
CHAPTER 151**CLANDESTINE MORTGAGES**

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SECTION

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CHAPTER 151

CLANDESTINE MORTGAGES

An Act to prevent frauds by clandestine mortgages.

*4 Will. & Mar., c.
16 extended by 1
of 1799 [A.D.
1692]
5 of 2002*

1. [This Act may be cited as the Clandestine Mortgages Act.]

Short title.

2. If any person or persons shall borrow any money or for any other valuable consideration for the payment thereof voluntarily give acknowledge permitt or suffer to be entred against him or them one or more judgment or judgments statute or statutes recognisance or recognisances to any person or persons creditor or creditors; and if the said borrower or borrowers debter or debtors shall afterwards take upp or borrow any other sum or sums of money of any other person or persons or for other valuable consideration become indebted to such person or persons and for secureing the repayment and discharge thereof shall mortgage his her or their lands or tenements or any part thereof to the said second or other lender or lenders of the said money creditor or creditors or to any other person or persons in trust for or to the use of such second or other lender or lenders creditor or creditors and shall not give notice to the said mortgagee or mortgagees of the said judgment or judgments statute or statutes recognisance or recognisances in writing under his her or their hand or hands before the execution of the said mortgage or mortgages unlesse such mortgager or mortgagers his her or their heires upon notice to him her or them given by the mortgagee or mortgagees of the said lands and tenements his her or their heirs executors administrators or assigns in writing under his her or their hands and seals attested by two or more sufficient witnesses of any such former judgment or judgments statute or statutes recognisance or recognisances shall within six months pay off and discharge the said judgment or judgments statute or statutes recognisance or recognisances and all interest and charges due thereupon and cause or procure the same to be vacated or discharged by record that then the mortgager or mortgagers of the said lands and tenements his her or their heires executors

Debtor upon judgment, etc., taking up money of another upon mortgage, without notice of the judgment to the mortgagee, unless upon notice by the mortgagee he pay off the same within six months, shall lose his equity to redeem:

and mortgagee may hold the land against the said mortgagor for such estate as was granted to him.

Person having mortgaged and mortgaging again without notice to the second or other succeeding mortgagee, to lose his equity of redemption.

administrators or assigns shall have no benefit or remedy against the said mortgagee or mortgagees his her or their heirs executors administrators or assigns or any of them in equity or elsewhere for redemption of the said lands and tenements or any part thereof. But the said mortgagee or mortgagees his her or their heirs executors administrators and assigns shall and may hold and enjoy the said lands and tenements for such estate and term therein as were or was granted and settled to the said mortgagee or mortgagees against the said mortgager or mortgagers [and¹] all person or persons lawfully claiming from him or under him her or them freed from equity of redemption and as fully to all intents and purposes whatsoever as if the same had been purchased absolutely and without any power or liberty of redemption.

3. If any person or persons who have or hath once mortgaged or shall mortgage any lands or tenements to any person or persons for security of money lent or otherwise accrued or become due or for other valuable considerations and if the said [mortgager²] or [mortgagers³] shall again mortgage the same lands or tenements or any part thereof to any other person or persons for valuable considerations (the said former mortgage being in force and not discharged) and shall not discover to the said second or other mortgagee or mortgagees or some or one of them the former mortgage or mortgages in writing under his or their hands that then and in those cases also the said [mortgager⁴] or [mortgagers⁵] his her or their heirs executors administrators or assigns shall have no relief or equity of redemption against the said second or after mortgagee or mortgagees his her or their heirs executors administrators or assigns upon the said after mortgage or mortgages but that such mortgagee or mortgagees his⁶ or their heirs executors administrators and assigns shall and may hold and enjoy such more then once mortgaged lands and tenements for such estate and terme therein as were or was granted and conveyed by the said [mortgager⁷] or [mortgagers⁸] against him her or them

¹ *O* omits.

² mortgagor *O*.

³ mortgagors *O*.

⁴ mortgagor *O*.

⁵ mortgagors *O*.

⁶ her *O*.

⁷ mortgagor *O*.

⁸ mortgagor *O*.

his her or their heires executors or administrators respectively freed from equity of redemption and as fully to all intents and purposes as if the same had been an absolute purchase and without any power or liberty of redemption.

4.⁹

Under-
mortgagees may
redeem.

5. Nothing in this Act contained shall be construed deemed or extended to bar any widow of any [mortgager¹⁰] of lands or tenements from her dower and right in or to the said lands who did not legally join with her husband in such mortgage or otherwise lawfully bar or exclude her selfe from such her dower or right.

Proviso for
dower.

⁹ Section 4 has been repealed by section 37 of Act 5 of 2002 only in so far as it applies to deaths occurring after 1st February, 2002. Section 4 originally read as follows: "If it so happen there be more than one mortgage at the same time made by any person or persons to any person or persons of the same lands and tenements the several late or under mortgagees his her or their heires executors administrators or assigns shall have power to redeem any former mortgage or mortgages upon payment of the principal debt interest and costs of suit to the prior mortgagee or mortgagees his her or their heires executors administrators or assigns any thing herein contained to the contrary thereof in any wise notwithstanding."

¹⁰ mortgagor *O*.