



Subject POWER OF SALE ASSIGNMENTS		Policy PL 2.05.02	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued February 11, 1997	
Replaces Directive Title Default of Mortgage Registry of Sale Papers	Number LM 8.10.03	Dated July 30, 1982	Page 1 of 4

1.0 DEFINITIONS

In this policy:

"mortgage" includes a charge;

"mortgagee" means a lender to whom property has been conveyed, subject to a right of redemption, as security for the payment of the debt in a Registry Division;

"mortgagor" means a borrower who has conveyed his property to a lender (mortgagee), subject to a right of redemption as security for the payment of the debt, and includes a chargor;

"power of sale" means a clause in a mortgage contract, or a statutory power, giving the mortgagee the right and power on default of the debt, to advertise and sell the mortgaged property by public auction or private contract to satisfy,

- a) the payment of expenses incurred in a sale or attempted sale,
- b) interest costs due under the mortgage,
- c) the principal due under the mortgage, and
- d) payment of subsequent encumbrances according to their priority;

"sale papers" include,

- a) a statutory declaration by the mortgagee, his solicitor or agent as to the actual existence of the default,
- b) a statutory declaration proving service of notice, including production of post office receipts for registration of registered mail, if any, and
- c) a statutory declaration by the mortgagee or his solicitor that the sale complies with Part III, or, where applicable Part II, of the Mortgages Act.

2.0 INTRODUCTION

A mortgagee may exercise a power of sale in accordance with Part III of the Mortgages Act and the terms of the mortgage, where the mortgagor defaults for at least 15 days and the mortgagee gives at least 35 days notice of his intention to exercise the power of sale to every person having an interest in the mortgages property (see section 31 of the Mortgages Act).

Where there is no power of sale in the mortgage, a mortgagee may exercise a statutory power of sale (Part II of the Mortgages Act) after three months default in the payment of moneys due under the mortgage and 45 days notice to persons having an interest in the mortgaged property.

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Proceeds from the sale are used to recover principal and interest owed a lender, the lender's expenses incurred in the sale, and the payment of other encumbrances. Any residue left after the payment of outstanding debts goes to the mortgagor.

When a sale transaction has been completed, a purchaser will get good title if the sale papers are executed and presented to the Land Registrar as proof that the power of sale has been carried out properly.

3.0 PROGRAM DIRECTION

3.1 Application

This policy applies provincially to the requirement of consent to an assignment/transfer of a leasehold estate following power of sale.

3.2 Guiding Principle

A mortgagee may use a power of sale to recover a debt owing for mortgaged leasehold lands.

3.3 Goal

To support the recovery of a mortgaged debt, where the Crown has consented to a mortgage and a tenant's interest has been sold to recover a mortgaged debt.

3.4 Policy Objectives and Strategies

A) To support integrity of title in the recovery of a mortgaged debt.

In a case where the defaulted mortgage involves leasehold title from the Crown and consent to assign is requested by the mortgagee, the Area Supervisor should obtain from the mortgagee an undertaking, preferably in writing, that he will present the Sale Papers to the Land Registrar prior to registering the Transfer. This is to be done before proceeding with giving the Ministry's consent. Appendix A shows a sample of a letter which will accompany the return of the approved Transfer, where an undertaking has been given to present the sale papers prior to registering a transfer. The reason for this is to satisfy the Land Registrar and the Ministry that there is a correct chain of title in the Land Titles records.

In the Registry Division the Land Registrar will accept the Sale Papers as items on their own but in the Land Titles Division, both the Sale Papers and the approved Transfer papers must be presented at the same time.

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- B) To eliminate any liability against the Crown.

Prior to giving a consent to a transfer in accordance with Objective and Strategy C, below, the Area Supervisor must receive sale papers from the mortgagee. The sale papers prove the existence of the debt and compliance with the Mortgages Act.

- C) To process the assignment in accordance with Policy Directive PL 2.05.01 Consent to Assign, Transfer, Mortgage, or Charge Crown or Other Ministry Documents.

Having received a request from a mortgagee an undertaking, preferably in writing, that he will present the Sale Papers to the Land Registrar prior to registering the assignment, the Ministry's consent to the transaction is handled in accordance with the above mentioned directive. Once the consent has been given, it is forwarded to the mortgagee or his/her solicitor, in accordance with Objectives and Strategies in A above.

4.0 REFERENCES

4.1 Statutory References

Mortgages Act, Parts II and III

4.2 Directive Cross References

PL 2.05.01 (POL & PRO) Consent to Assign Leases, Transfer, Mortgage, or Charge Crown or Ministry Documents

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APPENDIX A

SAMPLE

RE: Lessee (s)
Crown Lease #
Mortgagee (s)
Transferee (s)

Dear Sir:

Further to your letter dated _____, I attach hereto, in duplicate, a Transfer from (mortgagee(s)) to (transferee(s)) is pursuant of the power of sale contained in a mortgage between the lessee (s) and (mortgagee(s)) which has been consented to by the Crown.

The transfer is being forwarded to you in escrow on your undertaking, as stated in your letter, to present and have recorded the Power of Sale documents in the appropriate Land Registry Office, a draft of which you forwarded, prior to the registration of the said Transfer.

Yours truly,

Area Supervisor