



New South Wales

Conveyancing Amendment (Mortgages) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Conveyancing Act 1919* to impose a duty on mortgagees and chargees:

- (a) when exercising a power of sale in respect of mortgaged or charged property, to take all reasonable care to ensure that the property is sold for not less than its market value (if the property has a market value) or for the best price reasonably obtainable (if the property does not have a market value), and
- (b) when in possession of mortgaged or charged property, to take all reasonable care to ensure that the value of the property is not diminished.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

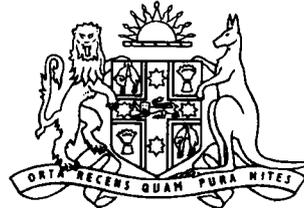
Clause 2 provides for the commencement of the proposed Act on a day 3 months after the date of assent, unless commenced sooner by proclamation.

Clause 3 is a formal provision giving effect to the amendment to the *Conveyancing Act 1919* set out in Schedule 1.

Schedule 1 inserts proposed section 111A (Certain duties of mortgagees and chargees) into the *Conveyancing Act 1919* to give effect to the object of the Bill outlined above.

Introduced by Mr D L Page, MP

First print



New South Wales

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Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Conveyancing Act 1919 No 6	2
Schedule 1 Amendment	3



New South Wales

Conveyancing Amendment (Mortgages) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Conveyancing Act 1919* to make further provision with respect to the duties of mortgagees and chargees.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Conveyancing Amendment (Mortgages) Act 2001</i> .	3
2 Commencement	4
This Act commences on the day that is 3 months after the date of assent, except in so far as it is commenced sooner by proclamation.	5 6
3 Amendment of Conveyancing Act 1919 No 6	7
The <i>Conveyancing Act 1919</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendment

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(Section 3)

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Section 111A

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Insert after section 111:

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111A Certain duties of mortgagees and chargees

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(1) In exercising a power of sale in respect of mortgaged or charged property, a mortgagee or chargee must take all reasonable care to sell the property for:

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(a) not less than its market value, if the property has a market value when it is sold, or

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(b) the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold, if the property does not have a market value when it is sold.

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(2) It is the duty of a mortgagee or chargee in possession of mortgaged or charged property to take all reasonable care to prevent the value of the mortgaged or charged property from being diminished.

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(3) The title of the purchaser is not impeachable on the ground that the mortgagee or chargee has committed a breach of any duty imposed by this section, but a person damnified by the breach of duty has a remedy in damages against the mortgagee or chargee exercising the power of sale.

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(4) An agreement or stipulation is void to the extent that it purports to relieve, or might have the effect of relieving, a mortgagee or chargee from a duty imposed by this section.

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(5) Nothing in this section affects the operation of any rule of law relating to the duty of the mortgagee or chargee to account to the mortgagor or chargor.

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Conveyancing Amendment (Mortgages) Bill 2001

Schedule 1 Amendment

- (6) This section applies to mortgages and charges whether made before or after the commencement of this section but only to a sale in the exercise of a power arising upon or in consequence of a default occurring after the commencement of this section. 1
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- (7) This section applies to mortgages and charges under the *Real Property Act 1900*. 5
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