



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **REAL PROPERTY ACT**

## PLEASE NOTE

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## REAL PROPERTY ACT

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## REAL PROPERTY ACT

### CHAPTER R-3

#### PART I — GENERAL PROVISIONS

##### 1. Deed or instrument of release of a freehold estate, effect of

- (1) Every deed or instrument of release of a freehold estate or deed or instrument purporting or intended to be a deed or instrument of release of a freehold estate, is as effectual for the purpose therein expressed, and operates in all respects both at law and in equity, as if the releasing party who has executed it, had also executed in due form, a deed or instrument of bargain and sale, or lease for a year, for giving effect to the release, although no such deed or instrument of bargain and sale or lease for a year, is executed.

##### "Freehold" defined

- (2) In this section the word "freehold" has not only its usual signification, but extends to all lands and hereditaments for the conveyance of which a bargain and sale, or lease for a year, as well as a release, would formerly have been used. *R.S.P.E.I. 1974, Cap. R-4, s.1.*

##### 2. Bonds, recognizances & warrants of attorney given as payment of debts to Crown, operate as lien

All bonds, recognizances, and warrants of attorney, given for the payment of moneys, debts, or dues to Her Majesty, operate as a charge upon all lands, tenements and hereditaments, of or to which any person entering into giving or executing them, at the date thereof, or at any time afterwards, until the amount secured is fully paid, is seised, possessed or entitled, for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder or expectancy or over which such person, at the time of giving the bond, recognizance or warrant of attorney, as the case may be, or at any time afterwards while it remains unsatisfied, has any disposing power which he might, without the assent of any other person, exercise for his own benefit; and is binding as against the person so giving or executing them, and against all persons claiming under him after the date thereof; and is also binding as against the issue of his body, and all other persons, whom he might, without the consent of any other person cut off and debar from any remainder, reversion or other interest, in or out of any of the said lands, tenements and hereditaments, as fully and effectually, to all intents and purposes, as if judgment had been recovered, and stood against such person at the suit of Her Majesty in the Supreme Court, and any judgment recovered or entered upon any such recognizance, bond, or warrant of attorney, shall be deemed, so far as to charge the lands, tenements, and hereditaments and render them available to be taken and sold under execution, to be issued for that purpose to relate back to the date of the bond, recognizance or warrant of attorney, as the case may be, on which they may be entered. *R.S.P.E.I. 1974, Cap. R-4, s.2.*

**3. Alienage of former owner, effect on title**

No title to real estate shall be invalid on account of the alienage of any former owner or holder thereof. *R.S.P.E.I. 1974, Cap. R-4, s.6.*

**4. Corporeal tenements & hereditaments**

All corporeal tenements and hereditaments, shall, as regards the conveyance of the immediate freehold thereof, be deemed to have lien and lie in grant as well as in livery. *R.S.P.E.I. 1974, Cap. R-4, s.7.*

**5. Deed required, where**

A feoffment shall be void at law, unless evidenced by deed; and a partition and an exchange of any tenements or hereditaments, and a lease required by law to be in writing, of any tenements or hereditaments, shall be void at law unless made by deed. *R.S.P.E.I. 1974, Cap. R-4, s.8.*

**6. "Give" and "grant" defined**

A feoffment shall not have any tortious operation, and an exchange or partition of any tenements or hereditaments made by deed shall not imply any condition in law, and the word "give", or the word "grant" in a deed, shall not imply any covenant in law, in respect of any tenements, except so far as the word "give", or the word "grant", may, by force of any statute. *R.S.P.E.I. 1974, Cap. R-4, s.9.*

**7. Indentures, taker not a named party, & effect of no indentation**

Under an indenture, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments may be taken, although the taker thereof is not named a party to the indenture, and a deed purporting to be an indenture, shall have the effect of an indenture although not actually indented. *R.S.P.E.I. 1974, Cap. R-4, s.10.*

**8. Contingent executory or future interest, disposition by deed**

A contingent, an executory and a future interest, and a possibility, coupled with an interest in any tenements or hereditaments of any tenure, whether the object of the gift, or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon, any tenements or hereditaments of any tenure, may be disposed of by deed, but no such disposition shall by force only of this section defeat or enlarge an estate tail. *R.S.P.E.I. 1974, Cap. R-4, s.11.*

**9. Reversion expectant surrendered or merges the estate**

When the reversion expectant on a lease of any tenements or hereditaments of any tenure is surrendered, or merges the estate, which for the time being confers as against the tenant under the same lease the next vested right to the same tenements or hereditaments, shall to the extent and for the purpose of preserving such incidents to and obligations on the same reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the same lease. *R.S.P.E.I. 1974, Cap. R-4, s.12.*





**10. Contingent remainder deemed a springing or shifting use**

Every contingent remainder created by an instrument executed after October 2, 1939, or by any will or codicil revived or republished by any will or codicil executed after that date in tenements or hereditaments of any tenure, which would have been valid as a springing or shifting use or executory devise or other limitation had it not had a sufficient estate to support it as a contingent remainder, in the event of the particular estate determining before the contingent remainder vests, shall be, and if created before October 2, 1939, shall be deemed to have been, capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other executory limitation. *R.S.P.E.I. 1974, Cap. R-4, s.13.*

**11. Merging term of years with reversion or remainder**

- (1) A tenant of land for any term of years the unexpired portion whereof is not less than one hundred and fifty years may apply to the Supreme Court of Prince Edward Island for an order for the merger with such term of years of any reversion or remainder expectant thereon or thereafter.

**Fixing value of reversion or remainder**

- (2) Upon such application, after notice to the reversioner or remainderman, whether known or not known, by personal service or publication or otherwise, in such manner as the court shall direct and to such other persons as the court may direct, the court may make an order fixing the present value of such reversion or remainder.

**Order to convey reversion or remainder to tenant**

- (3) If the reversioner or remainderman fails to execute a proper deed and assurance of such reversion or remainder to the tenant within a reasonable time after the fixing of the value thereof as aforesaid, the court may, upon payment into court of the amount so fixed, make a further order or decree directing the Prothonotary to convey and assure any such remainder or reversion to the tenant.

**Costs**

- (4) The court may make such order as it considers just for the payment of the costs of such an application. *R.S.P.E.I. 1974, Cap. R-4, s.14.*

**12. Death of party liable to perform contract, performance by personal representative**

- (1) If any person who died before October 2, 1939, was at the time of his death liable to perform any contract for the sale and conveyance of any real property, the Supreme Court of Prince Edward Island, on the application of his personal representative without notice to any other person, or on the application of the purchaser after notice to the personal representative, may declare the personal representative trustee thereof, so far as is necessary for performing such contract; and thereupon the personal representative may execute the necessary conveyances for the performance of the contract and shall hold the purchase money as assets of the estate in the same manner as if the conveyance had been made and the consideration received in the lifetime of the deceased.

**Idem**

- (2) If any person who died on or after October 2, 1939 was at the time of his death liable to perform any contract for the sale and conveyance of any real property, his personal representative may execute the necessary conveyance for the performance of such contract, and the conveyance by the personal representative shall vest in the purchaser the title estate

and interest of the deceased in and to the real property, unless the concurrence of other parties is required by the terms of the agreement or by the will of the deceased.

**Death of mortgagee, release of debt etc. by personal representative**

- (3) In the case of the death as well before as on or after October 2, 1939 of any person entitled to any freehold land by way of mortgage, his personal representative may convey, assign, release or discharge the mortgage debt and the estate in the land held by the deceased mortgagee or any portion thereof, or may sign, execute and deliver a proper certificate of payment and satisfaction of the mortgage; and such conveyance, assignment, release or discharge, or certificate of payment and satisfaction, shall be as effectual for all purposes as if the same had been made or executed by the deceased mortgagee in his lifetime. *R.S.P.E.I. 1974, Cap. R-4, s.15; 1974(2nd), c.65, s.3.*

**13. Conveyance to oneself jointly with another**

- (1) Any property may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person, and in like manner may be conveyed or assigned by a spouse to his or her spouse alone or jointly with another person.

**Conveying to oneself**

- (2) A person may convey property to or vest property in himself in like manner as he could have conveyed such property to or vested such property in another person.

**Conveyance by two or more to one of them**

- (3) Two or more persons, whether or not they are trustees or personal representatives, may convey and shall be deemed always to have been capable of conveying any property vested in them to any one or more of themselves in like manner as they could have conveyed the property to a third party; but if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

**Application of section**

- (4) This section, where applicable, applies to all conveyances executed since October 2, 1939. *R.S.P.E.I. 1974, Cap. R-4, s.16; 2008,c.8,s.23(2).*

## PART II — ESTATES TAIL

**14. Tenant in tail, effect of deed**

- (1) A deed in due form of law made and executed, of any lands, tenements or hereditaments, by any tenant in tail, and proved or acknowledged in the manner provided by the *Registry Act* R.S.P.E.I. 1988, Cap. R-10, to all intents and purposes, is as effectual and valid in law, to pass all estate, right, title, interest and claim of the party to the deed in or to the lands, tenements and hereditaments, and to defeat, extinguish, cut off and destroy all estates tail, remainders and reversions, touching and concerning the lands, tenements and hereditaments, as if the party so granting or conveying had levied a fine with proclamations, or suffered a common recovery of the lands, tenements, and hereditaments, according to the laws of England formerly in force, duly levied in the Court of Common Pleas at Westminster, with deeds properly executed to lead the uses, or declare the uses of the fine or recovery of lands, tenements, and hereditaments lying and being in England.



**Equitable and legal estates**

- (2) This section shall extend and apply to equitable as well as legal estates in land.

**Creation of estate tail avoided, where**

- (3) Lands to be sold, whether freehold or leasehold or of any other tenure, where the money arising from the sale thereof is subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money, or investments or personal property to be converted into money, subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall for all the purposes of this section be treated as the lands to be purchased and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to. *R.S.P.E.I. 1974, Cap. R-4, s.17.*

**15. Registration required to effect deed**

No deed or instrument, executed as aforesaid, shall have any force or effect, excepting against the party granting it, until it is duly registered as provided in the *Registry Act. R.S.P.E.I. 1974, Cap. R-4, s.18.*

**16. Leases of land made by indenture, effect of**

All leases of any lands, tenements and hereditaments made by indenture under seal, for any term of years, by any persons, being of the full age of eighteen years, held in fee tail in their own right shall be good and effectual in law against the lessors, their heirs and successors, and every of them, according to such estate as is comprised and specified in every such indenture of lease, in like manner and form as it should have been if the lessors thereof, and every of them, at the time of the making of the leases, had been lawfully seized of the lands, tenements and hereditaments in the indenture, of a good, perfect and pure estate of fee simple thereof to their only uses. *R.S.P.E.I. 1974, Cap. R-4, s.19.*

**17. Maximum term of lease, 999 years**

- (1) Section 16 does not extend to any lease made of any lands, tenements, and hereditaments, above the number of nine hundred and ninety-nine years, and which is not made by indenture of lease, mutually executed by all the parties thereto, and at the best and highest rent that can be, at the time of making the lease, obtained for the same, and which shall be so expressed in the indenture of lease.

**Remedy of reversioner upon death of lessor against lessees**

- (2) Every person, to whom the inheritance and reversion of the lands appertains, shall, according to his right or interest in it, after the death of the lessors, have such remedy and advantage, to all intents and purposes, against the lessees thereof, their executors and assigns, as the same lessor should or might have had against the same lessees. *R.S.P.E.I. 1974, Cap. R-4, s.20.*

**PART III — PARTITION****18. Definitions**

In this Part, “court” means the Supreme Court of Prince Edward Island and “judge” means a judge thereof. *R.S.P.E.I. 1974, Cap. R-4, s.21; 1974(2nd), c.65, s.3.*

**19. Partition of lands held in common**

All persons holding lands as joint tenants, tenants in common, or coparceners, may be compelled to divide the lands in manner provided in this Part. *R.S.P.E.I. 1974, Cap. R-4, s.22.*

**20. Joint tenants, tenants in common, coparceners, application for partition**

- (1) Except as mentioned in this section, any one or more of the persons holding lands as joint tenants, tenants in common or coparceners may apply by petition to the court or a judge, for a partition of the lands; and the court or judge may cause partition to be made accordingly and the shares of the petitioners shall be set off and assigned to them, and the residue of the premises shall remain for the persons entitled thereto, subject to a future partition among them, if there is more than one person so entitled.

**Entitlement to petition, who is**

- (2) The petition may be maintained by any person who has an estate in possession, but not by one who is entitled only to a remainder or reversion.

**Tenants, partition among**

- (3) No tenant for any term of years, unless twenty thereof, at the least, remain unexpired, shall maintain such a petition against any tenant of the freehold; but when two or more persons hold jointly or in common, as tenants for any term of years, either of them may have his share set off and divided from the others, in the same manner as if they had all been tenants of the freehold.

**Duration of partition among tenants**

- (4) The partition between two or more tenants for years continues in force only so long as their estates endure, and shall not affect the premises when they revert to the respective landlords or reversioners.

**Heirs or next-of-kin, entitlement to petition**

- (5) Heirs or next-of-kin of an intestate shall be deemed to be parties entitled to apply for partition under this Part, if they elect to avail themselves of its provisions. *R.S.P.E.I. 1974, Cap. R-4, s.23.*

**21. Petition, contents**

- (1) Every petition for partition shall set forth the rights and titles, so far as known to the petitioner, of all persons interested in the premises, who would be bound by the partition, whether they have an estate of inheritance, or for life or years, and whether it is an estate in possession or in remainder or reversion, and whether vested or contingent; and if the petitioner holds an estate for life or years, the person entitled to the remainder or reversion, after his estate, shall be considered as one of the persons so interested, and shall be entitled to notice accordingly.

**Amending petition**

- (2) The petition, or any subsequent proceedings had thereon, may be amended at any time upon such terms as the court or a judge may impose. *R.S.P.E.I. 1974, Cap. R-4, s.24.*

**22. Verification of petition**

- (1) The petition shall be verified by the oath of the petitioner, according to the best of his knowledge, information and belief.



**Order to appear and answer petition**

- (2) The court or judge shall grant an order to appear and answer the petition, and may make the same returnable either at court or in chambers.

**Service of order**

- (3) A copy of the order shall be served on each of the parties within the province named in the petition as interested in the land, at least twenty days before the return thereof. *R.S.P.E.I. 1974, Cap. R-4, s.25.*

**23. Notice to absent or unknown persons interested**

If any of the persons named as interested is outside the province, or if there are persons interested in the premises, and who would be bound by the partition, whose names are unknown to the petitioner, the court or judge shall order notice to be given to the absent or unknown parties interested, by a publication of the petition, or of the substance thereof, with the order of the court or judge thereon, in one or more newspapers to be designated in the order, or by personal service upon such absent party of the petition and order, or in such other manner as the court or judge considers to be most proper and effectual. *R.S.P.E.I. 1974, Cap. R-4, s.26.*

**24. Continuation of proceedings where interested person outside province**

If in any stage of the proceedings it appears to the court or judge that any person interested, whether named in the petition or not, is outside the province, and has not opportunity to appear and answer to the petition, it shall be continued, from time to time, until sufficient time has been allowed to enable him to appear and answer thereto; and the court or judge may, in its or his discretion, make an order to amend the said petition by inserting the name of the absent person. *R.S.P.E.I. 1974, Cap. R-4, s.27.*

**25. Failure to appear, further notices**

If any person entitled to notice fails to appear, and if the service of the order or other notice to him appears to the court or judge to have been insufficient, the court or judge may order such further notice as may be thought proper. *R.S.P.E.I. 1974, Cap. R-4, s.28.*

**26. Litigation guardian**

The court or judge may assign a litigation guardian for any infant or mentally incompetent person who is interested in the premises. *R.S.P.E.I. 1951, c.138, s.27.*

**27. Showing cause why partition should not be granted**

Any person interested in the premises, of which partition is prayed for, may appear and answer to the petition, either in person or by solicitor or counsel, and show cause, on affidavit, why the petitioner ought not to have partition as prayed for, either in whole or in part; and the court or judge may, on all occasions where considered just and necessary, and where it is demanded by either party, give leave to file affidavits or supplementary affidavits, as the case may be, in support of the petition, or in opposition thereto, and adjourn the further hearing for that purpose for such time as in the opinion of the court or judge may be necessary. *R.S.P.E.I. 1974, Cap. R-4, s.30.*

**28. Evidence**

The court or judge may receive evidence, and hear witnesses, orally, on oath or otherwise, as well as by affidavit, in any stage of the case, and in such way, and subject to such rules and regulations as the court or judge may ordain and appoint. *R.S.P.E.I. 1974, Cap. R-4, s.31.*

**29. Service of affidavits**

Each party petitioning or opposing shall serve on the other party, or his attorney, copies of all affidavits intended to be made use of, at any hearing hereunder, seven days before such hearing. *R.S.P.E.I. 1974, Cap. R-4, s.32.*

**30. Person not named in petition, appearance to object**

If any person, not named in the petition, appears and opposes the partition prayed for, or otherwise shows cause against the prayer of the petition, the petitioner may object that the person has no estate or interest in the lands described in the petition, and if, upon investigation of the case by the court or judge, it appears that the person so appearing or opposing has no estate or interest in the lands, the matter of his objection or opposition shall be no longer or further enquired of. *R.S.P.E.I. 1974, Cap. R-4, s.33.*

**31. Judgment or order for partition**

If upon the hearing it appears that the petitioner is entitled to have partition as prayed for, judgment may be entered or an order made for the petitioner to have partition, and to have assigned to him such part of the premises, if any, as he is entitled to, with costs, and costs may be awarded against an unsuccessful petitioner. *R.S.P.E.I. 1974, Cap. R-4, s.34.*

**32. Jurisdiction to grant order for partition**

Where there is no opposition to the petition, or where upon hearing, the opposer makes default, or it otherwise appears that the petitioner is entitled to have partition, whether for the share or proportion claimed in his petition, or for a less share, an order that partition be made shall be granted by the court or judge but the court or judge may set aside defaults, or grant hearings over again, on such terms as to time or costs, or otherwise, as seem fit. *R.S.P.E.I. 1974, Cap. R-4, s.35.*

**33. Appraisal and description of partitioned land**

When the order has been granted, the court or judge shall order the lands to be appraised, partitioned and set off by metes and bounds in such manner as the court or judge shall direct, subject to confirmation and final judgment by the court. *R.S.P.E.I. 1974, Cap. R-4, s.36.*

**34. Method of partition**

Several petitioners may have their shares set off together; or the share of each one may be set off in severalty at their election. *R.S.P.E.I. 1974, Cap. R-4, s.37.*

**35. Shares unequal, or damage to one part, compensation by recipient**

When the premises of which partition is demanded are such as cannot be divided without damage to the owners, or when any specific part of the estate is of greater value than either party's share, and can be divided without damage to the owners, the whole estate, or the part thereof so incapable of division may be set off to any one of the parties who will accept it, he



paying or securing to any one or more of the others such sums of money as the court or judge shall award, to make the partition just and equal, but the partition in such case shall not be established by the court or judge until all the sums so awarded be paid to the parties entitled thereto, or secured to their satisfaction. *R.S.P.E.I. 1974, Cap. R-4, s.38.*

**36. Alternative to s.35**

In the case mentioned in section 35, the court or judge, instead of setting off the premises, or a part thereof, in the manner therein provided, may assign the exclusive occupancy and enjoyment of the whole or part, as the case may be, to each of the parties alternately, for certain specified times, in proportion to their respective interests therein. *R.S.P.E.I. 1974, Cap. R-4, s.39.*

**37. Liability to co-tenants for damages**

When the whole or any specific part of the premises is assigned, in the manner provided in section 36, the person entitled, for the time being, to the exclusive occupancy, shall be liable to his co-tenants for any injury to the premises occasioned by his misconduct, in like manner and to the like extent as a tenant for years under a common lease without express covenants, would be to his landlord; and the other tenants in common may have their remedy therefor against him either jointly or severally, at their election. *R.S.P.E.I. 1974, Cap. R-4, s.40.*

**38. Remedies for trespass or damage to premises by co-tenant**

While any estate is in the exclusive occupancy of any co-tenant, under such an assignment, he is entitled to the same remedy against any person who trespasses upon or otherwise injures the premises, as if he held it under a lease for the same term for which they were assigned to him and he and all the other tenants in common shall also be entitled to recover against the wrongdoers such other and further damages as they have sustained by the same trespass or injury, in like manner as if the premises had been leased by them for the term; and all joint damages recovered by the tenants in common shall be appointed and divided among them, according to their respective rights, by the court in which the judgment is recovered. *R.S.P.E.I. 1974, Cap. R-4, s.41.*

**39. Partition, powers of court *re***

- (1) In a petition for partition where an order for partition might be made, then
- (a) if it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the court may, on the request of any of the parties interested and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary directions;
  - (b) if the party or parties interested, individually or collectively to the extent of one part or upwards in the property to which the suit relates, request the court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested the court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly and give all necessary directions;

- (c) if any party interested in the property to which the suit relates requests the court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the court may, unless the other parties interested in the property or some of them undertake to purchase the share of the party requesting a sale, direct a sale of the property and give all necessary directions; and where the undertaking is given, the court may order a valuation of the share of the party requesting a sale, and may give all necessary directions.

**Partition of lands of a deceased person**

- (2) The real or personal property of any deceased person may be administered and a partition of his lands may be made in one action, and an action for the administration and for partition of the lands of any deceased person shall not be considered multifarious; nor shall an action in which partition is in issue be considered multifarious, though distinct and independent matters may be joined therein, nor although the action may be in several distinct and separate matters with which one or more of the defendants have no concern. *1974(2nd), c.65, s.3.*

**40. Dower, curtesy, liens & charges re order for sale of land**

- (1) In any case in which a sale of land is ordered, whether belonging to an infant or otherwise, and in which the estate of any tenant for life is established, or on which there is any rent, charge, annuity or other lien or charge found to exist, if the person entitled to the estate, charge, annuity or lien, is a party, the court or judge shall determine whether the estate, charge, annuity or lien ought to be exempted from the sale or whether the same should be sold, and in making the sale regard shall be had to the interests of all parties.

**Effect of order to sell subject to encumbrances**

- (2) If a sale is ordered including the estate, charge, annuity or lien, all the estate and interest of any tenant or person entitled to the charge, annuity or lien passes thereby and no conveyance or release to the purchaser is required from such tenant or person entitled to the charge annuity or lien, and the purchaser, his heirs and assigns shall hold the premises freed and discharged from all claims by virtue of the estate or interest of any such tenant or person entitled to such charge, annuity or lien whether it is to any individual share or to the whole or any part of the premises sold.

**Payment of charges from proceeds of sale**

- (3) In case of a sale referred to in subsection (2) the court may direct the payment of such sum in gross out of the purchase money to the person entitled to life fee or charge, annuity or lien as may be deemed, upon the principles applicable to life annuities, a reasonable satisfaction for such estate or charge, annuity or lien, or may direct the payment to the person entitled of an annual sum, or of the income or interest to be derived from the purchase money or any part thereof as may seem just, and for that purpose may make an order for the investment or other disposition of the purchase money or any part thereof. *1974(2nd), c.65, s.3; 1987, c.6, s.17.*

**41. Final judgment, conclusive as to**

The final judgment, confirming and establishing the partition, shall be conclusive as to all rights, both of property and possession, of all parties and privies to the judgment, including all persons who might by law have appeared and answered to the petition, except as hereinafter provided, and the Prothonotary may be directed to convey the lands, vesting them in the parties entitled thereto. *R.S.P.E.I. 1974, Cap. R-4, s.42.*





**42. Exception**

If any person who has not appeared and answered to the petition for partition claims to hold in severalty the premises therein mentioned, or any part thereof, he shall not be concluded by the judgment for partition, but may bring his action for the land claimed by him against any or all of the petitioners or defendants or of the persons holding under them, as the case may require within the same time in which he might have brought it, if no such judgment for partition had been rendered. *R.S.P.E.I. 1974, Cap. R-4, s.43.*

**43. Action against assignee of part owner**

- (1) When any person who has not appeared and answered to the petition claims the share that was assigned to, or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares, in like manner, as if he had been a party to the suit; but he shall not be prevented thereby from bringing his action for the share claimed by him against the person to whom it was assigned, or for whom it was left.

**Action lies against tenant in possession**

- (2) The action in such case shall be brought against the tenant in possession, in like manner, as if the plaintiff had originally claimed the specific piece of land demanded, instead of an undivided part of the whole land; and it may be brought within the same time in which it might have been brought if no such judgment for partition had been rendered. *R.S.P.E.I. 1974, Cap. R-4, s.44.*

**44. Defendants, two or more, deciding respective claims**

If two or more persons appear as defendants, claiming the same share of the premises to be divided, it is not necessary to decide upon their respective claims, except only for the purpose of determining which of them shall be admitted to appear and plead in the suit; and if partition is made, the share so claimed shall be left for whichever of the parties proves to be entitled to it, in a suit to be thereafter brought between themselves. *R.S.P.E.I. 1974, Cap. R-4, s.45.*

**45. Neither defendant entitled to share, action by one against the other**

If in such a case, it is decided in the original suit for partition, upon the application of the petitioners or otherwise, that either of the defendants is not entitled to the share that he claims he is concluded by the judgment, so far as it respects the partition and the assignment of the shares; but he is not prevented from bringing his action for the share claimed by him against the other claimant thereof, in the manner provided in sections 43 and 44. *R.S.P.E.I. 1974, Cap. R-4, s.46.*

**46. Part owner fails to answer claims, remedy**

If any person who has not appeared and answered as aforesaid claims any part of the premises mentioned in the petition, as a part owner with those who were parties to that suit, or any of them, and if the part or share so claimed was not known or not allowed, and left for him in the process for partition, he is concluded by the judgment so far as it respects the partition; but he shall not be prevented thereby from bringing an action for the share or portion claimed by him against each of the persons who shall hold any part of the premises under the judgment for partition. *R.S.P.E.I. 1974, Cap. R-4, s.47.*

**47. New partition not allowed, damages only**

If the plaintiff prevails in the case referred to in section 46 he is not entitled to demand a new partition of the whole premises, but shall recover against each of the persons holding under the judgment for partition the same proportion of shares of the part held by him that the plaintiff was entitled to, out of the whole premises, before the partition thereof. *R.S.P.E.I. 1974, Cap. R-4, s.48.*

**48. Death of a person entitled to share**

If, after partition, it appears that any person for whom a share was left, or to whom a share was assigned, had died before the partition was made, the heir or devisee of the deceased person is not, by reason of the heir or devisee having been a party to the suit, either as a petitioner or as a defendant, barred from claiming the share that belonged to the deceased person; but the heir or devisee in such case has the same rights and the same remedies in all respects, as if the heir or devisee had not been a party to the suit, and had not notice of the pending thereof. *R.S.P.E.I. 1974, Cap. R-4, s.49.*

**49. Eviction of person entitled to share, new partition**

If a person to or for whom a share has been assigned or left upon any judgment for partition, is evicted thereof by any person who, at the time of the partition, had a title thereto paramount to the title of those who were parties to the suit for partition, the person so evicted is entitled to a new partition of the residue, in like manner as if the former partition had not been made. *R.S.P.E.I. 1974, Cap. R-4, s.50.*

**50. Mortgage or lien upon a share, concluded by judgment**

A person having a mortgage, attachment or other lien upon the share of a part owner is concluded by the judgment, so far as it respects the partition and the assignment of the shares, but his lien shall remain in full force upon the part assigned or left for such part owner. *R.S.P.E.I. 1974, Cap. R-4, s.51.*

**51. Death of party to petition, effect of**

In case of the death of any party in a petition for partition, the suit need not abate, but may be conducted and prosecuted to final judgment, under such rules and orders for bringing in the heirs or representatives of the deceased party, as the court or judge may think proper, for making them parties to the suit and regulating the proceedings accordingly. *R.S.P.E.I. 1974, Cap. R-4, s.52.*

**52. Holding lands under partition, effect re eviction**

A person holding lands under a partition made by virtue of this Act, shall be considered as holding them under an apparently good title; so that, in case of eviction, he is entitled to compensation for any improvements made thereon. *R.S.P.E.I. 1974, Cap. R-4, s.53.*

**53. Rules of court re partitions**

Where any difficulties arise, either in practice or otherwise, in carrying out proceedings for partitions under this Act, the court may make rules, either specially, for the purpose of any particular application, or generally with respect to all applications for partition. *R.S.P.E.I. 1974, Cap. R-4, s.54.*



**PART IV — SHORT FORMS OF INDENTURES****54. Definitions**

In this Part

- (a) “**lands**” extends to all freehold and leasehold tenements and hereditaments, whether corporeal or incorporeal, or any undivided part or share therein respectively;
- (b) “**party**” means one or more persons, any body politic or corporate as well as an individual or individuals. *R.S.P.E.I. 1974, Cap. R-4, s.55.*

**55. “In pursuance of the enactments respecting short forms of indentures”, effect of use of expression**

When a deed of conveyance, deed of mortgage, or deed of lease, made according to the forms set forth in the First, Second and Third Schedules of this Part respectively, expressed to be made “in pursuance of the enactments respecting Short Forms of Indentures” or otherwise referring to this Part, contains any of the forms or words contained in column one under the said Schedules, respectively and distinguished by any number therein, the deed shall be taken to have the same effect, and be construed as if it contained the form or words contained in column two under the same Schedule, and distinguished by the same number as is annexed to the form of words used in the deed; but it is not necessary in any such deed to insert the number or numbers. *R.S.P.E.I. 1974, Cap. R-4, s.56.*

**56. Deed binding on parties, where not effective under Part IV**

Any deed or part of a deed which fails to take effect by virtue of this Part is, nevertheless, as effectual to bind the parties thereto, as far as the rules of law and equity will permit, as if this Part had not been enacted. *R.S.P.E.I. 1974, Cap. R-4, s.57.*

**57. Deed deemed to include**

Every deed, unless an exception is specially made therein, shall be held and construed to include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water courses, light, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands therein comprised belonging or in any wise appertaining, or with the same demised, held, used, occupied or enjoyed, or taken, or known, as part or parcel thereof, and if the same purports to convey an estate in fee, also the reversion or reversions, remainder or remainders, yearly and other rents, issues and profits of the same lands and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, both at law and in equity of the grantor, in, to, out of or upon the same lands and every part and parcel thereof, with their and every of their appurtenances. *R.S.P.E.I. 1974, Cap. R-4, s.58.*

**58. Alternative terms, use of**

Parties who use any of the forms in the first column of the Schedules may substitute for the words “covenantor” or “covenantee,” or “releasor” or “releasee,” “grantor” or “grantee,” “lessor,” or “lessee,” any name or names, or “the party of the „first,” or „second,” or „third” part” as the case may be, and in every such case, corresponding substitutions shall be taken to be made in the corresponding forms in the second column. *R.S.P.E.I. 1974, Cap. R-4, s.59.*

**59. Masculine and feminine gender**

Parties who use any of the forms in the first column of the Schedules may substitute the feminine gender for the masculine, or the plural for the singular, or conversely, in any of the forms in the first column of the Schedules, and corresponding changes shall be taken to be made in the corresponding forms in the second column. *R.S.P.E.I. 1974, Cap. R-4, s.60.*

**60. Use of exceptions in forms**

Parties who use any of the forms in the first column of the Schedules may introduce into, or annex to, any of the forms in the first column, any express exceptions from, or other express qualifications thereof, respectively, or may extend them or remove therefrom any limitations, and the like exceptions or qualifications, or extension, or removal of limitations shall be taken to be made from or added, in the corresponding forms in the second column. *R.S.P.E.I. 1974, Cap. R-4, s.61.*

**61. Adding names at end of forms**

Parties who use any of the forms in the first column of the Schedules may add the name or other designation to any person or person, or class or classes of persons, or any other words, at the end of the forms of the first column, so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons or of all persons whomsoever, and in every such case the covenants, or such of them as may be employed in such deed, shall be taken to extend to the acts of the person or persons so named. *R.S.P.E.I. 1974, Cap. R-4, s.62.*

**62. Third Schedule, introducing exceptions**

In the case of a deed, demise or lease there may be introduced into any of the forms in the first column under the Third Schedule, any express exceptions from, or express qualifications thereof, respectively, and the like exceptions or qualifications shall be taken to be made from, or in the corresponding forms in the second column; where the premises demised are of freehold tenure, the covenants, under the said Third Schedule, one to eight, shall be taken to be made with, and the proviso nine to apply to, the heirs and assigns of the lessor; and where the premises demised are leasehold tenure, the covenants and provisos shall be taken to be made with, and to apply to, the lessor, his executors, administrators and assigns. *R.S.P.E.I. 1974, Cap. R-4, s.63.*

## PART V — PROCEEDINGS RELATING TO INFANTS

**63. Definitions**

In this Part, the words “**sale**” and “**other disposition**” made under the direction of the court shall be deemed to include mortgage. *1974(2nd), c.65, s.3.*

**64. Sale of land owned by infant, petition**

- (1) An infant seised or possessed of real or personal property or entitled to a term of years in lands, may by his next friend or by his guardian apply by petition to the court for an order for the sale or other disposition of said property.



**Guardians for purpose of sale**

- (2) On such application, the court may appoint one or more suitable persons to be the guardian or guardians of such infant, in relation to the proceedings on such application who shall give security, by way of bond or recognizance with such sureties, and in such form as the court shall direct, conditioned for the faithful performance of the trust in him or them reposed for the paying over, investing and accounting for all moneys which shall be received by such guardian or guardians, according to the order of the court, and for the observance of the orders and directions of the court in relation to the said trust, and in case of the forfeiture of such bond or recognizance, the court may order and direct the same to be prosecuted for the benefit of the party injured. *1974(2nd), c.65, s.3.*

**65. Inquiry into merits of application for sale of land of an infant**

Upon the filing of the bond by the guardian or guardians as aforesaid, the court may proceed in a summary way, by reference to the Prothonotary or by hearing in court, to enquire into the merits of the application, and where it appears that a disposition of the real or personal estate of the infant, or any part thereof, or of any term of years of which he may be possessed, or in which he may be interested, is necessary or proper either for the support and maintenance of the infant or for his education, or that the interest of the infant requires or will be substantially promoted by such disposition, for any reason or circumstance the court may order the letting for a term of years, or the sale or other disposition of such real or personal estate or interest, in such manner, and with such restrictions as shall be deemed expedient; but nothing herein contained shall be construed to authorize the ordering of the sale, leasing or other disposition of any real or personal estate or term of years, in any manner contrary to the provisions of any last will, or any conveyance, by, through or under which such estate or term was devised or conveyed to the infant. *1974(2nd), c.65, s.3.*

**66. Debts owing on land of infant, satisfaction of**

In any such application, and in a like summary way, where the real or personal estate of the infant is liable to the payments of any debts, whether on simple contract or on specialty, and the cost of administration by bill would be disproportionate to the value of the estate, the court shall, by its order made in the matter of such application, administer the estate of the deceased person by whom such debts were due and from whom the infant derives title as fully as if a bill for the due administration of such estate had been duly filed in the court, with full power in the course of such administration, out of the moneys arising from a sale under this Act, to pay and satisfy all such debts; making such order in relation to the balance of the proceeds of such sale as is authorized herein, and ordering the service of a copy of the petition, or of a notice thereof, on such persons as it shall consider necessary, and the purchaser at such sale shall hold and possess all real or personal estate conveyed to him as fully as if such sale had been made in due course of administration in a suit instituted therefor. *1974(2nd), c.65, s.3.*

**67. Method of sale or lease**

Every sale, leasing or other disposition of such real or personal estate or the interest therein of the infant, shall be made by public auction or private contract, and with such notices of sale as the court shall direct, and shall be made by the Prothonotary under the direction and subject to the confirmation of the court. *1974(2nd), c.65, s.3.*

**68. Title acquired after sale**

Where a sale is ordered the court may order that the lands shall be sold freed and discharged from all encumbrances, and the purchaser shall take title accordingly, and upon the sale being confirmed, the court may direct the Prothonotary to execute the deed of conveyance thereof, or of all the right, title and interest of the infant therein, and every deed or lease so executed by the Prothonotary shall be as valid and effectual as if made by such infant when of full age. *1974(2nd), c.65, s.3.*

**69. Proceeds of sale, disbursement & investment**

Upon an order for the sale of any property as aforesaid, the infant to whom the same belongs shall be considered, so far as relates to such property, a ward of the court; and the court may make an order for the investment, disposition and application of the proceeds of such property and of the increase and interest arising therefrom, so as to secure the same for the benefit of the infant. *1974(2nd), c.65, s.3.*

**70. Effect of sale on infant's interest in proceeds**

No sale made as aforesaid shall give to the infant any other or greater interest or estate in the proceeds of the sale than he had in the estate sold, but the proceeds shall be deemed estate of the same nature as the property sold. *1974(2nd), c.65, s.3.*

**71. Conveyance or lease, evidence of**

Every conveyance or lease made by the Prothonotary of an infant's or mentally incompetent person's land, having been first duly registered in the office of the Registrar of Deeds, or a certified copy thereof, when given in evidence in any court or before any person having by law or by consent of parties authority to hear and receive evidence, shall be deemed to be conclusive evidence that all the proceedings on which such conveyance is founded were rightly had and done. *1974(2nd), c.65, s.3.*

## PART VI — FORECLOSURE

**72. Order for sale of mortgaged property**

Where an action is commenced to foreclose or satisfy a mortgage, the court may order a sale of the mortgaged premises or such part thereof as may be sufficient to discharge the amount due on the mortgage and costs of suit and sale. *1974(2nd), c.65, s.3.*

**73. Sale made by Prothonotary**

- (1) All sales of mortgaged premises under order of the court shall be made by the Prothonotary under the direction of the court.

**Notice of sale**

- (2) Such notice of the sale of the mortgaged premises shall be given as the court may direct.

**Sale by public auction**

- (3) All sales of mortgaged premises shall be by public auction to the highest bidder and are subject to the confirmation of the court.



**Title acquired by purchaser**

- (4) After confirmation of the sale by the court the Prothonotary shall execute a conveyance of the premises and shall vest in the purchaser the same estate as, and no other, or greater than, would have vested in the mortgagee if the equity of redemption had been foreclosed.

**Effect of sale on mortgagor**

- (5) A conveyance executed under subsection (4) is as valid as if it were executed by the mortgagor and the mortgagee, and is an entire bar against each of them, and against all parties to the suit in which the order for sale was made, and against their heirs respectively, and all claiming under their heirs. *1974(2nd), c.65, s.3.*

**74. Disbursement of proceeds**

- (1) The proceeds of every sale made under the order of the court shall be applied to the discharge of the debts adjudged by the court to be due, and of the costs awarded.

**Surplus, disbursement of**

- (2) Where there is a surplus, it shall be brought into court for the use of the mortgagor, or of the person who may be entitled thereto, subject to the order of the court. *1974(2nd), c.65, s.3.*

**75. Payment of principal & interest by mortgagor**

- (1) When an action is commenced to foreclose a mortgage, the action may be ordered to be dismissed upon the defendants bringing into court, at any time before the order, the principal and interest due, with costs.

**Order, effect on of payment**

- (2) Where the principal and interest is brought into court after an order and before a sale, further proceedings thereupon shall be stayed, but the order stands as a security for such further sums as may thereafter fall due on the mortgage.

**Subsequent default**

- (3) Upon any subsequent default of payment of principal and interest the mortgage may be enforced by further order of the court for the sale of the mortgaged premises, or of such part thereof as shall be necessary from time to time, until the amount secured by the mortgage and the costs of the proceedings thereon have been fully paid and satisfied. *1974(2nd), c.65, s.3.*

**76. Sale of the whole premises**

If it appears to the court that the mortgaged premises are so situated that the sale of the whole will be most beneficial to the parties, the order shall in the first instance be entered for the sale of the whole premises accordingly; and in that case the proceeds of the sale shall be applied as well to the payment of the amount due and the costs of suit, as towards the residue of the sum not due at the time of the sale; and if the residue does not bear interest, then the court may direct it be paid with a deduction of the rebate of legal interest for the time during which the residue is not due and payable. *1974(2nd), c.65, s.3.*

**77. Residue of proceeds, subsequent encumbrances**

In case of subsequent encumbrances affecting any mortgaged premises which may be sold under the order of the court, the residue of the proceeds, which may remain after the discharge of the first mortgage thereon, are subject, under the order and direction of the court,

to the claims of the holders of the subsequent encumbrances according to their due priority, whether they are due and payable, or otherwise; subject to the like rebate of interest in case of sums not payable when they do not bear interest as is provided in section 76. *1974(2nd), c.65, s.3.*

## PART VII — PERSONAL LIABILITY UNDER MORTGAGE

### 78. Implied covenant in mortgage for indemnity

- (1) In an instrument transferring an interest in land subject to a mortgage there is implied, unless the parties have otherwise agreed in writing, a covenant by the transferee with the transferor to make payments under the mortgage in accordance with its terms, and to indemnify the transferor against liability to pay the principal sum, interest, any other money secured and liability on any express or implied covenants of the mortgagor.

#### Application

- (2) The covenant implied pursuant to subsection (1) does not apply where
- (a) the amount secured by the mortgage was not credited to the transferee in calculating the consideration for the transfer; or
  - (b) the transfer is in substance a gift. *1987, c.59, s.1.*

### 79. Extinction of liability under personal covenant

- (1) A person who transfers an interest in land subject to a mortgage ceases to be liable under the personal covenant in the mortgage unless the mortgagee makes a demand for payment for the sum secured on all persons who are personally liable for payment of the mortgage within three months after the term of the mortgage has expired.

#### Demand for payment

- (2) Subsection (1) applies notwithstanding any term of the mortgage that provides that all amounts outstanding at the end of the term are payable without a demand.

#### Waiver

- (3) A waiver of the benefit contained in subsection (1) is of no effect unless it is entered into by the original parties to the mortgage after the transfer referred to in subsection (1). *1987, c.59, s.1.*





**FIRST SCHEDULE \***

**DEED OF CONVEYANCE**

This Indenture made the ..... day of .....in the year of our Lord two thousand and ..... “In pursuance of the Enactments respecting Short Forms of Indentures between (here insert the names and recitals, if any) witnesseth that in consideration of (if recitals, say) the premises and of ..... dollars; (if no recitals omit the premises) and say of ..... dollars) of lawful money of Canada, now paid by the party of the part (as the fact is) to the party of the first part (the receipt whereof is hereby by him (or them) acknowledged) he (or they) the party of the first part doth (or do) grant unto the party of the .....part, his (or her or their) heirs and assigns, forever, all and singular the lands following, that is to say: (describe the lands).

(Here insert covenants and other provisions, conditions, etc., etc., if any).

In witness whereof the parties have hereto set their hands and seals.

Signed, sealed and delivered in the presence of

**COLUMN ONE**

**COLUMN TWO**

1. The (covenantor) convenience with the (covenantee).

1. And the covenantor doth hereby for himself, his heirs, executors and administrators, covenant, promise, and agree with and to the covenantee, his heirs and assigns, in manner following, that is to say:

2. That he has the right to convey the lands to the (covenantee) notwithstanding any act of the (covenantor).

2. That for and notwithstanding any act, deed, matter or thing, by the covenantor done, executed, committed or knowingly or wilfully permitted or suffered to the contrary, he the covenantor, now hath in himself, good right, full power and absolute authority to convey the lands and other premises hereby conveyed, or intended so to be, with their and every of their appurtenances, unto the covenantee, in manner aforesaid, and according to the true intent of these presents.

3. And that the (covenantee) shall have quiet possession of the lands.

3. And that it shall be lawful for the covenantee, his heirs and assigns from time to time, and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the lands and premises hereby conveyed, or intended so to be, with their and every of their appurtenances, and to have, receive, and take the rents, issues and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him the said covenantor, or his heirs or any person claiming, or to claim by, from, under, or in trust for him, them or any of them.

4. Free from all encumbrances

4. And that free and clear and freely and absolutely acquitted, exonerated, and forever discharged, or otherwise, by the covenantor or his heirs well and sufficiently saved, kept harmless and indemnified, of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent annuity, forfeiture, *re*-entry, and any and every other estate, title charge, trouble, and encumbrance whatsoever, made, executed, occasioned or suffered by the said covenantor or his heirs, or by an person claiming, or to claim, by, from, under or in trust for him, them or any of them.



5. And the (covenantor) covenants with the (covenantee) that he will execute such further assurances of the said lands as may be requisite.

5. And the covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise, and agree with, and to the covenantee, his heirs and assigns, that he, the covenantor, his heirs, executors, and administrators, and all and every other person whatsoever having or claiming or who shall or may hereafter have or claim, any estate, right, title, or interest whatsoever, either at law, or in equity, in, to, or out of, the lands and premises hereby conveyed or intended so to be, or any of them or any part thereof, by, from, under, or in trust for him, them or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the covenantee, his heirs or assigns, make, do, execute, or cause to be made done or executed, all such further and other lawful acts, deeds, things, devises, conveyances, and assurances, in the law whatsoever, for the better more perfectly and absolutely conveying and assuring the lands and premises hereby conveyed; or intended so to be, and every part thereof, with their appurtenances unto the covenantee, his heirs and assigns, in manner aforesaid, as by the covenantee, his heirs and assigns, his or their counsel in the law shall be reasonably devised, advised or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof, to go or travel from his usual place of abode.

6. And the (covenantor) covenants with the covenantee that he has done no act to encumber the lands.

6. And the covenantor for himself, his heirs, executors and administrators, doth hereby covenant, promise, and agree with and to the covenantee, his heirs, and assigns that he hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered any act, deed, matter, or thing whatsoever, whereby or by means whereof the lands and premises hereby conveyed or intended so to be, or any part or parcel thereof, are is, or shall or may be in any wise impeached, charged, affected or encumbered, in title, estate, or otherwise howsoever.

7. And the (releasor) releases to the (releasee) all his claims upon the lands.

7. And the releasor hath released, remised, and forever quitted claim, and by these presents doth release, remise, and forever quit claim unto the releasee, his heirs and assigns, all and all manner of right, title, interest, claim and demand whatsoever, both at law and in equity into and out of the lands and premises hereby granted or intended so to be, and every part and parcel thereof, so that neither he nor his heirs, executors, administrators or assigns shall or may at any time hereafter, have, claim, pretend to, challenge, or demand the lands and premises or any part thereof, in any manner howsoever, but the releasee, his heirs and assigns, and the same lands and premises, shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the releasor might or could have upon him in respect of the lands, or upon the lands.

*R.S.P.E.I. 1951, c.138:*

\*[Note: This Schedule is prescribed by section 55.]



**SECOND SCHEDULE**

**DEED OF MORTGAGE**

This Indenture made the ..... day of .....in the year of our Lord two thousand and ..... “In pursuance of the Enactments respecting Short Forms of Indentures between (here insert the parties and recitals, if any) witnesseth that in consideration of (if recitals, say) the premises and of ..... dollars; (if no recitals omit the premises) of lawful money of Canada now paid by the party of the ..... part, to the party of the ..... part (the receipt whereof is hereby acknowledged) he (or they) the party of the first part, doth (or do) grant and mortgage unto the party of the ..... part all and singular the lands following, that is to say: (describe the lands).

(Here insert proviso, covenants and other provisions and stipulations according to agreement).

In witness whereof the parties have hereto set their hands and seals.

Signed, sealed and delivered in the presence of

**COLUMN ONE**

**COLUMN TWO**

1. Provided , this mortgage shall be void on payment of (amount of principal money) of lawful money of Canada with interest at (rate of interest) per cent ., as follows: (terms of payment of principal and interest).

1. Provided always and these presents are upon this express condition, that if the mortgagor, his heirs, executors, administrators or assigns, or any of them, do and shall well and truly pay or cause to be paid unto the said mortgagee, his executors, administrators or assigns the just and full sum of (amount of principal money) of lawful money of Canada, with interest thereon, at the rate of (rate of interest) per cent, per annum, the day and time, and in manner following, that is to say (terms of payment of principal and interest without any deduction, defalcation or abatement out of the same contained shall be absolutely null and void, and the mortgagee, his heirs, executors, administrators or assigns, shall at any time thereafter at the request and expense of the mortgagor, his executors, administrators or assigns, acknowledge satisfaction in the manner by statute directed.

2. The mortgagor covenants with the mortgagee.

2. And the mortgagor doth hereby for himself, his heirs, executors, and administrators, covenant, promise and agree to and with the mortgagee, his heirs and assigns, in manner following, that is to say:

3. And mortgagor will pay the mortgage money and interest and observe the above proviso.
3. That the mortgagor, his heirs, executors, administrators, or some or one of them, shall and will well and truly pay or cause to be paid unto the mortgagee, his heirs, executors, administrators or assigns, the sum of money in the above proviso mentioned, with interest for the same as aforesaid, at the day and time in manner above limited for payment thereof, and shall and will, in everything well, faithfully and truly do, observe, perform, fulfil, and keep all and singular the provisions, agreements and stipulations in the above proviso set forth according to the true intent and meaning of these presents, and of the above proviso.
4. That the mortgagor has a good title in fee simple to the lands.
4. And also that the mortgagor at the time of the sealing and delivery hereof is, and stands, solely, rightfully and lawfully seised of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, in and of the lands, tenements, hereditaments, and all and singular other the premises, hereinbefore described, with their and every of their appurtenances, and of and in every part and parcel thereof, without any manner of trusts, reservations, limitations, provisos, or conditions except those contained in the original grant thereof from the Crown, or any other matter or thing to alter, charge, change, encumber or defeat the same.
5. And that he has the right to convey the lands to the mortgagee.
5. And also that the mortgagor now hath in himself, good right, full power and lawful and absolute authority to convey the lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances, unto the mortgagee, his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents.



6. And that on default the mortgagee shall have quiet possession of the lands.

6. And also that from and after default shall happen to me made of or in the payment of the said sums of money in the above proviso mentioned or the interest thereof, or any part thereof or of, or in the doing, fulfilling, or keeping of some one or more of the provisions, agreements, or stipulations, in the above proviso set forth, contrary to the true intent and meaning of these presents, and of the proviso, then, and in every such case, it shall and may be lawful, to and for the said mortgagee, his heirs and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, with the appurtenances, without let, suit, hindrances, interruption or denial of him, the said mortgagor, his heirs or assigns, or any other person or persons whomsoever.

7. Free from all encumbrances.

7. And that free and clear and freely and clearly acquitted, exonerated and discharged of, and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner of other charges or encumbrances whatsoever.

8. And that the mortgagor will execute such further assurances of the said lands as may be requisite.

8. And also that from and after default shall happen to be made of or in the payment of the proviso mentioned or the interest thereof, or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements, or stipulations in the above proviso set forth, contrary to the true intent and meaning of these presents and of the proviso, then and in every such case the mortgagor, his heirs and assigns, and all and every other person or persons, whomever, having or lawfully claiming or who shall or may have or lawfully claim any estate, right, title interest, or trust of, in, to, or out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be with the appurtenances or any part thereof, by, from, under or in trust for him, the mortgagor, shall and will from time to time and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, and assigns, make, do, suffer, and execute or cause or procure to be made, done, suffered and executed all and every such further and other reasonable act, or acts, deed or deeds, devises, conveyances and assurances in the law for the further, better, and more perfectly and absolutely conveying and assuring the lands, tenements, hereditaments and premises, with the appurtenances unto the said mortgagee, his heirs and assigns, as by the said mortgagee, his heirs and assigns, or his or their counsel learned in the law, shall or may be lawfully and reasonably devised, advised or required, so as no person who shall be required to make or execute such assurances, shall be compelled for the making or executing thereof, to go or travel from his usual place of abode.

9. And that the mortgagor has done no act to encumber the lands.

9. And also that the mortgagor hath not at any time hereinbefore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter, or thing whatsoever, whereby or by means whereof, the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be or any part or parcel thereof, are, is or shall or may be in anywise impeached, charged, affected or encumbered in title, estate, or otherwise howsoever.





10. And that the mortgagor will insure the buildings on the lands to the amount of not less than .....dollars currency.

10. And also that the mortgagor or his heirs shall and will forthwith insure, unless already insured, and during the continuance of this security keep insured against loss or damage by fire, in such proportions upon each building as may be required by the said mortgagee, his heirs or assigns, the messuages and buildings erected on the lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be in the sum of ..... of lawful money of Canada at the least, in some insurance office to be approved of by the said mortgagee, his heirs or assigns, and pay all premiums and sums of money necessary for such purpose, as the same shall become due, and will on demand, assign, transfer, and deliver over unto the mortgagee, his heirs, executors, administrators, or assigns, the policy or policies of assurance, receipt and receipts thereto appertaining, and if the mortgagee, his heirs or assigns, shall pay any premiums or sums of money for insurance of the premises or any part thereof, the amount of such payments shall be added to the debt hereby secured, and shall bear interest at the same rate from the time of the payments, and shall be payable at the time appointed for the then next ensuing payment of interest on the said debt.

11. And the mortgagor doth release to the mortgagee all his claims upon the said lands subject to the proviso.

11. And the mortgagor hath released, remised and forever quitted claim, and by these presents doth release, remise, and forever quit claim unto the mortgagee, his heirs and assigns, all and all manner of right, title, interest, claim and demand whatsoever, both at law and in equity of, into and out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, and every part and parcel thereof, so as that neither the said mortgagor, his heirs, executors, administrators or assigns, shall or may at any time hereafter, have, claim, pretend to, challenge or demand the lands tenements, hereditaments and premises, or any part thereof, in any manner howsoever, subject always to the above proviso, but the mortgagor, his heirs, executors or assigns and the said lands, tenements, hereditaments and premises, subject as aforesaid, shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demands whatsoever, which the mortgagor, his heirs or assigns might or could have upon the mortgagee, his heirs or assigns, in respect of the lands, tenements, hereditaments and premises, or upon the lands, tenements, hereditaments and premises.



12. Provided that the mortgagee on default of payment may enter on or lease or sell the lands, but no power of sale to be exercised till after ..... weeks" notice.

12. Provided always and it is hereby declared and agreed by and between the parties to these presents, that if the mortgagor, his heirs, executors or administrators, shall make default in any payment of the said money or interest, or any part of either of the same, according to the true intent and meaning of these presents and of the proviso in that behalf herein before contained, it shall and may be lawful to and for the mortgagee, his heirs or assigns, without any further consent or concurrence of the mortgagor, his heirs or assigns, to enter into possession of the lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, and to receive and take the rents, issues and profits thereof, and whether in or out of possession of the same, to any ease or leases thereof or of any part thereof as he shall think fit, and also to sell and absolutely dispose of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, or any part or parts thereof, with the appurtenances, by public auction or private contract, or partly by public auction and partly by private contract, as to him shall seem meet, and to make any stipulations as to title, evidence thereof, the payment of the purchase money or otherwise, and to convey and assure the same when so sold unto the purchaser or purchasers thereof, his heirs and assigns, or as he, she or they shall direct and appoint, and to execute and do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid; and the mortgagee shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid, unless the same shall happen by reason of his wilful neglect or default; and it is hereby further agreed between the parties to these present, that until such sale or sales shall be made as aforesaid, the said mortgagee, his heirs, executors, administrators or assigns shall and will stand and be possessed of and interested in the rents and profits of the said lands, tenements, hereditaments and premises, in case he shall take possession of the same on any default as aforesaid, and after such sale or sales shall stand and be possessed of and interested in the moneys to arise and be produced by such sale or sales, or which shall be received by the mortgagee, his heirs or assigns by reason of any insurance upon the said premises or any part, thereof upon trust,

in the first place, to pay and satisfy the costs and charges of preparing for and making sales, leases, and conveyances as aforesaid, and all other costs and charges, damages and expenses which the said mortgagee, heirs, executors, administrators or assigns shall bear, sustain, or be put to for taxes, rent, insurances and repairs, and all other costs and charges which may be incurred in and about the execution of any of the trusts in him hereby reposed, and in the next place to pay and satisfy the principal sum of money and interest hereby secured or mentioned, or intended so to be, or so much thereof as shall remain due and unsatisfied up to and inclusive of the day whereon the principal sum shall be paid and satisfied; and after full payment and satisfaction of all such sums of money and interest as aforesaid, upon this further trust that the said mortgagee, his heirs, executors, administrators or assigns, do and shall pay the surplus, if any, to the mortgagee, his heirs, executors, administrators or assigns, do and shall pay the surplus, if any, to the mortgagor, his executors, administrators or assigns, or as he shall direct and appoint, and shall also, in such event, at the request, costs and charges in the law of the mortgagor, his heirs or assigns, convey and assure unto the said mortgagor, his heirs or assigns, or to such person or persons as he shall direct and appoint, all such parts of the lands, tenements, hereditaments and premises as shall remain unsold for the purposes aforesaid, freed and absolutely discharged of, and from all estate, lien, charge and encumbrance whatsoever by the mortgagee, his heirs or assigns, in the meantime made or created thereon and so as no person who shall be required to make or execute any such assurance shall be compelled for the making thereof to go or travel from his usual place of abode; provided, always, and it is hereby further declared and agreed by and between the parties to these presents that notwithstanding the power of sale and other the powers and provisions contained in these present, the said mortgagee, his heirs or assigns, shall have and be entitled to his right of action on the covenants herein contained and of foreclosure of the equity of the redemption of the said mortgagor his heirs and assigns, in the said lands, tenements, hereditaments and premises, as fully and effectually as he might have exercised and enjoyed the same in case the power of sale and other former provisos and trusts incident thereto had not been herein contained: Provided also that if any sale shall be made under the powers herein contained by any person or persons in whom the legal estate of the premises sold shall not be vested then and in every such case, the person or persons in whom the legal estate shall be vested shall convey the same as the person or persons, by whom the sale shall be made shall direct: Provided also that no person or persons



shall exercise the power of sale herein contained until ..... weeks" notice thereof shall be given in some newspaper published in Prince Edward Island, or by serving notice thereof on the mortgagor or his assigns personally, or by leaving the same at this or their then or last known place of abode, or by addressing the same to him or them through the General Post Office addressed to his or their present post office address. Provided always that upon any sale purporting to be made in pursuance of these presents no person or persons shall be obliged to inquire whether any such default has been made, or notice given as is required, or whether any money is owing on his security or in anywise to ascertain the propriety or regularity of any such sale or be affected by express notice the sale is improper. Provided also that the receipts of the mortgagee, his executors, administrators and assigns, for the purchase money of the premises sold shall discharge the person or persons paying the same therefrom, and from all responsibility of seeing to the application thereof, and from being answerable for any loss mis-application or non-application thereof and that the power of sale and all other powers herein contained shall from time to time be exercisable by the person or persons who shall for the time being be entitled to give a discharge for the moneys owing on this security.

13. Provided that the mortgagee may distrain for arrears of interest.

13. And it is further covenanted, declared and agreed by and between the parties to these presents, that if the mortgagor, his heirs, executors, or administrators, shall make default in payment of any part of the said interest, at any of the days or times hereinbefore limited for the payment thereof, it shall and may be lawful for the mortgagee, his heirs and assigns, to distrain therefor upon the land, tenements, hereditaments and premises, or any part thereof, and by distress warrant, to recover by way of rent, reserved, as in the case of a demise of the said lands, tenements, hereditaments and premises, so much of such interest as shall, from time to time, be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress of rent.

14. Provided that in default of the payment of the interest hereby secured the principal hereby secured shall become payable.

14. Provided always and it is hereby further expressly declared and agreed by and between the parties to these presents, that if any default shall at any time happen to be made of or in the payment of the interest money hereby secured or mentioned or intended so to be or any part thereof, then and in such case, the principal money hereby secured or mentioned or intended so to be, and every part thereof, shall forthwith become due and payable in like manner and with the like consequences and effects to all intents and purposes whatsoever, as if the time herein mentioned for payment of such principal money had fully come and expired, but that, in such case, the mortgagor, his heirs or assigns, shall on payment of all arrears under these presents with lawful costs and charges on that behalf, at any time before any judgment in the premises recovered at law, or within such time as, by the practice of equity, relief therein could be obtained, be relieved from the consequences of non-payment of so much of the money secured by these presents or mentioned, or intended so to be, as may not then have become payable by reason of lapse of time.



15. Provided that until default of payment the mortgagor shall have quiet possession of the lands.

15. And provided also, and it is hereby further expressly declared and agreed by and between the parties to these presents, that until default shall happen to be made of or in the payment of the said sum of money hereby secured or mentioned, or intended so to be, or the interest thereof, or any part of either of the same, or the doing, observing, performing, fulfilling, or keeping some one or more of the provisions, agreements or stipulation herein set forth, contrary to the true intent and meaning of these present, it shall may be lawful to and for the mortgagor, his heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues, and profits thereof to his own use and benefit, without let, suit, hindrance, interruption or denial of or by the said mortgagor, his heirs, executors, administrators or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall or may lawfully claim by, from, under, or, in trust for him, her, them, or any or either of them.

*R.S.P.E.I. 1951, c.138:*

\*[Note: The Second Schedule is prescribed by section 55.]

**THIRD SCHEDULE**

**DEED OF LEASE**

This Indenture made the ..... day of .....in the year of our Lord two thousand and ..... “In pursuance of the Enactments respecting Short Forms of Indentures” between ..... of the first part, and ..... of ..... the second part; (any recitals required may be here inserted) witnesseth, that in consideration of the premises and (if any recitals; if not omit of the premises and) of the rents, covenants and agreements hereinafter reserved and contained on the part of the party of the second part, his (or their) executors, administrators and assigns, to be paid, kept, observed and performed, he (or they) the party of the first part hath (or have) demised and leased and by these presents doth (or do) demise and lease unto the party of the second part, his (or their) executors, administrators and assigns, all that messuage or tenement, lands and premises situate, (or all that parcel or tract of land situate) lying and being: (Here insert a description of the premises with sufficient certainty).

To have and to hold the said demised premises for and during the term of ..... to be computed from the ..... day of ..... two thousand and ..... and from thenceforth next ensuing and fully to be complete and ended yielding and paying therefor yearly and every year during the term hereby granted, unto the party of the first part, his (or their) heirs, executors, administrators or assigns the sum of ..... to be payable on the following days and times, that is to say: (or etc.) the first of such payments to become due and be made on the ..... day of ..... next.

(Here insert any provisos, conditions and covenants, required).

In witness whereof, etc.,

Signed, sealed and delivered in the presence of

**COLUMN ONE**

**COLUMN TWO**

1. That the (lessee) covenants with the (lessor) to pay rent.

1. And the lessee doth hereby, for himself, his heirs, executors, administrators and assigns, covenant with the lessor that he the lessee, his executors, administrators or assigns, will during the term pay unto the lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.

2. And to pay taxes.

2. And also will pay all taxes, rates, duties and assessments whatsoever, whether parliamentary or otherwise, now charged or hereafter to be charged upon the demised premises, or upon the lessor on account thereof.

3. And to repair.

3. And also will during the term, well and sufficiently repair, maintain, amend and keep the demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the term shall be erected and made, when, where and so often as need shall be.



4. And to keep up fences.
4. And also will from time to time, during the term, keep up the fences and walls of or belonging to the premises, and make anew any parts thereof that may require to be new-made in a good and functional manner, and at proper seasons of the year.
5. And not to cut down timber.
5. And also will not at any time during the term, hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs or for firewood, or for the purpose of clearance as herein set forth.
6. And that the (lessor) may enter and view state of repair, and that the (lessee) will repair according to notice.
6. And it is hereby agreed that it shall be lawful for the lessor and his agents, at all reasonable times during the term, to enter the demised premises to examine the condition thereof, and further that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises of the said lessee, his executors, administrators and assigns, will within three calendar months next after such notice, well and sufficiently repair and make good accordingly.
7. And will not assign or sublet without leave.
7. And also that the lessee shall not nor will, during the term, assign, transfer or set over, or otherwise by any act or deed, procure the premises or any of them to be assigned, transferred, set over, or sublet unto any person or persons whomsoever without the consent in writing of the lessor, his heirs or assigns first had and obtained.
8. And that he will leave the premises in good repair.
8. And further the lessee will at the expiration or other sooner determination of the term peaceably surrender and yield up unto the lessor, the premises hereby demised, with the appurtenances, together with all buildings, erections and fixtures thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

9. Proviso for *re*-entry by the lessor on non-payment of rent, or non-performance of covenant.

9. Provided always, and it is hereby expressly agreed, that if the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements, herein contained on the part of the lessee, his executors, administrators or assigns, then, and in either of such cases, it shall be lawful for the lessor at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole, to *re*-enter, and the same to have again, repossess and enjoy, as of his or their former estate, anything hereinafter contained to the contrary notwithstanding.

10. The (lessor) covenants with the lessee) for quiet enjoyment

10. And the lessor doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the lessee, his executors, administrators, and assigns, that he and they paying the rent hereby reserved, and performing the covenants herin before on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, his heirs, executors, administrators and assigns, or any other person or persons, lawfully claiming by, from or under him, them or any of them.

R.S.P.E.I. 1951,c.138;1956,c.33,s.1.

\*[Note: The Third Schedule is prescribed by section 55.]

2008,c.8,s.23(3)

