



Law of Property Act 1925

1925 CHAPTER 20 15 and 16 Geo 5

PART III

MORTGAGES, RENTCHARGES, AND POWERS OF ATTORNEY

Mortgages

100 Powers of mortgagor and mortgagee in possession to accept surrenders of leases.

- (1) For the purpose only of enabling a lease authorised under the last preceding section, or under any agreement made pursuant to that section, or by the mortgage deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines and minerals therein, and, on a surrender of the lease so far as it comprises part only of the land or mines and minerals leased, the rent may be apportioned.
- (2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to accept from time to time any such surrender as aforesaid.
- (3) On a surrender of part only of the land or mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.
- (4) Where any consideration for the surrender, other than an agreement to accept an authorised lease, is given by or on behalf of the lessee to or on behalf of the person

Changes to legislation: Law of Property Act 1925, Section 100 is up to date with all changes known to be in force on or before 16 March 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) View outstanding changes

accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

- (5) No surrender shall, by virtue of this section, be rendered valid unless:—
- (a) An authorised lease is granted of the whole of the land or mines and minerals comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender; and
 - (b) The term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and
 - (c) Where the whole of the land mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.
- (6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.
- (7) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.
- (8) This section applies to a mortgage made after the thirty-first day of December, nineteen hundred and eleven, but the provisions of this section, or any of them, may, by agreement in writing made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.
- (9) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.
- (10) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences:
- Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.
- (11) Nothing in this section operates to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor with the concurrence of all the incumbrancers if this Act and the enactments replaced by this section had not been passed.

Changes to legislation: Law of Property Act 1925, Section 100 is up to date with all changes known to be in force on or before 16 March 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) [View outstanding changes](#)

- (12) For the purposes of this section “mortgagor” does not include an incumbrancer deriving title under the original mortgagor.
- (13) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

Changes to legislation:

Law of Property Act 1925, Section 100 is up to date with all changes known to be in force on or before 16 March 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.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [2023 asc 3 s. 146\(5\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 52(2)(dc)(dd) inserted by [2016 c. 22 Sch. 7 para. 1\(2\)](#)