

N.R.C.D. 96

MORTGAGES ACT, 1972

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N.R.C.D. 96 MORTGAGES ACT, 1972(1)

AN ACT to provide for the law relating to mortgages and for related matters.

General Provisions

1. Nature of a mortgage

(1) A mortgage for the purposes of this Act is a contract charging immovable property as security for the due repayment of a debt and the interest accruing on the debt or for the performance of any other obligation for which it is given, in accordance with the terms of the contract.

(2) A mortgage is an encumbrance on the property charged, and does not, except as provided by this Act, operate so as to change the ownership, right to possession or any other interest, whether present or future in the property charged.

(3) A mortgage may be created in an interest in immovable property which is alienable.

2. Act to govern all mortgages

(1) A mortgage of immovable property is only capable of being effected in accordance with this Act, and a transaction which is in substance a mortgage of immovable property, whether expressed as a mortgage, charge, pledge of title documents, outright conveyance, trust for sale on condition, lease, hire-purchase, conditional sale, sale with right of repurchase or in any other manner is, for the purposes of the Act, a mortgage of immovable property and is governed by this Act.

(2) A customary loan transaction in respect of which a farmland is given as security for the loan shall be made in accordance with this Act.2(2)

3. Mortgages evidences by writing

(1) A mortgage is not enforceable unless

- (a) it is evidenced by a writing signed by the mortgagor or by the agent of the mortgagor authorised by the mortgagor in writing to sign, or
- (b) it is excused from the necessity of a writing by the operation of the rules of equity, including the rules relating to fraud, duress, hardship, unconscionability and part performance, or
- (c) it is excused from the necessity of a writing by an enactment, in the case of a customary law transaction.

(2) A writing evidencing a mortgage is, for the purpose of this Act, an instrument which may be registered in accordance with the Land Registry Act, 1962 (Act 122).

(3) A registrar empowered to register instruments in accordance with the Land Registry Act, 1962 (Act 122) may, in addition to a power given by that Act, refuse to register a writing evidencing a mortgage unless the writing

- (a) states the name and address of each mortgagor and each mortgagee,
- (b) states the nature of the mortgagor's interest in the property which is mortgaged and the extent to which that interest is subject to the mortgage,
- (c) identifies the mortgaged property by reference to its location and boundaries (which may be by reference to an official plan) or to a previously registered writing describing that property, and
- (d) where the mortgage secures the payment of money, states the date on which payment is due and states the principal sum of money lent or to be lent, or if the sum of money to be lent is indeterminate the writing so states, and if further advances are to be made and secured by the mortgage the writing so states.

(4) A writing evidencing the transfer or encumbrance of a mortgage or an interest in a mortgage is, for the purposes of this Act, an instrument which may be registered in accordance with the Land Registry Act, 1962 (Act 122).

(5) A writing evidencing a discharge of a mortgage or a part of a mortgage in accordance with section 22 of this Act is, for the purposes of this Act, an instrument which may be registered in accordance with the Land Registry Act, 1962 (Act 122), which writing shall be registered without the payment of stamp duty.

Effect of a Mortgage

4. Extent of mortgaged property

(1) A mortgage is effectual to create a charge on the interests and rights which the mortgagor has in the property mortgaged, or which the mortgagor enjoys as an incident of the interest in the mortgaged property.

(2) Subsection (1) applies only if and as far as a contrary intention does not appear expressly or by necessary implication, and has effect subject to the mortgage.

5. Acts secured by mortgage

Unless a contrary intention appears expressly, a mortgage is security only for the performance of the act provided in the mortgage and not for a performance promised in a past or future contract.

6. Personal liability of mortgagor

Unless a contrary intention appears expressly or by necessary implication, the mortgagor is personally liable as well as liable on the mortgage security, for the performance of the act secured by the mortgage.

7. Mortgage to more than one person

(1) Unless a contrary intention appears expressly or by necessary implication, a mortgage made to two or more mortgagees or transferred to two or more transferees or securing performance to two or more obligees is, for the purposes of this Act, as against the mortgagor or obligor or a person deriving an

interest through the mortgagor or obligor and without prejudice to the rights of the mortgagees, transferees or obligees among themselves, made to the mortgagees or transferred to the transferees or secured to the obligees as joint holders with the right of survivorship.

(2) Subsection (1) applies despite a notice to the mortgagor or obligor or person deriving an interest through either or both of them of a severance of the joint holding after the mortgage.

8. Implied covenants on creation of mortgage

Unless a contrary intention appears expressly or by necessary implication

- (a) there shall be implied the covenants relating to the right to mortgage, quiet enjoyment, freedom from encumbrances, further assurance, maintenance, repairs and protection of the mortgage security in the terms set out in Part One of the First Schedule, and
- (b) where the mortgaged property includes a leasehold as to that leasehold there shall be implied the further covenants relating to validity and past and future observance of the lease in the terms set out in Part Two of the First Schedule.

9. Implied covenants joint and several

Unless a contrary intention appears expressly or by necessary implication, in a mortgage or transfer of a mortgage

- (a) where two or more persons are expressed to mortgage or transfer or to join as covenanters, an implied covenant on their part shall be deemed to be a joint and several covenant by them; and
- (b) where there are two or more mortgages, or transferees an implied covenant with them shall be deemed to be a covenant with them jointly unless the performance secured by the mortgage is secured to them in shares or distinct sums of money in which case the implied covenant shall be deemed to be a covenant with each in respect of the share or distinct sum secured to the mortgagor.

10. Right to title documents

(1) Unless a contrary intention appears expressly or by necessary implication,

- (a) as against the mortgagor the prior mortgagee is entitled to possession of the mortgagor's title documents which relate exclusively to the mortgaged property;
- (b) where during the life of the mortgage the mortgagor becomes entitled to possess a title document relating exclusively to the mortgaged property the mortgagor shall deliver that document to the then prior mortgagee.

(2) A mortgagee having possession of a mortgagor's title documents

- (a) shall keep them whole, uncanceled and undefaced and is liable in an action for damages for a wilful or negligent failure to do so, and
- (b) shall deliver them on timely performance of the act secured by the mortgage or on redemption to the then prior mortgagee, and if there is no mortgagee then to the mortgagor or person succeeding to title through the mortgagor.

(3) Where the mortgagee has possession of the title documents, the mortgagor at a reasonable time, on the request and at the expense of the mortgagee is entitled in person or through an agent to inspect and

make copies or extracts from those documents.

11. Insurance

- (1) Both the mortgagor and the mortgagee have an insurable interest in the mortgaged property.
- (2) Unless a contrary intention appears expressly or by necessary implication,
 - (a) where the mortgagor has covenanted to insure all or a part of the mortgaged property and fails to do so as required by the terms of the mortgage, the mortgagee is entitled, after giving notice in writing to the mortgagor, to insure and keep insured the mortgaged property against loss or damage by theft, fire, earthquake or any other natural disaster; and
 - (b) the premiums paid by the mortgagee for the insurance shall be secured with the same priority as the mortgage and, where the mortgage secures payment of money, shall be added to the principal sum of money with interest at the same rate as on the principal sum of money.
- (3) Unless a contrary intention appears expressly or by necessary implication, where the mortgagor has covenanted to insure all or a part of the mortgaged property and the insurance has been effected by the mortgagor, or on behalf of the mortgagor by the mortgagee, the money received on the insurance shall be applied in making good the loss or damage in respect of which the money is received unless the mortgagor elects to apply all or a part of it toward the performance of the act secured by the mortgage.

12. Transfer by mortgagor

- (1) Unless a contrary intention appears expressly or by necessary implication, a mortgagor may transfer all or a part of the mortgagor's interest in the mortgaged property without the concurrence of the mortgagee.
- (2) The transfer of all or a part of the mortgagor's interest in the mortgaged property does not relieve the mortgagor of personal liability on a covenant in the mortgage.
- (3) In a transfer of a mortgage from a mortgagor for valuable consideration, unless a contrary intention appears expressly or by necessary implication, the transferee shall be deemed to have covenanted to indemnify the mortgagor's personal liability on a covenant in the mortgage.
- (4) Unless a contrary intention appears expressly or by necessary implication, it is implied that the mortgagor covenants to give notice to the mortgagee of a transfer of all or a part of the mortgagor's interest in the mortgaged property by the mortgagor subsequent to the mortgage; but despite a provision to the contrary, failure to give the notice does not invalidate the transfer.
- (5) In this section, a transfer includes a sale, lease, encumbrance or any other disposition.

13. Transfer by mortgagee

- (1) A mortgagee may transfer all or a part of the mortgagee's interest in the mortgage without the concurrence of the mortgagor, but the transfer is void if it purports to make a disposition of the mortgagee's interest in the mortgaged property without making the same disposition of the right to performance of the act secured by the mortgage.
- (2) Unless a contrary intention appears expressly or by necessary implication, a transfer of a mortgage by a mortgagee operates to transfer the entire interest of the mortgagee to the transferee, including,
 - (a) the right to demand, sue for, recover and give receipts for performance of the act secured by the mortgage, and the performance then due or later becoming due, and

- (b) the benefit of the securities for performance and the collateral securities and the benefit of and right to sue on the covenants with the mortgagee and the right to exercise the powers of the mortgagee.

(3) In this section, a transfer includes a sale, lease encumbrance or any other disposition.

14. Illegal, void and voidable transactions

(1) Where the performance of an act secured by the mortgage is illegal, or derives from a contract which is illegal, the mortgage is not, to that extent, enforceable, but a court may order the return of the title documents or the removal of a clog on the title to the mortgaged property.

(2) Where the performance of an act secured by the mortgage derives from a contract which is void or voidable at the mortgagor's option, the mortgage is not, to that extent, enforceable but a court may order restitution as a condition to the return of the title documents or the removal of a clog on the title to the mortgaged property.

15. Remedies of mortgagee on default

On the failure of performance of an act secured by the mortgage the mortgagee may

- (a) sue the mortgagor or obligor or both of them on a personal covenant to perform, or
- (b) realise the mortgagee's security in the mortgaged property in all or any of the ways provided in this Act and in no other despite a provision to the contrary in the mortgage.

16. Appointment of receiver on default

(1) On the failure of performance of an act secured by the mortgage, the mortgagee may apply to the Court for the appointment of a receiver, and where it is satisfied that grounds do exist for the appointment of a receiver, the Court shall appoint a receiver.

(2) The Court may empower a receiver appointed under subsection (1)

- (a) to take possession of the mortgaged property,
- (b) to collect by demand, action in the name of the mortgagor or mortgagee, or otherwise the income including arrears accruing from the mortgaged property,
- (c) to give valid receipts for the income collected, and
- (d) to do any other act necessary or proper to manage the property including the making of repairs and improvements, but a repair or improvement does not bind the mortgagor, the mortgagee or the property until approved by the Court.

(3) A receiver appointed under subsection (1) is liable to account when so ordered by the Court.

(4) A receiver appointed under subsection (1) is entitled to retain out of money received for the receiver's remuneration, and in satisfaction of the costs, charges and expenses incurred as receiver, a fee or commission at the rate determined by the Court.

(5) Unless otherwise directed by the Court, a receiver appointed under subsection (1) shall apply the income received from the property,

- (a) first, in discharge of the rents, taxes, rates and any other required outgoing affecting the mortgaged property,

- (b) secondly, in payment of the annual sums of money or any other payments, and the interest on the principal sums due, and having priority to the mortgage in right of the receivership,
- (c) thirdly, in payment of the fee or commission of the receiver and of the premiums of insurance payable in accordance with the mortgage and the cost of effecting the necessary repairs,
- (d) fourthly, in the payment of the interest accruing due in respect of a principal money due under the mortgage,
- (e) fifthly, in or towards the discharge of a principal money due under the mortgage,

and shall pay the residual to the person who, but for the possession of the receiver, would have been entitled to receive the income or who is otherwise entitled to the mortgaged property.

(6) A provision in a mortgage authorising the appointment of a receiver on the failure of performance of an act secured by the mortgage other than as provided in this section is void.

17. Mortgagee in possession

(1) On the failure of performance of an act secured by the mortgage, the mortgagee is entitled, as against the mortgagor and a person deriving an interest in the mortgaged property through the mortgagor whose interest is subsequent to that of the mortgagee, to possession of the mortgaged property, but in the case of default in the payment of principal or interest secured by the mortgage, the mortgagee's right to possession may be exercised only after thirty days' notice in writing to the mortgagor or a longer period, as provided by the mortgage.

(2) A mortgagee entitled to possession under this section is entitled

- (a) to enter and take possession of the mortgaged property if that may be done peacefully, or
- (b) to assert the right to possession by an action of possession.

(3) A mortgagee in possession liable to account to the mortgagor for the income, whether in cash or in kind, derived from the mortgaged property which the mortgagee has received or without wilful default might have received from the time of taking possession, and to pay over to the mortgagor the excess on the amounts due on the mortgage.

(4) In accounting under this section the mortgagee in possession

- (a) is liable for a failure to be diligent in realising a sum of money due to the mortgagee from the mortgaged property;
- (b) is liable at the fair market value for the occupational rent if the mortgagee occupies all or a part of the mortgaged property;
- (c) is liable for an unreasonable injury to or neglect of the mortgaged property caused by the wilful or negligent act or omission of the mortgagee; and
- (d) is not entitled to compensation for personally managing the mortgaged property.

(5) In accounting under this section the mortgagee in possession shall be allowed the cost of the reasonable repairs or improvements made to protect the value of the mortgaged property or to maintain or increase the income from the mortgaged property.

(6) To the extent that the sums of money involved under subsection (5) exceed the income from the mortgaged property they shall be secured with the same priority as the mortgage and where the mortgage

secures the payment of money shall be added to the principal sum of money with interest at the same rate as on the principal sum.

(7) A mortgagee in possession may, from the date of the possession, collect by action or otherwise the income from the mortgaged property, including arrears to which the mortgagee would have been entitled had the mortgagee owned the mortgaged property since the date of the mortgage.

(8) A mortgagee in possession, unless the mortgagee otherwise agrees, is not bound by a lease, profit or licence entered into by the mortgagor subsequent to the mortgage unless the tenant, profit holder or licensee took the interest as a purchaser for value without notice of the mortgage.

(9) A mortgagee in possession is entitled to transfer all or a part of the interest in the mortgaged property, including the right to possession, as provided in section 13.

18. Judicial sale

(1) On the failure of performance of an act secured by the mortgage, the mortgagee may apply to the Court for an order for the judicial sale of the mortgaged property, and on being satisfied as to the existence of grounds for the application, the Court shall, on the conditions that it considers just and equitable, grant an order for judicial sale of all or a part of the mortgaged property.

(2) In considering what conditions to attach to an order for judicial sale the Court shall consider what opportunity the mortgagee has afforded to the mortgagor or obligor or both of them to remedy the failure of performance.

(3) A judicial sale ordered under this section shall be by public auction, unless the mortgagor and the encumbrancers subsequent to the mortgagee requesting the judicial sale and of whom the mortgagor has notice at the time of the sale, agree to a private sale and the terms of the sale are approved by the Court.

(4) Prior to a judicial sale ordered under this section, the mortgagee requesting the judicial sale shall give reasonable notice of the sale to the mortgagor and every encumbrancer of whom the mortgagee has notice.

(5) Failure to give that reasonable notice shall not affect the judicial sale but shall render the mortgagee personally liable for the loss caused by the failure.

(6) The mortgagor or an encumbrancer, including the mortgagee who requested the judicial sale and a mortgagee prior or subsequent to the first-mentioned mortgagee, is not precluded from purchasing the mortgaged property at a judicial sale ordered under this section.

(7) A purchase under subsection (6) by the mortgagee who requested the judicial sale or the nominee of that mortgagee shall not take effect unless approved by the Court.

(8) The Court ordering the judicial sale

(a) may make an order for a conveyance, or a vesting order, proper for giving effect to the sale, and

(b) may authorise the Registrar or any other officer of the Court to execute, on behalf of the mortgagor and the mortgagee who requested the judicial sale, a conveyance granting the interests of the mortgagor and mortgagee in the mortgaged property to the purchaser at the judicial sale.

(9) The purchaser at a judicial sale ordered under this section shall take title to the mortgaged property free of the interests to which the mortgage of the mortgagee who requested the judicial sale has priority, and free of that mortgage, but subject to the interests which have priority to that mortgage, and is entitled

as against any other person to the title documents relating exclusively to the mortgaged property other than those title documents held by a person with an interest having priority to the mortgage of the mortgagee who requested the judicial sale.

(10) Despite a provision to the contrary in the mortgage, a judicial sale ordered under this section shall be the only manner in which a mortgagee may foreclose rights to redeem the mortgaged property.

(11) The proceeds from a judicial sale ordered under this section shall, as the Court directs, be deposited in the Court for distribution as ordered by the Court or shall be held in trust for distribution by the mortgagee who requested the judicial sale.

(12) Proceeds from a judicial sale shall be distributed

- (a) first, in payment of the expenses properly incurred as incident to the judicial sale or a prior attempted judicial sale,
- (b) secondly, in payment of the sums of money secured by the mortgage or with the same priority as the mortgage,
- (c) thirdly, in payment in the order of priority of the encumbrances subsequent to that of the mortgagee who requested the judicial sale, and
- (d) fourthly, the residue to the mortgagor or the successors in interest of the mortgagor.

(13) Where a mortgagee holding in trust for distribution proceeds from a judicial sale, ordered under this section is in doubt as to the proper distribution of all or a part of those proceeds, the mortgagee may apply to the Court for direction and may if the Court so orders deposit the proceeds in the Court.

(14) The title of a purchaser at a judicial sale ordered under this section is not impeachable on the grounds that the order for the judicial sale was improperly or irregularly ordered.

(15) A sale ordered by the Court under this section shall not take place until the expiration of thirty days after the date of the order.

19. Priorities

(1) Except as otherwise provided by this Act, or any other enactment or by express agreement among encumbrancers, priorities among encumbrances shall be in order of time, the first encumbrance in time having priority, subject to the operation of the rules of equity including the rules concerning fraud, estoppel for gross negligence or otherwise, purchasers for valuable consideration without notice of prior interests and the priority of legal over equitable interests where equities are equal.

(2) For the purposes of this section, including application of the rules of equity,

- (a) notice may be actual or constructive; and
- (b) a purchaser has constructive notice of a fact which would have been disclosed by a reasonable inquiry as to
 - (i) the possession and contents of title documents,
 - (ii) the title to the property back to a good root of title more than twenty years old, and
 - (iii) the rights of a person occupying the property.

(3) In determining priority among mortgages tacking shall not be allowed, but a mortgage expressed to secure further advances shall have priority to the full extent of the advances secured over a subsequent encumbrancer, unless that encumbrancer was a purchaser for valuable consideration without notice of the

prior mortgage.

(4) In determining priorities among encumbrances, encumbrances shall not be consolidated so that a mortgagor seeking to redeem any one mortgage is entitled to do so without performing an act secured by a separate mortgage made by the mortgagor or by a person through whom the mortgagor claims, solely on the property mortgaged by the mortgage which the mortgagor seeks to redeem.

(5) In determining the incidence of obligations secured by a mortgage the rules of equity relating to contribution, exoneration and marshalling shall apply.

20. Methods of redemption

(1) A person entitled to redeem a mortgaged property may redeem that property by

- (a) performing the acts secured by the mortgage which have yet to be performed, and
- (b) compensating the mortgagee by payment of interest, costs and any other expenses due in respect of the failure to have timely performance of the acts secured by the mortgage.

(2) A tender of performance and compensation sufficient to redeem the mortgaged property shall, if refused by the mortgagee, have the effect of relieving the person offering to redeem from an obligation to pay compensation for a further delay in performance of the acts secured by the mortgage.

(3) Redemption may, but need not be, by an action for redemption.

21. Judicial sale in lieu of redemption

A person entitled to redeem mortgaged property may have an order for judicial sale instead of an order for redemption in an action brought by that person for redemption alone, or for judicial sale alone or for judicial sale or redemption in the alternative.

22. Written discharge

(1) A mortgagee shall be redeemed on acceptance of a tender of performance and compensation under section 20 or on an order for redemption, but a person who redeems is entitled to require the mortgagee to issue a written discharge.

(2) Where a written discharge is issued to a person other than the mortgagor or the successor to the entire interest in the mortgaged property, it shall operate as a transfer of the mortgagee's interest in the mortgage.

(3) In a written discharge given under this section the same covenants shall be implied as if the person who executes the discharge had been expressed to transfer as mortgagee subject to an interest prior to the mortgage.

Miscellaneous

23. Model precedents

Instruments in the form of the model precedents contained in the Second Schedule, or in similar form or using expressions to a similar effect are sufficient, in regard to form and expression.

24. Interpretation

(1) In this Act, unless the context otherwise requires,

“**court**” means a court of competent jurisdiction;

“**encumbrance**” includes a mortgage, a lien and a charge;

“**encumbrancer**” includes a person entitled to the benefit of an encumbrance;

“**mortgagee**” includes a person from time to time deriving title through the original mortgagee;

“**mortgagor**” includes a person from time to time deriving title through the original mortgagor or entitled to redeem a mortgage according to the interest in the mortgaged property;

“**purchaser**” includes a purchaser in good faith for valuable consideration and a lessee or mortgagee who acquires an interest for valuable consideration.

(2) In this Act, unless the context otherwise requires,

(a) a reference to a prior mortgage or encumbrance is a reference to one that ranks in priority above another mortgage or encumbrance on the same property;

(b) a reference to a subsequent mortgage or encumbrance is a reference to one that ranks in priority below another mortgage or encumbrance on the same property.

25. Application

This Act applies to a mortgage created after the commencement of this Act.

26. Commencement

This Act shall come into force on the 1st day of January, 1973.

SCHEDULES

First Schedule IMPLIED COVENANTS

[Section 8]

PART ONE IMPLIED COVENANTS BY MORTGAGOR

There shall be implied the following covenants by the mortgagor:

1. That the mortgagor alone, or with the consent or concurrence of the other persons whose consent or concurrence is required, has full power to mortgage the property expressed to be mortgaged by the mortgagor in the manner in which it is expressed to be mortgaged.

2. That if either or both the mortgagee and persons deriving title through the mortgagee lawfully enter into possession of the mortgaged property, the mortgagor and every person concurring in the mortgage by the direction of the mortgagor and every person deriving title through the mortgagor, other than a person having an interest to which the mortgage is expressly made subject, shall not interfere with, interrupt or disturb the lawful possession of the person in possession.

3. That the mortgaged property is freed and discharged from or otherwise by the mortgagor

sufficiently indemnified against the interests, encumbrances, claims and demands whatsoever, other than those to which the mortgage is expressly made subject.

4. That the mortgagor and every person concurring in the mortgage by the direction of the mortgagor and every person deriving title through any of them, and every other person having or rightfully claiming an interest in the mortgaged property other than an interest to which the mortgage is expressly made subject, will from time to time and on the request of the mortgagee or a person deriving title through the mortgage, execute and do the lawful assurances and things for further or more perfectly assuring the title to the security interest as that person may reasonably request, the expenses in respect of this covenant to be borne by the mortgagor during the life of the mortgage and after that by the person making the request.

5. That the mortgagor and every person deriving an interest through the mortgagor, other than a person having an interest to which the mortgage is expressly made subject, will during the life of the mortgage preserve, protect, repair and maintain the mortgaged property so as not to diminish its value below what is reasonably required as security for the performance of an act secured by the mortgage but which has yet to be performed.

PART TWO IMPLIED COVENANTS BY MORTGAGOR OF LEASEHOLD PROPERTY

There shall be implied the following covenants by the mortgagor:

1. That the lease is at the date of the mortgage a good, valid and effectual lease of the mortgaged property and is in full force, unforfeited and unsurrendered, and has not become void or voidable.

2. That the rents reserved by, and the covenants, conditions and agreements contained in the lease and to be paid, observed or performed by the mortgagor and persons deriving title through the mortgagor have been paid, observed and performed up to the time of the mortgage.

3. That the mortgagor, or the person deriving title through the mortgagor, will during the continuance in force of the mortgage pay, observe and perform or cause to be paid, observed and performed, the rents reserved by the lease and the covenants, conditions and agreements contained in the lease, which the mortgagor or the person deriving title are bound to pay, observe and perform.

Second Schedule MODEL PRECEDENTS [Section 23]

FORM ONE FORM OF MORTGAGE

THIS MORTGAGE is made on the 1st day of January, 1974 between the mortgagor JOHN MENSAH of 1, Adabraka Road, Accra in the Eastern Region and the mortgagee PHILIP ARCHER of Cantonments Hill, Accra.

1. By a conveyance made on the 1st day of June, 1965 between James Bruce of Accra and the mortgagor (registered number 6543/65) the property known as James Fort, Accra (hereinafter called "the property") was conveyed to the mortgagor for ever.

2. In consideration of the sum of five thousand cedis (¢5,000) now paid by the mortgagee to the mortgagor (receipt of which the mortgagor hereby acknowledges,), the mortgagor covenants with the mortgagee to pay [*here state the terms for repayment of principal and interest*].

3. The mortgagor hereby mortgages the property to the mortgagee to secure payment of the principal money, interest and other money hereby covenanted to be paid by the mortgagor.

4. [*Add covenant to insure buildings and any other provisions desired*]

5. The property consists of a house and land bounded [*description of boundaries*] and is indicated by the colour red on the plan attached to the conveyance which shows the relevant measurements.

.....
Signed by JOHN MENSAH

In the presence of:

.....
Signed by PHILIP ARCHER

In the presence of:

FORM TWO
FORM OF TRANSFER OF MORTGAGE

THIS TRANSFER OF MORTGAGE is made on the 1st day of June, 1974 between the transferor PHILIP ARCHER of Cantonments Hill, Accra in the Eastern Region and the transferee WILLIAM ARCHER of 99, Marine Driver, Accra.

1. This transfer is supplemental to a mortgage made on the 1st day of January, 1974 between John Mensah of Accra and the transferor (registered number 100/74) on the property known as James Fort, Accra.

2. In consideration of the sums of four thousand cedis and five hundred cedis now paid by the transferee to the transferor, being the respective amounts of the principal money and interest now owing in respect of the mortgage (the receipt of which sums the transferor hereby acknowledges), the transferor hereby transfers to the transferee the benefit of the mortgage and all the rights under the mortgage.

.....
Signed by PHILIP ARCHER

In the presence of:

.....
Signed by WILLIAM ARCHER

In the presence of:

**FORM THREE
FORM OF DISCHARGE OF MORTGAGE**

THIS DISCHARGE OF MORTGAGE is made on the 1st day of January, 1980 by **WILLIAM ARCHER OF 99, Marine Drive, Accra in the Eastern Region.**

1. This discharge is supplemental to a mortgage made on the 1st day of January, 1974 between John Mensah of Accra and Philip Archer of Accra (registered number 100/74) on the property known as James Fort, Accra and to a transfer of the mortgage made on the 1st day of June, 1974 between Philip Archer and myself (registered number 250/74).

2. I, William Archer of Accra hereby acknowledge that I have this 1st day of January, 1980 received the sum of one hundred cedis (¢100) representing the balance remaining owing in respect of the principal money secured by the mortgage together with the interest and costs.

3. The property is accordingly discharged from the mortgage.

.....
Signed by WILLIAM ARCHER

In the presence of:

Endnotes

1 (Popup - Footnote)

1. This Act was issued as the Mortgages Decree, 1972 ([N.R.C.D. 96](#)) made on the 4th day of August, 1972 and notified in the *Gazette* on 18th August, 1972.

2 (Popup - Footnote)

2. [Subsection \(2\)](#) is an amendment effected by the Mortgages (Amendment) Decree, 1979 (A.F.R.C.D. 37) made on the 19th day of September 1979, and notified in the *Gazette* on 21st September, 1979. The Decree also provided that,

“2. Where at the commencement of this Decree any agricultural farmland stands as security for a loan under any customary loan transaction whether or not recorded in writing, such transaction shall forthwith be and is hereby converted into a mortgage under the Mortgages Decree, 1972 ([N.R.C.D. 96](#)) and accordingly all the provisions of that Decree shall apply to such transaction as far as may be necessary.”