

LAW REFORM COMMISSION



MANITOBA

COMMISSION DE RÉFORME DU DROIT

REPORT
ON
A SIMPLIFIED MORTGAGE FORM

December 15, 1980

Report #45

MG-3750

Law reform agencies have generally and understandably concerned themselves with a review of substantive law as developed through cases or found in statutes. However, in 1971 when the Manitoba Law Reform Commission was first formed, the members then on the Commission decided that there were other areas where a review and revision were both useful and necessary. One of these areas was the realm of legal documents.

There are many people, not familiar with legal terminology, who are affected by complicated standard forms of documents which determine important legal rights and obligations. Sometimes they have no control over and even knowledge of their contents. Yet, if a dispute arises between the parties with respect to the content of such a valid legal document, they will be deemed to have agreed to all of its terms. It is in the public interest that such forms be expressed, as far as is reasonably practicable, in language that can be easily understood. In order to study the usefulness and feasibility of this type of scrutiny and simplification, the Commission chose to examine the standard residential mortgage form usually employed in mortgage transactions between private parties in Manitoba.

A preliminary examination by two members of the original Commission of one of the law stationers' forms frequently employed in Manitoba produced a strong reaction to its language:

The present form is a classic example of incomprehensibility. It breaks all the normal rules of communication. The sentences wander on interminably. Incredibly, one of them is more than 300 words. The clauses follow no logical sequence and are often repetitive The language is ponderous, confusing, and replete with redundant and mumbo-jumbo words. . . .

To assist us in this endeavour the Commission retained Mr. John E. Deacon, a Winnipeg lawyer, to re-draft the standard mortgage in a style that a person without legal training might understand, and in a form that would impartially protect the interests of both parties to the transaction. Mr. Deacon's assignment was not easy. He performed this difficult task well and after many and lengthy discussions with the Commission proposed a simplified mortgage form for the province which was set out in the Appendix to our Working Paper published in 1978.

In our Working Paper we invited comments on this form and in particular the most suitable method or methods for ensuring that any such form should come into common usage. We received many helpful briefs and submissions from groups of both borrowers and lenders. As a result, we then had lengthy correspondence and discussions with interested groups and individuals and in particular with representatives of the Mortgage Loans Association of Manitoba and Canada Mortgage and Housing Corporation which culminated in an all-day meeting in October 1979.

It was pointed out at the meeting, as it had been stated in nearly all of the briefs, that the draft form attached to the Working Paper, in order to be utilized, would require substantive changes in the law relating to mortgages. We were therefore faced with undertaking a total review of the law of mortgages, a task which was beyond our existing resources. Consequently we considered whether there was a form in general use throughout the province which could fulfil our initial purpose of simplification.

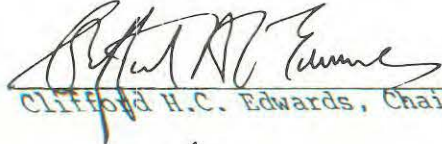
We found that Canada Mortgage and Housing Corporation had recently endeavoured to simplify its own standard residential form and that the mortgage forms of this Corporation were probably used in a majority of residential mortgage transactions in the province. Thus any simplified mortgage which might be adopted by Canada Mortgage and Housing Corporation would go a long way to securing our other objective of developing a form which might be an illustration for simplified mortgage forms in the province. It was therefore decided by the Commission that the Canada Mortgage and Housing Corporation form should be used as a basis for simplification.

Since our meeting in October 1979 several simplified revisions of the above form were prepared and submitted to Canada Mortgage and Housing Corporation, Counsel for the Mortgage Loans Association of Manitoba and to our own consultant, Mr. John Deacon. We are most appreciative for their helpful comments and criticisms.

In our final revision of this form we have proceeded on the premise that the original document was prepared so as to provide the required protection for Canada Mortgage and Housing Corporation as lenders in a mortgage transaction. We have, therefore, only attempted to put that form in language which is more easily understandable to the lay borrower without changing the purported rights and obligations it contains. We have made no study of its enforceability. The ultimate protection of both lenders and borrowers must be determined by their respective legal advisers. We would urge, however, that in drafting any necessary additions or amendments the same simplified style be used.

We have endeavoured to establish that the simplification of legal documentation is a readily attainable goal. We submit the simplified mortgage, attached as an Appendix to this Report, as an illustration of what can be accomplished in this regard.

This is a Report pursuant to section 5(2) of "The Law Reform Commission Act", signed this 15th day of December 1980.


Clifford H.C. Edwards, Chairman


Patricia G. Ritchie, Commissioner


David G. Newman, Commissioner


A. Burton Bass, Commissioner


Beverly-Mnn Scott, Commissioner


Knox B. Foster, Commissioner

APPENDIX

"SIMPLIFIED MORTGAGE" FORM

MORTGAGE

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"THE REAL PROPERTY ACT"

THE MORTGAGE ACT PROVIDES THAT THE MORTGAGOR CAN OBTAIN FREE OF CHARGE, FROM THE MORTGAGEE A STATEMENT OF THE DEBTS SECURED BY THIS MORTGAGE ONCE EVERY TWELVE MONTHS, OR AS NEEDED FOR PAYOFF OR SALE

Borrower

I, [borrower's name] the borrower (mortgagor), being (entitled to be) registered as owner of an estate in fee simple in possession

Mortgaged Property

, subject to the encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon in all the land described as follows:

(called the "mortgaged property") in return for and on receipt of the sum of DOLLARS (called the "principal sum") lent to me by you [lender's name] the lender (mortgagee), agree to mortgage to you all my estate and interest in the mortgaged property and for better securing to you the lender the repayment in the manner following of the principal and interest and other charges and money hereby secured I, the borrower, hereby mortgage to you, the lender, all my estate and interest in the above lands and covenant with you as follows:

Payment

1. I shall pay to you in Canadian currency the principal sum and interest thereon (together called the "mortgage money") at your head office or such other place as you may designate in writing. The principal sum hereby is the sum of DOLLARS and the rate of interest chargeable thereon is per centum (%) calculated and compounded half-yearly on the day of and on the day of , not in advance, before and after maturity of this mortgage until paid, as follows:

(a) Interest at the mortgage interest rate on the amounts advanced, computed from the respective dates of such advances, shall be due and be paid within one month of the date of the first advance and at following monthly intervals. In addition, at your option, such interest may be deducted from each subsequent advance, and the balance, if any, of the interest on advances shall be due and be paid on the day of 19 , (called the "interest adjustment date").

(b) After the interest adjustment date, the mortgage money at the mortgage interest rate computed from the interest adjustment date shall be paid as follows: by equal monthly instalments of \$ each (which includes principal and interest) on the day of every month in each year beginning the day of , 19 , and ending the day of , 19 . The balance, if any, of the mortgage money shall be due and be paid on the date last mentioned. These monthly instalments are to be applied first on account of interest on principal, secondly on account of interest on unpaid interest, and thirdly on account of principal.

[Insert other payment option clauses when applicable]

Pre-payment privileges

2. (a) If I am not in default under this mortgage, I shall have the privilege of making the following additional payments:

[Insert appropriate pre-payment privileges]

(b) I agree that, when any additional principal payment is made, I shall continue to pay the current monthly instalments (although such monthly instalments may require adjustment where other methods of payment apply) [~~strike if inapplicable~~].

Interest

3. All interest payable under this mortgage shall be calculated on the interest adjustment date, and, after that, half-yearly on the day of , and on the day of , and shall be payable monthly and be a charge on the mortgaged property. I shall pay interest at the mortgage interest rate from day to day on any money unpaid under this mortgage. If I do not pay the interest when due, it shall be added to the principal and bear compound interest at the mortgage interest rate before and after maturity of this mortgage.

Building loan

Optional

4. (a) If the loan secured by this mortgage is a building loan, I shall construct a building or buildings and other improvements on the mortgaged property in accordance with plans and specifications which have been or shall be approved by Canada Mortgage and Housing Corporation and by you. I shall carry on diligently to complete construction of the building or buildings and other improvements.

(b) It is the intention of all parties to this mortgage that the building now erected, being erected or to be erected on the mortgaged property forms part of the security for the full amount of the money secured by this mortgage. Advances on this mortgage are to be made from time to time in accordance with the progress of the building and/or upon its completion and occupation or sale. Neither the execution nor registration of this mortgage nor the advance of part of the money shall bind you to advance the money or any part of it, it being understood that any advance in whole or in part is in your sole discretion.

Taxes and encumbrances

5. As provided in this clause, I shall pay, when due, all taxes, rates, liens, charges, encumbrances or claims which are or may become due against the mortgaged property or on this mortgage or on you in respect of this mortgage.

But with respect to municipal, school and local improvement taxes (called "taxes") chargeable against the mortgaged property:

(a) you may deduct from the final advance an amount sufficient to pay any unpaid taxes which have become or will become payable on or before the day preceding the interest adjustment date;

(b) after the interest adjustment date I shall pay to you in monthly instalments, on the dates on which instalments of principal and interest are payable, sufficient sums, as reasonably estimated by you, to pay all taxes on or before their due date. I shall also pay to you on demand the amount, if any, by which the actual taxes exceed such estimated amount.

(c) You shall allow me credit for interest at not less than the current rate paid by chartered banks or personal savings deposits with chequing privileges, on the minimum monthly credit balances in the mortgage account for payment of taxes. This interest shall be credited to the mortgage account at least once a year. I shall pay interest, at the mortgage interest rate, on any deficiency in tax payments until the deficiency is fully repaid.

You agree to apply such deduction and payments towards the taxes chargeable against the mortgaged property so long as I am not in default under any provision of this mortgage, but nothing in this mortgage shall obligate you to apply such deduction and payments more often than yearly. You may use these deductions, if not previously applied to the taxes, to pay any principal and/or interest in default. I covenant to forward to you the assessment notices (if required), tax bills and other notices affecting the imposition of taxes immediately after they are received by me.

Direct payment of taxes

6. Notwithstanding the provisions of clause 5, you may require that I pay the taxes when due and submit to you receipts for them within 30 days after they become due. The monthly instalment, where necessary, will be adjusted accordingly.

Insurance

7. (a) I shall insure and maintain insurance on all buildings and other improvements on and being constructed on the mortgaged property with a company approved by you until this mortgage is fully repaid. This insurance shall be for the full replacement value of the buildings and other improvements and shall cover loss or damage by fire and such other perils, risks or events as you may at any time require.

(b) I shall deliver to you all policies of insurance and receipts for payments of premiums or, if acceptable to you, certified copies of these policies and receipts.

(c) All these insurance policies shall insure the interests of and name as insured both you and me with loss payable first to you under a mortgage endorsement clause. Subject to the Law of Property Act and the Mortgage Act, I shall do everything that is necessary to enable you to obtain payment of any insurance proceeds. You may use these proceeds in any one or more of the following ways and in any proportion you desire:

(i) towards payment of the mortgage debt whether due or not;

(ii) to pay me;

(iii) to rebuild or repair the mortgaged property.

(d) If I fail to insure and maintain the required insurance or if I fail to carry out any of my other obligations under clause 7, you shall be entitled to insure instead of me and the cost shall be payable by me as part of the "mortgage money".

Buildings, improvements and fixtures

8. (a) All buildings and other improvements, including fixtures and appurtenances (which include built-in appliances such as stoves and washers and are deemed to be fixtures) now on or later located upon the mortgaged property shall form part of the mortgaged property and mortgage security.

Due to keep property in good repair

(b) (i) I will not commit or permit any act of waste on the mortgaged property.

(ii) I shall repair, maintain and restore the mortgaged property until this mortgage has been repaid in full.

(iii) Within the time set out in notice from you, I shall repair, rebuild or reinstate any loss, damage or destruction which occurs to the mortgaged property. If I fail to do so within that time, such failure shall be a breach of this mortgage and the balance owing under this mortgage shall, at your option, be due and payable immediately.

Default

9. Should I default under any covenant, either expressed or implied in this mortgage, after any of the money secured has been advanced, you (or your agent where applicable) may

(a) at my expense have that covenant performed;

(b) enter upon and inspect the mortgaged property to determine its value and condition and have a lawyer examine its title;

(c) enter upon and complete the construction of, repair or put in order any buildings or other improvements on the mortgaged property;

(d) enter upon, inspect, take care of, lease, under such terms, for such periods and at such rents as you deem proper, in whole or in part, and whether in possession or not, collect the rents and profits of the mortgaged property and manage it as you deem proper;

(e) recover by distress upon the mortgaged property or part of it, or by any other means in law available to you, any mortgage money in arrears and unpaid together with all costs and expenses incurred by you;

(f) with or without entering into possession and with or without notice, sell, transfer and convey any part of the mortgaged property on such terms as shall appear to you most advantageous and for such prices as can be reasonably obtained but you shall not be accountable for or charged with any money until actually received. This power of sale may be exercised either before or after the lease referred to in sub-clause (d) and may be subject to that lease;

(g) sell from time to time parts of the mortgaged property to satisfy interest or principal overdue, leaving the balance of the principal to run and be paid with interest at the mortgage interest rate. You may make any stipulations as to title or evidences or commencement of title or otherwise as you deem proper, and may buy in or rescind or vary any contract for sale. On any sale or resale, you shall not be answerable for loss occasioned. For any of these purposes, you may make and execute all agreements and assurances that you deem advisable or necessary;

(h) recover, at your option, the whole of the mortgage money owing;

(i) take advantage of any remedy available in law.

Notice

10. Any notice you must give under clause 9 may be done properly by leaving it with an adult on the mortgaged property if occupied or by securely placing it there if unoccupied, or at your option by publishing it in a newspaper published in the area where the mortgaged property is situated. Such notice is sufficient even though addressed only "To whom it may concern". However, failure to provide or publish such notice or any defect in the notice as given shall not invalidate any sale or purported sale under this mortgage, but only the vendor with respect to the sale shall be responsible for such failure or defect.

Non-merger

11. I further covenant with you as follows:

(a) The obtaining of a judgment by you on any of the covenants contained in this mortgage shall not result in a merger of these covenants.

Partial release

(b) (i) You may at any time release any part of the mortgaged property or any other security or surety for payment of all or any part of the money secured by this mortgage.

(ii) You may release me or any other person from any covenant or other liability to pay the mortgage money in whole or in part, with or without consideration for such release, and without being accountable for its value, or for any money unless actually received by you.

(iii) Notwithstanding any such release, any part of the mortgaged property, security and covenant remaining unreleased shall continue as security for the mortgage money remaining unpaid.

Time extension

(c) No extension of time given by you to me or to anybody claiming under me shall in any way affect your rights against me or any other person liable for payment of the money secured by this mortgage.

Costs and expenses

(d) The following sums are to be secured by this mortgage and shall be a charge on the mortgaged property together with interest at the mortgage interest rate:

(i) all solicitors', inspectors', valuers' and surveyors' fees and expenses for preparing and registering this mortgage, for examining the mortgaged property and its title, and for making or maintaining this mortgage as a first charge on the mortgaged property;

(ii) all amounts which you advance or incur under this mortgage as principal, insurance premiums, taxes or rates, or toward payment of prior liens, charges, encumbrances or claims charged or to be charged against the mortgaged property, on this mortgage or on you in respect of this mortgage;

(iii) all expenses incurred by you in maintaining, repairing, restoring or completing the mortgaged property;

(iv) all fees and expenses incurred by you in inspecting, leasing, managing or improving the mortgaged property, including the price or value of any goods supplied to be used on the mortgaged property;

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- (v) legal costs incurred by you, as between solicitor and client;
- (vi) any sums expended by you in exercising, enforcing or pursuing any right, purpose or remedy under this mortgage or otherwise existing in law.

I shall pay all these sums to you on demand, or if not demanded, with the next instalment, unless provided otherwise in this mortgage. All such sums together with interest at the mortgage interest rate are included in the expression "the mortgage money".

Subrogation (e) If you advance any money under this mortgage which is applied toward the payment of any charge or encumbrance, you shall stand in the position of and be entitled to all the rights and equities of the person so paid, whether or not such charge or encumbrance has been discharged. Your decision as to the validity or amount of any advance or disbursement made under this mortgage or of any claim paid shall be binding on me.

Lender's accounting of money received (f) You shall not be accountable for any money receivable or collectible out of the mortgaged property or otherwise, except for money actually received. All revenue of the mortgaged property received or collected by you from anyone other than myself may, at your option, be used in maintaining, insuring or improving the mortgaged property, or in payment of taxes or other charges against the mortgaged property, or applied on the mortgage debt.

Alterations (g) I shall not make, or permit to be made, any alterations or additions to the mortgaged property without your consent.

Use of property (h) I shall not use the mortgaged property, or permit it to be used, for the purpose of any business, trade or manufacture of any description.

Right to inspect (i) You or your agent (or the agent of Canada Mortgage and Housing Corporation) [*strike if inapplicable*] may, at any time, enter upon the mortgaged property to inspect both the land and buildings.

(j) Any matter in this mortgage pertaining to you shall be sufficiently dealt with or exercised if done, or subsequently ratified, by the manager, acting manager or assistant manager of any of your branch offices in Manitoba, or by your executive officer or any officer or agent appointed by you for such purpose.

Title (k) I have or am entitled to have a good (freehold or leasehold) [*strike in appropriate term*] title to the mortgaged property.

(l) I have the right to mortgage the mortgaged property.

(m) Other than this mortgage, I have done nothing to encumber the mortgaged property.

(n) On default by me, you shall have quiet possession of the mortgaged property, subject only to the encumbrances, liens and interests listed below.

(o) I will execute such other documents pertaining to the mortgaged property as you may require.

Discharge 12. You shall have a reasonable time after payment of the mortgage money in full to provide a discharge of this mortgage, and interest at the mortgage rate shall continue and accrue until actual payment in full has been received by you. I shall pay all legal and other expenses for the preparation and execution of the discharge.

Discrimination 13. I covenant that in the selling or leasing of any house, multiple family dwelling or combination thereof purchased or constructed with money borrowed from you pursuant to the National Housing Act [*strike if inapplicable*], I will not discriminate against any person by reason of conviction for which a pardon has been granted, or of race, colour, religion, national origin, sex or marital status.

National Housing Loan Regulation 14. I acknowledge the procedure described in the National Housing Loan Regulations as the procedure to be followed in determining whether there has been a breach of the covenant contained in clause 13. [*strike if inapplicable*]

