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Mortgages Act

R.S.O. 1990, CHAPTER M.40

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Definitions

**1** In this Act,

“conveyance” includes assignment, appointment, lease, settlement and other assurance and covenant to surrender made by deed on a sale, mortgage, demise or settlement of any property or on any other dealing with or for any property; and “convey” has a corresponding meaning; (“cession”, “céder”)

“encumbrance” includes a mortgage in fee or for a less estate, a trust for securing money, a lien, and a charge of a portion, annuity or other capital or annual sum; and “encumbrancer” has a corresponding meaning, and includes every person entitled to the benefit of an encumbrance, or to require payment or discharge thereof; (“sûreté”, “bénéficiaire de la sûreté”)

“land” includes tenements and hereditaments, corporeal or incorporeal, houses and other buildings, and also an undivided share in land; (“bien-fonds”)

“mortgage” includes any charge on any property for securing money or money’s worth; “mortgage money” means money or money’s worth secured by a mortgage; “mortgagor” includes any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to the person’s estate, interest or right in the mortgaged property; and “mortgagee” includes any person deriving title under the original mortgagee. (“hypothèque”, “hypothécaire”, “montant de l’hypothèque”, “débiteur hypothécaire”, “créancier hypothécaire”) R.S.O. 1990, c. M.40, s. 1.

PART I  
RIGHTS AND OBLIGATIONS OF MORTGAGORS AND MORTGAGEES

Obligation on mortgagee to transfer instead of reconveying

**2** (1)  Despite any stipulation to the contrary, where a mortgagor is entitled to redeem the mortgagor may require the mortgagee, instead of giving a certificate of payment or reconveying and on the terms on which the mortgagee would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs, and the mortgagee is bound to assign and convey accordingly.

Idem

(2)  The right of the mortgagor to require an assignment belongs to and is capable of being enforced by each encumbrancer or by the mortgagor, despite any intermediate encumbrance; but a requisition of an encumbrancer prevails over that of the mortgagor, and as between encumbrancers a requisition of a prior encumbrancer prevails over that of a subsequent encumbrancer.

Exception

(3)  This section does not apply if the mortgagee is or has been in possession. R.S.O. 1990, c. M.40, s. 2.

Right of mortgagor to inspect title deeds

**3** Despite any stipulation to the contrary, a mortgagor, as long as the mortgagor’s right to redeem subsists, is entitled, at reasonable times, on request, and at the mortgagor’s own cost and on payment of the mortgagee’s costs and expenses in that behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee. R.S.O. 1990, c. M.40, s. 3.

Right of mortgagor to copy of mortgage

**4** (1)  Despite any stipulation to the contrary, within thirty days after receipt by the mortgagee of a mortgage executed by the mortgagor, the mortgagee or the mortgagee’s solicitor or representative shall deliver or mail or cause to be delivered or mailed a true copy of the mortgage to the mortgagor or the mortgagor’s solicitor or representative. R.S.O. 1990, c. M.40, s. 4 (1).

Offence

(2)  If the mortgagee or the mortgagee’s solicitor or representative fails to deliver or mail or cause to be delivered or mailed a true copy of the mortgage to the mortgagor or the mortgagor’s solicitor or representative within thirty days after receipt by the mortgagee of the mortgage executed by the mortgagor as required by subsection (1), the mortgagor may, within ten days after the period of thirty days has elapsed, demand from the mortgagee a true copy of the mortgage, and, if the mortgagee fails to comply with the demand within ten days after receipt of the demand, the mortgagee is guilty of an offence and on conviction is liable to a fine of not more than $200. R.S.O. 1990, c. M.40, s. 4 (2).

Facsimile

(3)  For the purposes of this section, a true copy shall include a facsimile as defined in section 1 of the Land Titles Act. 2000, c. 26, Sched. B, s. 14 (1).

**Section Amendments with date in force (d/m/y)**

[2000, c. 26, Sched. B, s. 14 (1)](http://www.ontario.ca/laws/statute/S00026" \l "schedbs14s1) - 06/12/2000

Action for possession of land by mortgagor

**5** A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of intention to take possession or to enter into receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in the mortgagor’s own name only, unless the cause of action arises upon a lease or other contract made by the mortgagor jointly with any other person, and in that case the mortgagor may sue or distrain jointly with such other person. R.S.O. 1990, c. M.40, s. 5.

Application of insurance money

**6** (1)  All money payable to a mortgagor on an insurance of the mortgaged property, including effects, whether affixed to the freehold or not, being or forming part thereof, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

Idem

(2)  Without prejudice to any obligation to the contrary imposed by law or by special contract, a mortgagee may require that all money received on an insurance of the mortgaged property be applied in or towards the discharge of the money due under the mortgagee’s mortgage. R.S.O. 1990, c. M.40, s. 6.

Covenants to be implied:

**7** There shall, in the several cases mentioned in this section, be deemed to be included, and there shall in those several cases be implied, covenants to the effect stated in this section, by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by that person or each person with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say,

on mortgage by beneficial owner

(a) in a conveyance by way of mortgage, the following covenants by the person who conveys, and is expressed to convey as beneficial owner, namely,

(i) for payment of the mortgage money and interest, and observance in other respects of the proviso in the mortgage,

(ii) for good title,

(iii) for right to convey,

(iv) that, on default, the mortgagee shall have quiet possession of the land, free from all encumbrances,

(v) that the mortgagor will execute such further assurances of the said lands as may be requisite, and

(vi) that the mortgagor has done no act to encumber the land mortgaged,

according to the forms of covenants for such purposes set forth in Schedule B to the Short Forms of Mortgages Act, being chapter 474 of the Revised Statutes of Ontario, 1980, subject to the provisions of that Act;

on mortgage of leaseholds, by beneficial owner

(b) in a conveyance by way of mortgage of leasehold property, the following further covenants by the person who conveys and is expressed to convey, as beneficial owner, namely,

(i) that the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed, and is in full force, unforfeited, and unsurrendered, and in no wise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant and on the part of the lessee or grantee and the persons deriving title under the lessee or grantee to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance, and

(ii) that the person so conveying, or the persons deriving title under that person, will at all times, as long as any money remains on the security of the conveyance, pay, observe and perform, or cause to be paid, observed and performed, all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under the lessee or grantee to be paid, observed and performed, and will keep the person to whom the conveyance is made and those deriving title under that person indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by that person or those persons by reason of the non-payment of such rent, or the non-observance or non-performance of such covenants, conditions and agreements, or any of them. R.S.O. 1990, c. M.40, s. 7.

Implied covenants in mortgages are joint and several

**8** In a mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenants on their part shall be deemed to be joint and several covenants by them, and where there are more mortgagees than one the implied covenant with them shall be deemed to be a covenant with them jointly unless the amount is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to each mortgagee. R.S.O. 1990, c. M.40, s. 8.

Exception

**9** Sections 7 and 8 do not apply to a mortgage of land in a part of Ontario designated under Part I of the Land Registration Reform Act, that is executed on or after the day on which the land is designated under clause 14 (a) of that Act. R.S.O. 1990, c. M.40, s. 9.

Release of equity of redemption without merger of debt

**10** (1)  A mortgagee of freehold or leasehold property may take and receive from the mortgagor a release of the equity of redemption in the property, or may purchase the same under any judgment or decree or execution without thereby merging the mortgage debt as against any subsequent mortgagee or person having a charge on the same property.

Position of subsequent mortgagee

(2)  Where a prior mortgagee so acquires the equity of redemption of the mortgagor no subsequent mortgagee is entitled to foreclose or sell the property without redeeming or selling, subject to the rights of such prior mortgagee, in the same manner as if such prior mortgagee had not acquired the equity of redemption.

Priority under registry

(3)  This section does not affect any priority or claim any mortgagee may have under the registry laws. R.S.O. 1990, c. M.40, s. 10.

Powers of executors of mortgagee

**11** Where a person entitled to any freehold land by way of mortgage has died, and his or her executor or administrator has become entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money was paid to the testator or intestate in his or her lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and the mortgagee’s estate in the land, and such executor or administrator has the same power as to any part of the land on payment of some part of the mortgage debt, or on any arrangement for exonerating the whole or any part of the mortgaged land, without payment of money, and such conveyance, assignment, release or discharge is as effectual as if the same had been made by the persons having the mortgagee’s estate. R.S.O. 1990, c. M.40, s. 11.

Payment: miscellaneous provisions

**12** (1)  In this section,

“court” means the Superior Court of Justice. R.S.O. 1990, c. M.40, s. 12 (1); 2000, c. 26, Sched. B, s. 14 (2).

Effect of receipts of surviving mortgagee, etc.

(2)  The payment in good faith of any money to and the receipt thereof by the survivor or survivors of two or more mortgagees, or the executors or administrators of such survivor, or their or his or her assigns, effectually discharges the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the security. R.S.O. 1990, c. M.40, s. 12 (2).

Where mortgagee cannot be found

(3)  When a mortgagor or any person entitled to pay off a mortgage desires to do so and the mortgagee, or one of several mortgagees, cannot be found or when a sole mortgagee or the last surviving mortgagee is dead and no probate of his or her will has been granted or letters of administration issued, or where from any other cause a proper discharge cannot be obtained, or cannot be obtained without undue delay, the court may permit payment into court of the amount due upon the mortgage and may make an order discharging the mortgage. R.S.O. 1990, c. M.40, s. 12 (3).

Payment out of money paid into court

(4)  The money paid into court shall be paid out of court with any accrued interest to the mortgagee or mortgagees or to the executor or administrator of the mortgagee or as the court by order for payment into court or any subsequent order may direct. R.S.O. 1990, c. M.40, s. 12 (4).

Notice to mortgagee

(5)  The court may require notice to be given by advertisement or as may be considered proper to the mortgagee or those claiming under the mortgagee either before or after making the order. R.S.O. 1990, c. M.40, s. 12 (5).

When amount offered questioned

(6)  When the amount admitted to be due upon the mortgage appears to be open to question the court may as a condition of making the order require payment into court of a sum in excess of the amount admitted to be due and in such case the additional sum is subject to the further order of the court. R.S.O. 1990, c. M.40, s. 12 (6).

Provision for subsequent interest and costs

(7)  The court may require payment into court of an additional sum to answer any claim by the mortgagee for subsequent interest and costs. R.S.O. 1990, c. M.40, s. 12 (7).

Death of mortgagee, order for discharge

(8)  When a mortgagee has died and all money due upon the mortgage was paid to him or her in the mortgagee’s lifetime or has been paid to a person entitled to receive the same after the mortgagee’s death or where in any other case it appears that all money due upon the mortgage has been paid and for any reason a discharge or reconveyance cannot be obtained without undue delay and expense the court may make an order discharging the mortgage. R.S.O. 1990, c. M.40, s. 12 (8).

Registration of order discharging

(9)  Upon the registration of an order discharging a mortgage it has the same effect as the registration of a certificate of discharge signed by the mortgagee would have under the Registry Act. R.S.O. 1990, c. M.40, s. 12 (9).

Appeal

(10)  An appeal lies to the Divisional Court from any order made under this section. R.S.O. 1990, c. M.40, s. 12 (10).

**Section Amendments with date in force (d/m/y)**

[2000, c. 26, Sched. B, s. 14 (2)](http://www.ontario.ca/laws/statute/S00026" \l "schedbs14s2) - 06/12/2000

Defence of purchase for value without notice

**13** The purchaser in good faith of a mortgage may, to the extent of the mortgage, and except as against the mortgagor, set up the defence of purchase for value without notice in the same manner as a purchaser of the mortgaged property might do. R.S.O. 1990, c. M.40, s. 13.

Exemption from liability to distress

**14** Despite any stipulation in the mortgage to the contrary, the right of a mortgagee to distrain for interest in arrear upon a mortgage is limited to the goods and chattels of the mortgagor, and to such of them as are not exempt from seizure under execution. R.S.O. 1990, c. M.40, s. 14.

Limitation upon right to distrain

**15** (1)  As against creditors of a mortgagor, or person in possession of mortgaged premises under a mortgagor, the right, if any, to distrain upon the mortgaged premises for arrears of interest or for rent, in the nature of or in lieu of interest under the provisions of any mortgage is restricted to one year’s arrears of such interest or rent.

When restriction to apply

(2)  This restriction does not apply unless some one of such creditors is an execution creditor, or unless there is an assignee for the general benefit of such creditors appointed before lawful sale of the goods and chattels distrained, nor unless the officer executing such writ of execution or such assignee, by notice in writing to be given to the person distraining or the attorney, bailiff, or agent of the person before such lawful sale, claims the benefit of this restriction.

Duty of distrainor when restriction applies

(3)  When such notice is given, the distrainor shall relinquish to the officer or assignee the goods and chattels so distrained, upon receiving one year’s arrears of such interest or rent and the reasonable costs of distress, or if such arrears and costs are not paid or tendered the distrainor shall sell only so much of the goods and chattels distrained as is necessary to satisfy one year’s arrears of such interest or rent and the reasonable costs of distress and sale, and shall thereupon relinquish any residue of them, and pay any residue of money, proceeds thereof so distrained, to such officer or assignee.

Reimbursement of officer or assignee

(4)  An officer executing an execution, or an assignee who pays any money to relieve goods and chattels from distress under this section, is entitled to reimburse himself, herself or itself therefor out of the proceeds of the sale thereof. R.S.O. 1990, c. M.40, s. 15.

Notice of sale

**16** Goods and chattels distrained by a mortgagee shall not be sold except after such public notice as is required to be given by a landlord who sells goods and chattels distrained for rent. R.S.O. 1990, c. M.40, s. 16.

Payment of principal upon default

**17** (1)  Despite any agreement to the contrary, where default has been made in the payment of any principal money secured by a mortgage of freehold or leasehold property, the mortgagor or person entitled to make such payment may at any time, upon payment of three months interest on the principal money so in arrear, pay the same, or the mortgagor or person entitled to make such payment may give the mortgagee at least three months notice, in writing, of the intention to make such payment at a time named in the notice, and in the event of making such payment on the day so named is entitled to make the same without any further payment of interest except to the date of payment.

Exception

(2)  If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice, the mortgagor or person is thereafter entitled to make such payment only on paying the principal money so in arrear and interest thereon to the date of payment together with three months interest in advance.

Saving

(3)  Nothing in this section affects or limits the right of the mortgagee to recover by action or otherwise the principal money so in arrear after default has been made. R.S.O. 1990, c. M.40, s. 17.

Right to redeem after 5 years

**18** (1)  Where any principal money or interest secured by a mortgage of freehold or leasehold property is not, under the terms of the mortgage, payable until a time more than five years after the date of the mortgage, then, if at any time after the expiration of such five years any person liable to pay or entitled to redeem tenders or pays to the person entitled to receive the money the amount due for principal money and interest to the time of such tender or payment, together with three months further interest in lieu of notice, no further interest is chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage.

Exceptions

(2)  This section does not apply to any mortgage given by a joint stock company or other corporation nor to any debenture issued by any such company or corporation for the payment of which security has been given on freehold or leasehold property. R.S.O. 1990, c. M.40, s. 18.

Paying off mortgage when provision made for a lower rate for punctual payment

**19** (1)  Where provision is made in a mortgage that if interest is paid promptly it will be accepted at a lower rate than that provided in the mortgage, and interest at the lower rate has been paid according to such condition up to the time when all the principal money has become payable, any person liable to pay or entitled to redeem is entitled to pay the principal money and interest on the same at the lower rate at any time after the time for payment of the principal money on giving three months notice of the intention to make such payment or on paying three months interest at such lower rate in lieu of notice.

Mortgagor failing to pay according to notice

(2)  If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice, the mortgagor or person entitled to make such payment is thereafter entitled to make such payment only on paying the principal and interest at the lower rate to the date of payment, together with three months interest in advance. R.S.O. 1990, c. M.40, s. 19.

Mortgagee’s right of action

**20** (1)  In this section,

“original mortgagor” means any person who by virtue of privity of contract with the mortgagee is personally liable to the mortgagee to pay the whole or any part of the money secured by the mortgage.

Right of mortgagee to recover personal judgment

(2)  Despite any stipulation to the contrary in a mortgage, where a mortgagor has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify the mortgagor with respect to the mortgage, the mortgagee has the right to recover from the grantee the amount of the mortgage debt in respect of which the grantee is obligated to indemnify the mortgagor; provided that the right of the mortgagee to recover the amount of the mortgage debt under this section from the grantee of the equity of redemption shall as against such grantee terminate on the registration of a grant or transfer of the equity of redemption by such grantee to another person unless prior to such registration an action has been commenced to enforce the right of the mortgagee.

Limit of right of action

(3)  Where a mortgagee has the right to recover the whole or any part of money secured by a mortgage from an original mortgagor and also has a right by virtue of this section to recover from a grantee of the equity of redemption from a mortgagor, if the mortgagee recovers judgment for the amount of the mortgage debt against the original mortgagor, the mortgagee thereupon forever ceases to have a right to recover under this section from a grantee, and if the mortgagee recovers judgment under this section against a grantee the mortgagee thereupon forever ceases to have a right to recover from the original mortgagor; provided that where there is more than one original mortgagor this section does not affect the right of a mortgagee after the recovery of judgment against one original mortgagor to recover judgment against the other original mortgagor or mortgagors. R.S.O. 1990, c. M.40, s. 20.

Building mortgages

**21** (1)  In this section,

“building mortgage” means any mortgage made for the purpose of financing the construction of a building.

When no action may be brought

(2)  Where, in any building mortgage made on or after the 1st day of July, 1942, it is expressly stated that it is a building mortgage made pursuant to this section, no action may be brought by the mortgagee after the expiration of one year from the date of the maturity of the mortgage whereby to recover payment from the person who executed the mortgage of the whole or any part of the money therein secured, if such person has made a sale in good faith of the property and has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify such person with respect to the mortgage. R.S.O. 1990, c. M.40, s. 21.

Relief before action

**22** (1)  Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,

(a) at any time before sale under the mortgage; or

(b) before the commencement of an action for the enforcement of the rights of the mortgagee or of any person claiming through or under the mortgagee,

the mortgagor may perform such covenant or pay the amount due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the mortgagee, and thereupon the mortgagor is relieved from the consequences of such default.

Statement of arrears, expenses, etc.

(2)  The mortgagor may, by a notice in writing, require the mortgagee to furnish the mortgagor with a statement in writing,

(a) of the amount of the principal or interest with respect to which the mortgagor is in default; or

(b) of the nature of the default or the non-observance of the covenant,

and of the amount of any expenses necessarily incurred by the mortgagee.

Idem

(3)  The mortgagee shall answer a notice given under subsection (2) within fifteen days after receiving it, and, if without reasonable excuse the mortgagee fails so to do or if the answer is incomplete or incorrect, any rights that the mortgagee may have to enforce the mortgage shall be suspended until the mortgagee has complied with subsection (2). R.S.O. 1990, c. M.40, s. 22.

Relief after action commenced

**23** (1)  Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable, in an action for enforcement of the rights of the mortgagee or of any person claiming through or under the mortgagee, the mortgagor, upon payment into court of the sum of $100 to the credit of the action as security for costs, may apply to the court and, conditional upon performance of such covenant or upon payment of the money due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and upon payment of the costs of the action, the court,

(a) shall dismiss the action if judgment has not been recovered; or

(b) may stay proceedings in the action, if judgment has been recovered and if no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place. R.S.O. 1990, c. M.40, s. 23 (1).

Idem

(2)  Despite clause (1) (b), where judgment has been recovered and recovery of possession of the land has taken place, the court may stay proceedings in the action upon the application of a person added as a party on a reference, made under subsection (1) within ten days after service of notice of the judgment has been made upon the person. R.S.O. 1990, c. M.40, s. 23 (2); 2020, c. 11, Sched. 5, s. 18 (1).

Subsequent default

(3)  Where proceedings have been stayed under clause (1) (b) or under subsection (2) and default again occurs under the mortgage, the court upon application may remove the stay. R.S.O. 1990, c. M.40, s. 23 (3).

**Section Amendments with date in force (d/m/y)**

[2020, c. 11, Sched. 5, s. 18 (1)](http://www.ontario.ca/laws/statute/S20011" \l "sched5s18s1) - 08/01/2021

PART II  
STATUTORY POWERS

Powers incident to mortgages after default

**24** Where any principal money is secured by mortgage of land, the mortgagee, at any time after the expiration of three months from the time of default in the payment of any money due under the mortgage or after any omission to pay any premium of insurance that by the terms of the mortgage ought to be paid by the mortgagor, has the following powers to the like extent as if they had been in terms conferred by the mortgage:

Power of sale

1. A power to sell, or to concur with any other person in selling, the whole or any part of the mortgaged property by public auction or private contract, subject to any reasonable conditions the mortgagee may think fit to make, and to buy in at an auction and to rescind or vary contracts for sale, and to resell the land, from time to time, in like manner without being answerable for any loss occasioned thereby.

Power to insure

2. A power to insure and to keep insured against loss or damage by fire any building or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance are a charge on the mortgaged property, in addition to the mortgage money and with the same priority and with interest at the same rate as the mortgage money. R.S.O. 1990, c. M.40, s. 24.

Receipts for purchase money sufficient discharges

**25** A receipt for purchase money given by the person exercising the power of sale conferred by section 24 is a sufficient discharge to the purchaser, who is not bound to see to the application of the purchase money. R.S.O. 1990, c. M.40, s. 25.

Notice before sale

**26** (1)  No sale under the power conferred by section 24 shall be made until after forty-five days notice in writing in the form prescribed by the regulations made under this Act has been given to the persons and in the manner provided by Part III. R.S.O. 1990, c. M.40, s. 26 (1); 2017, c. 20, Sched, 11, s. 21.

Idem

(2)  The notice may be given at any time after fifteen days default in making any payment provided for by the mortgage. R.S.O. 1990, c. M.40, s. 26 (2).

**Section Amendments with date in force (d/m/y)**

[2017, c. 20, Sched. 11, s. 21](http://www.ontario.ca/laws/statute/S17020" \l "sched11s21) - 01/01/2022

Application of purchase money

**27** The money arising from the sale shall be applied by the person receiving the same as follows:

Firstly, in payment of all the expenses incident to the sale or incurred in any attempted sale;

Secondly, in discharge of all interest and costs then due in respect of the mortgage under which the sale was made;

Thirdly, in discharge of all the principal money then due in respect of the mortgage;

Fourthly, in payment of the amounts due to the subsequent encumbrancers according to their priorities;

Fifthly, in payment to the tenants of the mortgagor of the rent deposits paid under section 106 of the Residential Tenancies Act, 2006 where the rent deposit was not applied in payment for the last rent period,

and the residue shall be paid to the mortgagor. R.S.O. 1990, c. M.40, s. 27; 1991, c. 6, s. 1; 1997, c. 24, s. 215 (1); 2006, c. 17, s. 252 (1).

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 1 - 13/06/1991; 1997, c. 24, s. 215 (1) - 17/06/1998

[2006, c. 17, s. 252 (1)](http://www.ontario.ca/laws/statute/S06017" \l "s252s1) - 31/01/2007

Exception, forfeited corporate property

**27.1** In the case of the sale of forfeited corporate real property within the meaning of the Forfeited Corporate Property Act, 2015, the money arising from the sale shall be applied in accordance with section 27 except that the residue shall be paid to the Crown rather than to the mortgagor. 2015, c. 38, Sched. 7, s. 52 (1).

**Section Amendments with date in force (d/m/y)**

[2015, c. 38, Sched. 7, s. 52 (1)](http://www.ontario.ca/laws/statute/S15038" \l "sched7s52s1) - 10/12/2016

Conveyance to the purchaser

**28** The person exercising the power of sale has power to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein of the mortgagor and of which the mortgagor had power to dispose. R.S.O. 1990, c. M.40, s. 28.

Right to title deeds and conveyance of legal estate

**29** At any time after the power of sale has become exercisable, the person entitled to exercise the same is entitled to demand and recover from the mortgagor all deeds and documents in the mortgagor’s possession or power relating to the mortgaged property, or to the title thereto, which the person would have been entitled to demand and recover if the property had been conveyed, appointed, surrendered or assigned to and was then vested in the person for all the estate and interest of the mortgagor and of which the mortgagor had power to dispose, and where the legal estate is outstanding in a trustee the mortgagee, or any purchaser from the mortgagee, is entitled to call for a conveyance of the legal estate to the same extent as the mortgagor could have called for such a conveyance if the mortgage had not been made. R.S.O. 1990, c. M.40, s. 29.

Application of Part II

**30** So much of this Part as confers a power to sell does not apply in the case of a mortgage that contains a power of sale, and so much as confers a power to insure does not apply in the case of a mortgage that contains a power to insure; nor do any of the provisions of this Part apply to a mortgage that contains a declaration that this Part does not apply thereto. R.S.O. 1990, c. M.40, s. 30.

PART III  
NOTICE OF EXERCISING POWER OF SALE

Notice of power of sale

**31** (1)  A mortgagee shall not exercise a power of sale unless a notice of exercising the power of sale in the form prescribed by the regulations made under this Act has been given by the mortgagee to the following persons, other than the persons having an interest in the mortgaged property prior to that of the mortgagee and any other persons subject to whose rights the mortgagee proposes to sell the mortgaged property:

1. Where the mortgaged property is registered under the Land Titles Act, to every person appearing by the parcel register and by the index of executions to have an interest in the mortgaged property.

2. Where the Registry Act applies to the mortgaged property, to every person appearing by the abstract index and by the index of writs received for execution by the sheriff for the area in which the mortgaged property is situate to have an interest in the mortgaged property.

3. Where there is a statutory lien against the mortgaged property in favour of the Crown or any other public authority and where the mortgagee exercising the power of sale has written notice of the lien, to the Crown or other public authority claiming the lien.

4. Where the mortgagee has actual notice in writing of any other interest in the mortgaged property and where such notice has been received prior to the giving of notice exercising the power of sale, to the person having such interest.

5. Where the last registered owner of the mortgaged property is a dissolved corporation, to the Minister responsible for the administration of the Forfeited Corporate Property Act, 2015. R.S.O. 1990, c. M.40, s. 31 (1); 2000, c. 26, Sched. B, s. 14 (3); 2015, c. 38, Sched. 7, s. 52 (2); 2017, c. 20, Sched, 11, s. 22.

Interpretation

(2)  In subsection (1), the expressions “parcel register” and “abstract index” include instruments received for registration before the time specified on the day immediately before the day on which a notice of exercising the power of sale is given. 2000, c. 26, Sched. B, s. 14 (4).

**Section Amendments with date in force (d/m/y)**

[2000, c. 26, Sched. B, s. 14 (3, 4)](http://www.ontario.ca/laws/statute/S00026" \l "schedbs14s3) - 06/12/2000

[2015, c. 38, Sched. 7, s. 52 (2)](http://www.ontario.ca/laws/statute/S15038" \l "sched7s52s2) - 10/12/2016

[2017, c. 20, Sched. 11, s. 22](http://www.ontario.ca/laws/statute/S17020" \l "sched11s22) - 01/01/2022

When notice may be given and power exercised

**32** Where a mortgage by its terms confers a power of sale upon a certain default, notice of exercising the power of sale shall not be given until the default has continued for at least fifteen days, and the sale shall not be made for at least thirty-five days after the notice has been given. R.S.O. 1990, c. M.40, s. 32.

Manner of giving notice, general rules

**33** (1)  A notice of exercising a power of sale shall be given by personal service or by registered mail addressed to the person to whom it is to be given at the person’s usual or last known place of address, or, where the last known place of address is that shown on the registered instrument under which the person acquired an interest, to such address, or by leaving it at one of such places of address, or, where the mortgage provides for personal service only, by personal service, or, where the mortgage provides a specific address, to such address.

Execution creditors

(2)  Where a person to be given a notice of exercising a power of sale is an execution creditor, the notice may be given in the manner provided in subsection (1) by addressing it to the solicitor who issued the execution or, where there is no solicitor, to the execution creditor.

Construction lien creditors

(3)  Where a person to be given a notice of exercising a power of sale is a construction lien claimant, the notice may be given in the manner provided in subsection (1) by addressing it to the solicitor who filed the claim for lien, but, where there is no solicitor and no address for service is shown on the claim for lien and the mortgagee has no actual knowledge of the lien claimant’s address, no notice need be given to such lien claimant.

Persons under disability

(4)  Where a person to be given a notice of exercising a power of sale is under a disability, the notice shall be deemed to have been effectually given if given in accordance with subsection (1).

Deceased persons

(5)  Where a person to be given a notice of exercising a power of sale has died, the notice shall be deemed to have been effectually given if given by registered mail in accordance with subsection (1), and, subject to paragraph 4 of subsection 31 (1), shall be deemed to be effectual notice to all persons who have any interest in the deceased’s estate. R.S.O. 1990, c. M.40, s. 33.

When notice by mail effective

**34** A notice of exercising a power of sale shall, if given by registered mail, be mailed in Ontario, and such a notice shall be deemed to have been given on the day on which it was mailed. R.S.O. 1990, c. M.40, s. 34.

Statutory declarations conclusive

**35** Subject to the Land Titles Act and except where an order is made under section 39, a document that contains all of the following is conclusive evidence of compliance with this Part and, where applicable, with Part II, and is sufficient to give a good title to the purchaser:

1. A statutory declaration by the mortgagee or the mortgagee’s solicitor or agent as to default.

2. A statutory declaration proving service, including production of the original or a notarial copy of the post office receipt of registration, if any.

3. A statutory declaration by the mortgagee or the mortgagee’s solicitor that the sale complies with this Part and, where applicable, with Part II. 1998, c. 18, Sched. E, s. 183.

**Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. E, s. 183 - 18/12/1998

Impeachment of title

**36** Where a notice has been given in professed compliance with this Part and, where applicable, with Part II, the title of the purchaser is not liable to be impeached on the ground that the provisions of this Part or, where applicable, Part II respecting default and the provisions of this Part respecting notice, have not been complied with, but any person damnified thereby has a remedy against the person exercising the power of sale. R.S.O. 1990, c. M.40, s. 36.

Abridgement of time

**37** Nothing in this Part shall be deemed to abridge,

(a) the period of default after which notice exercising a power of sale may be given where the period of default provided by the mortgage is greater than the period of default mentioned in section 32; or

(b) the period of time after notice has been given after which the mortgaged premises may be sold where the period of time provided by the mortgage is greater than the period of time mentioned in section 32. R.S.O. 1990, c. M.40, s. 37.

Notice rules paramount

**38** Despite any agreement to the contrary or any provision contained in any mortgage or any provision of this or any other Act, sections 31, 32, 33, 34, 35 and 36 apply to any power of sale in a mortgage, and sections 31, 33, 34, 35 and 36 apply to the power of sale conferred by section 24. R.S.O. 1990, c. M.40, s. 38.

Exercise of power of sale without notice

**39** (1)  Where a mortgage by its terms confers a power of sale upon a certain default and such default has continued for fifteen days, or where there has been at least three months default under a mortgage with respect to which a power of sale is conferred by section 24, a mortgagee may apply without notice to a judge of the Superior Court of Justice for leave to exercise power of sale without notice. R.S.O. 1990, c. M.40, s. 39 (1); 2000, c. 26, Sched. B, s. 14 (5); 2020, c. 11, Sched. 5, s. 18 (2).

Idem

(2)  Upon an application under subsection (1), the judge shall, having regard to the circumstances, either grant leave to exercise the power of sale without notice or with such notice to such persons, in such manner and within such time as he or she considers proper. R.S.O. 1990, c. M.40, s. 39 (2); 2020, c. 11, Sched. 5, s. 18 (3).

**Section Amendments with date in force (d/m/y)**

[2000, c. 26, Sched. B, s. 14 (5)](http://www.ontario.ca/laws/statute/S00026" \l "schedbs14s5) - 06/12/2000

[2020, c. 11, Sched. 5, s. 18 (2, 3)](http://www.ontario.ca/laws/statute/S20011" \l "sched5s18s2) - 08/01/2021

Transitional provision

**40** Where a mortgage made before the 1st day of January, 1965, contains a power of sale in accordance with The Short Forms of Mortgages Act, being chapter 374 of the Revised Statutes of Ontario, 1960, a sale made under such power of sale, so long as it complies with this Part, is as effectual as if The Short Forms of Mortgages Amendment Act, 1964, being chapter 110, had not been passed. R.S.O. 1990, c. M.40, s. 40.

Part III does not apply to bond mortgages

**41** This Part does not apply to a mortgage given by a corporation to secure bonds or debentures. R.S.O. 1990, c. M.40, s. 41.

PART IV  
GENERAL PROVISIONS AS TO POWER OF SALE

Restrictions as to proceedings

**42** (1)  Where, pursuant to any condition or proviso contained in a mortgage, there has been made or given a demand or notice either requiring payment of the money secured by the mortgage, or any part thereof, or declaring an intention to proceed under and exercise the power of sale therein contained, no further proceeding and no action either to enforce the mortgage, or with respect to any clause, covenant or provision therein contained, or to the mortgaged property or any part thereof, shall, until after the lapse of the time at or after which, according to such demand or notice, payment of the money is to be made or the power of sale is to be exercised or proceeded under, be commenced or taken until an order permitting the same has been obtained from a judge of the Superior Court of Justice. R.S.O. 1990, c. M.40, s. 42 (1); 2000, c. 26, Sched. B, s. 14 (5).

Proof on which order may be granted

(2)  The order may be obtained without notice or upon such notice as the judge may direct upon such proof as satisfies the judge that it is reasonable and equitable that the proposed action or proceeding should be permitted. R.S.O. 1990, c. M.40, s. 42 (2).

Exception

(3)  This section does not apply to proceedings to stay waste or other injury to the mortgaged property. R.S.O. 1990, c. M.40, s. 42 (3).

**Section Amendments with date in force (d/m/y)**

[2000, c. 26, Sched. B, s. 14 (5)](http://www.ontario.ca/laws/statute/S00026" \l "schedbs14s5) - 06/12/2000

Payment made in terms of notice

**43** (1)  Where such demand or notice requires payment of all money secured by or under a mortgage, the person making such demand or giving such notice is bound to accept and receive payment of the same if made as required by the terms of such demand or notice.

Payment or tender of costs

(2)  If there is a dispute as to the costs payable by the person by or on whose behalf such payment is either made or tendered, such costs shall, on three clear days notice to such person by the person claiming the same, be assessed and ascertained by an assessment officer.

Compliance with demand

(3)  Where the time limited by the demand or notice requiring payment expires before the assessment of the costs has been completed, the amount due apart from the costs claimed may be paid, and payment of the amount allowed for costs within ten days after the issue of a certificate of assessment shall be deemed a compliance with the demand or notice. R.S.O. 1990, c. M.40, s. 43 (1-3).

Costs, taxation

(4)  A mortgagee’s costs of and incidental to the exercise of a power of sale, whether under this Part or otherwise, may, without an order, be assessed by an assessment officer at the instance of any person interested. R.S.O. 1990, c. M.40, s. 43 (4); 1993, c. 27, Sched.

Discretion as to costs

(5)  The costs of the assessment shall be in the discretion of the assessment officer. R.S.O. 1990, c. M.40, s. 43 (5).

**Section Amendments with date in force (d/m/y)**

1993, c. 27, Sched. - 31/12/1991

PART V  
MORTGAGEES IN POSSESSION OF RENTAL RESIDENTIAL PREMISES

Definitions

**44** In this Part,

“landlord” has the same meaning as in subsection 2 (1) of the Residential Tenancies Act, 2006; (“locateur”)

“mortgagee” includes a condominium corporation with a lien enforceable under subsection 85 (6) of the Condominium Act, 1998; (“créancier hypothécaire”)

“rental unit” has the same meaning as in subsection 2 (1) of the Residential Tenancies Act, 2006; (“logement locatif”)

“residential complex” has the same meaning as in subsection 2 (1) of the Residential Tenancies Act, 2006; (“ensemble d’habitation”)

“spouse” means a person,

(a) to whom the person is married, or

(b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,

(i) have cohabited for at least one year,

(ii) are together the parents of a child, or

(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act; (“conjoint”)

“tenancy agreement” has the same meaning as in subsection 2 (1) of the Residential Tenancies Act, 2006; (“convention de location”)

“tenant” has the same meaning as in subsection 2 (1) of the Residential Tenancies Act, 2006. (“locataire”) 1991, c. 6, s. 2; 1997, c. 24, s. 215 (2); 1999, c. 6, s. 38 (1); 2005, c. 5, s. 42 (1, 2); 2006, c. 17, s. 252 (2-6); 2015, c. 28, Sched. 1, s. 153.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 2 - 20/12/1990; 1997, c. 24, s. 215 (2) - 17/06/1998; 1999, c. 6, s. 38 (1) - 1/03/2000

[2005, c. 5, s. 42 (1, 2)](http://www.ontario.ca/laws/statute/S05005" \l "s42s1) - 09/03/2005

[2006, c. 17, s. 252 (2-6)](http://www.ontario.ca/laws/statute/S06017" \l "s252s2) - 31/01/2007

[2015, c. 28, Sched. 1, s. 153](http://www.ontario.ca/laws/statute/S15028" \l "sched1s153) - 03/12/2015

Single family home

**45** (1)  For purposes of this Part, a single family home is a residential complex that consists of a single dwelling unit or a primary dwelling unit and not more than two subsidiary dwelling units and that is not subject to a tenancy agreement when the mortgage is registered. 1997, c. 24, s. 215 (3).

Duplexes or triplexes

(2)  A residential complex that is a duplex or a triplex is not a single family home. 1997, c. 24, s. 215 (3).

When number of units determined

(3)  In deciding whether a residential complex qualifies as a single family home, the number of subsidiary units shall be the number that existed when the default under the mortgage occurred. 1997, c. 24, s. 215 (3).

Definition

(4)  For purposes of this section,

“subsidiary dwelling unit” means,

(a) an apartment or a subsidiary residential unit, including premises whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner’s spouse, child or parent or the spouse’s child or parent, where the owner, spouse, child or parent lives in the building in which the premises are located,

(b) a room or other subsidiary unit that is rented for residential purposes, including one that is rented to a member of the mortgagor’s family or to an employee of the mortgagor. 1997, c. 24, s. 215 (3); 1999, c. 6, s. 38 (2); 2005, c. 5, s. 42 (3); 2021, c. 4, Sched. 11, s. 22.

**Section Amendments with date in force (d/m/y)**

1997, c. 24, s. 215 (3) - 17/06/1998; 1999, c. 6, s. 38 (2) - 01/03/2000

[2005, c. 5, s. 42 (3)](http://www.ontario.ca/laws/statute/S05005" \l "s42s3) - 09/03/2005

[2021, c. 4, Sched. 11, s. 22](http://www.ontario.ca/laws/statute/S21004" \l "sched11s22) - 19/04/2021

Application of Part

**46** (1)  In the event of a conflict between this Part and any other provision of this Act or any other Act, this Part prevails unless the provision or the Act states that it is to prevail over this Part.

Idem

(2)  This Part applies despite any agreement to the contrary. 1991, c. 6, s. 2.

Idem

(3)  This Part and section 27 apply to,

(a) tenancies of residential units and tenancy agreements whether entered into before or after the 13th day of June, 1991;

(b) mortgages, whether registered before or after the tenancy agreement was entered into, or the 13th day of June, 1991. 1991, c. 6, s. 2; 1997, c. 24, s. 215 (4).

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 2 - 20/12/1990; 1997, c. 24, s. 215 (4) - 17/06/1998

Person deemed to be landlord

**47** (1)  A person who becomes the mortgagee in possession of a mortgaged residential complex which is the subject of a tenancy agreement between the mortgagor and a tenant or who obtains title to the residential complex by foreclosure or power of sale shall be deemed to be the landlord under the tenancy agreement. 1997, c. 24, s. 215 (5).

Person ceases to be landlord

(2)  A person who is the landlord under the tenancy agreement ceases to be the landlord while another person is deemed to be a landlord under subsection (1). 1991, c. 6, s. 3; 1997, c. 24, s. 215 (6).

Person deemed to be landlord

(3)  A person who is deemed to be a landlord is subject to the tenancy agreement and to the provisions of the Residential Tenancies Act, 2006 which apply to residential complex. 1997, c. 24, s. 215 (7); 2006, c. 17, s. 252 (7).

Person ceases to be landlord

(4)  A person shall no longer be deemed to be the landlord under the tenancy agreement when the person ceases to be a mortgagee in possession. 1991, c. 6, s. 3; 1997, c. 24, s. 215 (8).

Mortgagee’s obligations continue

(5)  Despite subsection (4), a person who is deemed to be a landlord under subsection (1) continues to be liable for the obligations of a landlord that were incurred while the person was deemed to be a landlord. 1991, c. 6, s. 3.

Notice to tenants

(6)  A person who is deemed to be a landlord shall serve notice to all tenants of the change in landlord. 1991, c. 6, s. 3.

Idem

(7)  The notice shall be in writing and shall provide the person’s name and address. 1991, c. 6, s. 3.

Idem

(8)  The notice may be in the form prescribed by the regulations made under this Act. 1991, c. 6, s. 3; 2017, c. 20, Sched, 11, s. 23.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 3 - 13/06/1991; 1997, c. 24, s. 215 (5-8) - 17/06/1998

[2006, c. 17, s. 252 (7)](http://www.ontario.ca/laws/statute/S06017" \l "s252s7) - 31/01/2007

[2017, c. 20, Sched. 11, s. 23](http://www.ontario.ca/laws/statute/S17020" \l "sched11s23) - 01/01/2022

Possession

**48** (1)  No person exercising rights under a mortgage may obtain possession of a rental unit from the mortgagor’s tenant except in accordance with the Residential Tenancies Act, 2006. 1997, c. 24, s. 215 (9); 2006, c. 17, s. 252 (8).

Person deemed to be landlord

(2)  A person exercising rights under a mortgage who gives notice of termination of a tenancy shall be deemed to be a landlord under subsection 47 (1). 1991, c. 6, s. 3.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 3 - 13/06/1991; 1997, c. 24, s. 215 (9) - 17/06/1998

[2006, c. 17, s. 252 (8)](http://www.ontario.ca/laws/statute/S06017" \l "s252s8) - 31/01/2007

Payment of rent by tenant

**49** On or after default under the mortgage, a tenant who in good faith pays rent to a mortgagee who first serves notice on the tenant is released from the obligation to pay the rent to any other person unless the mortgagee instructs otherwise or a court orders otherwise. 1991, c. 6, s. 3.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 3 - 13/06/1991

Mortgagee’s rights after default

**50** (1)  Despite section 42, a mortgagee may at any time after the default under a mortgage on a residential complex make inquiries of the mortgagor regarding the existence of any tenancy agreement and require the mortgagor to provide a list of tenants, if any. 1997, c. 24, s. 215 (10).

Same

(2)  Despite section 42, a mortgagee at any time after default under a mortgage on a residential complex which is the subject of a tenancy agreement may,

(a) enter into the common areas of the residential complex for the purpose of inspection;

(b) demand production from the mortgagor or the mortgagor’s tenant of a copy of the tenancy agreement if it is written; and

(c) demand from the mortgagor or the mortgagor’s tenant any particulars of the tenancy agreement. 1997, c. 24, s. 215 (10).

Mortgagee not deemed mortgagee in possession

(3)  The mortgagee does not become a mortgagee in possession of the residential complex by any of the acts described in subsection (1) or (2). 1997, c. 24, s. 215 (10).

Obligations of mortgagor

(4)  In the circumstances described in subsection (1), the mortgagor shall provide the mortgagee with the information requested. 1991, c. 6, s. 3.

Obligations of mortgagor and tenant

(5)  In the circumstances described in subsection (2), the mortgagor and the mortgagor’s tenant shall provide the mortgagee with the information and documents requested and shall permit the mortgagee to enter the common areas of the complex. 1991, c. 6, s. 3; 1997, c. 24, s. 215 (11).

Application for compliance order

(6)  If a mortgagor or a mortgagor’s tenant does not comply with subsection (4) or (5), the mortgagee may apply to the Superior Court of Justice for an order requiring compliance. 1991, c. 6, s. 3; 2000, c. 26, Sched. B, s. 14 (5).

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 3 - 13/06/1991; 1997, c. 24, s. 215 (10, 11) - 17/06/1998

[2000, c. 26, Sched. B, s. 14 (5)](http://www.ontario.ca/laws/statute/S00026" \l "schedbs14s5) - 06/12/2000

Mortgagee not to interfere

**51** (1)  No mortgagee or person acting on behalf of the mortgagee shall,

(a) deliberately interfere with a reasonable supply of any service, such as heat, fuel, electricity, gas, food or water to a rental unit or to the residential complex in which it is located, whether or not it was the mortgagor’s obligation to supply the service; or

(b) substantially interfere with the reasonable enjoyment of the rental unit or of the residential complex in which it is located for all the usual purposes by the mortgagor’s tenant or household with the intent of causing the mortgagor’s tenant to give up possession of the rental unit or to refrain from asserting any rights under this Act, the tenancy agreement or the Residential Tenancies Act, 2006. 1997, c. 24, s. 215 (12); 2006, c. 17, s. 252 (9).

Offence

(2)  Any person who contravenes or fails to comply with this section is guilty of an offence and on conviction is liable to a fine of not more than $5,000 in the case of an individual and $25,000 in the case of a corporation. 1991, c. 6, s. 3.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 3 - 13/06/1991; 1997, c. 24, s. 215 (12) - 17/06/1998

[2006, c. 17, s. 252 (9)](http://www.ontario.ca/laws/statute/S06017" \l "s252s9) - 31/01/2007

Application to set aside tenancy

**52** (1)  The Superior Court of Justice may on application by the mortgagee vary or set aside a tenancy agreement, or any of its provisions, entered into by the mortgagor in contemplation of or after default under the mortgage with the object of,

(a) discouraging the mortgagee from taking possession of the residential complex on default; or

(b) adversely affecting the value of the mortgagee’s interest in the residential complex. 1997, c. 24, s. 215 (13); 2000, c. 26, Sched. B, s. 14 (5).

Idem

(2)  In considering the application, the judge shall have regard to the interests of the tenant and the mortgagee. 1991, c. 6, s. 3.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 3 - 13/06/1991; 1997, c. 24, s. 215 (13) - 17/06/1998

[2000, c. 26, Sched. B, s. 14 (5)](http://www.ontario.ca/laws/statute/S00026" \l "schedbs14s5) - 06/12/2000

Termination of tenancy

**53** (1)  A person described in subsection 47 (1) may obtain, under section 48 of the Residential Tenancies Act, 2006, possession of a single family home that is the subject of a tenancy agreement in the circumstances described in this section. 1997, c. 24, s. 215 (14); 2006, c. 17, s. 252 (10).

Possession on behalf of purchaser

(2)  When a person described in subsection 47 (1) has entered into a binding agreement for the purchase and sale of a single family home, the person may obtain possession of it on behalf of a purchaser who on closing would be entitled to give notice of termination under section 48 of the Residential Tenancies Act, 2006. 1997, c. 24, s. 215 (14); 2006, c. 17, s. 252 (11).

Purchaser’s undertaking in writing

(3)  The person described in subsection 47 (1) shall obtain from the purchaser an undertaking in writing that states that the purchaser requires the single family home or any part of it occupied by a tenant for the purpose of occupation by himself or herself, his or her spouse or a child or parent of his or hers or of his or her spouse. 1991, c. 6, s. 4; 1999, c. 6, s. 38 (3); 2005, c. 5, s. 42 (4); 2021, c. 4, Sched. 11, s. 22.

Notice of termination

(4)  The notice of termination may be effective at least sixty days after it is given regardless of any fixed term of tenancy. 1991, c. 6, s. 4.

Idem

(5)  In addition to the information required under section 43 of the Residential Tenancies Act, 2006, the notice of termination shall include a copy of the undertaking supplied by the purchaser. 1991, c. 6, s. 4; 1997, c. 24, s. 215 (14); 2006, c. 17, s. 252 (12).

Form of notice

(6)  The form of notice of termination may be the same as the form used under section 48 of the Residential Tenancies Act, 2006 except that it shall be modified to indicate that the mortgagee is obtaining possession on behalf of a purchaser who requires the single family home or any part of it occupied by a tenant for the purpose of occupation by himself or herself, his or her spouse or a child or parent of his or hers or of his or her spouse. 1991, c. 6, s. 4; 1997, c. 24, s. 215 (14); 1999,c. 6, s. 38 (4); 2005, c. 5, s. 42 (5); 2006, c. 17, s. 252 (13); 2021, c. 4, Sched. 11, s. 22.

Order for termination of tenancy

(7)  A person who has served notice may apply for an order terminating the tenancy and evicting the tenant under section 69 of the Residential Tenancies Act, 2006. 1997, c. 24, s. 215 (14); 2006, c. 17, s. 252 (14, 15).

Purchaser exercises rights of mortgagee

(8)  For the purpose of obtaining possession, a purchaser may exercise the rights of the person who served the notice of termination. 1991, c. 6, s. 4.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 4 - 20/12/1990; 1997, c. 24, s. 215 (14) - 17/06/1998; 1999, c. 6, s. 38 (3, 4) - 01/03/2000

[2005, c. 5, s. 42 (4, 5)](http://www.ontario.ca/laws/statute/S05005" \l "s42s4) - 09/03/2005

[2006, c. 17, s. 252 (10-15)](http://www.ontario.ca/laws/statute/S06017" \l "s252s10) - 31/01/2007

[2021, c. 4, Sched. 11, s. 22](http://www.ontario.ca/laws/statute/S21004" \l "sched11s22) - 19/04/2021

Tenant’s right to reoccupy

**54** (1)  If the purchaser does not within 180 days of the date of termination occupy the premises for his or her own use for a reasonable period, the tenant who was served notice under section 53 may bring an application to the Superior Court of Justice for an order directing that the tenant has the right to occupy the premises on the same terms that existed immediately before the date of termination. 1991, c. 6, s. 4; 2000, c. 26, Sched. B, s. 14 (5).

Limitation

(2)  An application by the tenant must be brought within 210 days after the date of termination set out in the notice of termination. 1991, c. 6, s. 4.

Tenant’s right to recovery

(3)  If the tenant makes an application or is entitled to make an application, and the premises are occupied by another tenant, the original tenant may bring an action against the purchaser to recover any costs and damages incurred as the result of the tenant having to vacate the premises. 1991, c. 6, s. 4.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 4 - 20/12/1990

[2000, c. 26, Sched. B, s. 14 (5)](http://www.ontario.ca/laws/statute/S00026" \l "schedbs14s5) - 06/12/2000

Right to show single family home

**55** A person described in subsection 47 (1) may on reasonable notice show a single family home that is the subject of a tenancy agreement to a prospective purchaser at reasonable times. 1991, c. 6, s. 4; 1997, c. 24, s. 215 (15).

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 4 - 20/12/1990; 1997, c. 24, s. 215 (15) - 17/06/1998

Tenant’s rights preserved

**56** Nothing in this Part diminishes any rights which a tenant of a mortgagor has at common law or in equity where the mortgagee is bound by the tenancy agreement. 1991, c. 6, s. 5; 1997, c. 24, s. 215 (16).

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 5 - 13/06/1991; 1997, c. 24, s. 215 (16) - 17/06/1998

Service

**57** All documents required to be served by this Part shall be served in accordance with section 191 of the Residential Tenancies Act, 2006. 1991, c. 6, s. 5; 1997, c. 24, s. 215 (17); 2006, c. 17, s. 252 (16).

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 5 - 13/06/1991; 1997, c. 24, s. 215 (17) - 17/06/1998

[2006, c. 17, s. 252 (16)](http://www.ontario.ca/laws/statute/S06017" \l "s252s16) - 31/01/2007

Regulations

**58** The Lieutenant Governor in Council may make regulations prescribing forms for the purposes of this Act and providing for their use. 1991, c. 6, s. 5; 2017, c. 20, Sched, 11, s. 24.

**Section Amendments with date in force (d/m/y)**

1991, c. 6, s. 5 - 13/06/1991

[2017, c. 20, Sched. 11, s. 24](http://www.ontario.ca/laws/statute/S17020" \l "sched11s24) - 01/01/2022

FORM Revoked: 2017, c. 20, Sched. 11, s. 25

**Section Amendments with date in force (d/m/y)**

[2017, c. 20, Sched. 11, s. 25](http://www.ontario.ca/laws/statute/S17020" \l "sched11s25) - 01/01/2022

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