

New South Wales

Conveyancing Amendment (Mortgages) Bill 2007

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, when exercising a power of sale in respect of mortgaged or charged land, to take all reasonable care to ensure that the property is sold for not less than its market value.

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.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Conveyancing Amendment (Mortgages) Bill 2007

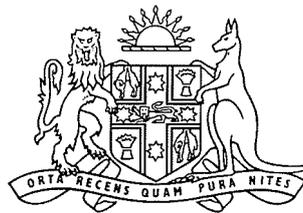
Explanatory note

Schedule 1 Amendment

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 Page, MP

First print



New South Wales

Conveyancing Amendment (Mortgages) Bill 2007

Contents

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



New South Wales

Conveyancing Amendment (Mortgages) Bill 2007

No. , 2007

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 2007</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
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendment	1
	(Section 3)	2
Section 111A		3
Insert after section 111:		4
111A	Certain duties of mortgagees and chargees	5
(1)	In exercising a power of sale in respect of mortgaged or charged land, a mortgagee or chargee must take all reasonable care to sell the land for not less than its market value when it is sold.	6 7 8
(2)	Nothing in section 112 (7) or 115 (2) of this Act, or in section 58 (1) of the <i>Real Property Act 1900</i> , affects the duty imposed by this section.	10 11
(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.	12 13 14 15 16
(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.	17 18 19
(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.	20 21 22
(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.	23 24 25 26
(7)	This section applies to mortgages and charges under the <i>Real Property Act 1900</i> .	27 28