by the mortgage does not make adequate provision to that effect.
- (2) The powers are—
 - (a) a power to sell the land, with an exception or reservation of all or any mines or minerals, and with or without easements, rights, or privileges over the land concerning the working of mines or the getting or carrying away of minerals:
 - (b) a power to sell all or any mines or minerals separately from the land, and with or without any easement, right, or privilege over the land of the kind referred to in paragraph (a).
- (3) The court may make an order under this section on any conditions the court thinks fit.

Compare: 1952 No 51 s 93

181 Powers incidental to power to sell land, mines, or minerals

A mortgagee's or receiver's power to sell mortgaged land, or to sell mines or minerals separately from mortgaged land, includes the power—

- (a) to sell the land, mines, or minerals subject to an easement, right, privilege, or covenant of any kind; and
- (b) to create an easement, right, or privilege of any kind over land for the time being remaining unsold; and
- (c) to enter into a covenant of any kind concerning land for the time being remaining unsold; and
- (d) in the case of a subdivision of land, to lay off and make any roads, streets, and passageways, and do any other

things in connection with the subdivision as circumstances require and the mortgagee or receiver thinks fit.

Compare: 1952 No 51 s 94

182 Sale together with other property at single price

- (1) A mortgagee or receiver who is entitled to sell mortgaged property may sell the whole or any part of the property, together with other property that is the subject of any collateral security from the current mortgagor to the mortgagee, at a single price.
- (2) The mortgagee or receiver must, in a case referred to in subsection (1), fairly and equitably apportion all expenses and purchase money between the properties.
- (3) However, any failure by the mortgagee or receiver to make an apportionment under subsection (2) does not affect the purchaser or the purchaser's interest in the property.

Compare: 1952 No 51 s 97

183 Mortgagee may transfer or assign mortgaged property to purchaser

- (1) On the sale of mortgaged property by a mortgagee,—
 - (a) the mortgagee's written receipt is a sufficient discharge to the purchaser for payment of the purchase money or other consideration; and
 - (b) the mortgagee may execute all assurances and do all other things necessary to transfer or assign the property to the purchaser.
- (2) The mortgagee's powers under subsection (1)(b) include, in the case of a mortgage over land under the Land Transfer Act 1952, the power to do either or both of the following:
 - (a) execute a transfer instrument that may be registered under section 105 of that Act;
 - (b) register a transfer instrument under that Act.
- (3) However, if the mortgagee is the purchaser, the transfer or assignment must be executed or registered by the Registrar under section 196 or in accordance with an order of a court made under section 200.

- (4) A transfer instrument or other instrument executed or registered by the mortgagee under subsection (1) or (2) transfers or assigns the property to which it relates to the transferee or assignee—
- (a) free from all liability on account of—
 - (i) the mortgage under which the power of sale was exercised; and
 - (ii) any subsequent mortgage or other subsequent encumbrance over the property; but
 - (b) subject to—
 - (i) any mortgage or other encumbrance, estate, or interest over or in the property that has priority over the mortgagee's mortgage and has not been discharged or otherwise terminated; and
 - (ii) any other estate or interest in the property that is binding on the mortgagee.
- (5) Subsection (4) is, in the case of an executed transfer instrument or other instrument, subject to the need for its registration under any enactment.
- Compare: 1952 No 51 s 98(1)

184 Protection of purchaser at sale by mortgagee

- (1) This section applies to—
- (a) a person who purchases mortgaged property from the mortgagee or a receiver (excluding the mortgagee if the mortgagee is the purchaser); and
 - (b) a person claiming the property through a person who purchases mortgaged property from the mortgagee or a receiver (including a person claiming through the mortgagee if the mortgagee is the purchaser).
- (2) The person—
- (a) is not answerable for the loss, misapplication, or non-application of the purchase money paid for the property; and
 - (b) is not obliged to see to the application of the purchase money; and
 - (c) need not inquire whether—
 - (i) there has been a default; or

- (ii) in the case of personal property, the property is at risk; or
 - (iii) any notice required to be given by this Part has been duly given; or
 - (iv) the sale is otherwise necessary, regular, or proper.
- (3) The person is protected from liability under subsection (2) (except in the case of fraud of which that person was aware) even if, at the time of purchase or other acquisition of the property, that person has actual notice that—
 - (a) there has not been a default; or
 - (b) in the case of personal property, the property is not at risk; or
 - (c) a notice required by this Part was not duly given; or
 - (d) the sale is otherwise unnecessary, irregular, or improper.

Compare: 1952 No 51 ss 98(1), 102, Schedule 4 cl 8

185 Application of proceeds of sale of mortgaged property

- (1) The proceeds arising from the sale by a mortgagee of mortgaged property must be applied—
 - (a) first, to the payment of all amounts (if any) referred to in subsection (2), together with interest on those amounts at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage;
 - (b) secondly, to the payment of amounts secured by any other mortgage, encumbrance, or security interest over the property to the extent that it has priority over the mortgagee's mortgage;
 - (c) thirdly, to the repayment of all amounts (if any) paid or advanced by the mortgagee for the purpose referred to in paragraph (b), together with interest on those amounts at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage;
 - (d) fourthly, to the payment of amounts secured by the mortgage (to the extent that those amounts have not been paid under paragraphs (a) to (c));
 - (e) fifthly, to the payment of amounts secured by any subsequent mortgage, subsequent encumbrance, or subsequent security interest over the property if—

- (i) the subsequent mortgage, subsequent encumbrance, or subsequent security interest is registered; or
 - (ii) the subsequent mortgage, subsequent encumbrance, or subsequent security interest is unregistered, but the mortgagee has actual notice of it:
- (f) sixthly, to the payment of any surplus to the current mortgagor.
- (2) The amounts are amounts reasonably paid or advanced at any time by the mortgagee—
 - (a) for the protection, insurance, maintenance, preservation, or repair of the mortgaged property; or
 - (b) for the payment of rates or other outgoings; or
 - (c) to meet the expenses of the mortgagee in entering into possession, or in doing anything that a mortgagee in possession is required or entitled to do; or
 - (d) with a view to the realisation of the security (including any additional amount referred to in section 120(2) or 129(2)).
- (3) For the purposes of—
 - (a) subsection (1)(b), if there is more than 1 mortgage, encumbrance, or security interest referred to in that paragraph, payment must be made under that paragraph of amounts secured by each in the order of its priority;
 - (b) subsection (1)(e), if there is more than 1 mortgage, encumbrance, or security interest referred to in that paragraph, payment must be made under that paragraph of amounts secured by each in the order of its priority.
- (4) Despite subsection (1), subsection (1)(b) does not apply in relation to another mortgage, encumbrance, or security interest over the property that has priority over the mortgagee's mortgage if—
 - (a) the person who purchases the property from the mortgagee agrees to accept the transfer or assignment of the property subject to the prior mortgage, encumbrance, or security interest; and
 - (b) the arrangement referred to in paragraph (a) is consented to in writing by the mortgagee under the prior

mortgage, the holder of the prior encumbrance, or the secured party under the prior security interest.

- (5) Subsection (1) is subject to section 153.
- (6) This section and section 153—
 - (a) apply to proceeds arising from a sale by a mortgagee of mortgaged property that are applied on or after 1 January 2008; but
 - (b) do not apply if section 104PPA of the Property Law Act 1952 continues to apply under section 154.

Compare: 1952 No 52 s 104

186 Payment of surplus to the Crown if current mortgagor cannot be found

- (1) This section applies if—
 - (a) a mortgagee sells mortgaged property; and
 - (b) there is a surplus that must be paid to the current mortgagor under section 185; and
 - (c) the current mortgagor cannot be found after the mortgagee has taken reasonable steps to locate the current mortgagor.
- (2) The mortgagee must—
 - (a) deliver to the Secretary to the Treasury a statutory declaration setting out, to the best of the mortgagee's knowledge and belief, particulars of—
 - (i) the mortgaged property; and
 - (ii) the current mortgagor; and
 - (iii) the sale; and
 - (iv) the application of the proceeds of the sale; and
 - (v) the information in the possession or control of the mortgagee as to the persons beneficially entitled to the surplus and the steps taken by the mortgagee to locate those persons; and
 - (b) pay the surplus to the Crown by remitting it to the Secretary to the Treasury; and
 - (c) deliver to the Secretary to the Treasury any further statutory declaration setting out further and better particulars of any matter referred to in paragraph (a) that the Secretary may require.

- (3) The Secretary to the Treasury must, on being satisfied that the particulars required to be supplied by the mortgagee under subsection (2) are true and complete, give a receipt to the mortgagee for the amount paid to the Crown under this section.
 - (4) A receipt given under subsection (3) is a sufficient discharge to the mortgagee for the proper application of the surplus.
 - (5) An amount paid to the Crown under this section is trust money for the purposes of Part 7 of the Public Finance Act 1989.
- Compare: 1952 No 51 s 102A

*Sale by mortgagee through Registrar or through
court*

187 Sale by mortgagee through Registrar

The Registrar may, in accordance with sections 188 to 198, conduct the sale by public auction of the whole or any part of mortgaged land.

Compare: 1952 No 51 s 99(1)

188 Application for sale under section 187

- (1) A mortgagee who is entitled to sell mortgaged land may file an application for a sale under section 187—
 - (a) in the office of the High Court nearest, by the most practicable route, to the place where the land proposed to be sold is situated; or
 - (b) if that land is situated in more than 1 place, in the office of the High Court nearest, by the most practicable route, to any of those places.
- (2) An application for a sale under section 187—
 - (a) must be in writing; and
 - (b) must advise the Registrar of the name and address of the following persons if the vendor mortgagee has actual notice of the name and address of the person:
 - (i) the current mortgagor;
 - (ii) any former mortgagor;
 - (iii) any covenantor;
 - (iv) the mortgagee under any other mortgage or encumbrance over the land proposed to be sold (whether or not it has priority over the vendor

mortgagee's mortgage), if that other mortgage or encumbrance—

- (A) is registered; or
- (B) is unregistered but the vendor mortgagee has actual notice of it:
- (v) any person who has lodged a caveat under section 137 of the Land Transfer Act 1952, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat, against the title to the land or any part of it.

Compare: 1952 No 51 s 99(1), (1A)

189 Vendor mortgagee must nominate discharge sum

- (1) In an application for a sale under section 187, the vendor mortgagee must nominate, for the land proposed to be sold, a sum upon payment of which the vendor mortgagee will become bound to discharge the mortgage over the land.
- (2) If the land is to be sold in separate lots, the vendor mortgagee must nominate a discharge sum for each lot separately, as well as for the land as a whole.
- (3) If the land proposed to be sold is subject to a mortgage or other encumbrance having priority over the vendor mortgagee's mortgage, the vendor mortgagee—
 - (a) must not include in the discharge sum the amounts secured by that mortgage or other encumbrance to the extent that the security for those amounts has priority; and
 - (b) must state whether the sale to be conducted by the Registrar is to be subject to, or free of, that mortgage or other encumbrance.

Compare: 1952 No 51 s 99(1)

190 Registrar to arrange sale

- (1) The Registrar must, as soon as practicable after receiving an application for a sale under section 187 and after being satisfied of the matters specified in subsection (2),—
 - (a) approve the proposed sale; and
 - (b) fix a convenient time (being not shorter than 1 month after the date of the application) for the conduct of the sale; and

- (c) fix a convenient place for the conduct of the sale; and
 - (d) if the vendor mortgagee has supplied their names and addresses under section 188(2)(b), give written notice to every person referred to in that paragraph of—
 - (i) the time and place at which the sale is to be conducted; and
 - (ii) the discharge sum nominated by the vendor mortgagee for the land proposed to be sold; and
 - (e) approve proper conditions of sale, employ an auctioneer, and do all other things necessary for the proper conduct of the sale by public auction, without reserve, of the land proposed to be sold; and
 - (f) advertise the sale in accordance with section 191.
- (2) The matters of which the Registrar must be satisfied are—
- (a) that, by reason of a default that has not been remedied, the vendor mortgagee has become entitled under the mortgage to exercise a power to sell the mortgaged land proposed to be sold; and
 - (b) that the vendor mortgagee has complied with all relevant provisions of subpart 5 concerning the exercise of the power of sale.
- (3) For the purposes of subsection (1)(b), the date of an application for a sale under section 187 is the date on which the completed application is filed in the proper office of the High Court as provided in section 188.
- Compare: 1952 No 51 s 99(2)

191 Advertising of sale

- (1) The Registrar must, for the purposes of section 190, give notice of the sale that the Registrar considers sufficient by advertisement in a newspaper circulating in the locality in which the land proposed to be sold is situated.
- (2) However, if the Registrar considers that, by reason of the character of the land, advertisement in a newspaper circulating only in that locality is unlikely to enable the vendor mortgagee to discharge the duty of care under section 176(1), the Registrar must give notice of the sale that the Registrar considers sufficient by advertisement also in newspapers circulating in any other localities that the Registrar thinks fit.

- (3) The High Court may, on the application of a specified person, direct the Registrar to undertake further or other advertising of the sale, or marketing of the land, that the High Court thinks fit.
- (4) In subsection (3), **specified person** means—
 - (a) the current mortgagor; or
 - (b) the vendor mortgagee; or
 - (c) any other person who has an interest in the proposed sale.
- (5) This section does not prevent the vendor mortgagee from carrying out more extensive advertising of the sale or marketing of the land proposed to be sold than is undertaken by the Registrar or directed by the court.
- (6) Costs reasonably incurred by the vendor mortgagee for the purpose referred to in subsection (5) are, for the purposes of sections 87, 88, 152, 153, and 185, amounts reasonably paid or advanced by the mortgagee with a view to the realisation of the security.

Compare: 1952 No 51 s 99(2)(c)

192 Registrar may consent to correction of defect or error

The Registrar may, at any time before the sale, consent to the correction of any defect or error in an application for a sale under section 187, or in any supporting or consequential document, if satisfied that the correction will not materially prejudice the current mortgagor or any other person who has an interest in the proposed sale.

193 Withdrawal of land from sale

- (1) The Registrar may approve, under section 190, conditions of sale that include a right on the part of the vendor mortgagee to withdraw from the sale the whole or any part of the land proposed to be sold, at any time before the land has been sold, and whether or not the bidding has reached the discharge sum nominated for the land.
- (2) If, in the opinion of the Registrar, the vendor mortgagee unreasonably withdraws from sale the whole or any part of the land proposed to be sold, the Registrar must disallow all or part

of the expenses of, and incidental to, the sale as the Registrar thinks fit.

- (3) For the purposes of sections 87, 88, 152, 153, and 185, no expense disallowed under subsection (2) is an amount paid or advanced with a view to the realisation of the security.
- (4) The Registrar may withdraw from sale under section 190 the land proposed to be sold if the Registrar becomes aware of any irregularity or impropriety in any matter preliminary to its sale.

194 Registrar's fees, expenses, and commission

- (1) A vendor mortgagee who applies for a sale under section 187 must pay to the Registrar—
 - (a) the prescribed fee payable on the making of the application; and
 - (b) the reasonable expenses of, and incidental to, the conduct of the sale (whether or not the land is in fact sold); and
 - (c) if the land is sold, a further fee of one-quarter of 1% of the purchase money, but the further fee must not be less than the minimum fee, and not more than the maximum fee, prescribed for the purposes of this paragraph.
- (2) In subsection (1)(c), **purchase money** includes, in the case of a sale subject to any mortgage or other encumbrance having priority over the vendor mortgagee's mortgage, the amounts secured by that mortgage or other encumbrance to the extent that the security for those amounts has priority at the time of the sale.

Compare: 1952 No 51 s 103

195 Current mortgagor or other person may redeem on payment of nominated discharge sum

- (1) The current mortgagor or any other person who is entitled to redeem the mortgaged land may, at any time before the land is sold, or is withdrawn from sale under section 193, redeem the land, in whole or in part, by paying to the vendor mortgagee either—
 - (a) the discharge sum nominated by the vendor mortgagee under section 189 for the land, or, if the land is to be

- sold in separate lots, the discharge sum so nominated for all or any lots; or
- (b) all amounts secured by the mortgage at the time of payment.
- (2) The vendor mortgagee must, on payment being made by the current mortgagor or other person under subsection (1), deliver to the current mortgagee, or otherwise provide,—
- (a) a discharge of the mortgage over the whole of the mortgaged land, or, in the case of payment under subsection (1)(a) of the discharge sum nominated by the vendor mortgagee for all or any lots, a discharge of the mortgage over the land comprised in that lot or those lots; and
 - (b) all instruments of title held by the vendor mortgagee for the land discharged from the mortgage.
- (3) However, if the payment relates to the whole of the mortgaged land and the current mortgagor or other person who makes the payment under subsection (1) requests the mortgagee to transfer the mortgage to a nominated person (other than the current mortgagor but including that other person),—
- (a) subsection (2) does not apply; and
 - (b) sections 102 and 103 apply as if the request had been made under section 102.
- (4) If the amount paid under subsection (1) is less than the amounts secured by the mortgage, the vendor mortgagee may recover the balance from any person bound by the covenant to repay that is expressed or implied in the mortgage.

Compare: 1952 No 51 s 100

196 Mortgagee may purchase at sale through Registrar

- (1) The vendor mortgagee may be a bidder at a sale by public auction of mortgaged land conducted by the Registrar under section 187.
- (2) If, at the sale, the vendor mortgagee is declared to be the purchaser of the land, or, if the land is sold as separate lots, the purchaser of all or any lots, the vendor mortgagee is bound to purchase the land, or the lot or lots, at a purchase price equal to the greater of—
 - (a) the amount of the vendor mortgagee's successful bid; or

- (b) the discharge sum nominated by the vendor mortgagee for the land or the lot or lots.
- (3) If, under this section, the vendor mortgagee becomes the purchaser of mortgaged land, the Registrar, on request, must execute or register a transfer instrument that—
 - (a) is expressed to be made between the Registrar (described only as the holder of that office) and the vendor mortgagee, with or without the addition of any other party; and
 - (b) recites that the sale has been made under section 187; and
 - (c) is sufficient to transfer or assign the land to the vendor mortgagee or to any other person whom the vendor mortgagee may in writing appoint; and
 - (d) states as the consideration for the transfer or assignment the amount of the purchase price determined in accordance with subsection (2).
- (4) Subsection (3)(c) is, in the case of an executed transfer instrument, subject to the need for its registration.

Compare: 1952 No 51 s 101(1), (3)

197 Effect of transfer executed or registered under section 196

- (1) A transfer instrument, executed or registered by the Registrar under section 196, transfers or assigns the land to which it relates to the transferee or assignee,—
 - (a) free from all liability on account of—
 - (i) the vendor mortgagee's mortgage; and
 - (ii) any subsequent mortgage or other subsequent encumbrance over the land; but
 - (b) subject to—
 - (i) any mortgage or other encumbrance, estate, or interest over or in the land that has not been discharged or otherwise terminated, to the extent that it has priority over the vendor mortgagee's mortgage; and
 - (ii) any other estate or interest in the land that is binding on the vendor mortgagee.

- (2) Subsection (1) is, in the case of an executed transfer instrument, subject to the need for its registration.
Compare: 1952 No 51 s 101(4), (5)

198 Registration of transfer instrument

- (1) A transfer instrument for land under the Land Transfer Act 1952, executed under section 196, may be registered.
- (2) The Registrar-General must, on the registration of a transfer instrument executed under section 196 or on a transfer instrument being otherwise registered under that section, make any entry in the register that is necessary to show that every registered mortgage or encumbrance over the land referred to in section 197(1)(a) has been discharged.
- (3) Subsection (2) is subject to section 197(1)(b).
Compare: 1952 No 51 s 101(6)

199 Applications for sale of mortgaged land by Registrar made before commencement of Act

- (1) This section applies if—
- (a) an application is made under section 99 of the Property Law Act 1952 before 1 January 2008 for the Registrar to conduct the sale of the whole or any part of mortgaged land; and
 - (b) the sale was not conducted before that date.
- (2) The repeal of the Property Law Act 1952 does not affect the completion of the sale.
- (3) Sections 99 to 102 and 103 to 103B of the Property Law Act 1952 continue to apply in relation to the sale as if those provisions had not been repealed by this Act.

200 Sale by mortgagee through court

- (1) A mortgagee who is entitled to sell mortgaged property may apply to a court for assistance—
- (a) in exercising the power of sale; or
 - (b) in completing the transfer of the property to the purchaser (if the property has already been sold by the mortgagee).

- (2) The court may make all or any of the orders specified in subsection (3) if it is satisfied that—
 - (a) there has been a default that has not been remedied or, in the case of personal property, the property is at risk; and
 - (b) the mortgagee has become entitled under the mortgage and subpart 5 to exercise a power of sale in respect of the mortgaged property.
- (3) The orders are as follows:
 - (a) an order directing the sale of the whole or any part of the mortgaged property:
 - (b) an order that the sale be conducted by the mortgagee or by the Registrar:
 - (c) an order making conditions concerning all or any of the following matters:
 - (i) the advertising of the sale:
 - (ii) other marketing of the mortgaged property proposed to be sold:
 - (iii) the conditions of sale:
 - (iv) the manner in which the sale is to be conducted:
 - (d) an order permitting the mortgagee to become the purchaser at the sale otherwise than under section 196:
 - (e) an order permitting the current mortgagor or any other person entitled to redeem the mortgaged property to redeem it otherwise than under subpart 4 or section 195:
 - (f) an order vesting the property, for any estate or interest that the court thinks fit, in the purchaser (including the mortgagee if the mortgagee is the purchaser) or discharging any mortgage or other encumbrance:
 - (g) an order directing the Registrar, or, if it is more convenient, appointing a person other than the Registrar, to execute or register a transfer or assignment of the property to the purchaser (including the mortgagee if the mortgagee is the purchaser) or a discharge of any mortgage or other encumbrance:
 - (h) an order determining the priority of mortgages or other encumbrances over the property.
- (4) An order under subsection (3)(f), or a transfer, assignment, or discharge executed or registered under subsection (3)(g),

has the same effect as a transfer or assignment instrument for the mortgaged property executed or registered by a mortgagee under section 183, or a mortgage discharge instrument for a mortgage duly executed or registered in accordance with section 83, as the case may be.

Compare: 1952 No 51 s 86(2)

201 Application for assistance must be served on certain persons

An application under section 200 must, unless the court orders otherwise, be served—

- (a) on the current mortgagor; and
- (b) on every former mortgagor; and
- (c) on every covenantor; and
- (d) on the mortgagee under any other mortgage, and on the holder of any other encumbrance, over the mortgaged property (whether or not the mortgage or encumbrance has priority over the mortgagee's mortgage) if—
 - (i) the mortgage or encumbrance is registered; or
 - (ii) the mortgage or encumbrance is unregistered, but the mortgagee applying to the court under section 200 has actual notice of it; and
- (e) in the case of mortgaged land, on any person who has lodged a caveat under section 137 of the Land Transfer Act 1952, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat, against the title to the land or any part of it.

202 Miscellaneous matters concerning orders under section 200

- (1) An order under section 200 may be made on any conditions the court thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of the sale or to secure the performance of any other condition of the order.
- (2) The court may make an order under section 200—
 - (a) even if a person who has an interest in the property or in the mortgage—
 - (i) is not before the court; or
 - (ii) opposes the making of the order; and

- (b) without first determining the priority of encumbrances over the property.

Compare: 1952 No 51 s 86(2)–(4)

Subpart 8—Liability to mortgagee of
person who accepts transfer, assignment, or
transmission of land subject to mortgage

203 Person who accepts transfer, assignment, or transmission of land personally liable to mortgagee

- (1) If a person accepts, subject to a mortgage, a transfer, assignment, or transmission of mortgaged land,—
 - (a) the person becomes personally liable to the mortgagee—
 - (i) for the payment of all amounts and the performance of all obligations secured by the mortgage; and
 - (ii) for the observance and performance of all other covenants expressed or implied in the mortgage; and
 - (b) the mortgagee has all remedies under or in connection with the mortgage directly against that person as if that person were the person who gave the mortgage.
- (2) Subsection (1) applies whether or not the person who accepts the transfer, assignment, or transmission has signed the instrument of transfer, assignment, or transmission.
- (3) Subsection (1) is subject to anything to the contrary expressed or implied in the mortgage or any other instrument.
- (4) For the purposes of subsection (1), amounts secured by a mortgage do not include advances made by the mortgagee to a former mortgagor at any time after the mortgagee had actual notice of the transfer, assignment, or transmission of the land to the current mortgagor, or any intermediate former mortgagor, as the case may be, unless the mortgagee was under an obligation to make the advance—
 - (a) when the mortgagee received actual notice of the transfer, assignment, or transmission; and
 - (b) when the advance was made.

Compare: 1952 No 51 s 104(1)

204 Liability of former mortgagor not extinguished

Section 203 does not extinguish the liability under the mortgage of any former mortgagor.

Compare: 1952 No 51 s 104(1)

205 Administrator or trustee liable only to extent of assets of estate or trust

An administrator of the estate of a person or a trustee to whom land is transferred, assigned, or transmitted, subject to a mortgage, is liable under section 203 only to the extent of the assets of the estate or trust in the administrator's or trustee's hands and available for meeting the obligations under the mortgage.

Compare: 1952 No 51 s 104(2)

Part 4

Leases of land

Subpart 1—General provisions

206 Application of Part

- (1) This Part (except sections 208 to 215 and 217 to 224) applies to every lease or sublease of land that is made before, on, or after 1 January 2008.
- (2) Sections 208 to 215 and 217 to 224 apply to every lease or sublease of land that comes into operation on or after 1 January 2008.
- (3) Sections 214, 243 to 264, and 273 apply, with all necessary modifications, to a licence as if every reference in those sections—
 - (a) to a lease were a reference to a licence; and
 - (b) to a lessee were a reference to a licensee; and
 - (c) to a lessor were a reference to a licensor.
- (4) However, sections 214, 243 to 264, and 273 do not confer on a licensee any estate or interest in land.

207 Interpretation

In this Part, unless the context otherwise requires,—

condition, in relation to a lease,—

- (a) means a covenant, condition, or power expressed or implied in the lease; and
- (b) includes, for the purposes of sections 243 to 264, and 273 any such provision under which an act or omission of the lessee or any other person (except an act or omission that is a breach of a covenant of the lessee), or a specified event (except the expiry of the term of the lease), is a ground for the cancellation of the lease (and a breach of a condition includes the commission of that act, or the occurrence of that omission or event)

covenant, in relation to a lease, means a promise expressed or implied in the lease

expire, in relation to the term of a lease that is a periodic tenancy or a statutory tenancy, includes the termination of the lease by notice given by the lessor or the lessee

licence means a licence to occupy land in consideration of—

- (a) rent; or
- (b) a payment in the nature of rent; or
- (c) a payment in kind of any form

short-term lease means an unregistered lease—

- (a) that has a term that commences not later than 20 working days after the date of the contract to lease; and
- (b) that is—
 - (i) a lease for a term of 1 year or less; or
 - (ii) a periodic tenancy for periods of 1 year or less; or
 - (iii) a statutory tenancy

statutory tenancy means a lease that is terminable at will under section 210.

Compare: 1952 No 51 ss 117, 120(1), (2)

Subpart 2—Form, duration, and effect of leases

208 Short-term lease: form

A short-term lease may be made orally or in writing.

209 Short-term lease: effect

- (1) A lessee who occupies land under a short-term lease has a legal interest in the land.
- (2) However, subsection (1) is subject to the Land Transfer Act 1952.
- (3) The legal interest in the land of a lessee under a short-term lease who has given valuable consideration has priority in relation to any unregistered interest in the land—
 - (a) that was created before the lessee entered into occupation of the land if—
 - (i) the lessee entered into occupation of the land in good faith and without actual notice of the unregistered interest; and
 - (ii) no caveat for the unregistered interest was lodged against the title to the land at the time when the lessee entered into occupation of the land; or
 - (b) that is created after the lessee has entered into occupation of the land.

210 Implied term of lease if no other term agreed

- (1) This section applies to a lease if—
 - (a) the lessee is in possession of the land, although the lessor and the lessee have not agreed, expressly or by implication, on the duration of the term of the lease; or
 - (b) the lessee remains in possession of the land with the lessor's consent, although the term of the lease has expired and the lessor and the lessee have not agreed, expressly or by implication, that the lessee may continue in possession for some other period.
- (2) A lease to which this section applies—
 - (a) is terminable at will; and
 - (b) may be terminated, at any time, by the lessor or the lessee giving not less than 20 working days' written notice to the other party to the lease.

Compare: 1952 No 51 s 105

211 Obligations of lessee to remain in force if lessee remains in possession of land with lessor's consent after term of lease has expired

If section 210(1)(b) applies, all the obligations of the lessee under the lease that are consistent with the lease being terminable at will remain in force until the time that the lease is terminated in accordance with section 210(2).

Compare: 1952 No 51 s 105

212 Lease terminating on occurrence of future event

- (1) A lease is not invalid only because it provides for its termination, or permits notice of its termination to be given, on the occurrence of a future event so long as the event is sufficiently defined in the lease that it can be identified when it occurs.
- (2) However, the lease terminates on the tenth anniversary of the date on which the term of the lease began (the **tenth anniversary date**) if that future event has not occurred before that date.
- (3) Subsection (2) does not apply to a lease that provides for its termination on, or for notice of its termination to be given on or before, a date that—
 - (a) is fixed in the lease; and
 - (b) is later than the tenth anniversary date.
- (4) A lease that is valid only because of the application of this section cannot be registered under the Land Transfer Act 1952 but is to be treated for all purposes as creating an equitable estate in the land.

213 Lessee remaining in possession without consent of lessor, or lessor accepting rent, after termination of lease

- (1) A lessee who remains in possession of the land without the lessor's consent after the lease has been terminated or the term of the lease has expired is subject to all the obligations of the lessee under the lease until the time that the lessee ceases to be in possession of the land.
- (2) A lessor who accepts rent for any period after the lease has been terminated or the term of the lease has expired is not, only because of that fact, to be treated as having—

- (a) consented to the lessee remaining in possession of the land; or
- (b) given up any of the lessor's rights or remedies against the lessee for breach of a covenant or condition of the lease.

Compare: 1986 No 120 s 60

214 Notice by joint tenants

- (1) This section applies to a notice of termination for a periodic tenancy that is entered into—
 - (a) by 2 or more lessors as joint tenants; or
 - (b) by 2 or more lessees as joint tenants.
- (2) A notice of termination to which this section applies may be given by 1 or more of the lessors or the lessees as joint tenants, on behalf of all the joint tenants, unless all the parties to the tenancy have agreed, expressly or by implication, to do otherwise.

215 Sublease for same or longer term as term of superior lease

- (1) This section applies to a sublease under a lease (the **superior lease**) if the sublease is entered into, or purportedly entered into,—
 - (a) by a lessee under the superior lease; and
 - (b) for a term that will expire at the same time as, or later than, the time at which the term of the superior lease expires.
- (2) A sublease to which this section applies does not, unless a contrary intention appears, operate as an assignment of the superior lease to the sublessee.
- (3) If the term of a sublease to which this section applies will expire later than the expiry of the term of the superior lease,—
 - (a) the term of the sublease is reduced and will expire at the same time as the term of the superior lease; and
 - (b) the sublease cannot be registered under the Land Transfer Act 1952 but is to be treated for all purposes as creating an equitable estate in the land.

- (4) Subsection (3) does not affect any remedy that the sublessee may have for the reduction, in accordance with that subsection, of the term of the sublease.
- (5) If the term of the superior lease is extended or renewed, the term of the sublease is extended and will expire at the earlier of the time that—
 - (a) the term of the extended or renewed superior lease is expressed to expire; or
 - (b) the term of the sublease is expressed to expire.
- (6) Although the term of a sublease to which this section applies (as expressed, reduced, or extended by this section) expires at the same time as the term of the superior lease, the sublessor must be treated as having a reversion expectant on the sublease.

216 Surrender of lease to enable new superior lease to be entered into not to affect sublease

- (1) If a lease (**lease A**) is surrendered to allow a new lease (**lease B**) to be entered into with the same lessee, a sublease in respect of lease A does not also have to be surrendered if—
 - (a) the term of the sublease, as expressed, will expire on or before the date on which the term of lease B will expire; or
 - (b) the sublease may be terminated by the sublessor giving a notice of termination that takes effect on or before that date.
- (2) A sublease in respect of lease A continues in force as though it had been entered into in respect of lease B and all the rights and obligations under the sublease, including those that relate to any period before the surrender of lease A, continue to be enforceable.
- (3) However, subsection (2) does not apply to any obligation under the sublease that, because lease B has been entered into, is more onerous than it would have been had lease A not been surrendered.
- (4) For the purposes of this section, a sublease in respect of lease A includes any sublease entered into by a person deriving title through the lessee under lease A.

- (5) For the purposes of section 117 of the Land Transfer Act 1952, a sublease in respect of lease A is an interest to which lease B is deemed to be subject.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 6 (UK)

Subpart 3—Covenants, conditions, and powers implied in leases

217 Application of sections 218 to 220

Sections 218 to 220 apply, as the case requires, unless a contrary intention is expressed (whether in a lease or otherwise) in accordance with section 279(2) (construction and variation, etc, of implied covenants).

Compare: 1952 No 51 s 106

218 Covenants, conditions, and powers implied in all leases

- (1) Every lease contains the implied covenants, conditions, and powers set out in Part 2 of Schedule 3.
- (2) The covenant set out in clause 9 of Part 2 of Schedule 3 (lessee entitled to quiet enjoyment) that is implied in a lease under subsection (1) relates only to the acts and omissions of—
- (a) the lessor; and
 - (b) all persons through whom the lessor derives title except by purchase for valuable consideration; and
 - (c) all persons who claim, or may claim, through, under, or in trust for the lessor or any person referred to in paragraph (b).

Compare: 1952 No 51 s 106

219 Covenant implied in leases (except unregistered short-term leases)

Every lease other than a short-term lease that is not registered contains the covenant set out in Part 3 of Schedule 3 (lessee to keep and yield up premises in existing condition).

Compare: 1952 No 51 s 106

220 Covenant implied in unregistered short-term leases

Every short-term lease that is not registered contains the covenant set out in Part 4 of Schedule 3 (lessee to use premises reasonably).

Compare: 1952 No 51 s 106

221 Reference to usual covenants

In a lease, unless the context otherwise requires, a reference to usual covenants must be taken to be a reference to the covenants implied in that lease by—

- (a) section 218; and
- (b) section 219 (for a lease that is not a short-term lease) or section 220 (for a short-term lease).

222 Time for payment of rent

The rent payable under a lease is payable monthly in advance (whether that rent is expressed as an annual amount or in another way) unless the lessor and the lessee agree otherwise.

223 Effect of covenant to keep premises in good condition

In a lease, unless the context otherwise requires, a covenant to keep leased premises in good condition (or words to that effect) does not require the lessee to put the premises into good condition if they are not in good condition when the term of the lease begins.

224 Consent not to be unreasonably withheld or delayed

- (1) In a lease, unless the context otherwise requires, a covenant of the lessee not to do a thing without the lessor's consent must be taken as requiring the lessor—
 - (a) not to unreasonably withhold consent to the doing of that thing by the lessee; and
 - (b) within a reasonable time, to—
 - (i) give the consent; or
 - (ii) notify the lessee in writing that the consent is withheld.
- (2) This section does not affect the operation of a covenant referred to in section 225.

225 Application of sections 226 to 228

- (1) Sections 226 to 228 apply if there is a covenant in a lease that the lessee will not, without the consent of the lessor, do 1 or more of the following things:
 - (a) transfer or assign the lease:
 - (b) enter into a sublease:
 - (c) part with possession of the leased premises:
 - (d) change the use of the leased premises from a use that is permitted under the lease:
 - (e) create a mortgage over the leasehold estate or interest:
 - (f) do any of the things referred to in paragraph (a), (b), (c), (d), or (e) in relation to any part of the leased premises, or for any part of the term of the lease.
- (2) Sections 226 to 228 do not prevent a lease from including a covenant binding the lessee absolutely not to do any of the things referred to in subsection (1).
- (3) To avoid doubt, sections 226 to 228 do not apply if, and to the extent that, a lease includes, in accordance with subsection (2), a covenant binding the lessee absolutely not to do any of the things referred to in subsection (1).

226 Consent to assignment, etc, or change of use

- (1) This section applies to a lessor who receives after 31 December 2007 an application by a lessee requesting the lessor's consent to do 1 or more of the things referred to in section 225(1)(a) to (f) (whether the lease came into operation before, on, or after that date).
- (2) The lessor—
 - (a) must not unreasonably withhold consent to the doing of the thing or things specified in the application (whether or not the covenant expressly provides that consent must not unreasonably be withheld); and
 - (b) must, within a reasonable time,—
 - (i) give the consent; or
 - (ii) notify the lessee in writing that the consent is withheld.

Compare: 1952 No 51 s 110

227 When consent is unreasonably withheld

- (1) For the purposes of section 226(2)(a), consent is unreasonably withheld if,—
 - (a) as a condition of, or in relation to, giving consent, the lessor—
 - (i) requires the payment of an amount (whether by way of additional rent, or by way of premium or fine) or other consideration; or
 - (ii) imposes on the lessee any unreasonable condition or precondition; or
 - (b) consent is withheld because the lessee—
 - (i) is bankrupt (if the lessee is an individual); or
 - (ii) is in receivership or liquidation (if the lessee is a company); or
 - (iii) is in receivership or is being liquidated under section 342 of the Companies Act 1993 (if the lessee is an overseas company).
- (2) Subsection (1) does not limit section 226(2)(a), nor does it prevent the lessor from requiring the lessee, if the lease so provides, to pay the reasonable legal or other expenses of the lessor in giving consent.
- (3) If the lessor refuses consent, or gives consent subject to a condition or precondition, the lessor must, on the written request of the lessee, promptly give the lessee written notice of the reasons for—
 - (a) the refusal; or
 - (b) the imposition of the condition or precondition.

Compare: 1952 No 51 ss 109, 110

228 Damages may be recovered from lessor if consent is unreasonably withheld

- (1) A person specified in subsection (2) who suffers loss because of a failure by a lessor to comply with section 226(2) may recover from the lessor—
 - (a) any payment required to be made or other consideration referred to in section 227(1)(a); and
 - (b) damages for any loss suffered because of any other failure by the lessor to comply with section 226(2).
- (2) The persons referred to in subsection (1) are—

- (a) the lessee; or
- (b) any assignee, sublessee, mortgagee, or person in possession of the leased premises.

229 Instruments have no effect so far as they conflict with section 225, 226, 227, or 228

A term has no effect if it—

- (a) is expressed or implied in an instrument; and
- (b) conflicts with section 225, 226, 227, or 228.

Subpart 4—Effect on leases of transactions
concerning reversion

230 Merger of reversion not to affect remedies

- (1) This section applies to a lease if the reversion expectant on the lease is merged in a remainder or other reversion, or in a future estate or interest in the land.
- (2) The person entitled to the estate or interest into which that reversion has merged has the same remedies for non-performance or non-observance of the covenants or conditions of the lease, and has the same rights to give notice to the lessee of termination of the lease, as the person who would for the time being (but for the merger) have been entitled to the reversion expectant on the lease would have had.

Compare: 1952 No 51 s 111

231 Burden of lessor's covenants to run with reversion

- (1) If the reversion expectant on a lease ceases to be held by the lessor (whether by transfer, assignment, grant, operation of law, or otherwise), the obligations imposed by every covenant of the lessor—
 - (a) run with the reversion; and
 - (b) may be enforced by the person who is from time to time entitled to the leasehold estate or interest against the person who is from time to time entitled to the reversion.
- (2) Subsection (1) applies unless a contrary intention appears from the lease or from another circumstance.
- (3) In subsection (1), the reference to every covenant of the lessor is,—

- (a) for a lease that comes into operation before 1 January 2008, a reference to every covenant of the lessor that refers to the subject matter of the lease; and
- (b) for a lease that comes into operation on or after that date, a reference to every covenant of the lessor, whether it refers to the subject matter of the lease or not.

Compare: Grantees of Reversions Act 1540, 32 Hen 8, c 34 (Imp); 1952 No 51 s 113

232 Rights under lease to which section 233 applies

- (1) Section 233 applies to all or any of the following rights under a lease:
 - (a) the right to receive the rent payable:
 - (b) the right to enforce every covenant of the lessee, including a covenant relating to a subject matter that was not in existence when the covenant was made:
 - (c) the right to enforce any guarantee of the performance of all or any covenants of the lessee:
 - (d) all rights and remedies of the lessor.
- (2) In subsection (1)(b), the reference to every covenant of the lessee is,—
 - (a) for a lease that comes into operation before 1 January 2008, a reference to every covenant of the lessee that refers to the subject matter of the lease; and
 - (b) for a lease that comes into operation on or after that date, a reference to every covenant of the lessee, whether it refers to the subject matter of the lease or not.
- (3) In subsection (1)(d), the reference to the rights and remedies of the lessor under a lease includes a reference to—
 - (a) the right to give any notice under the lease; and
 - (b) the right to take advantage of any condition of the lease; and
 - (c) the right to re-enter or apply for an order of possession of the land; and
 - (d) the right to cancel the lease.

Compare: Grantees of Reversions Act 1540, 32 Hen 8, c 34 (Imp); 1952 No 51 s 112

233 Benefit of lessee's covenants to run with reversion

- (1) If the reversion expectant on the lease ceases to be held by the lessor (whether by transfer, assignment, grant, operation of law, or otherwise), the rights to which this section applies—
- (a) run with the reversion; and
 - (b) may be exercised by the person who is from time to time entitled to the income of the land, whether or not the lessee has acknowledged that person as lessor (that is, with or without attornment by the lessee).
- (2) Subsection (1) applies unless a contrary intention appears from the lease or from another circumstance.

Compare: Grantees of Reversions Act 1540, 32 Hen 8, c 34 (Imp); 1952 No 51 s 112

234 When rights arising from covenants may be exercised

- (1) A person who is entitled under section 233(1) to exercise a right to which that section applies—
- (a) may exercise that right even though the basis for doing so first arose or accrued before the time at which that person became so entitled; and
 - (b) is the only person entitled to exercise that right.
- (2) Subsection (1)(a) applies unless—
- (a) the right was waived; or
 - (b) the lessee was released from the obligation to which the right relates.
- (3) Subsection (1)(b) applies unless the person who becomes entitled to exercise the right has agreed to the exercise of that right by some other person (in which case the right may be exercised by the other person to the extent so agreed).

Compare: Grantees of Reversions Act 1540, 32 Hen 8, c 34 (Imp); 1952 No 51 s 112

235 Rights and obligations under lease after severance

- (1) This section applies to a lease if—
- (a) the reversion expectant on the lease is divided into different parts, and different persons are entitled to the income of those different parts (that is, a severance of the reversion as regards the land); or

- (b) the lease has terminated for part only of the land comprised in the lease (that is, a severance of the reversion as regards the estate).
- (2) The obligations referred to in section 231 and the rights and remedies to which section 233 applies—
 - (a) must be apportioned; and
 - (b) to the extent required by that apportionment, must remain attached, as the case requires, to—
 - (i) each part of the reversion; or
 - (ii) that part of the land for which the lease has not been terminated; and
 - (c) may, to that extent, be—
 - (i) enforced by the person entitled to enforce those obligations under section 231; or
 - (ii) exercised by the person entitled to exercise those rights and remedies under section 233.

Compare: 1952 No 51 s 114

236 Notice of termination of lease after severance

- (1) This section applies to a lease if—
 - (a) the reversion expectant on the lease is divided into different parts; and
 - (b) a notice of termination of the lease is given after that division; and
 - (c) the notice terminates the lease for part only of the land comprised in the lease.
- (2) The lessee may, within 20 working days after receiving the notice of termination referred to in subsection (1), terminate the lease for the residue of the land comprised in the lease by notice to the person entitled to the reversion of that residue.
- (3) A notice given by the lessee under subsection (2) takes effect on the date the notice of termination referred to in subsection (1) takes effect.

237 Effect of payment by lessee to assignor of reversion

- (1) This section applies to a lease if the lessor has transferred or assigned the reversion expectant on the lease.

- (2) A lessee who pays all or part of the rent or other amounts due under the lease to the transferor or assignor of that reversion is discharged to the extent of that payment if the lessee had no actual notice of the transfer or assignment.
- (3) For the purposes of subsection (2), the registration of a transfer of the reversion is not, in itself, actual notice to the lessee of the transfer, despite anything to the contrary in any other enactment.

238 Effect of acknowledgement by lessee of another person as lessor

An acknowledgement by a lessee that a person who is not entitled to the reversion expectant on a lease is the lessor has no effect on the person who is so entitled, unless the acknowledgement is made—

- (a) with the consent of the person who is so entitled; or
- (b) under a court order.

Compare: Administration of Justice Act 1705, 4 and 5 Anne, c 3 ss 9, 10 (Imp); Distress for Rent Act 1737, 11 Geo 2, c 19 s 11 (UK)

**Subpart 5—Effect of transfer or assignment
of leases**

239 Application of subpart

- (1) This subpart applies to a transfer or assignment of a leasehold estate or interest in land that comes into operation on or after 1 January 2008 (whether the lease came into operation before, on, or after that date).
- (2) If a transfer or assignment to which this subpart applies relates to part only of the land comprised in a lease, the provisions of this subpart apply only in relation to the part that is transferred or assigned.

240 Transferee or assignee becomes lessee

- (1) A person who accepts a transfer or assignment of a lease becomes the lessee of the land without need to—
 - (a) acknowledge (by attornment or otherwise) the lessor as the lessor of the land; or
 - (b) take possession of the land.

- (2) If a lease contains a covenant that the lessee will not, or will not without the lessor's consent, transfer or assign the lease, a transfer or assignment of the lease by the lessee has effect whether or not—
 - (a) the lessor has consented to the transfer or assignment; and
 - (b) the transfer or assignment is in breach of that covenant.
- (3) A person who becomes the lessee under this section—
 - (a) must pay to the lessor the rent payable under the lease; and
 - (b) must observe and perform all covenants of the lessee; and
 - (c) may enforce all covenants of the lessor.
- (4) Subsection (3) applies whether or not any covenant referred to in that subsection relates to a subject matter that—
 - (a) was not in existence when the covenant was made; or
 - (b) refers to the subject matter of the lease.
- (5) Subsection (3) does not apply to a covenant that, immediately before the transfer or assignment, was not binding on the lessee, or on the lessor, as the case requires.
- (6) To avoid doubt, subsection (2) does not prevent the lessor from—
 - (a) re-entering the land peaceably (and without committing forcible entry under section 91 of the Crimes Act 1961); or
 - (b) cancelling the lease; or
 - (c) making a claim for a breach of the covenant referred to in that subsection.

241 Transferor or assignor remains liable

- (1) If there has been a transfer or assignment of a lease, the transferor or assignor remains liable to the lessor for—
 - (a) the payment of the rent payable under the lease; and
 - (b) the observance and performance of all covenants of the lessee.
- (2) However, if, without the consent of the transferor or assignor, the transferee or assignee agrees with the lessor to vary the lease, the variation does not increase the liability of the trans-

feror or assignor beyond that provided for by the lease at the time of the transfer or assignment.

- (3) Subsection (1) does not apply to a covenant that, immediately before the transfer or assignment, was not binding on the lessee, or on the lessor, as the case requires.
- (4) Subsection (2) does not apply if the lease provides for the variation.

242 Covenant implied in transfer or assignment of lease

- (1) Every transfer or assignment of a lease must be taken to contain a covenant by the transferee or assignee with the transferor or assignor that, on and after the date of the transfer or assignment, the transferee or assignee will—
 - (a) pay the rent payable under the lease as and when it falls due; and
 - (b) observe or perform every other covenant of the lessee; and
 - (c) indemnify the following persons against all claims and expenses for the non-payment of the rent or the breach of any other covenant of the lessee:
 - (i) the transferor or assignor and anyone claiming through the transferor or assignor;
 - (ii) any previous transferor or assignor.
- (2) Subsection (1)(c)(ii) applies whether—
 - (a) the transfer or assignment of the lease by the previous transferor or assignor came into operation before, on, or after 1 January 2008; and
 - (b) the non-payment of rent or the breach of any other covenant of the lessee results from an act or omission of—
 - (i) the transferee or assignee; or
 - (ii) a successor in title of the transferee or assignee.

Subpart 6—Remedies and relief

Cancellation of leases

243 Sections 244 to 264 to be code

- (1) A lease may be cancelled only in accordance with sections 244 to 252.

- (2) Any relief against any of the following things may be given only in exercise of the powers conferred by sections 253 to 264:
- (a) the actual or proposed cancellation of a lease; or
 - (b) the refusal to extend or renew a lease; or
 - (c) the refusal to enter into a new lease; or
 - (d) the refusal to transfer or assign the reversion expectant on a lease.
- (3) Any term expressed or implied in a lease or in any other instrument has no effect if it—
- (a) provides that the lease is automatically cancelled by breach of a covenant or condition of the lease; or
 - (b) is otherwise inconsistent with this section or with sections 244 to 264; or
 - (c) has the purpose or effect of avoiding the need for compliance with this section or with sections 244 to 264.

Compare: 1952 No 51 s 118

244 Cancellation of lease for breach of covenant or condition: general

- (1) A lessor who wishes to exercise a right to cancel a lease because of a breach by the lessee of a covenant or condition of the lease may—
- (a) apply to a court for an order for possession of the land; or
 - (b) re-enter the land peaceably (and without committing forcible entry under section 91 of the Crimes Act 1961).
- (2) However, subsection (1) is subject to sections 245 and 246.
- (3) If the lessor applies to a court for an order for possession of land for the purpose of cancelling a lease, the cancellation takes effect—
- (a) on the making of the order; or
 - (b) on any later date that is specified in the order.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

245 Cancellation of lease for breach of covenant to pay rent

- (1) A lessor may exercise a right to cancel a lease because of a breach of the covenant to pay rent under the lease only if—

- (a) the rent has been in arrears for not less than 10 working days; and
 - (b) the lessor has served on the lessee a notice of intention to cancel the lease; and
 - (c) at the expiry of the period specified in the notice, the breach has not been remedied.
- (2) However, if the lessor believes on reasonable grounds that the lessee has given up possession of the leased premises (whether or not the lessee has actually done so), the lessor does not need to serve a notice of intention to cancel the lease on the lessee but must serve the notice instead on all of the following whose names and addresses are known to the lessor:
 - (a) any mortgagee or receiver of the leasehold estate or interest;
 - (b) any sublessee of the lease;
 - (c) any mortgagee or receiver of the estate or interest of a sublessee.
- (3) The notice required by subsection (1)(b) or (2) must adequately inform the recipient of all of the following matters:
 - (a) the nature and extent of the breach complained about;
 - (b) the amount that must be paid to remedy the breach;
 - (c) the period within which the breach must be remedied (which must not be less than 10 working days after the date of service of the notice);
 - (d) the consequence that, if the breach is not remedied at the expiry of the period specified in the notice, the lessor may seek to cancel the lease in accordance with section 244;
 - (e) the right, under section 253, to apply to a court for relief against cancellation of the lease, and the advisability of seeking legal advice on the exercise of that right.
- (4) The period for remedying the breach specified under subsection (3)(c) may run concurrently with the period specified in subsection (1)(a) in which the rent must be in arrears before the lessor may exercise any right to cancel the lease.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

246 Cancellation of lease for breach of other covenants

- (1) A lessor may exercise a right to cancel a lease because of a breach of a covenant or condition of the lease (except the covenant to pay rent) only if—
 - (a) the lessor has served on the lessee a notice of intention to cancel the lease; and
 - (b) at the expiry of a period that is reasonable in the circumstances, the breach has not been remedied.
- (2) The notice required by subsection (1)(a) must adequately inform the recipient of all of the following matters:
 - (a) the nature and extent of the breach complained about;
 - (b) if the lessor considers that the breach is capable of being remedied by the lessee doing or stopping from doing a particular thing, or by the lessee paying reasonable compensation, or both,—
 - (i) the thing that the lessee must do or stop doing; or
 - (ii) the amount of compensation that the lessor considers reasonable; and
 - (c) the consequence that, if the breach is not remedied at the expiry of a period that is reasonable in the circumstances, the lessor may seek to cancel the lease in accordance with section 244;
 - (d) the effect of section 247(1) and (2);
 - (e) the right, under section 253, to apply to a court for relief against cancellation of the lease, and the advisability of seeking legal advice on the exercise of that right.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

247 Defects that do not invalidate notice of intention to cancel lease

- (1) The notice required by section 246(1)(a) is not invalid merely because the lessor—
 - (a) may not have specified that the breach is capable of being remedied by the payment of reasonable compensation; or
 - (b) may have specified an amount of compensation that is unreasonable; or

- (c) may have specified that the breach would be capable of being remedied by the payment of reasonable compensation, but without specifying the amount that the lessor considers reasonable.
- (2) None of the matters set out in subsection (1)(a) to (c) prevents a lessee from offering an amount that the lessee considers to be reasonable compensation for the breach.
- (3) For the purposes of this section and section 246(2)(b), reasonable compensation for the breach may include reimbursement of the lessor's reasonable expenses—
 - (a) in giving the notice required by section 246(1)(a); and
 - (b) in doing anything else that the lessor has reasonably done in relation to the breach.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

248 Application to court for possession of land made before expiry of period of notice of intention to cancel lease

- (1) This section applies to an application made to a court for an order for possession of the land comprised in a lease if—
 - (a) a notice of intention to cancel the lease for breach of a covenant or condition of the lease has been given under section 246(1)(a); and
 - (b) the court finds that the application was made before the expiry of the period that was reasonable in the circumstances for remedying the breach.
- (2) The court may make the order sought by the application if satisfied that, at the time when the order is made, a period that is reasonable in the circumstances has expired and the breach has not been remedied.
- (3) This section overrides section 246.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

249 Consequences of serving on lessee notice of intention to cancel lease under section 245 or 246

- (1) A lessor who has served a notice on a lessee in accordance with section 245 or 246 must, as soon as practicable, serve a

copy of the notice on all of the following whose names and addresses are known to the lessor:

- (a) any mortgagee or receiver of the leasehold estate or interest; and
 - (b) any sublessee of the lease; and
 - (c) any mortgagee or receiver of the estate or interest of a sublessee.
- (2) The lessor's failure to comply with subsection (1) does not, in itself, prevent the lessor from exercising a right to cancel the lease.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

250 Acceptance of rent by lessor after notice of intention to cancel lease given not to operate as waiver of lessor's rights

- (1) If a lessor accepts any rent after a notice of intention to cancel the lease is served on the lessee in accordance with section 245 or 246 the lessor's acceptance of the rent does not operate as a waiver of the lessor's right, on the ground of a breach of a covenant or condition of the lease, to—
- (a) apply for an order for possession of the land; or
 - (b) re-enter the land.
- (2) Subsection (1) applies unless the lessor, in accepting the rent, causes the lessee reasonably to believe that the lessor no longer intends to exercise the right to apply for an order for possession of, or to re-enter, the land.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

251 Powers of court in making order for possession

- (1) On an application to a court for an order for possession of the land comprised in a lease, the court may make the order and cancel the lease.
- (2) If the court makes the order and cancels the lease under subsection (1), it may also do all or any of the following:
- (a) order the lessee to pay the rent up to the date of cancellation or any later date on which the lessee yields up possession:

- (b) order the lessee to pay reasonable compensation for the breach;
 - (c) impose on the lessee or the lessor any other conditions that it thinks fit.
- (3) For the purposes of this section, reasonable compensation for the breach of a lease may include reimbursement of the lessor's reasonable expenses—
 - (a) in giving notice of intention to cancel the lease under section 245 or 246; and
 - (b) in doing anything else that the lessor has reasonably done in relation to the breach.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

252 Effect of sections 244 to 251

- (1) Sections 244 to 251 do not prevent a lessor from claiming damages for—
 - (a) the breach of a lease; or
 - (b) the breach of any other duty to the lessor that the lessee may be under independently of the lease.
- (2) Sections 244 to 251 also do not affect the amount that the lessor may claim by way of damages.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 2 (UK); 1952 No 51 s 118

253 Relief against cancellation of lease for breach of covenant or condition

- (1) All or any of the following persons may apply to a court for relief against the cancellation, or proposed cancellation, of a lease on the ground of a breach of a covenant or condition of the lease:
 - (a) the lessee;
 - (b) a mortgagee of the leasehold estate or interest;
 - (c) a receiver appointed in respect of the leasehold estate or interest;
 - (d) if 2 or more persons are entitled to the leasehold estate or interest as joint tenants, 1 or more of those persons on behalf of the other joint tenants.

- (2) If an application made in accordance with subsection (1)(d) is not made by all of the joint tenants, the application must be served on every joint tenant who is not already a party, unless the court orders otherwise.
- (3) Relief may be sought in—
 - (a) a proceeding brought by the lessor for an order for possession of the land; or
 - (b) a proceeding brought for the purpose of seeking the relief.
- (4) A proceeding referred to in subsection (3)(b) must be brought—
 - (a) before an order for possession of the land is made in a proceeding referred to in subsection (3)(a); or
 - (b) if the lessor has peaceably re-entered the land, not later than 3 months after the date on which the lessor peaceably re-entered the land.
- (5) Subsection (4)(b) is subject to section 254.
Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 4 (UK); 1952 No 51 s 118

254 Mortgagee or receiver may apply for extension of time for bringing proceedings

- (1) This section applies to a mortgagee of a leasehold estate or interest, or a receiver appointed in respect of that estate or interest, who has been prejudiced—
 - (a) by not being served under section 249 with a copy of a notice of intention to cancel the lease that is required to be given under section 245 or 246; or
 - (b) by not being served at a time that is reasonable in the circumstances (whether or not by reason of the failure of the lessor to comply with the relevant section).
- (2) A person to whom this section applies may apply to a court for an extension of—
 - (a) the time specified in section 253(4)(b) for the bringing of a proceeding for relief against the cancellation, or proposed cancellation, of the lease; or
 - (b) the time within which to make an application for relief in the lessor's proceeding for an order for possession of the land.

- (3) The court may grant the application for an extension of time on any conditions that it thinks fit.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 4 (UK); 1952 No 51 s 118

255 Application for relief not to constitute admission

- (1) This section applies to an application for relief against the cancellation, or proposed cancellation, of a lease.

- (2) The application is not, in itself, to be taken as an admission by the person making it—

- (a) that there has been a breach of a covenant or condition of the lease by the lessee; or
- (b) that, because of the breach, the lessor has the right to cancel the lease; or
- (c) that a notice has been duly served on the applicant in accordance with section 245 or 246; or
- (d) that, at the time when the lessor applied to the court for an order for possession of the land or peaceably re-entered the land, the following periods had expired:
 - (i) the period for the remedying of the breach specified in a notice served in accordance with section 245, if notice was served under that section;
 - (ii) a period for the remedying of the breach that was reasonable in the circumstances, if notice was served under section 246.

- (3) The court may grant relief against the cancellation of the lease without determining all or any of the things set out in subsection (2).

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 4 (UK); 1952 No 51 s 118

256 Powers of court on application for relief

- (1) In determining an application for relief against the cancellation, or proposed cancellation, of a lease, under section 253, a court may grant—

- (a) the relief sought on any conditions (if any) as to expenses, damages, compensation, or any other relevant matters that it thinks fit; and

- (b) an injunction restraining any similar breach in the future.
- (2) The court may grant relief against the cancellation, or proposed cancellation, of a lease even though—
 - (a) the cancellation is for a breach of an essential term of the lease; or
 - (b) the breach is not capable of being remedied.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 4 (UK); 1952 No 51 s 118

257 Effect of order granting relief against cancellation of lease

- (1) An order of a court granting relief against the cancellation, or proposed cancellation, of a lease may be registered as an instrument under—
 - (a) the Land Transfer Act 1952; or
 - (b) the Deeds Registration Act 1908.
- (2) On and after the making of the order—
 - (a) the lessee and any sublessee continue to hold the land under the terms of the lease, without any need for a new lease or sublease to be entered into; and
 - (b) any right or interest deriving from any sublease is reinstated.
- (3) Subsection (2) is subject to subsection (4), but otherwise applies despite anything to the contrary in section 121 of the Land Transfer Act 1952.
- (4) If the Registrar-General has, under section 121 of the Land Transfer Act 1952, notified the re-entry of the lessor on the register, subsection (2) has effect only from the time at which the order granting relief is registered.

Compare: Landlord and Tenant Act 1730, 4 Geo 2, c 28 s 4 (UK); 1952 No 51 s 118

258 Protection of sublessee on cancellation of superior lease

- (1) If a lessor exercises, or is proposing to exercise, a right to cancel a lease because of a breach by the lessee of a covenant or condition of the lease, any interested person may apply to a court for relief in—
 - (a) a proceeding brought by the lessor for an order for possession of the land; or

- (b) a proceeding brought by the interested person for the purpose of seeking the relief.
 - (2) A proceeding referred to in subsection (1)(b) must be brought—
 - (a) before an order for possession has been made in a proceeding referred to in subsection (1)(a); and
 - (b) if the lessor has peaceably re-entered the land, not later than 3 months after the date on which the lessor re-entered the land.
 - (3) Subsection (2)(b) is subject to section 259.
 - (4) In this section and sections 259 and 260, **interested person** means, as the case requires,—
 - (a) the sublessee; or
 - (b) a mortgagee of the estate or interest of the sublessee; or
 - (c) a receiver appointed in respect of that estate or interest.
- Compare: 1952 No 51 s 119

259 Interested person may apply for extension of time for bringing proceedings

- (1) This section applies to an interested person who has been prejudiced—
 - (a) by not being served under section 249 with a copy of a notice of intention to cancel a lease that is required to be given under section 245 or 246; or
 - (b) by not being served in that way with a copy of that kind at a time that is reasonable in the circumstances (whether or not by reason of the failure of the lessor to comply with that section).
- (2) An interested person to whom this section applies may apply to the court for an extension of—
 - (a) the time specified in section 258(2)(b) for the bringing of a proceeding for relief under section 258(1); or
 - (b) the time within which to make an application for relief in the lessor's proceeding for an order for possession.
- (3) The court may grant the application for an extension of time on any conditions that it thinks fit.

Compare: 1952 No 51 s 119

260 Powers of court on application for relief by sublessee

- (1) On an application for relief made under section 258, the court may order the lessor to enter into a lease of the whole or any part of the land with the interested person.
- (2) An order under subsection (1)—
 - (a) may specify a lease for a term—
 - (i) beginning on a date not earlier than the date on which the lessor peaceably re-entered the land or the date on which the cancellation of the lease took effect under an order for possession of the land in favour of the lessor; and
 - (ii) expiring on or before a date not later than the date on which the original sublease would have expired; and
 - (b) may be made on any conditions (if any) as to the execution of any instrument, payment of rent, expenses, damages, compensation, or the giving of security, or any other relevant matters, that the court thinks fit.
- (3) An order may be made under subsection (1) even though the lessee is not a party to the proceeding.

Compare: 1952 No 51 s 119

261 Relief against lessor's refusal to enter into renewal or sell reversion to lessee

- (1) This section applies to a lease if—
 - (a) the lessor has covenanted in writing with the lessee that,—
 - (i) on the expiry of the term of the lease, the lessor will extend the term of the lease, renew the lease, or enter into a new lease of all or part of the premises to the lessee; or
 - (ii) on the expiry of the term of the lease, or at some earlier time, the lessor will transfer or assign to the lessee all or part of the reversion expectant on the lease; and
 - (b) the obligation of the lessor referred to in paragraph (a) is conditional on—

- (i) the fulfilment of any condition or the performance of any covenant or agreement of the lessee; or
 - (ii) the lessee giving notice, within a specified time or in a specified manner, of the intention to exercise the right to require an extension or a renewal of the lease or the entering into of a new lease or the transfer or assignment of the reversion; and
 - (c) the lessee is in breach of the condition, covenant, or agreement, or has failed to give the notice within the specified time or in the specified manner; and
 - (d) the lessor has refused to extend or renew the lease, or enter into a new lease, or transfer or assign the reversion, as the case may be.
- (2) If this section applies to a lease, any of the following persons may apply to a court in accordance with section 262 for relief under section 264:
- (a) the lessee;
 - (b) a mortgagee of the leasehold estate or interest;
 - (c) a receiver appointed in respect of the leasehold estate or interest;
 - (d) if 2 or more persons are entitled to the leasehold estate or interest as joint tenants, 1 or more of those persons on behalf of the other joint tenants.
- (3) If an application made in accordance with subsection (2)(d) is not made by all of the joint tenants, the application must be served on every joint tenant who is not already a party, unless the court orders otherwise.

Compare: 1952 No 51 ss 120, 121

262 How application under section 261 for relief under section 264 to be made

An application under section 261 for relief under section 264—

- (a) may be made to the court in any proceeding brought by the lessor for an order for possession of the land or in a proceeding brought by the lessee, mortgagee, or receiver for the purpose of seeking relief; and

- (b) must be made not later than 3 months after the date on which the lessor serves on the lessee, and on any mortgagee or receiver of the leasehold estate or interest of which the lessor has actual notice, a notice that adequately and expressly informs the lessee of the matters specified in section 263.

Compare: 1952 No 51 ss 120, 121

263 Matters lessee must be informed of by notice

The matters referred to in section 262(b) are—

- (a) that the lessor refuses to extend or renew the lease, or enter into a new lease, or transfer or assign the reversion, as the case may be; and
- (b) that the lessee, mortgagee, or receiver may apply to a court for relief against the refusal; and
- (c) that the right to apply for such relief lapses if the application is not made to the court within 3 months of the date of service of the notice; and
- (d) that it is advisable for the lessee, mortgagee, or receiver to seek legal advice on the exercise of the right to apply to a court for relief against the refusal.

Compare: 1952 No 51 ss 120, 121

264 Relief court may grant on application

- (1) On an application under section 261, the court may grant relief against the refusal of the lessor to extend or renew the lease, or enter into a new lease, or transfer or assign the reversion, as the case may be.
- (2) In particular, the court may—
 - (a) do either of the following:
 - (i) order the lessor to extend or renew the lease or enter into a new lease with the lessee, mortgagee, or receiver; or
 - (ii) order the lessor specifically to perform the lessor's covenant or agreement to transfer or assign the reversion, and to execute all necessary assurances for that purpose; and

- (b) grant relief under paragraph (a)(i) or (ii) on any conditions (if any) as to expenses, damages, compensation, or any other relevant matters that the court thinks fit.
- (3) The fact that the lessor may have made a disposition to a person, other than the lessee, mortgagee, or receiver, that would be prejudicially affected by the grant of relief to the lessee, mortgagee, or receiver under this section does not affect the power of the court to grant that relief, but in that case the court may do all or any of the following:
 - (a) cancel or postpone that estate or interest:
 - (b) assess the damages or compensation to be paid to any person prejudicially affected by that cancellation or postponement:
 - (c) order any damages or compensation to be paid by the lessor or by the lessee, mortgagee, or receiver, or partly by the lessor and partly by the lessee, mortgagee, or receiver in the proportions that the court determines.
- (4) If, under this section, an order is made in respect of Māori land for the extension or renewal of a lease, or the entering into of a new lease to the lessee, mortgagee, or receiver, or the specific performance of a covenant or agreement to transfer or assign the reversion, the extension, renewal, entering into of a new lease, transfer or assignment must be confirmed as of right under Te Ture Whenua Maori Act 1993.

Compare: 1952 No 51 ss 120, 121

Abolition of right to distrain

265 Right to distrain abolished

- (1) The right to distrain for rent or other amounts payable under a lease or for a rentcharge is abolished.
- (2) A provision in a lease or in an encumbrance securing a rentcharge that purports to give any person the right to levy distress for rent or other amounts payable under the lease or for the rentcharge has no effect.
- (3) This section does not—
 - (a) affect the manner in which a person may enforce a judgment debt; or

- (b) prevent a lessee or a person by whom a rentcharge is payable from creating an encumbrance over goods to secure payment of the rent or other amounts payable under the lease or for the rentcharge.

Compare: Distress Act 1689, 2 Will and Mar, Sess 1, c 5 (Imp); 1952 No 51 s 107A

Miscellaneous matters

266 Removal of fixtures by lessee

- (1) A lessee may remove any trade, ornamental, or agricultural fixture (except a lessor's fixture) that the lessee has affixed to any leased premises, but may only do so either—
 - (a) while the lessee is in lawful possession of the premises; or
 - (b) during a reasonable period after the lessee ceases to be in lawful possession of the premises or that part of the premises to which the fixture is affixed.
- (2) Subsection (1) applies unless, in relation to a lease, the lessor and lessee agree otherwise.
- (3) A lessee who exercises a right to remove a fixture must—
 - (a) cause as little damage as possible to the leased premises; and
 - (b) make good any damage caused; and
 - (c) compensate the lessor for any damage caused and not made good; and
 - (d) compensate the lessor for any other loss caused to the lessor (including indemnifying the lessor against all claims and expenses for the removal or damage made or incurred by the lessor under any superior lease).
- (4) A lessee who has ceased to be in lawful possession of the premises is entitled, during the reasonable period referred to in subsection (1)(b), to have access to the premises that is reasonable and necessary for the purpose of—
 - (a) exercising any right to remove a fixture; or
 - (b) carrying out any duty to make good any damage caused.
- (5) In this section, **lessor's fixture** means a chattel that has been affixed to the premises (for example, a fence erected on the

land), in such a manner that it becomes part of the structure of a building or otherwise becomes integral to the land, by—

- (a) the lessee; or
- (b) a former lessee of the premises whose leasehold estate or interest was acquired by the lessee; or
- (c) a sublessee whose right to remove the fixture has expired.

Compare: Landlord and Tenant Act 1851, 14 and 15 Vic, c 25 s 3 (UK)

267 Effect of unlawful eviction on lessee's obligations

- (1) This section applies to a lessee under a lease who, contrary to the express or implied terms of the lease, is evicted from the whole or any part of the premises comprised in the lease.
- (2) A lessee to whom this section applies,—
 - (a) if evicted from the whole of those premises, is not required to do the following in respect of the period of eviction:
 - (i) pay the rent or any other amounts payable under the lease; and
 - (ii) perform any other covenant of the lessee; and
 - (b) if evicted from part of the premises, is not required to do the following in respect of the period of eviction:
 - (i) pay the rent and any other amounts payable under the lease for the whole of those premises (which are reduced in the proportion that the value to the lessee of the part of those premises from which the lessee has been evicted bears to the value to the lessee of the whole of those premises); and
 - (ii) observe or perform any other covenants of the lessee, so far as they relate to the part of those premises from which the lessee has been evicted.
- (3) For the purposes of this section, a lessee who, contrary to the express or implied terms of the lease, is, on the commencement of the term of the lease, unable to obtain possession of the whole or any part of those premises must be taken as having been evicted from the whole, or that part, of those premises, as the case may be.
- (4) If, under this section, a lessee is wholly or partly released from the obligation to pay the rent or other amounts payable under

the lease, or to observe or perform any other covenant of the lessee, any other person who is directly or contingently liable for that payment, observance, or performance is released to the same extent.

- (5) This section does not limit the right of a lessee to whom this section applies to—
 - (a) cancel the lease in accordance with any right—
 - (i) expressed or implied in the lease; or
 - (ii) provided for in the Contractual Remedies Act 1979; and
 - (b) claim damages for breach of the lease.
- (6) Any assessment of damages under a claim referred to in subsection (5)(b) must take into account the value of any release, in whole or in part, from the obligation to—
 - (a) pay the rent or other amounts payable under the lease; or
 - (b) observe or perform any other covenant on the part of the lessee.

268 Application of sections 269 and 270

- (1) Sections 269 and 270 apply if, on or after 1 January 2008, leased premises, or the whole or any part of the land on which the leased premises are situated, are destroyed or damaged by 1 or more of the following events:
 - (a) fire, flood, explosion, lightning, storm, earthquake, or volcanic activity;
 - (b) the occurrence of any other peril against the risk of which the lessor is insured or has covenanted with the lessee to be insured.
- (2) Section 269 applies even though an event that gives rise to the destruction or damage is caused or contributed to by the negligence of the lessee or the lessee's agent.
- (3) In this section and sections 269 and 270, **lessee's agent** means a person for whose acts or omissions the lessee is responsible.

269 Exoneration of lessee if lessor is insured

- (1) If this section applies, the lessor must not require the lessee—

- (a) to meet the cost of making good the destruction or damage; or
 - (b) to indemnify the lessor against the cost of making good the destruction or damage; or
 - (c) to pay damages in respect of the destruction or damage.
- (2) If this section applies, the lessor must indemnify the lessee against the cost of carrying out any works to make good the destruction or damage if the lessee is obliged by the terms of any agreement to carry out those works.
- (3) Subsection (1) does not excuse the lessee from any liability to which the lessee would otherwise be subject, and the lessor does not have to indemnify the lessee under subsection (2), if, and to the extent that,—
 - (a) the destruction or damage was intentionally done or caused by the lessee or the lessee's agent; or
 - (b) the destruction or damage was the result of an act or omission by the lessee or the lessee's agent that—
 - (i) occurred on or about the leased premises or on or about the whole or any part of the land on which the premises are situated; and
 - (ii) constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
 - (c) any insurance moneys that would otherwise have been payable to the lessor for the destruction or damage are irrecoverable because of an act or omission of the lessee or the lessee's agent.

270 Rights of lessor if insurance for leased premises or land is affected by negligence of lessee or lessee's agent

- (1) If this section applies and the destruction or damage is caused or contributed to by the negligence of the lessee or the lessee's agent, the lessor may—
 - (a) terminate the lease, on reasonable notice to the lessee, if the lessor's ability to obtain or retain insurance cover on reasonable terms for the leased premises or the land on which the premises are situated has been prejudiced by the destruction or damage; or

- (b) recover from the lessee any increased insurance costs incurred by the lessor in relation to the leased premises or the land on which the premises are situated as a result of the destruction or damage (including, without limitation, any increases in the insurance premium that are, or become, payable by the lessor or, as the case may be, any insurance excess that the lessor may be required to pay in relation to any future claims for destruction or damage of that kind).
- (2) This section overrides section 269.

271 Lessee may acknowledge lessor has not insured, or fully insured, premises

- (1) A lessee may expressly acknowledge in an instrument that the lessor has not insured, or has not fully insured, the premises or the land on which the premises are situated against destruction or damage arising from 1 or more of the events referred to in section 268(1) that are specified in the instrument.
- (2) The lessor and the lessee may expressly agree in that instrument that the lessee will meet the cost of making good the destruction or damage, or will indemnify the lessor against the cost of making good the destruction or damage, to the extent, but only to the extent, that—
 - (a) the destruction or damage arises from an event specified in accordance with subsection (1); and
 - (b) at the time when the destruction or damage occurs, the lessor is not, in fact, entitled to be indemnified under a policy of insurance for the whole or any part of the destruction or damage; and
 - (c) the absence of insurance cover for the whole or any part of the destruction or damage has been acknowledged by the lessee in accordance with subsection (1).
- (3) This section overrides section 269.

272 Instruments have no effect so far as they conflict with section 269, 270, or 271

A term has no effect if it—

- (a) is expressed or implied in an instrument; and
- (b) conflicts with section 269, 270, or 271.

273 Effect of waiver

- (1) A waiver by a lessor of the benefit of any covenant or condition of a lease—
- (a) extends only to the instance or breach to which the waiver particularly relates; and
 - (b) is not to be taken as a general waiver.
- (2) Subsection (1) applies unless a contrary intention appears.
- Compare: 1952 No 51 s 115

Subpart 7—Miscellaneous**274 Administrator not personally liable**

- (1) This section applies to an administrator of the estate of a person who, at the time of that person's death, was liable to—
- (a) pay the rent payable under a lease; or
 - (b) observe or perform any covenant of the lessee.
- (2) An administrator to whom this section applies is liable to pay that rent, or to observe or perform that covenant, only if, and if so only to the extent that, assets of the estate are available in the administrator's hands for that purpose.

Compare: 1952 No 51 s 116

Part 5**Covenants, easements, profits, and access
lots****Subpart 1—Covenants: nature and effect****275 Sections 276 to 278 apply to covenants express or implied**

Sections 276 to 278 apply not only to covenants expressed in an instrument, but also to covenants implied, by this Act or any other enactment, in an instrument or in a short-term lease not made in writing.

Compare: 1952 No 51 ss 65–67

276 Effect of covenants made by 2 or more covenantors

A covenant made by 2 or more covenantors binds both or all the covenantors jointly and severally, unless a contrary inten-

tion appears in the instrument or in the short-term lease not made in writing.

Compare: 1952 No 51 s 67

277 Effect of covenants for benefit of 2 or more covenantees

A covenant for the benefit of 2 or more covenantees binds the covenantor to perform the obligations under the covenant for the benefit of 1 or more survivors of those covenantees, unless a contrary intention appears in the instrument or in the short-term lease not made in writing.

Compare: 1952 No 51 s 65

277A Certain covenants void

- (1) A covenant concerning land is void if a principal purpose of the covenant is to stop the land being used for housing for—
 - (a) people on low incomes; or
 - (b) people with special housing needs; or
 - (c) people whose disabilities mean that they need support or supervision in their housing.
- (2) Without limiting the covenants that are void under subsection (1), covenants to the following effect are void:
 - (a) a covenant that the transferee will not directly or indirectly convey the land to Housing New Zealand Corporation, any other central or local government body, or a private body that may facilitate the occupation of housing on the land by people selected by the corporation or the body;
 - (b) a covenant that the transferee will not directly or indirectly convey the land to Housing New Zealand Corporation, a subsidiary company of Housing New Zealand Corporation, any other central or local government body, or a private body that provides housing to tenants on a subsidised basis;
 - (c) a covenant that the transferee will not directly or indirectly convey the land to a central or local government body or a private body for the purposes of public or institutional housing.

- (3) This section applies only to covenants entered into on or after the day on which this section comes into force.

Compare: 2008 No 67 ss 30, 34

Section 277A: inserted, on 6 August 2010, by section 8(2) of the Affordable Housing: Enabling Territorial Authorities Act Repeal Act 2010 (2010 No 101).

278 Covenants persons made with themselves

- (1) A covenant that a person made with himself, herself, or itself is enforceable in the same way as a covenant that that person made with 1 or more people, none of whom is that person.

- (2) This section applies—

- (a) whether that person is a covenantor alone or jointly with 1 or more other people; and
- (b) whether that person, or any of those people, is an individual, corporation sole, body corporate, or unincorporated body; and
- (c) whether or not the covenant is one that was made in connection with a disposition of property.

Compare: 1952 No 51 ss 66, 66A

279 Construction and variation, etc, of implied covenants

- (1) A covenant implied, by this Act or any other enactment, in an instrument or in a short-term lease not made in writing has the same force and effect, and may be enforced in the same way, as if it had been expressed in that instrument or short-term lease.

- (2) However, the covenant may be negated, varied, or extended—

- (a) by the express terms of the instrument; or
- (b) by a written memorandum executed, as the instrument was required to be executed, by the parties to the instrument; or
- (c) if implied in a short-term lease not made in writing, by the express or implied agreement of the parties.

Compare: 1952 No 51 s 68

280 Covenants implied by this Act are generally cumulative

- (1) Covenants implied, by a provision of this Act, in an instrument or in a short-term lease not made in writing apply together with, and not to the exclusion of, the covenants implied in that

instrument or lease by any other provision of this Act or any other enactment.

- (2) This section is subject to section 286.

281 Only by enactments can covenants be implied as matter of law in certain instruments relating to property, etc

- (1) This section applies to an instrument or lease coming into operation after 31 December 2007 if it is—
- (a) an instrument that relates to property; or
 - (b) a short-term lease not made in writing.
- (2) A covenant is not implied as a matter of law in the instrument or lease unless the covenant is implied by this Act or by another enactment.

Subpart 2—Covenants implied in certain instruments

282 Application of subpart

This subpart applies only to instruments coming into operation after 31 December 2007, and references in this subpart to an instrument must be construed accordingly.

283 Covenants implied unless contrary intention expressed

A covenant is implied in an instrument under any of sections 284 to 286, 288, and 289 unless a contrary intention is expressed—

- (a) by the express terms of the instrument; or
- (b) by a written memorandum executed, as the instrument was required to be executed, by the parties to the instrument.

Compare: 1952 No 51 ss 72–75

284 Covenants implied in instruments creating, transferring, or assigning estates or interests in land

- (1) An instrument contains the implied covenants in Part 1 of Schedule 4 if the instrument is one that, for valuable consideration,—
- (a) creates an estate or interest in land, other than an encumbrance or a leasehold estate or interest; or

- (b) transfers or assigns (otherwise than by way of encumbrance only) an estate or interest in land.
- (2) The covenants implied in an instrument by this section relate only to acts and omissions by the following people:
 - (a) the person who creates, transfers, or assigns the estate or interest; and
 - (b) all persons through whom that person derives title otherwise than by purchase for valuable consideration; and
 - (c) all persons who claim or may claim through, under, or in trust for a person referred to in paragraph (a) or (b).
- (3) This section is subject to section 286.
Compare: 1952 No 51 s 72

285 Covenant implied in instruments transferring or assigning lease of land

- (1) An instrument contains the implied covenant in Part 2 of Schedule 4 if the instrument is one that, for valuable consideration, transfers or assigns (other than by way of encumbrance only) a leasehold estate or interest in land.
- (2) This section is subject to section 286.
Compare: 1952 No 51 s 74

286 Covenants implied in instruments by fiduciary or mortgagee

- (1) This section applies to the following instruments:
 - (a) an instrument to which section 284 or 285 applies and that is executed by a person in a fiduciary capacity (*see* section 287) or as mortgagee:
 - (b) a mortgage discharge instrument, or memorandum of discharge of mortgage, relating to a mortgage over land and executed by a mortgagee.
- (2) An instrument to which this section applies contains the implied covenants in Part 3 of Schedule 4, instead of those in Part 1 or 2 of Schedule 4.
- (3) The covenants implied in an instrument by this section relate only to acts and omissions by the person executing the instrument.

- (4) This section overrides sections 280, 284, and 285.

Compare: 1952 No 51 s 75

287 When person executes instruments in fiduciary capacity for purposes of section 286

- (1) For the purposes of section 286, a person executes an instrument in a fiduciary capacity if that person executes the instrument as a trustee, as an administrator, as a manager of property of a person under the Protection of Personal and Property Rights Act 1988, under an order of a court, or in any other fiduciary capacity.
- (2) For the purposes of section 286, an instrument executed by Public Trust acting otherwise than as agent or attorney must be taken, in the absence of evidence to the contrary, to have been executed in a fiduciary capacity.
- (3) This section does not limit section 286.

Compare: 1952 No 51 s 75

288 Covenants implied in encumbrances of property

- (1) An instrument that creates an encumbrance over property contains the implied covenants in Part 4 of Schedule 4.
- (2) The covenants implied in an instrument by this section relate only to acts and omissions by the following people:
- (a) the person who creates the encumbrance:
 - (b) all persons through whom that person derives title otherwise than by purchase for valuable consideration:
 - (c) all persons who claim or may claim through, under, or in trust for any person referred to in paragraph (a) or (b).

Compare: 1952 No 51 s 72

289 Covenant implied in transfers or assignments of land subject to encumbrance

An instrument that transfers or assigns land subject to an encumbrance contains the implied covenant for the performance of the obligations under the encumbrance in Part 5 of Schedule 4.

Compare: 1952 No 51 s 73; 1952 No 52 s 96

290 Restriction on liability of certain administrators or trustees on covenant under section 289

- (1) This section applies to a transferee or assignee, under an instrument of the kind specified in section 289, of land subject to an encumbrance, if—
 - (a) the transferee or assignee was acquiring the land in the capacity of administrator or trustee; and
 - (b) the transferor or assignor received written notice to that effect before the relevant deadline.
- (2) The **relevant deadline** means the execution of the instrument or, if the instrument is one for the carrying out of an agreement for the sale and purchase of the land, the execution of the agreement by the transferor or assignor.
- (3) A transferee or assignee to whom this section applies is liable on the covenant implied by section 289 not personally, but only to the extent of the assets of the estate or trust in the administrator's or the trustee's hands and available for meeting the obligations under the covenant.

Compare: 1952 No 51 s 73; 1952 No 52 s 96

**Subpart 3—Easements, profits, and access
lots***Creation, benefits, burdens, apportionment, etc,
of easements, etc***291 Easements in gross permitted**

- (1) An easement over land may be created in gross (that is, without being attached to and benefiting other land) for the benefit of any person.
- (2) An easement in gross burdens the land of the covenantor.
- (3) In particular, an easement in gross over land binds—
 - (a) the covenantor; and
 - (b) the covenantor's successors in title; and
 - (c) any person claiming through the covenantor or the covenantor's successors in title, including an occupier for the time being of the burdened land.
- (4) The benefit of an easement in gross over land is capable of being assigned.

Compare: 1952 No 51 s 122

292 Easement includes profit, etc, in sections 293 to 296

In sections 293 to 296, **easement** includes a *profit à prendre* or other incorporeal right.

293 Easements, etc, granted for fixed term: benefits

- (1) This section applies only after a person (the **grantor**) has made a grant, for a fixed term, of an easement, and only to—
 - (a) the benefits, to the grantor, from the easement; and
 - (b) any right of the grantor to terminate the grant.
- (2) The benefits and right to which this section applies—
 - (a) are attached to the estate in the land out of which the easement was granted; and
 - (b) may be exercised or enforced by the person for the time being entitled to the income of that land.
- (3) Subsection (2)(b) applies even though a benefit or right to which this section applies first became exercisable, or accrued, before the time at which the person entitled to the income of that land became so entitled.
- (4) However, nothing in this section permits a person entitled to the income of that land to exercise or enforce a benefit or right after it is waived, or after the person against whom it was exercisable or enforceable is released from the obligation giving rise to it.

294 Easements, etc, granted for fixed term: burden

- (1) This section applies to an easement granted by a person (the **grantor**) for a fixed term.
- (2) The grantor's obligations under the easement burden the estate in the land out of which it was granted.
- (3) In particular, those obligations may be enforced against the holder for the time being of that estate by the person entitled for the time being to the easement.

295 Easements, etc, granted for fixed term: apportionment after severance of reversion as regards land or estate

- (1) This section applies to an easement granted for a fixed term if there has been—

- (a) a division of the estate in the land out of which the easement was granted, and different persons are entitled to the income of different parts (that is, a severance of the reversion as regards the land); or
 - (b) a termination of the easement for part only of the land over which it was granted (that is, a severance of the reversion as regards the estate).
- (2) If this section applies to an easement, an apportionment must be made of the following:
 - (a) the benefits and right to which section 293 applies; and
 - (b) the obligations referred to in section 294(2).
- (3) To the extent required by that apportionment, those benefits, that right, and those obligations remain attached to and benefit or burden each part of the land, and may, to that extent, be exercised or enforced by the person entitled to exercise or enforce them under section 293 or 294.

296 Easements, etc, can no longer be acquired by prescription

- (1) After 31 December 2007, no period of time runs, or continues to run, in favour of a person who, but for this subsection, would, at the expiry of that period, acquire, by continuous use or enjoyment throughout that period,—
 - (a) a prescriptive right to an easement; or
 - (b) a right to become registered as the proprietor of an easement.
- (2) The rule of law permitting a court to act upon the fiction of the lost modern grant is abolished.
- (3) This section does not affect, or prevent a person from continuing to use, enjoy, or have the right to exercise, after 31 December 2007, rights of the kind specified in subsection (1)(a) and (b) and that existed, or that had accrued, immediately before 1 January 2008.
- (4) Despite the Limitation Act 2010, a claim may be made at any time, and relief may be granted in respect of a claim made at any time, for the possession of land free of an easement if the purported easement was used or enjoyed in circumstances amounting to trespass.

Compare: Prescription Act 1832, 2 and 3 Will 4, c 71 ss 1, 2, 4–8 (UK)

Section 296(4): amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Vehicular rights of way

297 Covenants implied in grant of vehicular right of way

- (1) Every grant of a vehicular right of way contains the implied covenants in Schedule 5, except in so far as all or any of those implied covenants are negatived, varied, or extended as provided in subsection (2).
- (2) For a vehicular right of way (whether granted before, on, or after 1 January 2008), those implied covenants may be negatived, varied, or extended by—
 - (a) the instrument, contract, or arrangement creating the vehicular right of way; or
 - (b) the express terms of any other instrument; or
 - (c) a written memorandum executed, as the instrument creating the vehicular right of way was required to be executed, by the parties to that instrument; or
 - (d) an easement instrument registered under section 90A of the Land Transfer Act 1952; or
 - (e) an easement variation instrument registered under section 90C of the Land Transfer Act 1952.
- (3) As between a person (**person A**) entitled to enforce those implied covenants and a person (**person B**) bound by them, a provision to which this subsection applies must be taken as negating, varying, or extending any of those implied covenants only so long as the provision remains enforceable by person A against person B.
- (4) Subsection (3) applies to a provision of an instrument, contract, or arrangement coming into operation before 6 November 1986 (which is the date on which section 126B of the Property Law Act 1952 was substituted by section 4 of the Property Law Amendment Act 1986).
- (5) The provisions of this section are in addition to, and not in derogation of, the provisions of—
 - (a) section 90D of the Land Transfer Act 1952; and
 - (b) section 27(3) of the Housing Act 1955.

- (6) Rights and powers implied under section 90D of the Land Transfer Act 1952 prevail if, and to the extent that, they are inconsistent with any covenants implied by this section.
- (7) Subsection (6) does not limit section 8.
Compare: 1952 No 51 s 126B

Access lots

298 Rights of proprietors of access lot that is or includes driveway or proposed driveway

- (1) This section applies to the proprietors of an access lot that is or includes a driveway or proposed driveway.
- (2) Each of those proprietors has, in common with the rest of them, the same right to pass and re-pass over and along the access lot that the grantor and grantee of a vehicular right of way have (in common with one another) in respect of that right of way under clause 1 of Schedule 5.
- (3) Each of those proprietors has against one another in respect of the access lot the same rights that the owners and occupiers of the land for the benefit of which, and the land over which, a vehicular right of way is granted have against one another in respect of that right of way under clause 2 of Schedule 5.
- (4) Clause 3 of Schedule 5 applies to each of those proprietors in respect of the access lot in the same way as it applies to persons bound by, and persons entitled to enforce, in either case in respect of a vehicular right of way, the covenants in Schedule 5.

Light or air

299 Grant of easement of light or air

- (1) A right to the access of light or air to any land or building from or over the burdened land is enforceable only if—
 - (a) granted by an easement and in a way that complies with the 3 conditions in subsections (2) to (4); or
 - (b) the right is granted by an easement of the kind, or is a right of the kind, specified in subsection (5).

- (2) The first condition is that the easement is granted on or after 24 November 1927 (which is the date on which the Property Law Amendment Act 1927 came into force).
- (3) The second condition is that the easement is granted by deed, or by an instrument registrable under the Land Transfer Act 1915 or the Land Transfer Act 1952.
- (4) The third condition is that the deed or instrument referred to in subsection (3)—
 - (a) accurately defines the area on and over the burdened land in respect of which the right to access of light or air is intended to be provided; and
 - (b) if it is an instrument registrable under the Land Transfer Act 1915 or the Land Transfer Act 1952, is duly registered under the relevant Act within 12 months after the date on which it is executed by the grantor.
- (5) This section does not limit or affect easements or rights of access to or use of light or air existing or acquired, by prescription or otherwise, before 27 July 1894 (which is the date on which the Light and Air Act 1894 came into force).
- (6) In this section and section 300, a reference to light or air includes a reference to both.

Compare: 1952 No 51 ss 123–125

300 Effect of easement of light or air

- (1) An easement that is enforceable under section 299(1) (the **easement**) confers on the person entitled, in respect of the area on and over the burdened land defined in the deed or other instrument (the **defined area**), the rights to the access of light or air described in the grant.
- (2) Unless otherwise provided, the easement continues for the benefit of the person entitled, even though any buildings erected on the benefited land may be altered, or may be destroyed and replaced by other buildings.
- (3) A right conferred by the easement in respect of the defined area is not infringed by the erection on the burdened land of buildings of any height if no part of any building erected on that land encroaches on that area.

Compare: 1952 No 51 s 125

Subpart 4—Covenants: operation

301 Construction of covenants relating to land: benefits

- (1) This section applies to a covenant benefiting land of the covenantee, whether expressed in an instrument or implied by this Act or any other enactment in an instrument, and whether a positive covenant or a restrictive covenant.
- (2) Unless a contrary intention appears in the instrument, the covenant is enforceable by—
 - (a) the covenantee; and
 - (b) the covenantee's successors in title; and
 - (c) persons claiming through the covenantee or the covenantee's successors in title.
- (3) For the purposes of this section, the covenantee's successors in title include an occupier for the time being of the benefited land.

Compare: 1952 No 51 s 63

302 Construction of covenants relating to land: burdens

- (1) This section applies to a covenant burdening land of the covenantor, whether expressed in an instrument or implied by this Act or any other enactment in an instrument, and whether a positive covenant or a restrictive covenant.
- (2) Unless a contrary intention appears in the instrument, the covenant binds—
 - (a) the covenantor; and
 - (b) the covenantor's successors in title; and
 - (c) persons claiming through the covenantor or the covenantor's successors in title.
- (3) For the purposes of this section,—
 - (a) the covenantor's successors in title include an occupier for the time being of the burdened land;
 - (b) a restrictive covenant may relate to a subject matter not in existence when the covenant is made.

Compare: 1952 No 51 s 64

303 Legal effect of covenants running with land

- (1) This section applies to a restrictive covenant, and also to a positive covenant coming into operation on or after 1 January

1987 (which is the application date specified in section 64A(6) of the Property Law Act 1952, as inserted by section 3 of the Property Law Amendment Act 1986), in either case whether expressed in an instrument or implied by this Act or any other enactment in an instrument, if—

- (a) the covenant burdens land of the covenantor and is intended to benefit the owner for the time being of the covenantee's land; and
 - (b) there is no privity of estate between the covenantor and the covenantee.
- (2) Every covenant to which this section applies, unless a contrary intention appears, is binding in equity on—
- (a) every person who becomes the owner of the burdened land (whether by acquisition from the covenantor or from any of the covenantor's successors in title, and whether or not for valuable consideration, and whether by operation of law or otherwise); and
 - (b) every person who is for the time being the occupier of the burdened land.
- (3) Every covenant to which this section applies, unless a contrary intention appears, ceases to be binding on a person referred to in subsection (2) when that person ceases to be the owner or the occupier of the burdened land but without prejudice to that person's liability for any breach of the covenant arising before that person ceased to be the owner or occupier of the land.
- (4) For the purposes of this section, a contrary intention must appear in the instrument in which the covenant is expressed or implied.
- (5) This section overrides any other rule of law or equity, but is subject to sections 304 to 306.

Compare: 1952 No 51 s 64A(1), (2), (6)

304 Whether, and to what extent, administrator bound by covenant to which section 303 applies

- (1) This section applies to an administrator of the estate of a person who was bound, at the time of that person's death, by a positive covenant to which section 303 applies.
- (2) The administrator is bound by the covenant—

- (a) only if assets of the estate are available in the administrator's hands for meeting the obligations under the covenant; and
- (b) if so, only to the extent that they are so available.

Compare: 1952 No 51 s 64A(3)

305 How rights under covenant to which section 303 applies rank in relation to other unregistered interests

- (1) The rights under a covenant to which section 303 applies rank, in relation to all other unregistered interests affecting the same land, as if the covenant were an equitable and not a legal interest.
- (2) The ranking, under subsection (1), of rights under a covenant is subject to the effect of the notification of the covenant, under section 307, in the register (as defined in section 2 of the Land Transfer Act 1952).

Compare: 1952 No 51 s 64A(4)

306 Certain duties under, and law on, restrictive covenants not limited or affected by section 303

Section 303 does not limit or affect the following:

- (a) the duty owed by a person holding an interest in land (other than the occupier of the land) to observe the terms of any restrictive covenant burdening the land;
- (b) the law relating to restrictive covenants in gross.

Compare: 1952 No 51 s 64A(5)

307 Notification of covenants

- (1) This section applies to a covenant that—
 - (a) is a positive covenant or a restrictive covenant; and
 - (b) burdens land under the Land Transfer Act 1952; and
 - (c) benefits other land (whether under that Act or not); and
 - (d) is expressed in an instrument coming into operation on or after the relevant date.
- (2) **Relevant date**, in subsection (1)(d), means,—
 - (a) for a restrictive covenant, 1 January 1953 (which is the date on which the Property Law Act 1952 came into force); and

- (b) for a positive covenant, 1 January 1987 (which is the application date specified in section 64A(6) of the Property Law Act 1952, as inserted by section 3 of the Property Law Amendment Act 1986).
- (3) The Registrar-General may enter in the register (as defined in section 2 of the Land Transfer Act 1952) relating to the burdened land, the benefited land, or both, a notification of all or any of the following:
 - (a) a covenant to which this section applies:
 - (b) an instrument purporting to affect the operation of a covenant notified under paragraph (a):
 - (c) a modification or revocation of a covenant notified under paragraph (a).
- (4) A covenant notified under subsection (3) is an interest notified on the register relating to the burdened land for the purposes of section 62 of the Land Transfer Act 1952.
- (5) Notification of a covenant under subsection (3) makes the covenant an interest of the kind specified in subsection (4), but does not in any other way give the covenant any greater operation than it would otherwise have.
- (6) **Covenant**, in subsections (4) and (5), includes an instrument purporting to modify the operation, and a modification or revocation, of a covenant notified under subsection (3)(a).

Compare: 1952 No 51 s 126A

Subpart 5—Easements, covenants, and
access lots: enforcement, modification, and
extinguishment

*Enforcement of covenants by giving notice of
work required*

308 Person entitled may give notice of work required

- (1) This section applies to a positive covenant benefiting land, and to the people who, in relation to that positive covenant, are the person entitled and the person bound.
- (2) The person entitled may serve on the person bound a notice calling on the person bound to undertake, or to contribute to

the cost of undertaking, work required to be done under the terms of the covenant.

Compare: 1952 No 51 s 126C(1)

309 Requirements for notice served under section 308

Every notice served under section 308 must—

- (a) specify the work required to be undertaken, with sufficient details to enable the person bound to understand its nature and estimate its cost; and
- (b) identify the instrument or other source of the positive covenant under which the person entitled claims that—
 - (i) the work is required to be done; and
 - (ii) the person bound is obliged to undertake the work or contribute to its cost; and
- (c) if the person entitled proposes that the cost of the work be shared among 2 or more persons (whether or not including the person entitled), identify those persons and the shares to be borne by each; and
- (d) if the person entitled considers that it will be necessary to enter onto the land of the person bound (other than, in the case of a vehicular right of way, land actually comprised in the right of way) for the purpose of undertaking all or any part of the work, contain details of the intended purpose, extent, and duration of the proposed entry; and
- (e) set out the consequences that will follow if the person bound neither complies with the notice nor serves a cross-notice on the person entitled within the time specified in section 310.

Compare: 1952 No 51 s 126C(1)–(3)

310 Person bound who does not agree may serve cross-notice

- (1) This section applies to proposals, in a notice served under section 308 calling on the person bound to undertake, or to contribute to the cost of undertaking, work required to be done under the terms of a positive covenant, about—
 - (a) the requirement to undertake or contribute to the cost of the work; and
 - (b) the nature or extent of the work; and

- (c) the shares in which the cost of the work is to be borne; and
 - (d) the need for entry onto the land of the person bound.
- (2) The person bound must be treated as agreeing with the proposals if the person bound has not, within 15 working days after the date of service of the notice, served on the person entitled a cross-notice specifying the proposals to which the person bound objects.
- (3) The person bound may set out in that cross-notice, in the same detail required for a notice served under section 308, any counter-proposals of the person bound.

Compare: 1952 No 51 s 126D

311 Circumstances in which person bound is not liable

- (1) The person bound is not liable to contribute to the cost of any part of the proposed work if that work is carried out in the period starting with the time when the person bound was duly served with a notice under section 308 (a **notice**) and ending on the earlier of the following:
 - (a) the time at which a cross-notice under section 310 (a **cross-notice**) was duly served by the person bound on the person entitled;
 - (b) the expiry of 15 working days after the date on which the notice was duly served on the person bound (which is the period within which the person bound may serve a cross-notice).
- (2) The person bound is not liable to contribute to the cost of any part of the proposed work if that work is carried out in any period, after a notice and a cross-notice have been duly served, during which differences between the parties remain to be settled, either by agreement or by a court.
- (3) Neither subsection (1) nor (2) prevents the person bound from agreeing, in the particular case, during the period referred to in that subsection, to contribute to the cost of the proposed work.

Compare: 1952 No 51 s 126C(4)

312 Person entitled or person bound ceasing to be owner or occupier

- (1) If, after the service of a notice under section 308, but before the question of undertaking or contributing to the cost of the proposed work is settled (whether by agreement or by order of a court), the person serving the notice or the person on whom it was served ceases to be the owner or the occupier of the benefited land or of the burdened land, the notice and any cross-notice served under section 310 cease to have effect.
- (2) After the question of undertaking and contributing to the cost of the proposed work is settled (whether by agreement or by order of a court), any owner or occupier for the time being of the benefited land may proceed with the proposed work and recover from the person on whom the notice was served under section 308 the share of the cost of the work that that person agreed or was ordered by the court to contribute, even if that person has ceased to be an owner or occupier of the burdened land.
- (3) No settlement referred to in this section binds an owner or occupier for the time being of the burdened or the benefited land who was not a party to the settlement, whether or not that person became, or ceased to be, an owner or occupier of that land before, on, or after the date of the settlement.

Compare: 1952 No 51 s 126E

*Enforcement, modification, and extinguishment
of easements, covenants, and access lots by
order of court*

313 Court may enforce easements and positive or restrictive covenants

- (1) In determining a question or dispute concerning the existence or effect of an easement, positive covenant, or restrictive covenant, a court may make an order, on any conditions the court thinks fit, concerning all or any of the following matters:
 - (a) the existence of an easement, positive covenant, or restrictive covenant benefiting or burdening land:
 - (b) the enforceability of an easement, positive covenant, or restrictive covenant by or against any person, and whether under this Act or otherwise:

- (c) the question whether any work is work required to be done under the terms of an easement, positive covenant, or restrictive covenant (**required work**) and, if so, the nature and extent of any required work at the time in question:
 - (d) the reasonable and proper cost of any required work, including interest on outlay, expenses of survey, and reasonable remuneration for the superintendence or work of a person entitled or person bound who is or has been personally engaged on that work:
 - (e) the person or persons by whom the cost of any required work is to be borne and, if the cost is to be shared among 2 or more persons, the shares to be borne by each of them:
 - (f) the time at or before which, and the manner in which, any required work is to be undertaken:
 - (g) the entry onto any land (whether or not land over which a vehicular right of way is granted) for the purpose of doing any required work, and the use on or over that land of vehicles, aircraft, or any other means of transport, and any plant, machinery, crane, or other equipment for the purpose of carrying out that work:
 - (h) any other matters arising in relation to a question or dispute concerning the existence or effect of an easement, positive covenant, or restrictive covenant.
- (2) This section is subject to sections 314 and 315.
Compare: 1952 No 51 s 126F(1)

314 Duties of court making order under section 313(1)(e) on sharing of cost of work under vehicular right of way

- (1) This section applies to a court making an order under section 313(1)(e) in relation to the sharing among 2 or more persons of the cost of work that is required under the terms of a vehicular right of way.
- (2) The court must assume, in the absence of evidence to the contrary, that every person entitled makes full and reasonable use of the right of way.

- (3) However, the court must also take into account any disproportionate (though still reasonable) use of the right of way by any person entitled.

Compare: 1952 No 51 s 126F(2)

315 Application of sections 313 and 317, etc, to access lots

Sections 313, 314, and 316 to 318 apply, subject to the following modifications, to an access lot that is or includes a driveway or proposed driveway:

- (a) a reference in section 313, 314, 316, or 317 to an easement, or the terms of a vehicular right of way, must be treated as including a reference to the rights under section 298 of the proprietors of the access lot (whether those rights are modified by an order under section 317 or not):
- (b) for the purposes of section 318, the rights under section 298 of the proprietors of the access lot (whether those rights are modified by an order under section 317 or not) must be treated as if they were an easement of the kind specified in section 318(1)(a).

316 Application for order under section 317

- (1) A person bound by an easement, a positive covenant, or a restrictive covenant (including a covenant expressed or implied in an easement) may make an application to a court for an order under section 317 modifying or extinguishing that easement or covenant.
- (2) That application may be made in a proceeding brought by that person for the purpose, or in a proceeding brought by any person in relation to, or in relation to land burdened by, that easement or covenant.
- (3) That application must be served on the territorial authority in accordance with the relevant rules of court, unless the court directs otherwise on an application for the purpose, and must be served on any other persons, and in any manner, the court directs on an application for the purpose.

Compare: 1952 No 51 s 126G(1), (3), (4)

317 Court may modify or extinguish easement or covenant

- (1) On an application (made and served in accordance with section 316) for an order under this section, a court may, by order, modify or extinguish (wholly or in part) the easement or covenant to which the application relates (the **easement or covenant**) if satisfied that—
- (a) the easement or covenant ought to be modified or extinguished (wholly or in part) because of a change since its creation in all or any of the following:
 - (i) the nature or extent of the use being made of the benefited land, the burdened land, or both;
 - (ii) the character of the neighbourhood;
 - (iii) any other circumstance the court considers relevant; or
 - (b) the continuation in force of the easement or covenant in its existing form would impede the reasonable use of the burdened land in a different way, or to a different extent, from that which could reasonably have been foreseen by the original parties to the easement or covenant at the time of its creation; or
 - (c) every person entitled who is of full age and capacity—
 - (i) has agreed that the easement or covenant should be modified or extinguished (wholly or in part); or
 - (ii) may reasonably be considered, by his or her or its acts or omissions, to have abandoned, or waived the right to, the easement or covenant, wholly or in part; or
 - (d) the proposed modification or extinguishment will not substantially injure any person entitled.
- (2) An order under this section modifying or extinguishing the easement or covenant may require any person who made an application for the order to pay to any person specified in the order reasonable compensation as determined by the court.

Compare: 1952 No 51 s 126G(1)

318 Registration and recording of orders under section 317

- (1) The Registrar-General must enter in the register (as defined in section 2 of the Land Transfer Act 1952) relating to the

burdened land or the benefited land or both all amendments or entries necessary to give effect to an order under section 317 in respect of—

- (a) an easement or covenant registered under the Land Transfer Act 1952; or
 - (b) a covenant notified under section 307 of this Act.
- (2) Those amendments and entries are, when so entered, binding on every person who is, or who later becomes, a person entitled, whether or not that person—
- (a) was of full age and capacity at the time of the making of the order; or
 - (b) was a party to the proceeding.
- (3) If an order is made under section 317 in respect of an easement or covenant that is not an easement or covenant referred to in subsection (1)(a) or (b), a court may, on an application for the purpose and by a written direction, require a memorandum of the order to be recorded on any instruments of title or register relating to the burdened or the benefited land.
- (4) Every person to whom a written direction under subsection (3) is addressed must comply with that direction.

Compare: 1952 No 51 s 126G(6), (7)

Part 6

Special powers of court

Subpart 1—Entry onto neighbouring land

319 Owner or occupier of land may apply to court for order authorising entry onto or over neighbouring land

- (1) A person may apply to a court for an order under section 320 if the person is an owner or occupier of any land who wishes to enter onto or over any neighbouring land for any of the following purposes:
- (a) to erect, repair, alter, add to, paint, or demolish the whole or any part of any structure on the applicant's land; or
 - (b) to do any other necessary or desirable thing in relation to the applicant's land.

- (2) An application under subsection (1) may be made only if the applicant has given at least 5 working days' written notice of intention to apply for the order to—
 - (a) the owner of the neighbouring land; and
 - (b) if the owner is not the occupier of the neighbouring land, the occupier of that land.
 - (3) The written notice required by subsection (2) must adequately inform the owner and, if applicable, the occupier of the neighbouring land of all of the following matters:
 - (a) the nature of the proposed work;
 - (b) how the work is proposed to be undertaken;
 - (c) the time during which the work is proposed to be undertaken;
 - (d) the measures that are proposed to be taken to maintain adequate access to the neighbouring land.
 - (4) In this section and section 320, **neighbouring land** means any land for which the order is sought whether or not it adjoins the applicant's land.
- Compare: 1952 No 51 s 128

320 Powers of court making order authorising entry onto or over neighbouring land

- (1) On an application under section 319(1), the court may make an order authorising the applicant to do either or both of the following things:
 - (a) to enter and re-enter onto or over the neighbouring land at reasonable times, with or without any employees, agents, or contractors and any aircraft, boats, vehicles, appliances, machinery, and equipment that are reasonably necessary for the purposes specified in the order;
 - (b) to store on the neighbouring land any materials required for the purposes, and in the quantities, specified in the order.
- (2) An order under subsection (1) must specify—
 - (a) how and when entry is to be made; and
 - (b) any other conditions that the court thinks fit to impose.
- (3) Those conditions may relate to all or any of the following matters:

- (a) the period of time during which the entry onto or over the neighbouring land is authorised:
 - (b) the hours of the day or night during which the work may be done:
 - (c) the preservation of the safety of persons or property on the neighbouring land:
 - (d) the maintenance of adequate access to the neighbouring land:
 - (e) the restoration of the neighbouring land to its former condition:
 - (f) the provision of security or indemnity to secure the performance of any condition of the order:
 - (g) the making good of any damage caused by the entry onto or over the neighbouring land or the reimbursement of the owner and, if applicable, the occupier of the neighbouring land for any costs, expenses, or loss arising from the entry:
 - (h) any other relevant matters.
- (4) Before exercising any powers conferred by an order made under subsection (1), the applicant must serve the order on the owner and, if applicable, the occupier of the neighbouring land concerned.

Compare: 1952 No 51 s 128

Subpart 2—Wrongly placed structures

321 Interpretation

In this subpart,—

land—

- (a) means any piece or area of land; and
- (b) includes the airspace over that land; and
- (c) in the case of land actually occupied by a wrongly placed structure, also includes any land reasonably required as curtilage and for access to the structure

land affected means any land on which a structure is actually situated

land intended means any land on which a structure was intended to be situated

structure includes—

- (a) a partially built structure; and
- (b) any part of a structure

wrongly placed structure means a structure that—

- (a) is situated on or over the land affected, not being the land intended for the structure (whether or not the land intended adjoins the land affected); or
- (b) is situated on or over the land affected but was not placed there—
 - (i) by, on behalf of, or in the interest of a person who was, at the time, the owner of the land affected; or
 - (ii) under a contract made with, or by way of a gift made to, a person who was, at the time, the owner of the land affected.

Compare: 1952 No 51 ss 129, 129A

322 Certain persons may apply for relief for wrongly placed structure

- (1) The following persons may apply to a court for relief, under section 323, for a wrongly placed structure:
 - (a) the owner, occupier, or mortgagee of, or the holder of any other encumbrance over, the land affected by the wrongly placed structure:
 - (b) the owner, occupier, or mortgagee of, or the holder of any other encumbrance over, the land intended for the wrongly placed structure:
 - (c) any person by whom, or on whose behalf, or in whose interest the wrongly placed structure was placed on or over the land affected:
 - (d) any person who has an interest in the wrongly placed structure:
 - (e) the relevant territorial authority.
- (2) The application may be made whether the wrongly placed structure was placed on or over the land affected—
 - (a) before or after any boundary of that land or of the land intended for the structure was fixed; or
 - (b) before or after this Act comes into force.

- (3) Unless the court directs otherwise, the application must be served by the applicant on each person who could have made an application under subsection (1).

Compare: 1952 No 51 ss 129, 129A

323 Court may grant relief for wrongly placed structure

- (1) A court may grant relief for a wrongly placed structure—
- (a) to any person entitled to apply for relief under section 322; or
 - (b) to any other party to the proceeding for relief.
- (2) The court may grant relief if the court considers it is just and equitable in the circumstances that relief should be granted.
- (3) However, the court must not grant relief if the wrongly placed structure for which relief is sought is a fence and all questions or disputes concerning it can be resolved by an exercise of the jurisdiction conferred by section 24 of the Fencing Act 1978.
- (4) The granting of relief does not deprive any person of any claim for damages that the person would otherwise have against any other person for any deliberate or negligent act or omission in relation to—
- (a) the placing of a wrongly placed structure; or
 - (b) the fixing or ascertaining of any boundary of the land affected by the structure or the land intended for the structure.
- (5) In making any award of damages, the court must take into account any relief granted under this section.

Compare: 1952 No 51 ss 129, 129A

324 Matters court may consider in determining application for relief

- (1) In determining an application, under section 322, for relief under section 323, the court may have regard to—
- (a) the reasons why the wrongly placed structure was placed on or over the land affected; and
 - (b) the conduct of the parties; and
 - (c) the extent to which any person has been unjustifiably enriched at the expense of the person seeking relief be-

cause the owner of the land affected has become the owner of the wrongly placed structure.

- (2) Subsection (1) does not prevent the court from granting relief merely because the person seeking relief knew of the true boundaries or ownership of the land affected at the time that the structure was placed there, or at the time when that person became the owner of, or acquired an estate or interest in, the land affected, the land intended, or the structure.

Compare: 1952 No 51 ss 129, 129A

325 Orders court may make

- (1) In granting relief under section 323 on an application under section 322, the court may make 1 or more orders to the following effect:
- (a) requiring any land specified in the order to be vested in the owner of the land affected by, or the land intended for, the wrongly placed structure, or in any other person with an estate or interest in either of those pieces of land:
 - (b) granting an easement over any land specified in the order for the benefit of the land affected by, or the land intended for, the wrongly placed structure:
 - (c) giving the owner of the land affected by, or the land intended for, the wrongly placed structure, or any other person with an estate or interest in either of those pieces of land, the right to possession of any land specified in the order for the period and on the conditions that the court may specify:
 - (d) giving the owner of the land affected by the wrongly placed structure, or any other person having an estate or interest in that piece of land, the right to possession of the whole or any part of the structure that is specified in the order:
 - (e) allowing or directing any person specified in the order to remove the whole or any specified part of a wrongly placed structure and any specified fixtures or chattels from any land specified in the order:
 - (f) requiring any person to whom relief is granted under paragraphs (a) to (e) to pay to any person specified in

the order reasonable compensation as determined by the court.

- (2) In an order under subsection (1)(a), the court may—
 - (a) declare any land that is to be vested in any person to be free from any mortgage or other encumbrance; or
 - (b) vary, to the extent that the court considers necessary, any mortgage, lease, or contract relating to that land.
- (3) An order under subsection (1) may be made on any conditions the court thinks fit concerning—
 - (a) the execution of any instrument; or
 - (b) the doing of any other thing necessary to give effect to the order.
- (4) Part 10 of the Resource Management Act 1991 does not apply to a transfer or other disposition of land giving effect to an order of the court under subsection (1).
- (5) Section 348 of the Local Government Act 1974 does not apply to any easement granted in an order of the court under subsection (1).
- (6) An order under subsection (1) may be registered as an instrument under, as the case requires,—
 - (a) the Land Transfer Act 1952; or
 - (b) the Deeds Registration Act 1908; or
 - (c) Part 1 of the Crown Minerals Act 1991.

Compare: 1952 No 51 ss 129, 129A

Subpart 3—Landlocked land

326 Interpretation

In this subpart,—

landlocked land means a piece of land to which there is no reasonable access

reasonable access, in relation to land, means physical access for persons or services of a nature and quality that is reasonably necessary to enable the owner or occupier of the land to use and enjoy the land for any purpose for which it may be used in accordance with any right, permission, authority, consent, approval, or dispensation enjoyed or granted under the Resource Management Act 1991.

Compare: 1952 No 51 s 129B

327 Owner or occupier of landlocked land may apply to court

- (1) An owner or occupier of landlocked land may apply to a court for an order under section 328(1) granting reasonable access to any such land.
- (2) Unless the court directs otherwise, the application must be served on—
 - (a) the owner of each piece of land adjoining the landlocked land; and
 - (b) every person who—
 - (i) has an estate or interest in the landlocked land or in any other piece of land (whether or not adjoining the landlocked land) that may be affected by the granting of the application; or
 - (ii) claims to be a party to, or to be entitled to a benefit under, any instrument relating to land of the kind specified in subparagraph (i); and
 - (c) the relevant territorial authority.

Compare: 1952 No 51 s 129B

328 Court may grant reasonable access to landlocked land

- (1) A court, on an application under section 327, may—
 - (a) make an order granting reasonable access to the landlocked land; and
 - (b) for that purpose, specify in the order that—
 - (i) any other piece of land (whether or not adjoining the landlocked land) must be vested in the owner of the landlocked land; or
 - (ii) an easement over that other piece of land must be granted for the benefit of the landlocked land.
- (2) The court must not make an order under subsection (1) granting reasonable access to landlocked land over—
 - (a) land that is part of a national park within the meaning of the National Parks Act 1980; or
 - (b) land that is a public reserve or part of a public reserve within the meaning of the Reserves Act 1977; or
 - (c) a railway line within the meaning of the New Zealand Railways Corporation Act 1981.

- (3) The court may decline to make an order under subsection (1) if it considers that the applicant is entitled, and should be required, to seek relief under—
- (a) Te Ture Whenua Maori Act 1993; or
 - (b) the Local Government Act 2002; or
 - (c) any other enactment.

Compare: 1952 No 51 s 129B

329 Matters court must consider in determining application for order for reasonable access

In determining an application for an order under section 328, the court must have regard to—

- (a) the nature and quality of the access (if any) to the landlocked land at the time when the applicant purchased or otherwise acquired the land;
- (b) the circumstances under which the land became landlocked;
- (c) the conduct of the parties, including any attempts they have made to negotiate reasonable access to the landlocked land;
- (d) the hardship that would be caused to the applicant by the refusal of an order, in comparison with the hardship that would be caused to any other person by the making of an order;
- (e) any other relevant matters.

Compare: 1952 No 51 s 129B

330 Court may impose conditions in making order for reasonable access

- (1) In making an order under section 328, a court may impose any conditions it thinks fit, including conditions relating to the following:
- (a) the payment of reasonable compensation by the applicant to any other person;
 - (b) the exchange of any land between the applicant and any other person;
 - (c) the fencing of any land and the upkeep and maintenance of any fence:

- (d) the upkeep and maintenance of any land over which an easement is to be granted:
 - (e) the carrying out of a survey of any land:
 - (f) the time within which any work necessary to give effect to the order is to be carried out:
 - (g) the execution of any instrument or the doing of any other thing necessary to give effect to the order:
 - (h) any other matters that the court considers relevant, including any question arising under section 331.
- (2) A court making an order under section 328 may also—
- (a) do either of the following:
 - (i) declare any land that is to be vested in any person to be free of any mortgage or other encumbrance; or
 - (ii) vary, to the extent that the court considers necessary, any mortgage, lease, or contract relating to that land:
 - (b) declare that any land that is to be vested in any person is to become subject to the terms, conditions, liabilities, and encumbrances on and subject to which the owner of the landlocked land holds that land, and accordingly that every instrument affecting the owner's rights and obligations in respect of the landlocked land is to apply to the vested land as if that land had been expressly referred to in that instrument.
- (3) Part 10 of the Resource Management Act 1991 does not apply to a transfer, exchange, or other disposition of land giving effect to an order of the court under section 328.
- (4) Section 348 of the Local Government Act 1974 does not apply to any easement granted in an order of the court under section 328.
- (5) An order made under section 328 may be registered as an instrument under, as the case requires,—
- (a) the Land Transfer Act 1952; or
 - (b) the Deeds Registration Act 1908; or
 - (c) Part 1 of the Crown Minerals Act 1991.

Compare: 1952 No 51 s 129B

331 Costs of work giving effect to order

The reasonable cost of any work necessary to give effect to an order under section 328 must be met by the applicant, unless the court—

- (a) is satisfied, having regard to the matters specified in section 330(1), that it is just and equitable to require any other person to pay the whole or any specified share of the cost; and
- (b) gives a direction in the order accordingly.

Compare: 1952 No 51 s 129B

Subpart 4—Trees and unauthorised improvements on neighbouring land

332 Application of this subpart

This subpart applies to—

- (a) any structure that was erected on any land except a structure that—
 - (i) was erected with a building permit or building consent issued by the relevant territorial authority; or
 - (ii) was erected by the Crown, for which a building permit or building consent was not necessary, but would have been necessary had it been erected by a person other than the Crown; and
- (b) any tree, shrub, or plant (**tree**) growing or standing on any land.

Compare: 1952 No 51 s 129C

333 Court may order removal or trimming of trees or removal or alteration of structures

- (1) A court may, on an application under section 334, order an owner or occupier of land on which a structure is erected or a tree is growing or standing—
 - (a) to remove, repair, or alter the structure; or
 - (b) to remove or trim the tree.
- (2) An order may be made under subsection (1) whether or not the risk, obstruction, or interference that the structure or tree is causing—

- (a) constitutes a legal nuisance; and
 - (b) could be the subject of a proceeding otherwise than under this section.
- (3) Subsection (4) applies if—
 - (a) the applicant's land may be used for residential purposes under rules in the relevant proposed or operative district plan; and
 - (b) the application is made in relation to the use or enjoyment of the land for those purposes; but
 - (c) no building intended for residential purposes has been erected on the land.
- (4) The court may not make an order under subsection (1) unless satisfied that the building will be erected on the land within a reasonable time and, if the court makes the order,—
 - (a) the order does not take effect unless and until the building is erected; and
 - (b) if the building is not erected within a reasonable time, the order may be vacated on the application of any interested person.

Compare: 1952 No 51 s 129C

334 Owner or occupier of land may apply for order under section 333

- (1) An owner or occupier of any land may apply for an order under section 333.
- (2) If an order is sought against the occupier of any land, the owner of the land must be joined as defendant.

Compare: 1952 No 51 s 129C

335 Matters court may consider in determining application for order under section 333

- (1) In determining an application under section 334, the court may make any order under section 333 that it thinks fit if it is satisfied that—
 - (a) the order is fair and reasonable; and
 - (b) the order is necessary to remove, prevent, or prevent the recurrence of—
 - (i) an actual or potential risk to the applicant's life or health or property, or the life or health or property

- of any other person lawfully on the applicant's land; or
 - (ii) an undue obstruction of a view that would otherwise be enjoyed from the applicant's land, if that land may be used for residential purposes under rules in a relevant proposed or operative district plan, or from any building erected on that land and used for residential purposes; or
 - (iii) an undue interference with the use of the applicant's land for the purpose of growing any trees or crops; or
 - (iv) an undue interference with the use or enjoyment of the applicant's land by reason of the fall of leaves, flowers, fruit, or branches, or shade or interference with access to light; or
 - (v) an undue interference with any drain or gutter on the applicant's land, by reason of its obstruction by fallen leaves, flowers, fruit, or branches, or by the root system of a tree; or
 - (vi) any other undue interference with the reasonable use or enjoyment of the applicant's land for any purpose for which it may be used under rules in the relevant proposed or operative district plan; and
 - (c) a refusal to make the order would cause hardship to the applicant or to any other person lawfully on the applicant's land that is greater than the hardship that would be caused to the defendant or any other person by the making of the order.
- (2) In determining whether to make an order under section 333, the court must—
- (a) have regard to all the relevant circumstances (including Māori cultural values and, if required, the matters specified in section 336); and
 - (b) if applicable, take into account the fact that the risk, obstruction, or interference complained of was already in existence when the applicant became the owner or occupier of the land.

- (3) Despite subsection (2)(b), an order may be made under section 333 if, in all the circumstances, the court thinks fit.
Compare: 1952 No 51 s 129C

336 Further considerations relating to trees

- (1) A court determining an application under section 334 for an order for the removal or trimming of a tree under section 333 must have regard to the following matters:
- (a) the interests of the public in the maintenance of an aesthetically pleasing environment:
 - (b) the desirability of protecting public reserves containing trees:
 - (c) the value of the tree as a public amenity:
 - (d) any historical, cultural, or scientific significance of the tree:
 - (e) any likely effect of the removal or trimming of the tree on ground stability, the water table, or run-off.
- (2) Except for a purpose referred to in section 335(1)(b)(i), the court may not make an order under section 333 relating to any tree that is the subject of a requirement lawfully made by a heritage protection authority under the provisions of Part 8 of the Resource Management Act 1991.
Compare: 1952 No 51 s 129C

337 Court may impose conditions in making order under section 333

- (1) In making an order under section 333, the court may impose any conditions it thinks fit, including conditions for either or both of the following:
- (a) requiring the defendant to make good, or pay compensation to the applicant for, any damage caused to the land of the applicant or any property on that land, in the course of removing or trimming any tree ordered to be removed or trimmed, or the doing of any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of:
 - (b) requiring the applicant or the defendant, or both of them, to give security for any expenses or damage.

- (2) The reasonable cost of any work necessary to give effect to an order made under section 333 must be met by the applicant, unless the court—
 - (a) is satisfied, having regard to the conduct of the defendant, that it is just and equitable to require the defendant to pay the whole or any specified share of the cost of the work; and
 - (b) gives a direction as a condition of the order accordingly.
- (3) Subsection (2) is subject to section 338(6).
Compare: 1952 No 51 s 129C

338 Completion of work required by order under section 333

- (1) The work necessary to carry out an order made under section 333 must be completed within—
 - (a) 20 working days after the date of the making of the order; or
 - (b) a later time specified in the order or subsequently allowed by the court for the completion of the work.
- (2) However, the order may specify that a tree must be kept trimmed, or that a structure to which this subpart applies must be kept in good repair, or that any other work required to be done to eliminate or reduce the risk, obstruction, or interference complained of must be done—
 - (a) as often as is necessary; or
 - (b) at intervals specified in the order.
- (3) Despite subsection (2), a person who is subject to an order of the kind referred to in that subsection may apply to the court for the order to be varied if there has been a change in the circumstances that, had the change occurred before the making of that order, could reasonably be expected to have resulted in the order being different from the one that was made.
- (4) The court may, on an application made under subsection (3), vary the order to reflect the change in circumstances that has occurred since the order was made.
- (5) If the order is not duly complied with within the time specified in this section or in the order, or subsequently allowed by the court, the applicant, with the agreement of the defendant or with the leave of the court, may, in person, or through the

applicant's employees, agents, or contractors, enter onto the defendant's land and carry out any work necessary to give effect to the order.

- (6) If work is done by or through the applicant under subsection (5), then, unless the parties otherwise agree or the court otherwise orders, the applicant is entitled to recover from the defendant the whole of the reasonable cost of the work necessary to give effect to the order.
- (7) In granting leave to an applicant under subsection (5), the court may impose any conditions it thinks fit in relation to—
 - (a) the time by which, and the manner in which, any work necessary to give effect to the order must be carried out;
 - (b) security or indemnity against any expenses or damage;
 - (c) the avoidance or making good of any injury or damage;
 - (d) the disposal of all or part of any tree or structure;
 - (e) any other relevant matters.

Subpart 5—Division of property among co-owners

339 Court may order division of property

- (1) A court may make, in respect of property owned by co-owners, an order—
 - (a) for the sale of the property and the division of the proceeds among the co-owners; or
 - (b) for the division of the property in kind among the co-owners; or
 - (c) requiring 1 or more co-owners to purchase the share in the property of 1 or more other co-owners at a fair and reasonable price.
- (2) An order under subsection (1) (and any related order under subsection (4)) may be made—
 - (a) despite anything to the contrary in the Land Transfer Act 1952; but
 - (b) only if it does not contravene section 340(1); and
 - (c) only on an application made and served in the manner required by or under section 341; and
 - (d) only after having regard to the matters specified in section 342.

- (3) Before determining whether to make an order under this section, the court may order the property to be valued and may direct how the cost of the valuation is to be borne.
- (4) A court making an order under subsection (1) may, in addition, make a further order specified in section 343.
- (5) Unless the court orders otherwise, every co-owner of the property (whether a party to the proceeding or not) is bound by an order under subsection (1) (and by any related order under subsection (4)).
- (6) An order under subsection (1)(b) (and any related order under subsection (4)) may be registered as an instrument under—
 - (a) the Land Transfer Act 1952; or
 - (b) the Deeds Registration Act 1908; or
 - (c) Part 1 of the Crown Minerals Act 1991.

Compare: Partition Act 1539, 31 Hen 8, c 1 (Imp); Partition Act 1540, 32 Hen 8, c 32 (Imp); 1952 No 51 ss 140–143

340 Order under section 339(1)(b) subject to restrictions on subdivision of land

- (1) No order under section 339(1)(b) (and no related order under section 339(4)) may subdivide land contrary to section 11 or Part 10 of the Resource Management Act 1991.
- (2) A court that concludes that an order under section 339(1)(b) (or a related order under section 339(4)) would contravene subsection (1) may make an order of that kind that does not contravene that subsection, or may instead make an order under section 339(1)(a) or (c) (and any related order under section 339(4)).

341 Application for order under section 339(1)

- (1) An application for an order under section 339(1) (and for any related order under section 339(4)) may be made by all or any of the following people:
 - (a) a co-owner of any property;
 - (b) a mortgagee of any property of a co-owner or co-owners if, under the mortgage and subpart 7 of Part 3, the mortgagee has become entitled to exercise a power of sale;
 - (c) a person with a charging order over any property of a co-owner or co-owners.

- (2) Every person who is one of the following must, if not already a party to the proceeding on that application, be served with a copy of that application:
- (a) a co-owner of the property:
 - (b) a person who has an estate or interest in the property that may be affected by the granting of the application:
 - (c) a person claiming to be a party to, or entitled to a benefit under, an instrument relating to the property.
- (3) The court to which that application is made may, by order made on an application for the purpose, change, or dispense with service on, the people who must be served under subsection (2).

Compare: Partition Act 1539, 31 Hen 8, c 1 (Imp); Partition Act 1540, 32 Hen 8, c 32 (Imp); 1952 No 51 ss 140–143

342 Relevant considerations

A court considering whether to make an order under section 339(1) (and any related order under section 339(4)) must have regard to the following:

- (a) the extent of the share in the property of any co-owner by whom, or in respect of whose estate or interest, the application for the order is made:
- (b) the nature and location of the property:
- (c) the number of other co-owners and the extent of their shares:
- (d) the hardship that would be caused to the applicant by the refusal of the order, in comparison with the hardship that would be caused to any other person by the making of the order:
- (e) the value of any contribution made by any co-owner to the cost of improvements to, or the maintenance of, the property:
- (f) any other matters the court considers relevant.

Compare: Partition Act 1539, 31 Hen 8, c 1 (Imp); Partition Act 1540, 32 Hen 8, c 32 (Imp); 1952 No 51 ss 140–143

343 Further powers of court

A further order referred to in section 339(4) is an order that is made in addition to an order under section 339(1) and that does all or any of the following:

- (a) requires the payment of compensation by 1 or more co-owners of the property to 1 or more other co-owners:
- (b) fixes a reserve price on any sale of the property:
- (c) directs how the expenses of any sale or division of the property are to be borne:
- (d) directs how the proceeds of any sale of the property, and any interest on the purchase amount, are to be divided or applied:
- (e) allows a co-owner, on a sale of the property, to make an offer for it, on any terms the court considers reasonable concerning—
 - (i) the non-payment of a deposit; or
 - (ii) the setting-off or accounting for all or part of the purchase price instead of paying it in cash:
- (f) requires the payment by any person of a fair occupation rent for all or any part of the property:
- (g) provides for, or requires, any other matters or steps the court considers necessary or desirable as a consequence of the making of the order under section 339(1).

Compare: Partition Act 1539, 31 Hen 8, c 1 (Imp); Partition Act 1540, 32 Hen 8, c 32 (Imp); 1952 No 51 ss 140–143

Subpart 6—Setting aside of dispositions that prejudice creditors

344 Purpose of this subpart

The purpose of this subpart is to enable a court to order that property acquired or received under or through certain prejudicial dispositions made by a debtor (or its value) be restored for the benefit of creditors (but without the order having effect so as to increase the value of securities held by creditors over the debtor's property).

Compare: 1952 No 51 s 60

345 Interpretation

- (1) For the purposes of this subpart,—

- (a) a disposition of property prejudices a creditor if it hinders, delays, or defeats the creditor in the exercise of any right of recourse of the creditor in respect of the property; and
 - (b) a disposition of property is not made with intent to prejudice a creditor if it is made with the intention only of preferring one creditor over another; and
 - (c) a disposition of property by way of gift includes a disposition made at an undervalue with the intention of making a gift of the difference between the value of the consideration for the disposition and the value of the property comprised in the disposition; and
 - (d) a debtor must be treated as insolvent if the debtor is unable to pay all his, her, or its debts, as they fall due, from assets other than the property disposed of.
- (2) In this subpart, unless the context otherwise requires,—
- disposition** means—
- (a) a conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:
 - (b) the creation of a trust:
 - (c) the grant or creation, at law or in equity, of a lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over property:
 - (d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of a debt, contract, or thing in action, or of a right, power, estate, or interest in or over any property (and for this purpose a debt, or any other right, estate, or interest, must be treated as having been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time):
 - (e) the exercise of a general power of appointment in favour of a person other than the donee of the power:
 - (f) a transaction entered into by a person with intent by entering into the transaction to diminish, directly or indirectly, the value of the person's own estate and to increase the value of the estate of another person

proceeds, in relation to any property, means—

- (a) the proceeds of the sale or exchange of the property; and
- (b) if the property is money, other property bought with that money

property includes the proceeds of any property.

Compare: 1952 No 51 s 60

346 Dispositions to which this subpart applies

- (1) This subpart applies only to dispositions of property made after 31 December 2007—
 - (a) by a debtor to whom subsection (2) applies; and
 - (b) with intent to prejudice a creditor, or by way of gift, or without receiving reasonably equivalent value in exchange.
- (2) This subsection applies only to a debtor who—
 - (a) was insolvent at the time, or became insolvent as a result, of making the disposition; or
 - (b) was engaged, or was about to engage, in a business or transaction for which the remaining assets of the debtor were, given the nature of the business or transaction, unreasonably small; or
 - (c) intended to incur, or believed, or reasonably should have believed, that the debtor would incur, debts beyond the debtor's ability to pay.

Compare: 1952 No 51 s 60

347 Application for order under section 348

- (1) Only the following may apply for an order under section 348:
 - (a) a creditor who claims to be prejudiced by a disposition of property to which this subpart applies (whether the disposition was made before or after the debtor became indebted to the creditor);
 - (b) the liquidator, if the debtor is a company in liquidation or an overseas company being liquidated under section 342 of the Companies Act 1993.
- (2) The application must specify the disposition claimed to be prejudicial, and the property or compensation sought through the application.

- (3) The application, together with a notice communicating the effect of sections 348 and 349, must be served on—
- (a) the person in whose favour the disposition of property was made; and
 - (b) any other person from whom property or compensation is sought through the application.

Compare: 1952 No 51 s 60

348 Court may set aside certain dispositions of property

- (1) A court may make an order under this section—
- (a) on an application for the purpose (made and served in accordance with section 347); and
 - (b) if satisfied that the applicant for the order has been prejudiced by a disposition of property to which this subpart applies.
- (2) The order must do 1, but not both, of the following:
- (a) vest the property that is the subject of the disposition in the person (for any applicable purpose) specified in section 350;
 - (b) require a person who acquired or received property through the disposition to pay, in respect of that property, reasonable compensation to the person (for any applicable purpose) specified in section 350.
- (3) If the order does what is specified in subsection (2)(a), it may also require a person who acquired or received property through the disposition to physically restore some or all of that property that is tangible personal property to 1 or more persons specified in the order.
- (4) **Person who acquired or received property through the disposition** means a person who acquired or received property—
- (a) under the disposition; or
 - (b) through a person who acquired or received property under the disposition.
- (5) The order must not have effect so as to increase the value of a security held by a creditor over the debtor's property.
- (6) Subsection (5) overrides subsection (2) and section 350.
- (7) This section is subject to section 349.

Compare: 1952 No 51 s 60

349 Protection of persons receiving property under disposition

- (1) A court must not make an order under section 348 against a person who acquired property in respect of which a court could otherwise make the order and who proves that—
- (a) the person acquired the property for valuable consideration and in good faith without knowledge of the fact that it had been the subject of a disposition to which this subpart applies; or
 - (b) the person acquired the property through a person who acquired it in the circumstances specified in paragraph (a).
- (2) A court may decline to make an order under section 348, or may make an order under section 348 with limited effect or subject to any conditions it thinks fit, against a person who received property in respect of which a court could otherwise make the order and who proves that—
- (a) the person received the property in good faith and without knowledge of the fact that it had been the subject of a disposition to which this subpart applies; and
 - (b) the person's circumstances have so changed since the receipt of the property that it is unjust to order that the property be restored, or reasonable compensation be paid, in either case in part or in full.

Compare: 1952 No 51 s 60

350 Person in or to whom order under section 348 vests property or makes compensation for it payable

- (1) Property vested, or compensation to be paid, by or under an order under section 348, vests in, or is payable to, the following person:
- (a) the Official Assignee, if the debtor is a bankrupt; or
 - (b) the debtor, if the debtor is a company in liquidation or an overseas company being liquidated under section 342 of the Companies Act 1993; or
 - (c) in every other case, the person directed by the court under subsection (2).
- (2) A direction under this subsection must specify that the property vests in, or the compensation is payable to, the following person (for the following purpose, if any):

- (a) a trustee for the debtor's creditors; or
 - (b) the debtor (for the purpose only of enabling the carrying out of any execution or similar process against the debtor or the administration of a future bankruptcy or liquidation of the debtor or arrangement with the debtor's creditors).
- (3) On or after making a direction under subsection (2)(a) the court may, on its own initiative or on an application for the purpose, make any further orders it thinks fit concerning all or any of the following:
 - (a) the administration of the property or amounts paid by way of compensation; and
 - (b) proofs of debt; and
 - (c) the distribution of assets available to the trustee; and
 - (d) any other relevant matters.
- (4) This section overrides the Land Transfer Act 1952.
Compare: 1952 No 51 s 60

Part 7

Miscellaneous provisions

Land not owned by the Crown and not under Land Transfer Act 1952

351 Application of Schedule 6

Schedule 6 applies only to—

- (a) land that is—
 - (i) not owned by the Crown; and
 - (ii) not under the Land Transfer Act 1952; and
- (b) instruments relating to land to which paragraph (a) applies.

Compare: 1952 No 51 s 3

Service of notices and other documents

352 Documents to which section 353 applies

Section 353 applies to a notice, cross-notice, or other document required or authorised to be given to, or served on, a person by any of the following sections:

- (a) section 28 (vendor may cancel agreement for sale and purchase, and regain possession, of land):
- (b) section 118 (calling up of mortgage over any kind of property if interest has been accepted after expiry of term):
- (c) sections 119, 122, 128, and 132 (intention of mortgagee of land or goods to exercise power of sale, power to enter into possession, or right to call up mortgage amounts under an acceleration clause, including a notice to covenantor):
- (d) sections 245 and 246 (intention of lessor or licensee to cancel lease or licence relating to land for breach of covenant or condition):
- (e) section 261 (lessor's notice of a refusal to grant a renewal or to sell a reversion to a lessee or licensee of land).

Compare: 1952 No 51 s 152

353 How documents in section 352 to be given or served

- (1) A document to which this section applies (*see* section 352) is not adequately given or served unless it is given to, or served on,—
- (a) an individual person in a manner provided for in section 359:
 - (b) a company under the Companies Act 1993 in a manner provided for in section 387(1) (other than paragraph (e)) or section 388 of that Act:
 - (c) an overseas company in a manner provided for in section 389(1) (other than paragraph (e)) or section 390 of the Companies Act 1993:
 - (d) any other body corporate in a manner in which it could be given or served if the body corporate were a company:
 - (e) the Crown, by delivery to, or receipt by, the chief executive of the relevant government department or office, or an agent of that chief executive, at the head office of the department or office, in a manner provided for in section 359.

- (2) This section is subject to sections 355 to 357, but applies despite anything to the contrary in—
- (a) any other enactment; or
 - (b) any instrument or agreement.
- Compare: 1952 No 51 s 152

354 How other documents to be given or served

- (1) This section applies to a notice or other document—
- (a) required or authorised to be given to, or served on, a person by this Act; but
 - (b) that is not a document to which section 353 applies (*see* section 352).
- (2) A notice or other document to which this section applies is adequately given or served when it is given to, or served on, that person in accordance with section 353(1).
- (3) Subsection (2) does not apply if it has been agreed that the notice or other document must be given or served in some other manner.
- (4) This section is subject to sections 355 to 357.
- Compare: 1952 No 51 s 152

355 Person to or on whom document to be given or served in special cases

- (1) This section applies if a notice, cross-notice, or other document (the **document**) is required or authorised to be given to, or served on, a person (the **person**) by this Act.
- (2) If the person is out of New Zealand, the document may be given to, or served on, an agent in New Zealand of the person.
- (3) If the person has died, the document must be given to, or served on, the administrator of the person's estate.
- (4) If the person is a bankrupt, the document must be given to, or served on, the Official Assignee.
- (5) If a property order under the Protection of Personal and Property Rights Act 1988 has been made in respect of the person, the document must be given to, or served on, a person appointed to act as manager of the property.
- (6) If the person is a company in liquidation, or is an overseas company being liquidated under section 342 of the Companies

Act 1993, the document must be given to, or served on, the liquidator.

- (7) If the person is a company that has been removed from the New Zealand register or an overseas company that has been removed from the overseas register, or is a body corporate that has otherwise ceased to exist, the document must be given to, or served on, the person who is or is acting as, or a person who is an agent of, the Secretary to the Treasury.
- (8) If the property in respect of which the document is required or authorised to be given or served belongs to the Crown as *bona vacantia*, the document must be given to, or served on, the person who is or is acting as, or a person who is an agent of, the Secretary to the Treasury.
- (9) The document is not adequately given or served unless it is given to, or served on, a person referred to in subsections (2) to (8) in accordance with the relevant paragraph of section 353(1).
- (10) This section is subject to sections 356 and 357, but applies despite anything to the contrary in—
 - (a) any other enactment; or
 - (b) any instrument or agreement.

Compare: 1952 No 51 s 152

356 Sections 353 to 355 and service in legal proceedings

Sections 353 to 355 do not apply to the service of a document in a legal proceeding, whether the proceeding is brought under this Act or otherwise.

Compare: 1952 No 51 s 152

357 Orders dispensing with, or directing manner of, service

- (1) In any case referred to in sections 353 to 355,—
 - (a) a court may, on an application for the purpose, make an order—
 - (i) dispensing with service; or
 - (ii) directing that a notice, cross-notice, or other document is to be given or served in a manner other than that provided for in any of those sections or in any instrument; and

- (b) if the court makes an order under paragraph (a)(ii), the notice, cross-notice, or other document is adequately given or served if it is given or served in accordance with the order.
 - (2) This section overrides sections 353 to 355 and all other provisions of this Act, and applies despite anything to the contrary in—
 - (a) any other enactment; or
 - (b) any instrument or agreement.
- Compare: 1952 No 51 s 152

358 Agent defined for purposes of sections 353 and 355

In sections 353 and 355, **agent**, in relation to a person who is overseas, the Secretary to the Treasury, or any other chief executive of a government department or office, means a person who has actual or ostensible authority to receive, on behalf of that person, the Secretary to the Treasury, or the other chief executive, a notice, cross-notice, or other document required or authorised to be given or served by a provision of this Act.

Compare: 1952 No 51 s 152

359 Manner of giving or serving notices

- (1) A notice, cross-notice, or other document is given to, or served on, an individual person (including an individual person referred to in section 355) when it is, either in New Zealand or elsewhere,—
 - (a) delivered by registered post to that person or that person's agent; or
 - (b) received by that person in accordance with section 360.
- (2) In this section,—

agent, in relation to a person to whom an envelope or package is to be delivered (**person A**), means a person who has actual or ostensible authority to take delivery, on person A's behalf, of an envelope or package—

 - (a) directed to person A by name; and
 - (b) purporting to contain a document

registered post includes any service that—

 - (a) provides a system of recorded delivery; and

- (b) is similar in nature to a registered post service provided by a person registered as a postal operator under the Postal Services Act 1998.

Compare: 1952 No 51 s 152; 1987 No 74 s 2(1)

360 Receipt for purposes of section 359

A notice, cross-notice, or other document is received by a person for the purposes of section 359 when—

- (a) it is handed to, and accepted by, that person; or
- (b) if that person does not accept it when it is handed to him or her, it is put down in that person's presence and brought to his or her attention; or
- (c) it is otherwise received in writing by that person.

Compare: 1952 No 51 s 152

361 Time of service if more than 1 person to be served

- (1) This section applies to a notice, cross-notice, or other document if, under a provision of this Act,—
 - (a) time runs from the time at which that document is given to, or served on, a person or persons; and
 - (b) that document is required or authorised to be given to, or served on, more than 1 person, or a class or classes of persons.
- (2) Time runs from the time at which that document is given to, or served on,—
 - (a) the last of the persons concerned; or
 - (b) the last member of the relevant class or classes.

Compare: 1952 No 51 s 152

*District Courts' jurisdiction, regulations,
consequential amendments, repeals, etc, and
savings and transitional provisions*

362 Jurisdiction of District Courts

- (1) Every District Court has jurisdiction to hear and determine the following matters, or to make the following orders:
 - (a) a question or dispute concerning the existence or effect of an easement or a covenant, so far as it can be resolved by the making of an order under section 313:

- (b) an order under section 317 modifying or extinguishing an easement or covenant;
 - (c) an order under section 320 authorising entry onto or over neighbouring land;
 - (d) an order under section 323 granting relief in respect of a wrongly placed structure situated on a single piece, or on 2 or more pieces, of land, if the value of that single piece, or of one of those 2 or more pieces, of land (excluding the value of the wrongly placed structure) does not exceed the amount to which the jurisdiction of District Courts is limited by section 31 of the District Courts Act 1947;
 - (e) an order under section 333 for the removal or trimming of a tree or the removal or alteration of a structure;
 - (f) an order under section 357 dispensing with, or directing the manner of, service.
- (2) This section applies despite anything to the contrary in the District Courts Act 1947.
 - (3) The District Courts Act 1947 applies to the jurisdiction of District Courts under this section as if that jurisdiction had been conferred by that Act.
 - (4) This section does not affect any jurisdiction that a District Court has, otherwise than under this section, to exercise a power conferred on a court by this Act.

363 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the forms of notices required by sections 119 and 128;
- (b) prescribing information to be included in the reports required by sections 162 and 163;
- (c) prescribing conditions of sale to apply in respect of sales under section 187, and providing for the variation of conditions of that kind by the Registrar, whether on the application of the mortgagee or on the Registrar's own motion;

- (d) prescribing the application fee payable under section 194(1)(a), and the minimum and maximum fees payable under section 194(1)(c):
- (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1952 No 51 s 104AA

364 Consequential amendments

- (1) The enactments specified in Schedule 7 are amended in the manner specified in that schedule.
- (2) However, if section 443(1) of the Insolvency Act 2006 (which repeals the Insolvency Act 1967) comes into force on or before 1 January 2008, all items in Schedule 7 that relate to the Insolvency Act 1967 are repealed on 1 January 2008.

365 Imperial enactments relating to property no longer part of law of New Zealand

- (1) The enactments to which this section applies cease to have effect as part of the law of New Zealand.
- (2) This section applies to the enactments specified under the heading “Enactments relating to property” in Schedule 1 of the Imperial Laws Application Act 1988, namely—
 - (a) (1267) 52 Hen 3 (The Statute of Marlborough), c 23:
 - (b) (1289–90) 18 Edw 1, St 1—(Quia Emptores), c 1, c 3:
 - (c) (1539) 31 Hen 8, c 1—The Partition Act 1539:
 - (d) (1540) 32 Hen 8, c 32—The Partition Act 1540:
 - (e) (1540) 32 Hen 8, c 34—The Grantees of Reversions Act 1540, except section 3:
 - (f) (1689) 2 Will and Mar, Sess 1, c 5—The Distress Act 1689, except sections 3 and 4:
 - (g) (1705) 4 and 5 Anne, c 3—The Administration of Justice Act 1705: sections 9 and 10:
 - (h) (1709) 8 Anne, c 18—The Landlord and Tenant Act 1709: sections 1, 4, 6, and 7:
 - (i) (1730) 4 Geo 2, c 28—The Landlord and Tenant Act 1730: sections 2, 4, 5, and 6:
 - (j) (1737) 11 Geo 2, c 19—The Distress for Rent Act 1737: sections 1, 2, 7, 8, 11, 14, 16, and 17:

- (k) (1832) 2 and 3 Will 4, c 71—The Prescription Act 1832: sections 1, 2, and 4 to 8:
 - (l) (1851) 14 and 15 Vict, c 25—The Landlord and Tenant Act 1851: sections 1 to 4.
- (3) This section also applies to the following enactments specified under the heading “Other enactments” in Schedule 1 of the Imperial Laws Application Act 1988:
 - (a) (1774) 14 Geo 3, c 78—The Fires Prevention (Metropolis) Act 1774: section 83, and section 86 [as amended by the Statute Law Revision Act 1861 (24 and 25 Vict c 101)]:
 - (b) (1828) 9 Geo 4, c 14—The Statute of Frauds Amendment Act 1828: section 6.
- (4) Schedule 1 of the Imperial Laws Application Act 1988 is consequentially amended by repealing the heading referred to in subsection (2) and so much of that schedule as relates to the enactments to which this section applies, and the following are consequentially repealed:
 - (a) section 3(2) of the Innkeepers Act 1962; and
 - (b) section 43(1A) of the Forest and Rural Fires Act 1977.
- (5) Sections 17 to 19 and 21 of the Interpretation Act 1999 apply to the enactments to which this section applies as if those enactments were Acts of the Parliament of New Zealand.
Compare: 1952 No 51 s 155(1); 1999 No 55 s 112(2), (3); 2001 No 31 s 22(2), (3)

366 Property Law Act 1952 and 2 related Acts repealed

The following are repealed:

- (a) Contracts Enforcement Act 1956 (1956 No 23):
- (b) Distress and Replevin Act 1908 (1908 No 47):
- (c) Property Law Act 1952 (1952 No 51).

Compare: 1952 No 51 s 155(2)

367 Existing matters, proceedings, and instruments

- (1) Matters or proceedings may be continued, completed, and enforced under a provision of this Act that, with or without modification, replaces, or corresponds to, an enactment referred to in section 365 or 366, if those matters or proceedings were—

- (a) commenced under the enactment referred to in section 365 or 366; and
 - (b) pending or in progress immediately before 1 January 2008.
- (2) A period of time within which a thing must be done and that, immediately before 1 January 2008, was running for the purposes of an enactment referred to in section 365 or 366 continues to run for the purposes of any corresponding or replacement provision of this Act as though that thing were required to be done under this Act, but not so as to extend or reduce a period of time that began to run before 1 January 2008.
- (3) No alteration in the law made by this Act affects—
 - (a) a right, interest, title, immunity, or duty, or a status or capacity, existing under the law so altered and immediately before 1 January 2008; or
 - (b) the validity, invalidity, effect, or consequences of—
 - (i) an instrument of the kind to which this Act applies and that came into operation before 1 January 2008; or
 - (ii) anything done or suffered before that date.
- (4) All instruments of the kind to which this Act applies and that came into operation before 1 January 2008 must, to give effect to subsection (3), be read and construed as if the law existing immediately before 1 January 2008 continued to have effect, and must be given only the effect and consequences that they would have had under that law.
- (5) Covenants implied by the Property Law Act 1952, or by section 96 or 98 of the Land Transfer Act 1952, into instruments that came into operation before 1 January 2008 are not affected by sections 364 and 366(c), and continue as if that Act, and those sections, had not been repealed.
- (6) Covenants, conditions, terms, or powers implied by sections 105 to 107 of the Property Law Act 1952 into leases that came into operation before 1 January 2008 are not affected by section 366(c), and continue as if that Act had not been repealed.
- (7) Subsections (5) and (6) do not limit subsections (3) and (4); but subsections (1) to (6) are subject to express provision to the contrary in this Act or any other enactment.

- (8) Nothing in section 365 or this section limits or affects the application of the Interpretation Act 1999.

Compare: 1952 No 51 s 155(3)–(7)

368 Distraint may be completed

The levying of any distress for rent or other amounts payable under a lease of land or for a rentcharge that has lawfully been commenced, but not completed, before 1 January 2008 may be continued and completed in all respects on and after that date as if—

- (a) section 366(b) had not repealed the Distress and Replevin Act 1908; or
- (b) this Act had not repealed any other enactment concerning the levying of the distress.

369 Transitional provisions relating to Insolvency Act 2006

- (1) Until the commencement of Part 6 of the Insolvency Act 2006, the definition of **bankrupt** in section 4 of this Act must be read as if the reference to Part 6 of the Insolvency Act 2006 were a reference to Part 17 of the Insolvency Act 1967.
- (2) Until the commencement of subpart 9 of Part 3 of the Insolvency Act 2006, the definition of **creditor** in section 4 of this Act must be read as if the reference to the Insolvency Act 2006 were a reference to the Insolvency Act 1967.

370 Transitional provisions relating to Companies Amendment Act 2006

- (1) Until the commencement of section 40 of the Companies Amendment Act 2006, section 153(2)(c) and (4) of this Act must be read as if the references to clauses 1(1) and 2(1)(b) of Schedule 7 of the Companies Act 1993 were references to clauses 1 and 9(b) of Schedule 7 of the Companies Act 1993.
- (2) If section 40 of the Companies Amendment Act 2006 is in force on 1 January 2008, clause 5 of Schedule 7 of the Companies Act 1993 is amended by omitting “landlord or other” in each place where it appears.
- (3) If section 40 of the Companies Amendment Act 2006 is not in force on 1 January 2008,—

- (a) clause 11 of Schedule 7 of the Companies Act 1993 is amended by omitting “landlord or other” in each place where it appears; and
- (b) the Schedule 7 of the Companies Act 1993 to be substituted by section 40, and set out in Schedule 1, of the Companies Amendment Act 2006, is amended by omitting from clause 5 “landlord or other” in each place where it appears.

**371 Transitional provision relating to Insolvency
(Cross-border) Act 2006**

Until the commencement of section 13 of the Insolvency (Cross-border) Act 2006, references in this Act to an overseas company being liquidated under section 342 of the Companies Act 1993 must be read as references to an overseas company whose assets in New Zealand are being liquidated under that section.

Schedule 1

s 20

**Form of certificate of non-revocation of
power of attorney**

Certificate of non-revocation of power of
attorney

I, *[full name]* of *[place and country of residence]*, *[occupation]*, certify—

* 1 That by deed dated *[date of instrument creating the power of attorney]*, *[full name of donor of power of attorney]* of *[place and country of residence of donor**]* appointed me his/her/its* attorney.

(Alternative to be used if attorney is a body corporate)

* 1 That by deed dated *[date of instrument creating the power of attorney]*, *[full name of donor of power of attorney]* of *[place and country of residence of donor**]* appointed as attorney *[full name of body corporate holding power of attorney]*, a body corporate having its registered office *[or principal place of business]* at *[address of registered office or principal place of business]*, and I am authorised to give this certificate on its behalf. The capacity in which I give this certificate for the attorney is as *[director, officer, or other capacity]*.

2 That I have not received notice of any event revoking the power of attorney *[***and to the best of my knowledge and belief no such notice has been received by [full name of body corporate holding power of attorney] or by any employee or agent of that body corporate]*.

Signed at *[place]*, *[date]*.

* Delete if inapplicable.

** If donor is a body corporate, state place of registered office or principal place of business of donor and, if that is not in New Zealand, state the country in which the principal place of business is situated.

*** Include if donor is a body corporate.

Schedule 2
Covenants implied in mortgages

ss 95, 96

Part 1

**Covenants, conditions, and powers implied
in mortgages over land**

1 Payment of principal amount and interest

- (1) The mortgagor will pay to the mortgagee the principal amount secured by the mortgage at the time and in the manner specified in the mortgage or any other instrument.
- (2) The mortgagor will pay to the mortgagee interest on the principal amount and all other amounts secured by the mortgage, from the date on which all or any of those amounts are advanced by the mortgagee, or otherwise attract interest, until the date of their payment,—
 - (a) at the agreed rate (if any) specified in the mortgage or any other instrument; and
 - (b) at the times and in the manner specified in the mortgage or any other instrument.
- (3) If the mortgagee obtains judgment against the mortgagor for an amount owing under the mortgage, the mortgagor will pay to the mortgagee interest on the amount, at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage, from the date of judgment until the date of payment of the sum awarded by the judgment.

Compare: 1952 No 51 Schedule 4 cl 1

2 Insurance

- (1) The mortgagor will at all times keep insured all buildings and other insurable improvements from time to time erected on the mortgaged land—
 - (a) against loss or damage by fire; and
 - (b) to the extent possible, against loss or damage by natural disaster or any other event normally covered by an insurance policy for buildings and improvements of the relevant kind.
- (2) The insurance policy or policies—
 - (a) will be arranged in the joint names of the mortgagor and the mortgagee for their respective rights and interests in

Part 1—*continued*

- an insurance office in New Zealand that is approved by the mortgagee; and
- (b) will be for the full insurable value of the buildings and other improvements; and
 - (c) will be, if the mortgagee so requires, on normal replacement terms.
- (3) The mortgagee is entitled to the custody of every insurance policy arranged under this clause.
- (4) The mortgagor will—
- (a) punctually pay all premiums, valuation fees, and other sums payable to keep the insurance in force; and
 - (b) on request, immediately deliver to the mortgagee a certificate or other confirmation from the insurer that all of those sums have been paid.

Compare: 1952 No 51 Schedule 4 cl 2

3 Application of insurance money

- (1) If any buildings or improvements on the mortgaged land are destroyed or damaged, all money received by the mortgagee, in respect of that destruction or damage, under any insurance policy will be applied, at the option of the mortgagee, either in or towards—
- (a) rebuilding or repairing the buildings and improvements; or
 - (b) payment of the principal amount, interest, and other amounts for the time being secured by the mortgage (even if the principal amount, interest, or other amounts may not then have fallen due).
- (2) If the mortgagee applies the insurance money in or towards payment of the principal amount, interest, and other amounts for the time being secured by the mortgage,—
- (a) the mortgagor may, at any time within 2 months after the date on which the insurance money was so applied, pay off all amounts still owing under the mortgage; and

Part 1—*continued*

- (b) interest ceases to be payable on amounts secured by the mortgage and paid to the mortgagee under this clause as from the date of payment.

Compare: 1952 No 51 Schedule 4 cl 6

4 Obligations in respect of mortgaged land

The mortgagor will—

- (a) pay all rates, taxes, and charges for the mortgaged land as and when they become due; and
- (b) perform all duties and obligations imposed on the owner or occupier of the mortgaged land concerning the land, including (without limitation) all obligations binding on the owner or occupier of the land under—
 - (i) the Resource Management Act 1991 or any consent given, or any notice, order, or requirement made, under that Act or under the rules of any regional or district plan; and
 - (ii) the Building Act 2004 or any building consent given under that Act; and
- (c) comply with all notices and demands relating to the mortgaged land made under the provisions of any other enactment, ordinance, or bylaw.

Compare: 1952 No 51 Schedule 4 cl 3

5 Property to be put and kept in good and substantial repair

The mortgagor will put and keep in good and substantial repair all buildings, fences, drains, or other improvements at any time erected, laid, or made on the mortgaged land.

Compare: 1952 No 51 Schedule 4 cl 4

6 Power to inspect

The mortgagee may at all reasonable times, either personally or by agents, enter the mortgaged land to inspect the buildings and improvements.

Compare: 1952 No 51 Schedule 4 cl 4

Part 1—*continued*

7 Buildings and improvements must not be removed, dismantled, or structurally altered without consent

The mortgagor will not, without the written consent of the mortgagee, cause or permit any buildings or improvements on the mortgaged land to be removed, dismantled, or structurally altered, in whole or in part.

8 Observance of covenants under prior mortgages

(1) If, and to the extent that, the security for the payment of amounts or the performance of obligations under any other mortgage or encumbrance over the mortgaged land has priority over the present mortgage, the mortgagor will—

- (a) duly and punctually pay all of the principal amount, interest, and other amounts secured by that mortgage or encumbrance; and
- (b) duly perform and observe all the covenants and conditions contained or implied in that mortgage or encumbrance.

(2) To the extent that the mortgagor complies with the provisions of any mortgage or other encumbrance referred to in subclause (1) that relate to the duty to insure against loss or damage by fire or other cause, that compliance is compliance also with any like duty to insure contained or implied in the present mortgage.

Compare: 1952 No 51 Schedule 4 cls 11, 13

9 Observance of other covenants

The mortgagor will—

- (a) do everything that may be required to be done by the occupier of land under any positive covenant to which section 303 of the Property Law Act 2007 applies; and
- (b) comply with any restrictive covenant burdening the mortgaged land; and
- (c) comply with any other covenant registered against the title to the mortgaged land.

Compare: 1952 No 51 Schedule 4 cl 4A

Part 1—*continued***10 Mortgagee may remedy defaults of mortgagor**

- (1) This clause applies if the mortgagor fails to do punctually any of the acts or things that the mortgagor covenants to do under—
- (a) the mortgage; or
 - (b) any mortgage or other encumbrance over the mortgaged land having priority over the present mortgage; or
 - (c) any covenant referred to in this Part; or
 - (d) any lease upon which the mortgagor holds the mortgaged land.
- (2) The mortgagee may, but is not required to, do the covenanted act or thing referred to in subclause (1) on behalf of the mortgagor.
- (3) The following are repayable to the mortgagee by the mortgagor upon demand:
- (a) all amounts expended by the mortgagee in terms of subclause (2);
 - (b) all amounts expended by the mortgagee in lawfully exercising or enforcing, or lawfully attempting to exercise or enforce, any power, right, or remedy contained or implied in the mortgage.
- (4) In subclause (3), **upon demand** means upon demand for payment of the amounts referred to in that subclause being made to the mortgagor by a notice in writing signed by the mortgagee or by an agent of the mortgagee.

Compare: 1952 No 51 Schedule 4 cls 5, 7, 12, 16

11 Power to call up amounts secured

- (1) The mortgagee may, by notice served on the mortgagor, call up as payable all of the principal amount, interest, and other amounts for the time being secured by the mortgage (even if the time or times appointed for payment may not have arrived) if—
- (a) the mortgagor fails to pay any amounts secured by the mortgage on the due date; or
 - (b) the mortgagor fails to perform or observe any covenant expressed or implied in the mortgage; or

Part 1—*continued*

- (c) the mortgagor sells, transfers, exchanges, leases, parts with possession of, or otherwise disposes of the mortgaged land or any part of it without the prior written consent of the mortgagee; or
 - (d) the mortgagor agrees to do any of the things referred to in paragraph (c) without the prior written consent of the mortgagee; or
 - (e) the mortgaged land or any part of it is taken under any enactment; or
 - (f) the mortgagor becomes bankrupt or, in the case of a company, is placed in liquidation or, in the case of an overseas company, is being liquidated under section 342 of the Companies Act 1993; or
 - (g) the mortgagor is a body corporate and, as a result of all or any of the following, the effective management or control of the body corporate is materially different from that when the mortgage was executed:
 - (i) a change in the legal or beneficial ownership of any of its shares;
 - (ii) an issue of new capital;
 - (iii) an alteration of voting rights or other rights attaching to any of its shares; or
 - (h) the mortgagor is a body corporate and a receiver or statutory manager is appointed for all, or substantially all, of the assets of the mortgagor or for the mortgaged land or any part of it; or
 - (i) the whole or any part of the mortgaged land or any interest in the land is sold in exercise of a power of sale in any mortgage over the land.
- (2) If, under subclause (1), the mortgagee calls up as payable amounts secured by the mortgage, the mortgagee may require the mortgagor to pay 1 month's premium interest calculated at the agreed rate (if any) payable on the principal amount secured by the mortgage (in addition to all other interest payable under the mortgage to the date of payment of all amounts secured by the mortgage).

Part 1—*continued*

- (3) Subclause (2) does not apply in relation to a consumer credit contract (as defined in the Credit Contracts and Consumer Finance Act 2003).
- (4) No acquiescence, delay, or failure to act by the mortgagee after acquiring knowledge of any failure of the mortgagor or other event referred to in subclause (1) prejudices, or operates as a waiver of, the rights of the mortgagee under this clause.
- (5) The mortgagee may agree in writing to waive the rights of the mortgagee under this clause in relation to a particular failure of the mortgagor or a particular event referred to in subclause (1).
- (6) However, a waiver under subclause (5) relates only to the failure or event concerned and does not prejudice, or operate as a waiver of, the rights of the mortgagee for any failure or event that may occur in the future.

Compare: 1952 No 51 Schedule 4 cl 9

12 Power to enter into possession as mortgagee or to appoint receiver

If the mortgagor fails to pay any amounts secured by the mortgage on the due date, or fails to perform or observe any covenant expressed or implied in the mortgage, the mortgagee may—

- (a) enter into possession of the mortgaged land as mortgagee in any of the ways specified in section 137 of the Property Law Act 2007; or
- (b) appoint 1 or more receivers with the power to enter into possession of the mortgaged land as the agent of the mortgagor, and receive—
 - (i) any rents or profits payable by a lessee or occupier of the land; and
 - (ii) any income from any business carried on by the mortgagor on the land.

Part 1—*continued*

13 Power of sale

- (1) The mortgagee, or any receiver appointed by the mortgagee under the mortgage, may sell the whole or any part of the mortgaged land if the mortgagor—
 - (a) fails to pay any amounts secured by the mortgage on the due date; or
 - (b) fails to perform or observe any covenant expressed or implied in the mortgage.
- (2) The mortgagee is not obliged to account for or apply the proceeds arising from the sale of mortgaged land unless and until the mortgagee actually receives payment of them.
- (3) The mortgagor remains liable to the mortgagee for the amount by which the proceeds arising from the sale of mortgaged land and available to a mortgagee in accordance with section 185 of the Property Law Act 2007 is less than the amounts then secured by the mortgage.
- (4) If a contract for the sale of the mortgaged land entered into by the mortgagee or a receiver is cancelled,—
 - (a) the mortgagee is entitled to make to the purchaser all allowances or refunds that the purchaser may be entitled to receive, at law or in equity, upon the cancellation of the contract; and
 - (b) the mortgagee is not responsible for any act or thing done or omitted by any purchaser; and
 - (c) the mortgagee is not obliged to enforce against the purchaser any right or power contained or implied in the contract of sale.
- (5) The mortgagee's costs and expenses arising out of the cancellation or the exercise or any attempted exercise by the mortgagee of rights and powers against any purchaser will be borne by the mortgagor.

Compare: 1952 No 51 Schedule 4 cl 8

14 Power to subdivide

- (1) For the purpose of exercising the power conferred by clause 13 to sell the whole or any part of the mortgaged land, the mortgagee (without the need to enter into possession of the land as

Part 1—*continued*

mortgagee) or any receiver appointed by the mortgagee under the mortgage may subdivide the land.

- (2) The power to subdivide conferred by subclause (1) includes the following powers:
- (a) to apply for and obtain all necessary consents under the Resource Management Act 1991:
 - (b) to comply with all reasonable and proper conditions of consent, including (without limitation)—
 - (i) the payment of any financial contributions:
 - (ii) the vesting of reserves:
 - (iii) the provision of services:
 - (iv) the formation and dedication of roads and service lanes:
 - (v) the formation of access ways and rights of way:
 - (vi) the creation of easements:
 - (vii) the execution of any bonds, covenants, or consent notices:
 - (c) to survey the mortgaged land and deposit a plan of subdivision under the Land Transfer Act 1952.
- (3) The mortgagor irrevocably appoints the mortgagee as the attorney of the mortgagor to execute documents and do things that may be reasonably necessary or incidental to the exercise of the powers conferred by subclauses (1) and (2).
- (4) The mortgagee, as attorney of the mortgagor, has power from time to time to appoint and remove 1 or more substitute attorneys, and the mortgagor agrees to ratify and confirm anything that the mortgagee or a substitute attorney lawfully does or causes to be done under this clause.

15 Unit titles

- (1) If the mortgage is of, or includes, any stratum estate under the Unit Titles Act 2010, the mortgagor will—
- (a) comply with all obligations of the mortgagor under the Unit Titles Act 2010 and the rules of the body corporate; and

Part 1—*continued*

- (b) duly and punctually pay to the body corporate all amounts payable by the mortgagor under the Unit Titles Act 2010 and the rules of the body corporate; and
 - (c) arrange and maintain a mortgage redemption policy under section 137(1)(b) of the Unit Titles Act 2010 for an amount not less than all of the amounts from time to time secured by the mortgage; and
 - (d) do all things reasonably necessary to enforce the obligations of the body corporate under the Unit Titles Act 2010 and the rules of the body corporate; and
 - (e) give the mortgagee any information relating to the affairs of the body corporate that the mortgagee reasonably requires.
- (2) The mortgagee may call up as payable all of the principal amount, interest, and other amounts for the time being secured by the mortgage (even if the time or times appointed for payment may not have arrived), in the same manner and subject to the same conditions as if the power to do so were conferred by clause 11, if either—
 - (a) the principal unit is damaged or destroyed so that it is no longer habitable or usable; or
 - (b) an administrator is appointed by the High Court under section 141 of the Unit Titles Act 2010.
- (3) The mortgagor's voting rights under the Unit Titles Act 2010 and the rules of the body corporate (whether at a meeting or by entry in the minute book) may be exercised by the mortgagee, at the expense of the mortgagor.
- (4) For the purposes of subclause (3), the mortgagor irrevocably appoints the mortgagee as the attorney of the mortgagor.
- (5) If any resolution put at a meeting of the body corporate requires a special resolution for its passing,—
 - (a) the mortgagor will not vote on it without the prior consent of the mortgagee; and
 - (b) the mortgagor must vote on it only as directed by the mortgagee.

Part 1—*continued*

- (6) The mortgagee, as attorney of the mortgagor, has power from time to time to appoint and remove 1 or more substitute attorneys.
- (7) The mortgagor agrees to ratify and confirm anything that the mortgagee or a substitute attorney lawfully does or causes to be done under this clause.

Schedule 2 Part 1 clause 15(1): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Schedule 2 Part 1 clause 15(1)(a): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Schedule 2 Part 1 clause 15(1)(b): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Schedule 2 Part 1 clause 15(1)(c): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Schedule 2 Part 1 clause 15(1)(d): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Schedule 2 Part 1 clause 15(2)(b): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Schedule 2 Part 1 clause 15(3): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Schedule 2 Part 1 clause 15(5): amended, on 20 June 2011, pursuant to section 233(1) of the Unit Titles Act 2010 (2010 No 22).

16 Farming provisions

- (1) If the mortgaged land is used for agricultural, pastoral, orchard, or other farming purposes, the mortgagor—
 - (a) will keep the land clear of all blackberry, gorse, other noxious plants, and animal and insect pests:
 - (b) will take all reasonable steps to control disease in crops, pastures, trees, plants, and any stock on the land:
 - (c) will farm and manage the land in accordance with established farm management practices and keep properly cultivated any part of the land that is or has usually been cultivated:
 - (d) will not, without the mortgagee's prior written consent, make any material change in the type of farming conducted on the land.
- (2) Consent under subclause (1)(d) may not be unreasonably withheld.

Part 1—*continued*

17 Covenants implied in mortgages of leasehold estate or interest in land

- (1) This clause applies if the mortgage is over a leasehold estate or interest in land.
- (2) The mortgagor covenants that, up to the date of the mortgage,—
 - (a) the rent reserved by the lease under which the mortgagor holds the land has been paid; and
 - (b) the covenants and conditions expressed or implied in the lease, and to be performed and observed by the lessee, have been performed and observed.
- (3) The mortgagor will from time to time, so long as any amounts remain owing under the mortgage,—
 - (a) pay the rent reserved by the lease under which the mortgagor holds the land; and
 - (b) perform and observe the covenants and conditions expressed or implied in the lease and to be performed and observed by the lessee.
- (4) The mortgagor will at all times keep the mortgagee indemnified against all actions, expenses, and claims on account of the non-payment of the rent referred to in subclause (3)(a), or the breach or non-observance of the covenants or conditions referred to in subclause (3)(b).
- (5) The mortgagor irrevocably appoints the mortgagee as the attorney of the mortgagor to do, in the name and on behalf of the mortgagor, all or any of the following:
 - (a) make any inquiry of the lessor concerning the lease:
 - (b) anything necessary to—
 - (i) obtain a new or renewed lease or an assurance of the reversion expectant on the lease in accordance with the provisions of the lease:
 - (ii) negotiate and agree upon any new rental:
 - (iii) make any application under section 253 or 261 of the Property Law Act 2007:
 - (c) execute a new mortgage over any new or renewed lease or reversion in substitution for this mortgage on terms,

Part 1—*continued*

- covenants, and conditions as like or similar to those of the present mortgage as the circumstances will permit:
- (d) enforce the rights of the mortgagor to any compensation, damages, or other amounts for any cause, including compensation for the value of improvements and buildings that is or may be payable if any person other than the mortgagor becomes the purchaser at auction of any right to a lease of the land, or otherwise:
 - (e) receive the compensation, damages, or other amounts referred to in paragraph (d) on behalf of the mortgagor:
 - (f) enter into, execute, and register any instrument that is necessary or expedient for any of the purposes specified in paragraphs (a) to (e) (including the making of a request to the Registrar-General under section 117 or 118A of the Land Transfer Act 1952).
- (6) The mortgagee, as attorney of the mortgagor, has power from time to time to appoint and remove 1 or more substitute attorneys.
- (7) The mortgagor agrees to ratify and confirm anything that the mortgagee or a substitute attorney lawfully does or causes to be done under this clause.

Compare: 1952 No 51 Schedule 4 cls 14, 15

18 Discharge of mortgage

The mortgagee will, on payment by the mortgagor of all amounts and the performance of all other obligations secured by the mortgage,—

- (a) return to the mortgagor the mortgage instrument; and
- (b) give to the mortgagor a mortgage discharge instrument executed in compliance with section 83 of the Property Law Act 2007; and
- (c) if the mortgage is registered, do all things that are reasonably necessary to allow a mortgage discharge instrument to be registered; and

Part 1—*continued*

- (d) give to the mortgagor all certificates or instruments of title and other documents deposited with the mortgagee on account of the mortgage (if any).

Compare: 1952 No 51 Schedule 4 cl 10

19 Production of instruments of title

- (1) The mortgagee is not bound to produce the certificate of title or other instruments of title to the mortgaged land or the mortgage—
 - (a) while the mortgagor is failing to pay any amounts secured by the mortgage and then due; or
 - (b) while the mortgagor is failing to perform or observe any covenant expressed or implied in the mortgage; or
 - (c) for the purpose of any dealing concerning the land referred to in clause 11(1)(c) or (i) of these covenants to which the mortgagee has not consented; or
 - (d) until the proper and reasonable costs of their production have first been paid to the mortgagee.
- (2) Subclause (1) does not apply if the mortgagee is required to produce the certificate of title or other instruments of title to the mortgaged land or the mortgage by a notice issued by the Registrar-General under section 211 of the Land Transfer Act 1952.

20 Mortgagor's liability for costs

- (1) The mortgagor will pay all costs and expenses of and incidental to the arranging and preparation of the mortgage and any variation or discharge of the mortgage or any transfer of the mortgage or the mortgaged land instead of a discharge.
- (2) If and as often as the mortgagor fails to pay any amounts secured by the mortgage on the due date, or fails to perform or observe any covenant expressed or implied in the mortgage, the mortgagor will pay the costs of the mortgagee (as between solicitor and client) of and incidental to the enforcement or attempted enforcement by the mortgagee of the mortgagee's rights, remedies, and powers under the mortgage.

Part 1—*continued*

- (3) The costs of the mortgagee under subclause (2) include the costs of giving or attempted giving of any notice required by the Property Law Act 2007 and the costs of inspection and valuation of the mortgaged land.

Part 2

Covenants, conditions, and powers implied
in mortgages over goods**1 Payment of principal amount and interest**

- (1) The mortgagor will pay to the mortgagee the principal amount secured by the mortgage at the time and in the manner specified in the mortgage or any other instrument.
- (2) The mortgagor will pay to the mortgagee interest on the principal amount and all other amounts secured by the mortgage, from the date on which all or any of those amounts are advanced by the mortgagee, or otherwise attract interest, until the date of their payment,—
- (a) at the agreed rate (if any) specified in the mortgage or any other instrument; and
- (b) at the times and in the manner specified in the mortgage or any other instrument.
- (3) If the mortgagee obtains judgment against the mortgagor for an amount owing under the mortgage, the mortgagor will pay to the mortgagee interest on the amount, at the agreed rate (if any) at which interest is payable on the principal amount secured by the mortgage, from the date of judgment until the date of payment of the sum awarded by the judgment.

2 Insurance

- (1) The mortgagor will at all times keep insured the mortgaged goods that are of an insurable nature—
- (a) against loss or damage by fire; and
- (b) to the extent possible, against loss or damage by natural disaster or any other event normally covered by an insurance policy for goods of the relevant kind.
- (2) The insurance policy or policies—

Part 2—*continued*

- (a) will be arranged in the joint names of the mortgagor and the mortgagee for their respective rights and interests in an insurance office in New Zealand that is approved by the mortgagee; and
 - (b) will be for the full insurable value of the mortgaged goods.
- (3) The mortgagee is entitled to the custody of every insurance policy arranged under this clause.
- (4) The mortgagor will—
 - (a) punctually pay all premiums, valuation fees, and other sums payable to keep the insurance in force; and
 - (b) on request, immediately deliver to the mortgagee a certificate or other confirmation from the insurer that all of those sums have been paid.

3 Application of insurance money

- (1) If any of the mortgaged goods are destroyed or damaged, all money received by the mortgagee, in respect of the destruction or damage, under any insurance policy will be applied, at the option of the mortgagee, either in or towards—
 - (a) replacing or repairing the goods; or
 - (b) payment of the principal amount, interest, and other amounts for the time being secured by the mortgage (even if the principal amount, interest, or other amounts may not then have fallen due).
- (2) If the mortgagee applies the insurance money in or towards payment of the principal amount, interest, and other amounts for the time being secured by the mortgage,—
 - (a) the mortgagor may, at any time within 2 months after the date on which the insurance money was so applied, pay off all amounts still owing under the mortgage; and
 - (b) interest ceases to be payable on amounts secured by the mortgage and paid to the mortgagee under this clause as from the date of payment.

Part 2—*continued***4 Repairs and replacement**

The mortgagor will—

- (a) keep and maintain the mortgaged goods in the same order as they are in at the date of the mortgage; and
- (b) repair any damage to the mortgaged goods; and
- (c) replace, with other goods of similar nature and value, any of the mortgaged goods that may be destroyed or lost, or may cease to exist; and
- (d) if required by the mortgagee, execute any mortgage that may be necessary to give the mortgagee security over the replacement goods referred to in paragraph (c).

5 Power to inspect

The mortgagee may at all reasonable times, either personally or by agents, enter upon the premises of the mortgagor to inspect the mortgaged goods.

6 Observance of covenants under prior mortgages

- (1) If, and to the extent that, the security for the payment of amounts or the performance of obligations under any other mortgage or encumbrance over the mortgaged goods has priority over the present mortgage, the mortgagor will—
 - (a) duly and punctually pay all of the principal amount, interest, and other amounts secured by that mortgage or encumbrance; and
 - (b) duly perform and observe all the covenants and conditions contained or implied in that mortgage or encumbrance.
- (2) To the extent that the mortgagor complies with the provisions of any mortgage or encumbrance referred to in subclause (1) that relate to the duty to insure against loss or damage by fire or other cause, that compliance is compliance also with any like duty to insure contained or implied in the present mortgage.

Part 2—*continued*

7 Mortgagee may remedy defaults of mortgagor

- (1) This clause applies if the mortgagor fails to do punctually any of the acts or things which the mortgagor covenants to do under—
 - (a) the mortgage; or
 - (b) any mortgage or other encumbrance over the mortgaged goods having priority over the present mortgage.
- (2) The mortgagee may, but is not required to, do the covenanted act or thing referred to in subclause (1) on behalf of the mortgagor.
- (3) The following are repayable to the mortgagee by the mortgagor upon demand:
 - (a) all amounts expended by the mortgagee in terms of subclause (2);
 - (b) all amounts expended by the mortgagee in lawfully exercising or enforcing, or lawfully attempting to exercise or enforce, any power, right, or remedy contained or implied in the mortgage.
- (4) In subclause (3), **upon demand** means upon demand for payment of the amounts referred to in that subclause being made to the mortgagor by a notice in writing signed by the mortgagee or by an agent of the mortgagee.

8 Mortgagor's right to retain possession of mortgaged goods

The mortgagor may retain possession of the mortgaged goods unless and until—

- (a) the mortgagor fails to pay any amounts secured by the mortgage on the due date; or
- (b) the mortgagor fails to perform or observe any covenant expressed or implied in the mortgage; or
- (c) the goods are at risk; or
- (d) the mortgagee, under clause 9, calls up as payable amounts secured by the mortgage.

Part 2—*continued***9 Power to call up amounts secured**

- (1) The mortgagee may, by notice served on the mortgagor, call up as payable all of the principal amount, interest, and other amounts for the time being secured by the mortgage (even if the time or times appointed for payment may not have arrived) if—
- (a) the mortgagor fails to pay any amounts secured by the mortgage on the due date; or
 - (b) the mortgagor fails to perform or observe any covenant expressed or implied in the mortgage; or
 - (c) the mortgagor sells, assigns, exchanges, parts with possession of, or otherwise disposes of the mortgaged goods or any of them without the prior written consent of the mortgagee; or
 - (d) the mortgagor agrees to do any of the things referred to in paragraph (c) without the prior written consent of the mortgagee; or
 - (e) the mortgagor becomes bankrupt or, in the case of a company, is placed in liquidation or, in the case of an overseas company, is being liquidated under section 342 of the Companies Act 1993; or
 - (f) the mortgagor is a body corporate and, as a result of all or any of the following, the effective management or control of the body corporate is materially different from that when the mortgage was executed:
 - (i) a change in the legal or beneficial ownership of any of its shares;
 - (ii) an issue of new capital;
 - (iii) an alteration of voting rights or other rights attaching to any of its shares; or
 - (g) the mortgagor is a body corporate and a receiver or statutory manager is appointed for all, or substantially all, of the assets of the mortgagor or for the mortgaged goods or any of them; or
 - (h) the mortgaged goods or any of them are sold in exercise of a power of sale in any other mortgage or encumbrance over the goods.

Part 2—*continued*

- (2) If, under subclause (1), the mortgagee calls up as payable amounts secured by the mortgage, the mortgagee may require the mortgagor to pay 1 month's premium interest calculated at the agreed rate (if any) payable on the principal amount secured by the mortgage (in addition to all other interest payable under the mortgage to the date of payment of all amounts secured by the mortgage).
- (3) Subclause (2) does not apply in relation to a consumer credit contract (as defined in the Credit Contracts and Consumer Finance Act 2003).
- (4) No acquiescence, delay, or failure to act by the mortgagee after acquiring knowledge of any failure of the mortgagor or other event referred to in subclause (1) prejudices, or operates as a waiver of, the rights of the mortgagee under this clause.
- (5) The mortgagee may agree in writing to waive the rights of the mortgagee under this clause in relation to a particular failure of the mortgagor or a particular event referred to in subclause (1).
- (6) However, a waiver under subclause (5) relates only to the failure or event concerned and does not prejudice, or operate as a waiver of, the rights of the mortgagee for any failure or event that may occur in the future.

10 Power to take possession as mortgagee

The mortgagee may take possession of the mortgaged goods or any of them as mortgagee in any of the ways specified in section 137 of the Property Law Act 2007 if—

- (a) the mortgagor fails to pay any amounts secured by the mortgage on the due date; or
- (b) the mortgagor fails to perform or observe any covenant expressed or implied in the mortgage; or
- (c) the goods are at risk.

11 Power of sale

- (1) The mortgagee may sell all or any of the mortgaged goods if—
 - (a) the mortgagor fails to pay any amounts secured by the mortgage on the due date; or

Part 2—*continued*

- (b) the mortgagor fails to perform or observe any covenant expressed or implied in the mortgage; or
 - (c) the goods are at risk.
- (2) The mortgagee is not obliged to account for or apply the proceeds arising from the sale of mortgaged goods unless and until the mortgagee actually receives payment of them.
- (3) The mortgagor remains liable to the mortgagee for the amount by which the proceeds arising from the sale of mortgaged goods and available to a mortgagee in accordance with section 185 of the Property Law Act 2007 is less than the amounts then secured by the mortgage.
- (4) If a contract for the sale of any mortgaged goods entered into by the mortgagee is cancelled,—
 - (a) the mortgagee is entitled to make to the purchaser all allowances or refunds as the purchaser may be entitled to receive, at law or in equity, upon the cancellation of the contract; and
 - (b) the mortgagee is not responsible for any act or thing done or omitted by any purchaser; and
 - (c) the mortgagee is not obliged to enforce against the purchaser any right or power contained or implied in the contract of sale.
- (5) The mortgagee's costs and expenses arising out of the cancellation or the exercise or any attempted exercise by the mortgagee of rights and powers against any purchaser will be borne by the mortgagor.

12 Discharge of mortgage

The mortgagee will, on payment by the mortgagor of all amounts and the performance of all other obligations secured by the mortgage,—

- (a) return to the mortgagor the mortgage instrument; and
- (b) give to the mortgagor a mortgage discharge instrument executed in compliance with section 83 of the Property Law Act 2007; and

Part 2—*continued*

- (c) give to the mortgagor all certificates or instruments of title and other documents deposited with the mortgagee on account of the mortgage (if any).

13 Mortgagor's liability for costs

- (1) The mortgagor will pay all costs and expenses of and incidental to the arranging and preparation of the mortgage and any variation or discharge of the mortgage or any transfer of the mortgage or the mortgaged goods instead of a discharge.
 - (2) If and as often as the mortgagor fails to pay any amounts secured by the mortgage on the due date, or fails to perform or observe any covenant expressed or implied in the mortgage, the mortgagor will pay the costs of the mortgagee (as between solicitor and client) of and incidental to the enforcement or attempted enforcement by the mortgagee of the mortgagee's rights, remedies, and powers under the mortgage.
 - (3) The costs of the mortgagee under subclause (2) include the costs of giving or attempted giving of any notice required by the Property Law Act 2007 and the costs of inspection and valuation of the mortgaged goods.
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Schedule 3
Covenants, conditions, and powers
implied in leases of land

ss 218–220

Part 1
Preliminary
Interpretation

1 Interpretation

In this schedule, **leased premises** includes all land comprised in the lease.

General covenants

2 General covenant between lessor and lessee on matters set out in Part 2 of this schedule

The lessor and lessee covenant between each other on the matters set out in Part 2 of this schedule.

3 General covenants of lessee on matters set out in Part 3 or 4 of this schedule

The lessee covenants with the lessor on the matters, as the case requires, set out in Part 3 or 4 of this schedule.

Part 2
Covenants, conditions, and powers implied
in all leases of land

4 Payment of rent

- (1) The lessee will pay the rent payable under the lease when it falls due.
- (2) However, if the leased premises or any part of them are destroyed or damaged by any of the causes specified in subclause (3) to the extent that they become unfit for occupation and use by the lessee, the rent and any contribution payable by the lessee to the outgoings on those premises will abate, in fair and just proportion to the destruction or damage, until those premises—
 - (a) have been repaired and reinstated; and
 - (b) are again fit for occupation and use by the lessee.

Part 2—*continued*

- (3) The causes referred to in subclause (2) are—
 - (a) fire, flood, or explosion (whether or not the fire, flood, or explosion is caused, or contributed to, by the lessee's negligence); or
 - (b) lightning, storm, earthquake, or volcanic activity; or
 - (c) any other cause the risk for which the lessor has insured the premises.
- (4) Despite subclause (2), the lessee is not entitled to the abatement referred to in that subclause if, and to the extent that, any insurance moneys that would otherwise have been payable to the lessor for the destruction of or damage to the leased premises cannot be recovered because of an act or omission of—
 - (a) the lessee; or
 - (b) the lessee's agent, contractor, or invitee; or
 - (c) any other person under the lessee's direction or control.
- (5) Any dispute arising under this clause will be referred to arbitration under the Arbitration Act 1996.

Compare: 1952 No 51 ss 106, 107

5 Alteration of buildings

- (1) The lessee will not, without the consent of the lessor, alter any building that comprises, or is part of, the leased premises.
- (2) The lessor will not unreasonably withhold consent under subclause (1).

Compare: 1952 No 51 ss 106, 107

6 Noxious or offensive acts or things

- (1) The lessee will not do, or permit to be done, on the leased premises any of the things specified in subclause (2) to—
 - (a) the lessor; or
 - (b) the other lessees of the lessor; or
 - (c) the owners or occupiers of neighbouring properties.
- (2) The things referred to in subclause (1) are—
 - (a) any noxious or offensive act or thing; or

Part 2—*continued*

- (b) any act or thing that is, or is likely to be, a nuisance or that causes, or is likely to cause, any nuisance, damage, or disturbance.

Compare: 1952 No 51 ss 106, 107

7 Commission of waste

The lessee will not commit, or permit any of the lessee's agents, contractors, or invitees to commit, the tort of voluntary waste in relation to the leased premises.

Compare: 1952 No 51 ss 106, 107

8 Lessor not to depart from grant

The lessor will not derogate from the lease.

Compare: 1952 No 51 ss 106, 107

9 Lessee entitled to quiet enjoyment

The lessee and all persons claiming under the lessee will be able quietly to enjoy the leased premises without disturbance by any person specified in section 218(2).

Compare: 1952 No 51 ss 106, 107

10 Premises unable to be used for particular purpose

- (1) The lessee may terminate the lease, on reasonable notice to the lessor, if—
 - (a) it is an express or implied term of the lease that the leased premises may be used for 1 or more specified purposes; and
 - (b) at any time during the currency of the lease, those premises cannot, or can no longer be, lawfully used for 1 or more of those specified purposes.
- (2) Despite subclause (1), the lessee may not terminate the lease if the reason the leased premises cannot, or can no longer be, lawfully used for 1 or more of the specified purposes is because of an act or omission of—
 - (a) the lessee; or
 - (b) the lessee's agent, contractor, or invitee; or

Part 2—*continued*

(c) any other person under the lessee's direction or control.

Compare: 1952 No 51 ss 106, 107

11 Power to inspect premises

- (1) The lessor may at all reasonable times, either personally or by the lessor's agent, enter the leased premises for the purpose of—
- (a) inspecting their state of repair; or
 - (b) carrying out repairs; or
 - (c) complying with the requirements of—
 - (i) any enactment or bylaw; or
 - (ii) any notice issued by a competent authority.
- (2) The lessor will not unreasonably interfere with the lessee's occupation and use of the leased premises in the exercise of the power conferred by subclause (1).

Compare: 1952 No 51 ss 106, 107

12 Power to cancel lease for non-payment of rent or other breach

- (1) The lessor may cancel the lease in accordance with section 244 if—
- (a) any rent is unpaid for 15 working days after the due date for payment (whether or not a demand for payment has been made to the lessee by written notice signed by the lessor or the lessor's agent); or
 - (b) the lessee has failed, for a period of 15 working days, to observe or perform any other covenant, condition, or stipulation on the part of the lessee expressed or implied in the lease.
- (2) The lessee is not released from liability for the payment of any unpaid rent or for the breach or non-observance of any other covenant, condition, or stipulation referred to in subclause (1) if the lessor cancels the lease in accordance with section 244 and, accordingly,—
- (a) the lessor peaceably re-enters the leased premises or any representative part of those premises; or

Part 2—*continued*

- (b) the court makes an order for possession of the land in favour of the lessor.

Compare: 1952 No 51 ss 106, 107

Part 3

Covenant implied in all leases of land
(except short-term leases)**13 Lessee to keep and yield up premises in existing condition**

- (1) The lessee will,—
 - (a) at all times during the currency of the lease, keep the leased premises in the same condition that they were in when the term of the lease began; and
 - (b) at the termination of the lease, yield the leased premises in that condition.
- (2) However, the lessee is not bound to repair any damage to the leased premises caused by—
 - (a) reasonable wear and tear; or
 - (b) any of the following:
 - (i) fire, flood, or explosion (whether or not the fire, flood, or explosion is caused or contributed to by the lessee's negligence);
 - (ii) lightning, storm, earthquake, or volcanic activity;
 - (iii) any other cause the risk for which the lessor has insured the premises.
- (3) Despite subclause (2)(b), the lessee is not excused from liability to repair any damage caused by any of the events referred to in that paragraph if, and to the extent that, any insurance moneys that would otherwise have been payable to the lessor for the destruction of or damage to the leased premises cannot be recovered because of an act or omission of—
 - (a) the lessee; or
 - (b) the lessee's agent, contractor, or invitee; or
 - (c) any other person under the lessee's direction or control.

Compare: 1952 No 51 s 106

Part 4

Covenant implied in short-term leases

14 Lessee to use premises reasonably

The lessee will, at all times during the currency of the lease, use the leased premises in the way that a reasonable tenant would.

Compare: 1952 No 51 s 106

Schedule 4

Covenants implied in certain instruments

ss 284–290

Part 1

Covenants for right to convey, quiet enjoyment, and further assurance

Section 284

This Part applies to a person (**person A**) who, by an instrument to which section 284 applies, creates, transfers, or assigns an estate or interest in land.

Person A covenants with the grantee, transferee, or assignee that—

- (a) person A has the right and the power to create, transfer, or assign the estate or interest free of all encumbrances except any that are specified in the instrument as encumbrances to which the estate or interest will remain subject; and
- (b) the person who becomes entitled to the estate or interest (**person B**), and all persons claiming under person B, will be able quietly to enjoy the estate or interest without disturbance by any person (*see* section 284(2)) to whose acts or omissions the covenants set out in this Part relate; and
- (c) person A will, at the request and the expense of person B, execute all documents, and do all other acts, for the better assuring of the title to the estate or interest, as person B may from time to time reasonably require.

Compare: 1952 No 51 s 72

Part 2

Covenant implied in instruments transferring or assigning leases of land

Section 285

This Part applies to a person (**person A**) who, by an instrument to which section 285 applies, transfers or assigns a leasehold estate or interest in land.

Person A covenants with the transferee or assignee that, as at the coming into operation of the instrument, all rent due under the lease has been paid and all covenants and conditions contained in the lease have been performed and observed.

Part 2—*continued*

Compare: 1952 No 51 s 74

Part 3
Covenants implied in instruments by
fiduciary or mortgagee

Sections 286 and 287

This Part applies to a person (**person A**) who, by an instrument to which section 286 applies,—

- (a) creates, transfers, or assigns an estate or interest in land in a fiduciary capacity or as mortgagee; or
- (b) executes a mortgage discharge instrument, or memorandum of discharge of mortgage, relating to a mortgage over land.

Person A covenants with the grantee, transferee, assignee, or mortgagor that person A has not done and will not do, and has not knowingly been and will not knowingly be party to, any act or thing that will or may do all or any of the following:

- (a) invalidate the creation, transfer, or assignment of the estate or interest:
- (b) cause the estate or interest of the person who becomes entitled to it to be defeated or the title to the estate or interest to be encumbered:
- (c) prevent the creation, transfer, or assignment of the estate or interest in terms of the instrument.

Compare: 1952 No 51 s 75

Part 4
Covenants implied in encumbrances of
property

Section 288

This Part applies to a person (**person A**) who, by an instrument to which section 288 applies, encumbers any property.

Part 4—*continued*

Person A covenants with the holder of the encumbrance that person A—

- (a) has the right and the power to encumber the property free of all other encumbrances except any that are specified in the instrument as encumbrances to which the property will remain subject; and
- (b) will, at the request of the person for whose benefit the property is encumbered (**person B**), execute all documents and do all other things for the better assuring of the title of person B under the encumbrance as person B may from time to time reasonably require.

Compare: 1952 No 51 s 72

Part 5

Covenant for performance of obligations
under encumbrance*Sections 289 and 290*

This Part applies to a person (**person A**) to whom land is transferred or assigned subject to an encumbrance.

Person A covenants with the transferor or assignor, to the extent provided in section 290, that person A will—

- (a) pay all amounts and perform all other obligations secured by the encumbrance as and when they fall due; and
- (b) observe all other provisions of the encumbrance and carry out all the express or implied covenants it contains; and
- (c) indemnify the person who transfers or assigns the land subject to the encumbrance for any cost incurred by that person because of the failure by the person to whom the land is transferred or assigned to perform or carry out any obligations, provisions, or covenants referred to in paragraph (a) or (b).

Compare: 1952 No 51 s 73

Schedule 5

ss 297, 298

Covenants implied in grants of vehicular rights of way

The grantor and the grantee of a vehicular right of way covenant with one another as follows:

1 Right to pass and re-pass

- (1) The grantee and the grantor have (in common with one another) the right to go, pass, and re-pass over and along the land over which the right of way is granted.
- (2) That right to go, pass, and re-pass is exercisable at all times, by day and by night, and is exercisable with or without vehicles, machinery, and equipment of any kind.
- (3) In this clause, the **grantee** and the **grantor** include agents, contractors, employees, invitees, licensees, and tenants of the grantee or the grantor.

Compare: 1952 No 51 s 126B, Schedule 9 cl 1

2 Right to establish and maintain driveway

The owners and occupiers of the land for the benefit of which, and the land over which, the right of way is granted have the following rights against one another:

- (a) the right to establish a driveway on the land over which the right of way is granted, and to make necessary repairs to any existing driveway on it, and to carry out any necessary maintenance or upkeep, altering if necessary the state of that land; and
- (b) any necessary rights of entry onto that land, with or without machinery, plant, and equipment; and
- (c) the right to have that land at all times kept clear of obstructions, whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway; and
- (d) the right to a reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard; and
- (e) the right to recover the cost of repairing any damage to the driveway made necessary by any deliberate or

negligent act of a person bound by these covenants or that person's agents, contractors, employees, invitees, licensees, or tenants.

Compare: 1952 No 51 s 126B, Schedule 9 cl 2(a)–(d)

3 Right to have land restored after completion of work

- (1) This clause applies to a person bound by these covenants (**person A**) if a person entitled to enforce these covenants (**person B**) has undertaken work, in accordance with the right conferred by clause 2(a) or with an order of a court, on the land over which a right of way is granted.
- (2) Person A has the right, after the completion of the work, to have the land restored as far as possible to its former condition (except for the existence of the driveway).
- (3) That right of person A is subject to person B's right, in accordance with clause 2(d), to receive a reasonable contribution towards the cost of the work.

Compare: 1952 No 51 s 126B, Schedule 9 cl 2(e)

Schedule 6

s 351

**Provisions applying to land not owned by
the Crown and not under Land Transfer
Act 1952**

1 Certain dealings in land not valid unless made by deed

- (1) No partition, exchange, lease, assignment, or surrender of land is valid unless it is made by deed.
- (2) However, subclause (1) does not apply to—
- (a) short-term leases; or
 - (b) assignments or surrenders by operation of law.

Compare: 1952 No 51 s 10

2 Fee to pass without words of limitation

A conveyance of land without words of limitation passes the fee simple or other whole estate that the party conveying has power to dispose of.

Compare: 1952 No 51 s 43

3 Form of conveyance in fee simple

- (1) A deed in, or to the effect of, the following form passes title to, and possession of, land:

Deed of Conveyance

This deed, made on *[insert date]*, between *[name of conveying party]* of *[place of residence]*, *[occupation]*, the **conveying party** and *[name of assignee]* of *[place of residence]*, *[occupation]*, the **assignee**

[Recitals, if any,]: [Now this deed]

witnesses that, in consideration of the sum of *[amount]* paid by the assignee to the conveying party (the receipt of which is acknowledged), the conveying party conveys to the assignee all that piece of land *[insert description of land]*: as shown on the plan drawn on this conveyance and coloured *[insert description of colour used]*.

Signed at _____, this _____ day of *[month]*, *[year]*

[signature]

[*name of conveying party*]

Signed by [*name of conveying party*] in the presence of:

[*signature of witness*]

[*place of residence*]

[*occupation*]

- (2) The description of the land must—
- (a) refer to the marks and numbers in the Surveyor-General's map or other official record map; and
 - (b) describe particularly the situation, boundaries, and measurements; and
 - (c) specify any variation in any of those particulars.

Compare: 1952 No 51 s 47

4 What conveyance of land includes

- (1) A conveyance of land includes all rights, easements, and appurtenances belonging to the land or usually held or enjoyed with the land.
- (2) Subclause (1) applies subject to the terms of the conveyance.
- (3) A conveyance under this clause does not—
 - (a) convey any property, right, or thing that the conveying party cannot convey; or
 - (b) pass a better title to any property, right, or thing than the title expressed to be passed by the conveyance.

Compare: 1952 No 51 s 47

5 Application of stated conditions of sale

- (1) In the completion of a contract for the sale of land,—
 - (a) 30 years is substituted for 60 years as the period of commencement of title which a purchaser may require; but earlier title than 30 years may be required in cases similar to those in which, immediately before 1 January 1953, earlier title than 60 years might have been required;
 - (b) the following rules apply to the obligations and rights of vendor and purchaser:

- (i) recitals, statements, and descriptions of facts, matters, and parties contained in instruments or statutory declarations 20 years old at the date of the contract are to be taken to be sufficient evidence of the truth of those facts, matters, and parties, except to the extent that they are proved to be inaccurate:
 - (ii) the inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title is not an objection to title if the purchaser, on the completion of the contract, has an equitable right to the production of the documents:
 - (iii) any covenant for production that the purchaser can and does require must be furnished at the purchaser's expense, and the vendor must bear the expense of perusal and execution on behalf of himself or herself and any necessary parties other than the purchaser:
 - (iv) if the vendor retains any part of an estate to which any documents of title relate, he or she is entitled to retain those documents of title.
- (2) This clause applies subject to the contract for the sale of the land.

Compare: 1952 No 51 s 52

6 Sale by administrator

- (1) On a sale by an administrator of land, the vendor's receipt in writing is a sufficient discharge to the purchaser for the purchase money expressed to have been received.
- (2) Neither the purchaser nor any person claiming through the purchaser needs—
 - (a) to be concerned to see to the application of the purchase money; or
 - (b) to inquire whether the sale was irregular or improper.

Compare: 1952 No 51 s 57

7 Covenants for the production of title deeds

- (1) In a conveyance of land by way of sale, mortgage, marriage settlement, or lease, and in every other conveyance of land for valuable consideration, there is implied a covenant for production of title deeds in the terms set out in subclause (2).
- (2) The conveying party covenants with the grantee that, unless prevented by fire or other inevitable accident,—
 - (a) at the request and cost of the grantee, the conveying party will produce to the grantee, as the grantee may direct, within New Zealand, all registered deeds and instruments or evidences of title in the possession of the conveying party relating to the land conveyed (whether or not they relate also to other land); and
 - (b) in the meantime the conveying party will keep those deeds, instruments, and evidences of title safe, whole, and uncanceled.
- (3) The covenant for production of title deeds runs with the land, so as to bind only the person for the time being entitled to the possession of the deeds, instruments, or evidences of title.
- (4) In this clause,—

conveying party includes the conveying party's assigns

grantee includes the grantee's assigns.

Compare: 1952 No 51 s 72

8 Form of mortgage

- (1) Mortgages of land may be made by an ordinary conveyance by way of mortgage or in the following form:

Mortgage of Land

- (a) Mortgagor: *[full name, place of residence, and occupation of mortgagor or mortgagors]*
- (b) Estate: *["freehold in fee simple" or "leasehold", as the case may be]*
- (c) Land: *[full description, with plan, of the land to be mortgaged]*
- (d) Mortgagee: *[full name, place of residence, and occupation of mortgagee or mortgagees]*

- (e) Principal sum: [*amount*]
- (f) Date of advance: [*date*]
- (g) Rate of interest: [*rate (if any) agreed upon*]
- (h) How interest payable: [*“yearly”, “half-yearly”, “quarterly”, and date or dates for payment, or otherwise, as the case may be*]
- (i) How and when principal sum to be repaid: [*date and mode of payment agreed upon*].

And for the better securing to the mortgagee the payment of the principal sum, interest and other money, I [*or we*] mortgage to the mortgagee all my [*or our*] estate and interest in the land.

Signed at _____, this _____ day of [*month*], [*year*]

[*signature or signatures*]

Mortgagor [*or Mort-*
gagors]

Signed by [*name of mortgagor or mortgagors*] as mortgagor[s], in the presence of:

[*signature of witness*]

[*place of residence*]

[*occupation*]

- (2) A mortgage in the form set out in subclause (1)—
 - (a) is to be treated as a charge on the land; and
 - (b) may be registered accordingly.

Compare: 1952 No 51 s 76

9 Recovery of annual sums charged on land

- (1) This clause applies if—
 - (a) a person is entitled to receive out of any land, or out of the income of land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the

- income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion; and
- (b) the instrument under which the annual sum is payable came into operation on or after 1 January 1906.
- (2) The person entitled to receive the annual sum has the remedies for recovering payment of it described in subclause (4)—
- (a) so far as the remedies might have been conferred by the instrument under which the annual sum is payable, but not further; and
- (b) subject to the terms of the instrument.
- (3) Subclause (2) applies subject and without prejudice to all estates, interests, and rights having priority to the annual sum.
- (4) If at any time the annual sum or any part of it is unpaid for 40 days after the time appointed for payment, then, although no legal demand for the payment has been made, the person entitled to receive the annual sum may do either or both of the following:
- (a) enter into possession of and hold the land charged, or any part of it, and take the income of the land, or any part of it, without impeachment of waste, until the annual sum and all arrears due at the time of entry or afterwards becoming due while the person continues in possession, and all costs arising from the non-payment of the annual sum, are fully paid:
- (b) by deed, convey the land charged or any part of it to a trustee for a term of years, with or without impeachment of waste, on trust, by all or any of the following means:
- (i) mortgage; or
- (ii) sale; or
- (iii) demise for all or any part of the term; or
- (iv) receipt of the income of the land or any part of it; or
- (v) any other reasonable means.
- (5) The power in subclause (4)(b) may be exercised only to raise and pay the annual sum and all arrears due or becoming due, and all costs arising from the non-payment of the annual sum, or incurred in compelling or obtaining payment of the annual sum, including the costs of the preparation and execution of

any instrument and the costs of execution of the trust thereby created.

- (6) The surplus, if any, of the money raised or the income received under the trust must be paid to the person for the time being entitled to the land comprised in the trust, in reversion immediately expectant on the term of the trust.
- (7) The rule against perpetuities as modified by the Perpetuities Act 1964 does not apply to—
 - (a) any powers or remedies conferred by this clause; or
 - (b) any equivalent powers or remedies conferred by any instrument for recovering the payment of any annual sum within the meaning of this clause.

Compare: 1952 No 51 s 150

Schedule 7

Consequential amendments

s 364(1)

Administration Act 1969 (1969 No 52)

Section 36(3): repeal and substitute:

“(3) Section 149 of the Property Law Act 1952 continues to apply to a will made before 1 January 1971 as if that section had not been repealed by the Property Law Act 2007.”

Section 43: repeal.

Agricultural and Pastoral Societies Act 1908 (1908 No 4)

Section 8(3): omit “and distrain”.

Building Societies Act 1965 (1965 No 22)

Definition of land in section 2(1): repeal and substitute:

“**land** includes—

- “(a) all estates or interests, whether freehold or chattel, in real property; and
- “(b) a licensee’s interest under—
 - “(i) a licence to occupy (within the meaning of section 121A of the Land Transfer Act 1952); or
 - “(ii) a deferred payment licence (within the meaning of section 2 of the Land Act 1948)”.

Section 56G: omit “section 79 of the Property Law Act 1952” and substitute “section 83 of the Property Law Act 2007, and without affecting section 9 of that Act”.

Climate Change Response Act 2002 (2002 No 40)

Section 30C(4): omit “Section 152 of the Property Law Act 1952 applies” and substitute “Sections 354 to 361 of the Property Law Act 2007 apply”.

Companies Act 1993 (1993 No 105)Heading to Part 6: add “**and debentures**”.

Companies Act 1993 (1993 No 105)—continued

Insert after section 95:

“Debentures

“95A Perpetual debentures

- “(1) A term that is expressed in a debenture or in a deed securing a debenture, issued or executed by a company, is not invalid by reason only that it provides that the debenture is—
- “(a) irredeemable; or
 - “(b) redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.
- “(2) This section applies despite anything to the contrary in section 97 of the Property Law Act 2007 or in any rule of law or equity.

“Compare: 1952 No 51 s 151B

“95B Power to reissue redeemed debentures in certain cases

- “(1) A company that has redeemed debentures previously issued by it may—
- “(a) reissue the debentures; or
 - “(b) issue other debentures in their place.
- “(2) Subsection (1) applies—
- “(a) whether the debentures were redeemed before, on, or after 1 January 2008:
 - “(b) unless—
 - “(i) the company’s constitution or a contract entered into by the company contains a provision (whether express or implied) to the contrary; or
 - “(ii) the company has, by passing a resolution or by some other act, indicated its intention that the debentures are cancelled.
- “(3) On a reissue of redeemed debentures or of other debentures in their place, the debentures are to be treated as having, and as always having had, the same priority as the redeemed debentures.
- “(4) Debentures of a company deposited to secure advances from time to time (whether on current account or otherwise) are

Companies Act 1993 (1993 No 105)—continued

not to be treated as redeemed because the company's account ceases to be in debit while the debentures are deposited.

- “(5) Subsection (4) applies whether the debentures were deposited before, on, or after 1 January 2008.
- “(6) The reissue of a debenture or the issue of another debenture in its place under this section (whether before, on, or after 1 January 2008)—
- “(a) is to be treated as the issue of a new debenture for the purposes of stamp duty payable (if any); but
 - “(b) is not to be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued.

“Compare: 1952 No 51 s 151C

“95C Specific performance of contracts to subscribe for debentures

- “(1) A court may order the specific performance of a contract with a company to take up and pay for any debentures of the company.
- “(2) The court must not refuse to order the specific performance of a contract of that kind on the ground that the contract is one to lend money.

“Compare: 1952 No 51 s 151D”.

Section 181(3): repeal and substitute:

- “(3) Sections 19 to 21 of the Property Law Act 2007 apply, with all necessary modifications, in relation to a power of attorney executed by a company, to the same extent as if the company was a natural person and as if the commencement of the liquidation or, if there is no liquidation, the removal from the register kept for the purposes of this Act of the company was an event revoking the power of attorney within the meaning of those sections.”

Section 343(1): repeal and substitute:

- “(1) Sections 19 to 21 of the Property Law Act 2007 apply, with all necessary modifications, in relation to a power of attorney executed by an overseas company registered under this Part of

Companies Act 1993 (1993 No 105)—*continued*

this Act, to the same extent as if the company was a natural person and as if the commencement of the liquidation of the company was an event revoking the power of attorney within the meaning of those sections.”

Contracts (Privity) Act 1982 (1982 No 132)

Section 13: repeal.

Sections 14 and 15: repeal and substitute:

“14 Savings

“(1) Nothing in this Act limits or affects—

“(a) any right or remedy that exists or is available apart from this Act; or

“(b) subpart 2 of Part 2 of the Property Law Act 2007 or any other enactment that requires any contract to be in writing or to be evidenced by writing; or

“(c) the law of agency; or

“(d) the law of trusts.

“(2) Subsection (1) is subject to the repeal of section 7 of the Property Law Act 1952 effected by section 13 of this Act.

“(3) Section 7 of the Property Law Act 1952 continues to apply, despite its repeal effected by section 13 of this Act, in respect of any deed made before 1 April 1983.

“15 Application of Act

“(1) This Act does not apply to any promise, contract, or deed made before 1 April 1983.

“(2) Subsection (1) is subject to section 14(3).”

Contractual Mistakes Act 1977 (1977 No 54)

Section 8(2): omit “section 130 of the Property Law Act 1952” and substitute “subpart 5 of Part 2 of the Property Law Act 2007”.

Contractual Remedies Act 1979 (1979 No 11)

Section 11(4)(a): omit “section 104 of the Property Law Act 1952” and substitute “subpart 8 of Part 3 of the Property Law Act 2007”.

Contractual Remedies Act 1979 (1979 No 11)—*continued*

Section 15(g): repeal and substitute:

- “(g) sections 253 to 260 of the Property Law Act 2007 (which relate to relief against cancellation of leases for breach of covenant or condition):”.

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Section 42(1)(d): omit “foreclose,”.

Section 42(1)(g): omit “distrain for rent,”.

Credit Contracts and Consumer Finance Act 2003 (2003 No 52)

Section 50(4): omit “section 81 of the Property Law Act 1952” and substitute “sections 97 to 99 of the Property Law Act 2007”.

Crown Pastoral Land Act 1998 (1998 No 65)

Section 19(4): omit “Section 118 of the Property Law Act 1952” and substitute “Sections 244 to 257 of the Property Law Act 2007”.

Defence Act 1990 (1990 No 28)

Section 92(3): omit “from distress and”.

District Courts Act 1947 (1947 No 16)

Sections 32 and 95: repeal.

Family Benefits (Home Ownership) Act 1964 (1964 No 32)

Section 13(7): repeal and substitute:

- “(7) The Property Law Act 2007 applies to every such charge—
 - “(a) as if the charge were a mortgage over the land; and
 - “(b) as if references to the mortgagor and to the mortgagee were references to the person giving the charge and to the charge holder respectively.
- “(7A) In particular, and without limiting the generality of subsection (7), there is implied in the charge,—

Family Benefits (Home Ownership) Act 1964 (1964 No 32)—continued

- “(a) on the part of the person giving it, the covenants by the mortgagor specified in Part 1 of Schedule 2 of the Property Law Act 2007; and
- “(b) in favour of the charge holder, the powers and conditions specified in that schedule.”

Forestry Encouragement Act 1962 (1962 No 20)

Section 5(10A): repeal and substitute:

“(10A) Forestry encouragement agreements, whether entered into before or after the close of 31 December 2007, must be treated as mortgages for the purposes of sections 90 to 92 of the Property Law Act 2007; and the Minister must be treated as a mortgagee of the leasehold estate or interest for the purposes of section 249(1)(a) of that Act.”

Forests Act 1949 (1949 No 19)

Heading to section 67ZC: omit “**Section 126G of Property Law Act 1952 does**” and substitute “**Sections 316 to 318 of Property Law Act 2007 do**”.

Section 67ZC: omit “section 126G of the Property Law Act 1952” and substitute “sections 316 to 318 of the Property Law Act 2007”.

Historic Places Act 1993 (1993 No 38)

Section 6(9): omit “section 126G of the Property Law Act 1952” and substitute “sections 316 to 318 of the Property Law Act 2007”.

Housing Corporation Act 1974 (1974 No 19)

Section 19(4)(c)(i) and (ii): omit “Property Law Act 1952” and substitute “Property Law Act 2007” in each case.

Innkeepers Act 1962 (1962 No 140)

Section 10(1): omit “for the rent of the inn or any other claim”.

Insolvency Act 1967 (1967 No 54)

Items repealed.

Insolvency Act 2006 (2006 No 55)

Section 192(1)(d): repeal and substitute:

- “(d) a disposition of property to which subpart 6 of Part 6 (setting aside of dispositions that prejudice creditors) of the Property Law Act 2007 applies.”

Section 206(1)(d): repeal and substitute:

- “(d) a disposition of property to which subpart 6 of Part 6 (setting aside of dispositions that prejudice creditors) of the Property Law Act 2007 applies.”

Item relating to the Property Law Act 1952 in Part 1 of Schedule 2: repeal.

Institute of Chartered Accountants of New Zealand Act 1996 (1996 No 39)

Clause 11(1) of Schedule 1: omit “Property Law Act 1952” and substitute “Property Law Act 2007”.

Insurance Law Reform Act 1985 (1985 No 117)

Section 13(1): repeal and substitute:

- “(1) Subsection (1A) applies during the period beginning with the making of a contract for the sale of land and all or any fixtures on that land, and ending on the purchaser taking possession of the land and fixtures, or final settlement (whichever occurs first).
- “(1A) During the period specified in subsection (1), any policy of insurance maintained by the vendor in respect of any damage to or destruction of any part of the land or fixtures enures, in respect of the land and fixtures agreed to be sold and to the extent that the purchaser is not entitled to be indemnified or to require reinstatement of that land and those fixtures under any other policy of insurance, for the benefit of the purchaser as well as the vendor.
- “(1B) In particular, the purchaser is entitled to be indemnified by the insurer or to require the insurer to reinstate that land and those fixtures in the same manner and to the same extent as the vendor would have been so entitled under the policy if there had been no contract of sale.

Insurance Law Reform Act 1985 (1985 No 117)—*continued*

“(1C) However, nothing in subsections (1A) and (1B) obliges an insurer to pay or expend more in total under a policy of insurance than it would have had to pay or expend if there had been no contract of sale.”

Section 13(2)(a): repeal and substitute:

- “(a) a claim by a purchaser against an insurer under this section, that the vendor otherwise would not be entitled to be indemnified by the insurer or to require reinstatement because the vendor has suffered no loss or has suffered diminished loss because the vendor is or was entitled to be paid all, or the balance of, the purchase price, by the purchaser; or”.

Land Act 1948 (1948 No 64)

Section 24(1)(e): omit “distrain, sue for,” and substitute “sue for”.

Section 84(4): omit “, and, in case the same is levied by distress, an order by the Commissioner shall be a sufficient warrant and authority to distrain, any law or enactment to the contrary notwithstanding”.

Land Transfer Act 1952 (1952 No 52)

Section 90F(1): omit “section 126A of the Property Law Act 1952” and substitute “section 307 of the Property Law Act 2007”.

Section 90F(3): omit “Sections 63 to 71, 126, 126A, and 126G of the Property Law Act 1952” and substitute “Sections 4, 8(1) and (2)(c), 23(2), 275 to 279, 301 to 307, and 316 to 318 of the Property Law Act 2007”.

Section 90F(4): omit “section 126A of the Property Law Act 1952” and substitute “section 307 of the Property Law Act 2007”.

Sections 96 and 98: repeal.

Section 101(2)(e): repeal and substitute:

- “(e) the stated priority limit under section 92 of the Property Law Act 2007 (if any).”

Section 104: repeal.

Section 105: omit “any such sale as aforesaid” and substitute “exercising a power of sale over any land”.

Sections 106 to 108 and 110: repeal.

Land Transfer Act 1952 (1952 No 52)—*continued*

Section 115(1): omit “for a life or lives, or for a term of not less than 3 years”.

Section 115(5): repeal.

Section 121L(2)(b): omit “Section 104 of the Property Law Act 1952” and substitute “subpart 8 of Part 3 of the Property Law Act 2007”.

Section 141(3)(a)(ii): omit “section 101 of the Property Law Act 1952” and substitute “section 196 of the Property Law Act 2007”.

Section 164E(4): omit “section 49A of the Property Law Act 1952” and substitute “section 25 of the Property Law Act 2007”.

Section 244: repeal.

Paragraph (2) of Schedule 3: omit “and the provisions of paragraph (7) of Schedule 4 of the Property Law Act 1952 shall, with the necessary modifications, apply with respect to” and substitute “and clause 10 of Part 1 of Schedule 2 of the Property Law Act 2007 applies (with all necessary modifications) to”.

Schedule 4: omit “Part 8 of the Property Law Act 1952” and substitute “Part 4 of the Property Law Act 2007”.

Land Transfer Amendment Act 1963 (1963 No 61)

Section 11(2): omit “section 92 of the Property Law Act 1952” and substitute “subpart 5 of Part 3 of the Property Law Act 2007”.

Section 11(3): omit “section 104 of the Property Law Act 1952” and substitute “subpart 8 of Part 3 of the Property Law Act 2007”.

Law Reform (Testamentary Promises) Act 1949 (1949 No 33)

Section 3(2)(b): omit “section 4 of the Statute of Frauds 1677, or section 2 of the Contracts Enforcement Act 1956” and substitute “subpart 2 of Part 2 of the Property Law Act 2007”.

Lawyers and Conveyancers Act 2006 (2006 No 1)

Heading to clause 18 of Schedule 1: omit “**Property Law Act 1952**” and substitute “**Property Law Act 2007**”.

Clause 18 of Schedule 1: omit “Property Law Act 1952” and substitute “Property Law Act 2007”.

Life Insurance Act 1908 (1908 No 105)

Section 40B(2)(d): omit “Foreclose,”.

Section 40B(2)(e): omit “distrain for rent,”.

Maori Affairs Restructuring Act 1989 (1989 No 68)

Section 43(5): omit “expressed by the Land Transfer Act 1952 or the Property Law Act 1952, as the case may be, in respect of mortgages” and substitute “implied by the Property Law Act 2007 in mortgages over land”.

Maori Housing Act 1935 (1935 No 34)

Section 14A: omit “section 152 of the Property Law Act 1952” and substitute “sections 353 to 360 of the Property Law Act 2007”.

Maori Housing Amendment Act 1938 (1938 No 17)

Section 21(8): omit “conferred by the Land Transfer Act 1952 and the Property Law Act 1952 in respect of mortgages” and substitute “implied in mortgages over land by the Property Law Act 2007”.

Maori Reserved Land Act 1955 (1955 No 38)

Clause 11 in form A of Schedule 2: omit “Property Law Act 1952 relating to forfeiture and relief against forfeiture (notwithstanding that, and whatever the means by which, such forfeiture may be avoided)” and substitute “Property Law Act 2007 relating to cancellation of leases (despite that, and whatever the means by which, such cancellation may be avoided)”.

Clause 16 in form A of Schedule 2: omit “by distress under the Distress and Replevin Act 1908 or otherwise”.

Clause 18 in form A of Schedule 2: omit “implied in leases by the Property Law Act 1952” and substitute “implied in leases (other than registered or unregistered short-term leases) by the Property Law Act 2007”.

Clause 16 in form B of Schedule 2: omit “Property Law Act 1952 relating to forfeiture and relief against forfeiture (notwithstanding that, and whatever the means by which, such forfeiture may be avoided)” and substitute “Property Law Act 2007 relating to cancellation of leases (despite that, and whatever the means by which, such cancellation may be avoided)”.

Maori Reserved Land Act 1955 (1955 No 38)—*continued*

Clause 25 in form B of Schedule 2: omit “by distress under the Distress and Replevin Act 1908 or otherwise”.

Clause 27 in form B of Schedule 2: omit “implied in leases by the Property Law Act 1952” and substitute “implied in leases (other than registered or unregistered short-term leases) by the Property Law Act 2007”.

Maori Reserved Land Amendment Act 1997 (1997 No 101)

Clause 2(1)(i)(ii) of Schedule 1: omit “section 99 of the Property Law Act 1952 by a Registrar of the High Court, of the redemption price stated” and substitute “sections 187 to 198 of the Property Law Act 2007 by a Registrar of the High Court, of the discharge sum nominated”.

Maori Trustee Act 1953 (1953 No 95)

Section 49(2): omit “expressed by the Land Transfer Act 1952 or the Property Law Act 1952, as the case may be, in respect of mortgages,” and substitute “implied in mortgages over land by the Property Law Act 2007”.

Maori Vested Lands Administration Act 1954 (1954 No 60)

Clause 18 of Schedule 1: omit “Property Law Act 1952 relating to forfeiture and relief against forfeiture (notwithstanding that, and whatever the means by which, such forfeiture may be avoided)” and substitute “Property Law Act 2007 relating to cancellation of leases (despite that, and whatever the means by which, such cancellation may be avoided)”.

Clause 31 of Schedule 1: omit “and shall be recoverable by distress under the Distress and Replevin Act 1908 or otherwise as if the same were rent in arrear hereby reserved”.

Clause 33 of Schedule 1: omit “the Property Law Act 1952” and substitute “sections 218 and 219 of the Property Law Act 2007”.

Medicines Act 1981 (1981 No 118)

Section 55G(2): omit “section 2 of the Property Law Act 1952” and substitute “section 4 of the Property Law Act 2007”.

Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)

Heading to section 411: omit “**Property Law Act 1952**” and substitute “**Property Law Act 2007**”.

Section 411: omit “Section 129B of the Property Law Act 1952” and substitute “Subpart 3 of Part 6 of the Property Law Act 2007”.

Official Appointments and Documents Act 1919 (1919 No 18)

Section 3(4): omit “Property Law Act 1952” and substitute “Property Law Act 2007”.

Personal Property Securities Act 1999 (1999 No 126)

Section 104(1)(b): repeal and substitute:

- “(b) a secured party has sold the collateral under section 109, and the net proceeds of the sale exceed the sum of the amounts required to be paid under section 116A (if any) and—
 - “(i) the amount of the debt owed to the secured party by the debtor (if the collateral secures payment); or
 - “(ii) the monetary value of the obligation owed to the secured party (if the collateral secures performance of an obligation).”

Section 107(1): omit “117(1)(c).”.

Section 107(2)(b) and (j): repeal.

Section 107: add:

- “(4) The provisions of this section, as in force immediately before the commencement of the Property Law Act 2007, continue to apply to a security agreement that was entered into before that commencement.”

Section 109(1): omit “with priority over all other secured parties”.

New section 110A: insert after section 110:

“110A No defence or indemnity

- “(1) It is not a defence to a proceeding against a secured party for a breach of the duty imposed by section 110 that the secured party was acting as the agent of, or under a power of attorney from, the debtor or any former debtor.

Personal Property Securities Act 1999 (1999 No 126)—continued

“(2) A secured party is not entitled to compensation or indemnity from the collateral or from the debtor, any former debtor, or any guarantor for any liability arising from a breach of the duty imposed by section 110.

“(3) This section applies despite anything to the contrary in any instrument or in any rule of law.

“Compare: 1952 No 51 s 103B”.

Section 114(2)(b): omit “after default”.

Section 114(2)(e): repeal and substitute:

“(e) the collateral consists of inventory; or

“(f) the security interest arises under an instrument creating a charge on the property of a body corporate that comprises all, or substantially all, of the assets of the body corporate (whether or not there is a collateral security interest in the collateral securing the same debt or obligation); or

“(g) after the secured party takes possession of the collateral, every person entitled to receive notice under subsection (1) consents in writing to the immediate sale of the collateral; or

“(h) a court grants leave to the secured party to sell collateral under section 109 without complying with subsection (1).”

Section 114: add:

“(3) If a security interest is over collateral and some, but not all, of the collateral is described in subsection (2), the secured party may sell the collateral described in subsection (2) under section 109 without complying with subsection (1).

“(4) If the security interest is created or provided for by a mortgage over goods,—

“(a) sections 128 to 136 of the Property Law Act 2007 apply; and

“(b) the notice that is given under subsection (1) must be—

“(i) in the form prescribed by regulations made under that Act (instead of being in the form prescribed by regulations made under this Act); and

Personal Property Securities Act 1999 (1999 No 126)—continued

“(ii) given to the persons referred to in sections 128 and 130 of the Property Law Act 2007 (instead of to the persons referred to in subsection (1)).

“(5) In subsection (4), **mortgage** has the same meaning as in section 4 of the Property Law Act 2007.”

Insert after section 116:

“116A Secured party selling collateral must pay prior ranking secured parties

“(1) A secured party who has sold collateral under section 109 must, before applying the net proceeds of the sale towards the satisfaction of the debt or other obligation secured by the security interest of the secured party, apply the net proceeds of the sale towards satisfying the claims of any person who has registered a financing statement in the name of the debtor over the collateral that is sold if—

“(a) the registration was effective immediately before the collateral was sold; and

“(b) the security interest relating to that registration had priority over the security interest of the secured party who sold the collateral.

“(2) The security interests to which subsection (1) applies must be paid in the order of their priority as determined by Part 7 or by Part 8.

“(3) The persons who must be paid under subsection (1) are entitled to recover the amount that must be paid from the secured party.

“(4) In this section, **net proceeds** has the same meaning as in section 104(2).

“(5) This section is subject to sections 153 and 154 of the Property Law Act 2007.”

Section 117: add:

“(4) This section is subject to sections 153 and 154 of the Property Law Act 2007.”

Protection of Personal and Property Rights Act 1988 (1988 No 4)

Section 57(1)(c): omit “foreclose,”.

Section 57(1)(d): omit “distrain for rent,”.

Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90)

Section 18: new section 103C(1): omit “section 135(1) to (5) of the Property Law Act 1952” and substitute “section 20(1) to (4) of the Property Law Act 2007”.

Section 18: new section 103C(1): omit “section 135(6)(b) of the Property Law Act 1952” and substitute “section 20(5)(b) of the Property Law Act 2007”.

Heading to section 26: omit “**section 135 of Property Law Act 1952**” and substitute “**section 20 of Property Law Act 2007**”.

Section 26: omit “Section 135 of the Property Law Act 1952” and substitute “Section 20 of the Property Law Act 2007”.

Section 26: new subsection (6): omit “(6)” and substitute “(5)”.

Section 26: new subsection (6): omit “subsections (1) to (5)” in each place where it appears and substitute in each case “subsections (1) to (4)”.

Public Service Investment Society Management Act (No 2) 1979 (1979 No 9)

Section 6(1)(d): omit “Foreclose,”.

Section 6(1)(e): omit “distrain for rent,”.

Public Trust Act 2001 (2001 No 100)

Section 12(5): repeal.

Public Works Act 1981 (1981 No 35)

Section 221(3): omit “Property Law Act 1952” and substitute “Property Law Act 2007”.

Receiverships Act 1993 (1993 No 122)

Paragraph (c) of the definition of **receiver** in section 2(1): repeal and substitute:

- “(c) a mortgagee who, whether personally or through an agent, exercises a power to—
 - “(i) enter into possession of mortgaged property in a manner referred to in section 137 of the Property Law Act 2007; or

Receiverships Act 1993 (1993 No 122)—*continued*

“(ii) sell or otherwise alienate mortgaged property;
or”.

Section 9: repeal.

Section 30: insert before subsection (3):

“(2B) For the purposes of subsection (2)(a), if an amount of an expense or of remuneration—

“(a) is payable partly in relation to the accounts receivable or inventory concerned and partly in relation to other property,—

“(i) the amount must be fairly and equitably apportioned between the accounts receivable or inventory and the other property; and

“(ii) the proportion relating to the accounts receivable or inventory must be taken into account; and

“(iii) the proportion relating to the other property must be disregarded:

“(b) is payable only in relation to property other than the accounts receivable or inventory concerned, the amount must be disregarded:

“(c) is not payable in relation to any particular property, only a fair and equitable proportion of the amount must be taken into account.”

Section 30B(3): omit “section 102A(2) to (5) of the Property Law Act 1952” and substitute “section 186(2) to (5) of the Property Law Act 2007”.

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 122(1)(d): omit “Foreclose,”.

Section 122(1)(g): omit “distrain for rent,”.

Reserves and Other Lands Disposal Act 1958 (1958 No 108)

Heading to section 13: omit “**Public Trustee**” and substitute “**Public Trust**”.

Section 13(1) to (4): omit “The Public Trustee” and “the Public Trustee” and substitute in each case “Public Trust”.

Reserves and Other Lands Disposal Act 1958 (1958 No 108)—*continued*

Section 13(5): repeal and substitute:

- “(5) For the purpose of securing payment of any sum so raised, whether under subsection (3)(a) or (b), the lender has the power of sale in clause 13 of Part 1 of Schedule 2 of the Property Law Act 2007.
- “(6) Despite subsection (5),—
- “(a) a notice under sections 119 and 120 of the Property Law Act 2007 is not required if the advance is under subsection (3)(a):
 - “(b) the period of notice required by sections 119 and 120 of the Property Law Act 2007 may be modified or extended by agreement between Public Trust and the lender if the advance is under subsection (3)(b).”

Residential Tenancies Act 1986 (1986 No 120)

Section 5(ba): insert “, the tenancy was granted before the commencement, on 1 January 2008, of the Property Law Act 2007,” after “a fixed-term tenancy of at least 5 years”.

Section 5(t): omit “shelter” and substitute “shelter:”.

Section 5: add:

- “(u) if the tenancy has been entered into by a leasing authority under section 7(1)(e), (f), (g), or (h) of the Public Bodies Leases Act 1969:
- “(v) if the Māori Trustee has leased a Māori reserve or township land under section 26 of the Maori Reserved Land Act 1955:
- “(w) if the lease provides for a perpetual right of renewal:
- “(x) if the lease is of land on which a dwellinghouse is erected and the lessee is entitled (whether beneficially or as trustee), on or before the termination of the tenancy, to remove the dwellinghouse or to receive compensation in respect of it.”

Residential Tenancies Act 1986 (1986 No 120)—*continued*

Insert after section 5:

- “5A Certain excluded long fixed-term tenancies remain subject to repealed sections of Property Law Act 1952**
- “(1) This section applies to a fixed-term tenancy of at least 5 years, and to which this Act does not apply because the tenancy—
- “(a) commenced before 1 December 1996 and is one to which section 6 of this Act, as repealed by section 4(1) of the Residential Tenancies Amendment Act 1996, continues to apply in accordance with section 4(2) of that Amendment Act; or
 - “(b) commenced on or after 1 December 1996 and before 1 January 2008 (which is the date on which the Property Law Act 2007 came into force) and is one to which section 5(ba) of this Act applies.
- “(2) The tenancy—
- “(a) remains subject to sections 104A, 104B, 107B, and 116A to 116M (except section 116B(2)) of the Property Law Act 1952 (the **specified sections of the 1952 Act**), so far as those sections were applicable to the tenancy immediately before the commencement, on 1 January 2008, of the Property Law Act 2007, and as if those sections had not been repealed by that Act; and
 - “(b) is subject to subsections (3) to (6).
- “(3) No covenant or agreement, whether entered into before or after the commencement, on 19 September 1975, of the Property Law Amendment Act 1975 has, from that commencement, any force or effect to deprive the lessor or lessee of any dwelling-house of any right, power, privilege, or other benefit provided for in any of the specified sections of the 1952 Act.
- “(4) Subsection (3) does not apply in respect of any lease of a dwellinghouse if the rent thereby reserved does not exceed 50% of the equitable rent of the dwellinghouse.
- “(5) Subsection (6) applies to a person who makes an assertion, for the purposes of subsection (4), that the rent reserved by the lease of a dwellinghouse does not exceed 50% of the equitable rent of that dwellinghouse.

Residential Tenancies Act 1986 (1986 No 120)—*continued*

“(6) It is for the person to prove the assertion by showing that the rent does not exceed 50% of the equitable rent of the dwelling-house within the preceding period of 12 months as determined by a District Court—

“(a) on an application for the purpose by the person; and

“(b) applying section 8 of the Rent Appeal Act 1973.”

Section 58(2): omit “Property Law Act 1952” and substitute “Property Law Act 2007”.

Section 77(4): repeal and substitute:

“(4) In respect of tenancy agreements, the Tribunal has jurisdiction to exercise, and may exercise, all the powers conferred on a court by section 264 of the Property Law Act 2007 (which relates to the granting of relief to the tenant against the landlord’s refusal to enter into a renewal of a tenancy agreement or to sell the landlord’s interest in the premises to the tenant).”

Section 142: repeal and substitute:

“142 Effect of Property Law Act 2007

“(1) Nothing in Part 4 of the Property Law Act 2007 applies to a tenancy to which this Act applies.

“(2) However, the Tribunal, in exercising its jurisdiction in accordance with section 85 of this Act, may look to Part 4 of the Property Law Act 2007 as a source of the general principles of law relating to a matter provided for in that Part (which relates to leases of land).”

Resource Management Act 1991 (1991 No 69)

Section 11(1)(d): omit “section 129B of the Property Law Act 1952 (which relates to the granting of access to land-locked land)” and substitute “subpart 3 of Part 6 of the Property Law Act 2007 (which relates to the granting of access to landlocked land)”.

Te Ture Whenua Maori Act 1993 (1993 No 4)

Section 21: omit “sections 118 and 119 of the Property Law Act 1952” and substitute “sections 253 to 260 of the Property Law Act 2007”.

Te Ture Whenua Maori Act 1993 (1993 No 4)—*continued*

Section 22: omit “section 120 of the Property Law Act 1952” and substitute “section 264 of the Property Law Act 2007”.

Section 23: omit “conferred on the District Court by subsections (1), (2), and (4) of section 128 of the Property Law Act 1952” and substitute “conferred on a court by subpart 1 of Part 6 of the Property Law Act 2007”.

Section 24: repeal and substitute:

“24 Power of court to grant relief if building is on wrong land or encroachment exists

The court may exercise with respect to Māori freehold land all of the powers conferred on a court by subpart 2 of Part 6 of the Property Law Act 2007.”

Section 107(3): omit “Sections 37 and 38 of the Property Law Act 1952” and substitute “Section 65 of the Property Law Act 2007”.

Trustee Act 1956 (1956 No 61)

Section 14(6A): insert “or civil union partner,” after “wife,”.

Section 14(6A): omit “or partner” and substitute “, civil union partner, or surviving de facto partner”.

Insert after section 14(6AA):

“(6AB) If, under a marriage settlement of land, there is a tenant for life in possession, a trustee may exercise a power conferred by subsection (1)(a) or (b) only at the request in writing of the tenant for life.”

Trustee Companies Act 1967 (1967 No 35)

Section 13(1): omit “section 134 and subsections (1), (2), and (5) of section 135 of the Property Law Act 1952, and of section 399 of the Companies Act 1955,” and substitute “sections 19 and 20 of the Property Law Act 2007 and section 343 of the Companies Act 1993”.

Section 24(1): omit “or the Property Law Act 1952”.

Trustee Companies Management Act 1975 (1975 No 25)

Section 4(2)(d): omit “Foreclose,” and “distrain for rent,”.

Trustee Companies Management Amendment Act 1978 (1978 No 39)

Section 7(d): omit “Foreclose,” and “distrain for rent,”.

Unit Titles Act 1972 (1972 No 15)

Section 27(1)(b): repeal.

Section 29(4): omit “section 120 of the Property Law Act 1952” and substitute “section 264 of the Property Law Act 2007”.

Schedule 7: amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Schedule 7 **Insolvency Act 1967**: items repealed, on 1 January 2008, by section 364(2).

Contents

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 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes

1 *General*

This is a reprint of the Property Law Act 2007. The reprint incorporates all the amendments to the Act as at 20 June 2011, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Limitation Act 2010 (2010 No 110): section 58

Affordable Housing: Enabling Territorial Authorities Act Repeal Act 2010 (2010 No 101): section 8

Property Law Amendment Act 2010 (2010 No 76)

Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42): section 14(1)

Unit Titles Act 2010 (2010 No 22): section 233(1)

Protection of Personal and Property Rights Amendment Act 2007 (2007 No 90): section 26

