

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 13 October, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1977.

An Act to amend the Conveyancing Act, 1919, and the Conveyancing (Amendment) Act, 1976, in relation to the appointment and powers of receivers in respect of mortgaged property and in relation to the power of a mortgagee or receiver to sell mortgaged property.

BE

Conveyancing (Receivers) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 **1.** This Act may be cited as the "Conveyancing Short
(Receivers) Amendment Act, 1977". title.

2. (1) Except as provided in subsection (2), this Act Commence-
shall commence on the date of assent to this Act. ment.

 (2) Sections 4 and 5 and Schedules 1 and 2 shall
10 commence on such day as may be appointed by the Governor
in respect thereof and as may be notified by proclamation
published in the Gazette.

3. This Act contains the following Schedules :— Schedules.

15 **SCHEDULE 1.—AMENDMENTS TO THE CONVEY-**
 ANCING ACT, 1919.

SCHEDULE 2.—AMENDMENTS TO THE CONVEY-
 ANCING (AMENDMENT) ACT, 1976.

4. The Conveyancing Act, 1919, is amended in the Amend-
manner set forth in Schedule 1. ment of
Act No. 6,
1919.

20 **5.** The Conveyancing (Amendment) Act, 1976, is Amend-
amended in the manner set forth in Schedule 2. ment of
Act No. 84,
1976.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE CONVEYANCING ACT, 1919.

(1) Section 2, matter relating to Part VII, Division 3—

Omit "115", insert instead "115A".

5 (2) Section 115 (1)—

Omit the subsection, insert instead :—

(1) Except where otherwise expressly provided, this section applies only to a receiver appointed under the power in that behalf conferred by this Act.

10

(3) Section 115A—

After section 115, insert :—

115A. (1) In this section, "default", in respect of a mortgage, means default in—

Appoint-
ment of
receivers.

15

(a) the observance of a covenant, agreement or condition expressed or implied in the mortgage;

20

(b) the payment, in accordance with the terms of the mortgage, of the principal, interest or other money the payment of which is secured by the mortgage; or

(c) the payment, in accordance with the terms of the mortgage, of any part of that principal, interest or other money.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONVEYANCING ACT, 1919—
continued.

5 (2) Notwithstanding anything contained in
any other section of this Act or in any mortgage or
other instrument—

10 (a) a mortgagee under a mortgage, whether
executed before or after the commencement
of this section, is not entitled to appoint,
whether under the power conferred by this
Act or otherwise, a receiver in respect of
the mortgaged property unless default has
been made in respect of the mortgage;

15 (b) subject to paragraph (a), a mortgagee
under a mortgage executed before the
commencement of this section is entitled
to exercise the power to appoint a receiver
conferred on him by this Act or otherwise
20 as if section 111 (2) (b) and (c), (3)
and (4) of this Act or, as the case may be,
section 57 (2) (b) and (c), (3) and (4)
of the Real Property Act, 1900, had not
been enacted; and

25 (c) a person purporting to have been appointed
after the commencement of this section as
a receiver in respect of the mortgaged
property, whether by the mortgage or other
instrument or otherwise, shall not be
30 entitled to exercise, as a receiver, any
powers in respect of the mortgaged property
unless—

(i) default has been made in respect
of the mortgage; and

35 (ii) that appointment was made by a
instrument in writing which has
been registered.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONVEYANCING ACT, 1919—
continued.

5 (3) A receiver, however appointed, shall not exercise a power to sell any land the subject of the mortgage unless the mortgagee is entitled to exercise a power to sell that land.

(4) This section applies to mortgages and incumbrances under the Real Property Act, 1900.

10

SCHEDULE 2.

Sec. 5.

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976.

15 (1) Section 109 (2) of the Conveyancing Act, 1919, as to be amended by section 4 of, and Schedule 3 (1) to, the Conveyancing (Amendment) Act, 1976—

Omit “on the due date”, insert instead “, in accordance with the terms of the mortgage.”.

20 (2) Section 111 of the Conveyancing Act, 1919, as to be amended by section 4 of, and Schedule 3 (5) to, the Conveyancing (Amendment) Act, 1976—

(a) From subsection (2), omit “Subject to subsection (1)”, insert instead “Except in the case of a memorandum of mortgage or incumbrance referred to in subsection (1)”.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—*continued.*

- 5 (b) In subsection (2) (a) (i), after “covenant”,
insert “, agreement or condition”.
- (c) From subsection (2) (a) (ii) and (iii), omit
“on the due date” wherever occurring, insert
instead “, in accordance with the terms of the
mortgage”.
- 10 (d) From subsection (2), omit paragraph (b), insert
instead :—
- (b) where—
- (i) the default relates to that
payment; or
- 15 (ii) the default does not relate to that
payment and notice or lapse of
time pursuant to this section has
not been dispensed with by
agreement expressed in the
- 20 mortgage,
a written notice that complies with
subsection (3) has been served on the
mortgagor in the manner authorised by
section 170; and
- 25 (e) In subsection (3) (b) (i), after “covenant”
wherever occurring, insert “, agreement or
condition”.
- (f) From subsection (3) (c), omit “the mortgagee
in”.

Conveyancing (Receivers) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—*continued.*

- 5 (g) From subsection (3) (d), omit “the mortgagee proposes to exercise his power of sale”, insert instead “it is proposed to exercise a power of sale in respect of the mortgaged property”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

[8c]

Conveyancing (Rectors) Amendment

SCHEDULE 2—continued.

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—continued.

(g) From subsection (3) (d), omit the words
propose to exercise his power of sale, insert
instead "it is proposed to exercise a power of
sale in respect of the mortgaged property."

2

**CONVEYANCING (RECEIVERS) AMENDMENT
BILL, 1977**

No. , 1977.

A BILL FOR

An Act to amend the Conveyancing Act, 1919, and the
Conveyancing (Amendment) Act, 1976, in relation to
the appointment and powers of receivers in respect of
mortgaged property and in relation to the power of a
mortgagee or receiver to sell mortgaged property.

[MR CRABTREE—14 September, 1977.]

BE

Conveyancing (Receivers) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 **1.** This Act may be cited as the "Conveyancing Short
(Receivers) Amendment Act, 1977". title.

2. (1) Except as provided in subsection (2), this Act Commence-
shall commence on the date of assent to this Act. ment.

 (2) Sections 4 and 5 and Schedules 1 and 2 shall
10 commence on such day as may be appointed by the Governor
in respect thereof and as may be notified by proclamation
published in the Gazette.

3. This Act contains the following Schedules :— Schedules.

15 **SCHEDULE 1.—AMENDMENTS TO THE CONVEY-**
 ANCING ACT, 1919.

SCHEDULE 2.—AMENDMENTS TO THE CONVEY-
 ANCING (AMENDMENT) ACT, 1976.

4. The Conveyancing Act, 1919, is amended in the Amend-
manner set forth in Schedule 1. ment of
Act No. 6,
1919.

20 **5.** The Conveyancing (Amendment) Act, 1976, is Amend-
amended in the manner set forth in Schedule 2. ment of
Act No. 84,
1976.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE CONVEYANCING ACT, 1919.

(1) Section 2, matter relating to Part VII, Division 3—

Omit "115", insert instead "115A".

5 (2) Section 115 (1)—

Omit the subsection, insert instead :—

(1) Except where otherwise expressly provided, this section applies only to a receiver appointed under the power in that behalf conferred by this Act.

10

(3) Section 115A—

After section 115, insert :—

115A. (1) In this section, "default", in respect of a mortgage, means default in—

Appointment of receivers.

15

(a) the observance of a covenant, agreement or condition expressed or implied in the mortgage;

20

(b) the payment, in accordance with the terms of the mortgage, of the principal, interest or other money the payment of which is secured by the mortgage; or

(c) the payment, in accordance with the terms of the mortgage, of any part of that principal, interest or other money.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONVEYANCING ACT, 1919—
continued.

5 (2) Notwithstanding anything contained in
any other section of this Act or in any mortgage or
other instrument—

10 (a) a mortgagee under a mortgage, whether
executed before or after the commencement
of this section, is not entitled to appoint,
whether under the power conferred by this
Act or otherwise, a receiver in respect of
the mortgaged property unless default has
been made in respect of the mortgage;

15 (b) subject to paragraph (a), a mortgagee
under a mortgage executed before the
commencement of this section is entitled
to exercise the power to appoint a receiver
conferred on him by this Act or otherwise
20 as if section 111 (2) (b) and (c), (3)
and (4) of this Act or, as the case may be,
section 57 (2) (b) and (c), (3) and (4)
of the Real Property Act, 1900, had not
been enacted; and

25 (c) a person purporting to have been appointed
after the commencement of this section as
a receiver in respect of the mortgaged
property, whether by the mortgage or other
instrument or otherwise, shall not be
entitled to exercise, as a receiver, any
30 powers in respect of the mortgaged property
unless—

(i) default has been made in respect
of the mortgage; and

35 (ii) that appointment was made by an
instrument in writing which has
been registered.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONVEYANCING ACT, 1919—
continued.

5 (3) A receiver, however appointed, shall not exercise a power to sell any land the subject of the mortgage unless the mortgagee is entitled to exercise a power to sell that land.

(4) This section applies to mortgages and incumbrances under the Real Property Act, 1900.

10

SCHEDULE 2.

Sec. 5.

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976.

15 (1) Section 109 (2) of the Conveyancing Act, 1919, as to be amended by section 4 of, and Schedule 3 (1) to, the Conveyancing (Amendment) Act, 1976—

Omit “on the due date”, insert instead “, in accordance with the terms of the mortgage,”.

20 (2) Section 111 of the Conveyancing Act, 1919, as to be amended by section 4 of, and Schedule 3 (5) to, the Conveyancing (Amendment) Act, 1976—

(a) From subsection (2), omit “Subject to subsection (1)”, insert instead “Except in the case of a memorandum of mortgage or incumbrance referred to in subsection (1)”.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—*continued.*

- 5 (b) In subsection (2) (a) (i), after “covenant”,
insert “, agreement or condition”.
- (c) From subsection (2) (a) (ii) and (iii), omit
“on the due date” wherever occurring, insert
instead “, in accordance with the terms of the
mortgage”.
- 10 (d) From subsection (2), omit paragraph (b), insert
instead :—
- (b) where—
- (i) the default relates to that
payment; or
- 15 (ii) the default does not relate to that
payment and notice or lapse of
time pursuant to this section has
not been dispensed with by
agreement expressed in the
- 20 mortgage,
a written notice that complies with
subsection (3) has been served on the
mortgagor in the manner authorised by
section 170; and
- 25 (e) In subsection (3) (b) (i), after “covenant”
wherever occurring, insert “, agreement or
condition”.
- (f) From subsection (3) (c), omit “the mortgagee
in”.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 2—continued.

**AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—continued.**

- 5 (g) From subsection (3) (d), omit “the mortgagee proposes to exercise his power of sale”, insert instead “it is proposed to exercise a power of sale in respect of the mortgaged property”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977
[8c]

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 11-15-2011 BY 60322

DATE 11-15-2011 BY 60322

DATE 11-15-2011 BY 60322

DATE 11-15-2011

BY 60322

11-15-2011

PROOF

**CONVEYANCING (RECEIVERS) AMENDMENT
BILL, 1977**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

THE objects of this Bill are—

- (a) to prevent the appointment of a receiver of mortgaged property unless default has been made in the observance of certain covenants, agreements or conditions (Schedule 1 (3));
 - (b) to enable a mortgagee to appoint such a receiver where such a default has been made if he would be so entitled but for restrictions on the exercise of his power of sale (Schedule 1 (3));
 - (c) to prevent such a receiver from exercising a power to sell land the subject of the mortgage unless the mortgagee is entitled to exercise that power (Schedule 1 (3));
 - (d) to extend the provisions of section 111 (2), to be inserted in the Conveyancing Act, 1919, with respect to the notice to be served on a mortgagor (where a default in the observance of a covenant has occurred and it is proposed to exercise a power of sale in respect of the mortgaged property) so that those provisions also apply where the default occurred in the observance of an agreement or a condition in the mortgage (Schedules 1 (3) and 2 (2)); and
 - (e) to make other provisions of a minor or ancillary nature.
-

PROOF

THE UNIVERSITY OF CHICAGO PRESS

CHICAGO, ILL.

Published by the University of Chicago Press, 5 East Lake Street, Chicago, Illinois 60607. This book is printed on acid-free paper. Copyright © 1985 by the University of Chicago Press. All rights reserved. Printed in the United States of America. ISBN 0-226-01111-1. Hbk. \$25.00. Pbk. \$12.50. This book is also available in paperback.

PROOF

**CONVEYANCING (RECEIVERS) AMENDMENT
BILL, 1977**

No. , 1977.

A BILL FOR

An Act to amend the Conveyancing Act, 1919, and the Conveyancing (Amendment) Act, 1976, in relation to the appointment and powers of receivers in respect of mortgaged property and in relation to the power of a mortgagee or receiver to sell mortgaged property.

[MR CRABTREE—14 September, 1977.]

BE

Conveyancing (Receivers) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 **1.** This Act may be cited as the "Conveyancing (Receivers) Amendment Act, 1977". Short title.

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act. Commencement.

(2) Sections 4 and 5 and Schedules 1 and 2 shall
10 commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act contains the following Schedules :— Schedules.

15 **SCHEDULE 1.—AMENDMENTS TO THE CONVEYANCING ACT, 1919.**

SCHEDULE 2.—AMENDMENTS TO THE CONVEYANCING (AMENDMENT) ACT, 1976.

4. The Conveyancing Act, 1919, is amended in the manner set forth in Schedule 1. Amendment of Act No. 6, 1919.

20 **5.** The Conveyancing (Amendment) Act, 1976, is amended in the manner set forth in Schedule 2. Amendment of Act No. 84, 1976.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE CONVEYANCING ACT, 1919.

(1) Section 2, matter relating to Part VII, Division 3—

Omit "115", insert instead "115A".

5 (2) Section 115 (1)—

Omit the subsection, insert instead :—

(1) Except where otherwise expressly provided, this section applies only to a receiver appointed under the power in that behalf conferred by this Act.

10

(3) Section 115A—

After section 115, insert :—

115A. (1) In this section, "default", in respect of a mortgage, means default in—

Appointment of receivers.

15

(a) the observance of a covenant, agreement or condition expressed or implied in the mortgage;

20

(b) the payment, in accordance with the terms of the mortgage, of the principal, interest or other money the payment of which is secured by the mortgage; or

(c) the payment, in accordance with the terms of the mortgage, of any part of that principal, interest or other money.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONVEYANCING ACT, 1919—
continued.

5 (2) Notwithstanding anything contained in
any other section of this Act or in any mortgage or
other instrument—

10 (a) a mortgagee under a mortgage, whether
executed before or after the commencement
of this section, is not entitled to appoint,
whether under the power conferred by this
Act or otherwise, a receiver in respect of
the mortgaged property unless default has
been made in respect of the mortgage;

15 (b) subject to paragraph (a), a mortgagee
under a mortgage executed before the
commencement of this section is entitled
to exercise the power to appoint a receiver
conferred on him by this Act or otherwise
as if section 111 (2) (b) and (c), (3)
20 and (4) of this Act or, as the case may be,
section 57 (2) (b) and (c), (3) and (4)
of the Real Property Act, 1900, had not
been enacted; and

25 (c) a person purporting to have been appointed
after the commencement of this section as
a receiver in respect of the mortgaged
property, whether by the mortgage or other
instrument or otherwise, shall not be
entitled to exercise, as a receiver, any
30 powers in respect of the mortgaged property
unless—

(i) default has been made in respect
of the mortgage; and

35 (ii) that appointment was made by an
instrument in writing which has
been registered.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CONVEYANCING ACT, 1919—
continued.

5 (3) A receiver, however appointed, shall not exercise a power to sell any land the subject of the mortgage unless the mortgagee is entitled to exercise a power to sell that land.

(4) This section applies to mortgages and incumbrances under the Real Property Act, 1900.

10

SCHEDULE 2.

Sec. 5.

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976.

15 (1) Section 109 (2) of the Conveyancing Act, 1919, as to be amended by section 4 of, and Schedule 3 (1) to, the Conveyancing (Amendment) Act, 1976—

Omit “on the due date”, insert instead “, in accordance with the terms of the mortgage,”.

20 (2) Section 111 of the Conveyancing Act, 1919, as to be amended by section 4 of, and Schedule 3 (5) to, the Conveyancing (Amendment) Act, 1976—

(a) From subsection (2), omit “Subject to subsection (1)”, insert instead “Except in the case of a memorandum of mortgage or incumbrance referred to in subsection (1)”.

SCHEDULE

Conveyancing (Receivers) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—*continued.*

- 5 (b) In subsection (2) (a) (i), after “covenant”,
insert “, agreement or condition”.
- (c) From subsection (2) (a) (ii) and (iii), omit
“on the due date” wherever occurring, insert
instead “, in accordance with the terms of the
mortgage”.
- 10 (d) From subsection (2), omit paragraph (b), insert
instead :—
- (b) where—
- (i) the default relates to that
payment; or
- 15 (ii) the default does not relate to that
payment and notice or lapse of
time pursuant to this section has
not been dispensed with by
agreement expressed in the
- 20 mortgage,
a written notice that complies with
subsection (3) has been served on the
mortgagor in the manner authorised by
section 170; and
- 25 (e) In subsection (3) (b) (i), after “covenant”
wherever occurring, insert “, agreement or
condition”.
- (f) From subsection (3) (c), omit “the mortgagee
in”.

Conveyancing (Receivers) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE CONVEYANCING (AMENDMENT)
ACT, 1976—*continued.*

- 5 (g) From subsection (3) (d), omit “the mortgagee proposes to exercise his power of sale”, insert instead “it is proposed to exercise a power of sale in respect of the mortgaged property”.

1977

...

...

...

...

...

...

...

...

...

...