



# Law of Property Act 1925

1925 CHAPTER 20 15 and 16 Geo 5

## PART III **E+W**

MORTGAGES, RENTCHARGES, AND POWERS OF ATTORNEY

### *Mortgages*

#### **88 Realisation of freehold mortgages. **E+W****

- (1) Where an estate in fee simple has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—
  - (a) the conveyance by him shall operate to vest in the purchaser the fee simple in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;
  - (b) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land conveyed;and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.
- (2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple in him (subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured), and thereupon the mortgage term, if any, shall thereby be merged in the fee simple, and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.
- (3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed

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*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: Law of Property Act 1925, Section 88 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.

- (4) Where the mortgage includes fixtures or chattels personal any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.
- (5) In the case of a sub-mortgage by subdemise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the fee simple or acquire it by foreclosure, enlargement, or otherwise as aforesaid.
- (6) This section applies to a mortgage whether created before or after the commencement of this Act, and to a mortgage term created by this Act, but does not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the mortgage (being a valid mortgage) and the restrictions imposed by this Act in regard to the effect and creation of mortgages were not in force, and all prior mortgages (if any) not being merely equitable charges had been created by demise or by charge by way of legal mortgage.

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