Reprint
as at 12 November 2018

Property Law (Mortgagees' Sales Forms) Regulations 2007

(SR 2007/363)

Regulations name: amended, on 1 July 2013, by regulation 26(2) of the High Court Fees Regulations 2013 (SR 2013/226).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 3rd day of December 2007

Present:
His Excellency the Governor-General in Council

Pursuant to section 363 of the Property Law Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Justice.

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Regulations

1 Title

These regulations are the Property Law (Mortgagees' Sales Forms) Regulations 2007.

Regulation 1: amended, on 1 July 2013, by regulation 26(3) of the High Court Fees Regulations 2013 (SR 2013/226).

2 Commencement

These regulations come into force on 1 January 2008.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Property Law Act 2007.

(2) A reference in these regulations to a numbered form—

(a) is a reference to that numbered form as set out in the Schedule; but

(b) does not include any notes stated to be not part of that form.

Forms of notice of exercise of powers

4 Notice to mortgagor of mortgaged land of exercise of powers by reason of default

Every notice required by section 119 of the Act must be in form 1.

5 Notice to mortgagor of mortgaged goods of exercise of powers by reason of default

Every notice required by section 128(1) of the Act must be in form 2.

6 Notice to mortgagor of mortgaged goods of exercise of power of sale by reason of goods being at risk

Every notice required by section 128(2) of the Act must be in form 3.

Fees for sale by vendor mortgagee through Registrar

[Revoked]

Heading: revoked, on 1 July 2013, by regulation 26(4) of the High Court Fees Regulations 2013 (SR 2013/226).

7 Application fee

[Revoked]

Regulation 7: revoked, on 1 July 2013, by regulation 26(4) of the High Court Fees Regulations 2013 (SR 2013/226).

8 Commission fees

[Revoked]

Regulation 8: revoked, on 1 July 2013, by regulation 26(4) of the High Court Fees Regulations 2013 (SR 2013/226).

9 GST included

[Revoked]

Regulation 9: revoked, on 1 July 2013, by regulation 26(4) of the High Court Fees Regulations 2013 (SR 2013/226).

Revocation

10 Former regulations revoked

The Property Law (Mortgagees' Sales) Regulations 1983 (SR 1983/44) are revoked.

Schedule
Forms

rr 4–6

Form 1
Notice to mortgagor of mortgaged land of exercise of powers by reason of default

Section 119, Property Law Act 2007

In the matter of section 119 of the Property Law Act 2007

and

In the matter of Mortgage Instrument No: [*specify*], [*Land Registration District*] Registry (the **mortgage**)

To [*Mortgagor's full name and actual or last-known residential or business address*]

[*Mortgagee's or receiver's full name*], the mortgagee/receiver* under the mortgage, gives notice that the consequence specified below will follow if each default specified below has not been, or cannot be, remedied on or before [*date*].[1]

*Delete whichever is inapplicable.

Default

As at the date of this notice, you are in default under the mortgage in that—

†(a) you have failed to pay [*specify each default of payment claimed, stating the amount, due date, and nature (for example, principal, interest, insurance premiums, etc) of each missed payment, and any other particulars necessary to adequately inform the mortgagor of the nature and extent of the default*]:

†(b) you have failed to observe or perform the following express or implied covenant(s) in the mortgage: [*specify each default complained of with sufficient particularity to adequately inform the mortgagor of the nature and extent of the default, for example, failure to keep building(s) insured or in good repair*]:

†(c) the following has occurred: [*specify any other event (other than the arrival of the due date) on the occurrence of which any amounts secured by the mortgage become payable, or may be called up as becoming payable, under any express or implied term in the mortgage*].

†Delete if inapplicable.

Action required to remedy default

[2]You are required to remedy the specified default(s), or to cause the default(s) to be remedied,—

†(a) by payment of the sum of $[*amount*] †(which includes [*amount*], being the reasonable costs and disbursements of the mortgagee/receiver* in preparing and serving this notice):

†(b) by [*specify action required to remedy each default*].

†Delete if inapplicable.

*Delete whichever is inapplicable.

Consequence if default not remedied

If each default has not been, or cannot be, remedied on or before [*date*],[1]—

†(a) all amounts/the following selected amounts* secured by the mortgage will become payable, namely: [*specify relevant amounts*]:

†(b) all amounts/the following selected amounts* secured by the mortgage may be called up as becoming payable, namely: [*specify relevant amounts*]:

†(c) the following powers of the mortgagee/receiver* will become exercisable:

- †(i) the mortgagee's power to enter into possession of the mortgaged land:
- †(ii) the receiver's power to manage the mortgaged land or demand and recover income from the mortgaged land:
- †(iii) the mortgagee's/receiver's* power to sell the mortgaged land.

†Delete if inapplicable.

*Delete whichever is inapplicable.

Important information for recipient of notice

You are strongly recommended to consult a lawyer about this notice without delay.

Signed and dated at [*place*] on [*date*] by [*full name*], who is/who signed this notice on behalf of* the mortgagee/receiver*: [*signature*]

*Delete whichever is inapplicable.

This notice is given by [*specify*], whose address for service is [*address*].

Copy to [*each person specified in section 121(1)(a) to (d) of the Property Law Act 2007*[3] *of whose name and address the mortgagee or receiver has actual notice*].

Notes for mortgagee or receiver completing notice

These notes are not part of the form.

1 Section 120(1)(c) of the Property Law Act 2007 requires the date specified to be a date—

- (a) at least 20 working days after the date of service of the notice; or
- (b) after any longer period for the remedying of the default specified by any term that is expressed or implied in any instrument.

2 If the default complained of is incapable of remedy, omit this paragraph and substitute: "The default is incapable of remedy."

3 The persons specified in section 121(1)(a) to (d) of the Property Law Act 2007 are as follows:

(a) any former mortgagor:

(b) any covenantor:

(c) any mortgagee under a subsequent mortgage, and any holder of any subsequent encumbrance, over the mortgaged land if—

(i) the subsequent mortgage or other subsequent encumbrance is registered; or

(ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it:

(d) any person who has lodged a caveat under section 138 of the Land Transfer Act 2017, or a notice under section 42 of the Property (Relationships) Act 1976 having the effect of a caveat, against the title to the mortgaged land or any part of it.

4 A notice under section 118 (calling up of mortgage over any kind of property if interest has been accepted after expiry of term) of the Property Law Act 2007 may be given in the same document as the notice: Property Law Act 2007, sections 118(4) and 119(4).

Schedule form 1 note paragraph 3(d): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Form 2
Notice to mortgagor of mortgaged goods of exercise of powers by reason of default

Section 128(1), Property Law Act 2007, and section 114(4), Personal Property Securities Act 1999

In the matter of section 128(1) of the Property Law Act 2007

and

In the matter of the mortgage over goods (the **security agreement**) dated [*date*] over the following mortgaged goods (the **collateral**): [*describe collateral*].

To [*Mortgagor's full name and actual or last-known residential or business address*]

[*Mortgagee's or receiver's full name*], the mortgagee/receiver* under the security agreement, gives notice—

(a) that the consequence specified below will follow if each default specified below has not been, or cannot be, remedied on or before [*date*]:[1]

†(b) that the mortgagee/receiver* has taken possession of the collateral, which is subject to the security interest that—

(i) was created or provided for in the security agreement; and

(ii) if perfected, was perfected on [*date and time*].

*Delete whichever is inapplicable.

†Delete if inapplicable.

Default

As at the date of this notice, you are in default under the security agreement in that—

†(a) you have failed to pay [*specify each default of payment claimed, stating the amount, due date, and nature (for example, principal, interest, insurance premiums, etc) of each missed payment, and any other particulars necessary to adequately inform the mortgagor of the nature and extent of the default*]:

†(b) the following has occurred: [*specify any other event (other than the arrival of the due date) on the occurrence of which any amounts secured by the security agreement become payable, or may be called up as becoming payable, under any express or implied term in the security agreement*]:

†(c) the details of any other default under the security agreement are [*details of default*].

†Delete if inapplicable.

Action required to remedy default

[2]You are required to remedy the specified default(s), or to cause the default(s) to be remedied,—

†(a) by payment of the sum of $[*amount*] †(which includes [*amount*], being the reasonable costs and disbursements of the mortgagee/receiver* in preparing and serving this notice):

†(b) by [*specify action required to remedy each default*].

†Delete if inapplicable.

*Delete whichever is inapplicable.

Consequence if default not remedied

If each default has not been, or cannot be, remedied on or before [*date*],[1]—

†(a) all amounts/the following selected amounts* secured by the security agreement will become payable, namely: [*specify relevant amounts*]:

†(b) all amounts/the following selected amounts* secured by the security agreement may be called up as becoming payable, namely: [*specify relevant amounts*]:

†(c) the following power of the mortgagee/receiver* to sell the collateral will become exercisable: [*specify mortgagee's or receiver's power to sell*].

†Delete if inapplicable.

*Delete whichever is inapplicable.

Important information for recipient of notice

- You are strongly recommended to consult a lawyer about this notice without delay.
- If you are the debtor, you may,—
  - unless you have otherwise agreed in writing after default, in accordance with section 132(1) of the Personal Property Securities Act 1999, redeem the collateral in accordance with section 132 of the Personal Property Securities Act 1999. Your right has priority over any other person's right to redeem the collateral; or
  - unless you have otherwise agreed, reinstate the security agreement under section 133 of the Personal Property Securities Act 1999. Any right of reinstatement is subject, unless you have otherwise agreed, to section 134 of the Personal Property Securities Act 1999.
- If you are not a debtor, you may, subject to the debtor's prior right to redeem the collateral, and unless you have otherwise agreed in writing after default, in accordance with section 132(1) of the Personal Property Securities Act 1999, redeem the collateral in accordance with section 132 of the Personal Property Securities Act 1999.
- If there is a question as to who is entitled to receive any surplus, the secured party (as defined in section 16(1) of the Personal Property Securities Act 1999) may pay the surplus into court under section 118 of the Personal Property Securities Act 1999.

Signed and dated at [*place*] on [*date*] by [*full name*], who is/who signed this notice on behalf of* the mortgagee/receiver*: [*signature*]

*Delete whichever is inapplicable.

This notice is given by [*specify*], whose address for service is [*address*].

Copy to [*each person specified in section 130(1)(a) to (c) of the Property Law Act 2007*[3] *of whose name and address the mortgagee or receiver has actual notice*].

Notes for mortgagee or receiver completing notice

These notes are not part of the form.

1 Section 129(1)(c) of the Property Law Act 2007 requires the date specified to be a date—

(a) at least 10 working days after the date of service of the notice; or

(b) after any longer period for the remedying of the default specified by any term that is expressed or implied in any instrument.

2 If the default complained of is incapable of remedy, omit this paragraph and substitute: "The default is incapable of remedy."

3 The persons specified in section 130(1)(a) to (c) of the Property Law Act 2007 are as follows:

(a) any former mortgagor:

(b) any covenantor:

(c) any mortgagee under a subsequent mortgage, and any holder of any subsequent encumbrance, over the mortgaged goods if—

(i) the subsequent mortgage or other subsequent encumbrance is registered; or

(ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it.

4 The parties to a security agreement may contract out of certain provisions of the Personal Property Securities Act 1999. If this has occurred, the notice needs to be altered accordingly.

5 A notice under section 118 (calling up of mortgage over any kind of property if interest has been accepted after expiry of term) of the Property Law Act 2007 may be given in the same document as the notice: Property Law Act 2007, sections 118(4) and 128(4).

Form 3
Notice to mortgagor of mortgaged goods of exercise of power of sale by reason of goods being at risk

Section 128(2), Property Law Act 2007, and section 114(4), Personal Property Securities Act 1999

In the matter of section 128(2) of the Property Law Act 2007

and

In the matter of the mortgage over goods (the **security agreement**) dated [*date*] over the following mortgaged goods (the **collateral**): [*describe collateral*].

To [*Mortgagor's full name and actual or last-known residential or business address*]

[*Mortgagee's or receiver's full name*], the mortgagee/receiver* under the security agreement, gives notice—

(a) that, as at the date of this notice, the collateral is at risk on the grounds specified below:

(b) that the mortgagee/receiver* has taken possession of the collateral, which is subject to the security interest that—

  (i) was created or provided for in the security agreement; and

  (ii) if perfected, was perfected on [*date and time*]:

(c) that, on or after [*date*],[1] the secured party (as defined in section 16(1) of the Personal Property Securities Act 1999) may exercise any power to sell the collateral, by reason of the collateral being at risk.

*Delete whichever is inapplicable.

Grounds on which goods are at risk

As at the date of this notice, the collateral is at risk in that the secured party has the following reasonable grounds to believe that it has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of the security agreement: [*specify grounds*].

Important information for recipient of notice

- You are strongly recommended to consult a lawyer about this notice without delay.
- If you are the debtor, you may,—
  - unless you have otherwise agreed in writing after default, in accordance with section 132(1) of the Personal Property Securities Act 1999, redeem the collateral in accordance with section 132 of the Personal Property Securities Act 1999. Your right has priority over any other person's right to redeem the collateral; or

- unless you have otherwise agreed, reinstate the security agreement under section 133 of the Personal Property Securities Act 1999. Any right of reinstatement is subject, unless you have otherwise agreed, to section 134 of the Personal Property Securities Act 1999.

- If you are not a debtor, you may, subject to the debtor's prior right to redeem the collateral, and unless you have otherwise agreed in writing after default, in accordance with section 132(1) of the Personal Property Securities Act 1999, redeem the collateral in accordance with section 132 of the Personal Property Securities Act 1999.
- If there is a question as to who is entitled to receive any surplus, the secured party may pay the surplus into court under section 118 of the Personal Property Securities Act 1999.

Signed and dated at [*place*] on [*date*] by [*full name*], who is/who signed this notice on behalf of* the mortgagee/receiver*: [*signature*]

*Delete whichever is inapplicable.

This notice is given by [*specify*], whose address for service is [*address*].

Copy to [*each person specified in section 130(1)(a) to (c) of the Property Law Act 2007*[2] *of whose name and address the mortgagee or receiver has actual notice*].

Notes for mortgagee or receiver completing notice

These notes are not part of the form.

1 Under section 128(2) of the Property Law Act 2007, a power to sell is exercisable only on or after a date not less than 10 working days after service of the notice.

2 The persons specified in section 130(1)(a) to (c) of the Property Law Act 2007 are as follows:

(a) any former mortgagor:

(b) any covenantor:

(c) any mortgagee under a subsequent mortgage, and any holder of any subsequent encumbrance, over the mortgaged goods if—

(i) the subsequent mortgage or other subsequent encumbrance is registered; or

(ii) the subsequent mortgage or other subsequent encumbrance is unregistered, but either the mortgagee or receiver has actual notice of it.

3 The parties to a security agreement may contract out of certain provisions of the Personal Property Securities Act 1999. If this has occurred, the notice needs to be altered accordingly.

4 A notice under section 118 (calling up of mortgage over any kind of property if interest has been accepted after expiry of term) of the Property Law Act 2007

may be given in the same document as the notice: Property Law Act 2007, sections 118(4) and 128(4).

Martin Bell,
for Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 6 December 2007.

High Court Fees Regulations 2013

(SR 2013/226)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 20th day of May 2013

Present:
His Excellency the Governor-General in Council

Pursuant to section 18(4) of the Administration Act 1969, section 11(4) of the Admiralty Act 1973, section 100A of the Judicature Act 1908, sections 57 and 339(g) of the Lawyers and Conveyancers Act 2006, sections 67(2)(b) and 70(2) of the Local Government (Rating) Act 2002, section 52 of the Māori Trustee Act 1953, section 363(d) of the Property Law Act 2007, section 147 of the Public Trust Act 2001, and section 41 of the Trustee Companies Act 1967, His Excellency the Governor-General, acting—

(a) on the advice and with the consent of the Executive Council; and

(b) to the extent that these regulations prescribe the fees referred to in section 12BA of the Māori Trustee Act 1953, on the recommendation of the Minister of Māori Affairs,—

makes the following regulations.

Regulations

1 Title

These regulations are the High Court Fees Regulations 2013.

2 Commencement

(1) Except as provided in subclause (2), these regulations come into force on 1 July 2013.

(2) Item 29 in the fees table, which relates to filing an application for an order protecting a secured party's interests, comes into force on the later of—

(a) 1 July 2013; and

(b) the date appointed under section 2(2) of the District Courts Amendment Act 2011 for the coming into force of section 33 of that Act.

Consequential and transitional matters

29 Transitional provision

(1) In respect of a proceeding commenced before 1 July 2013,—

(a) an enactment revoked by regulations 25 to 28 continues to apply in respect of any step taken before 1 July 2013; and

(b) these regulations apply in respect of any step taken on or after that date.

(2) However, in respect of a hearing described in subclause (3),—

(a) regulations 9 to 14 of these regulations and items 17 to 20 of the fees table do not apply; and

(b) regulations 11, 11A, and 12 and items 6 to 9 of the Schedule of the High Court Fees Regulations 2001 continue to apply.

(3) Subclause (2) applies to a hearing if the Registrar notifies the parties of the scheduled hearing date before 1 July 2013.

Rebecca Kitteridge,
Clerk of the Executive Council.

Date of notification in *Gazette*: 23 May 2013.

Reprints notes

1 General

This is a reprint of the Property Law (Mortgagees' Sales Forms) Regulations 2007 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Land Transfer Act 2017 (2017 No 30): section 250

High Court Fees Regulations 2013 (SR 2013/226): regulation 26

Wellington, New Zealand:

Published under the authority of the New Zealand Government—2018