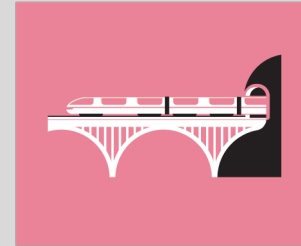




An introduction to mortgage law

Cecily Crampin



Falcon Chambers

www.falcon-chambers.com



What this session will cover

- What is a mortgage?
- Mortgages and the Law of Property Act 1925
- Mortgages and the Land Registration Act 2002
- Transfer
- Mortgage remedies, particularly mortgage possession claims
- Redemption
- A brief introduction to regulation in the context of court claims





What is a mortgage?

- Security
- Mortgages versus mere charges
- A little explanatory history
- The right of redemption



Mortgages and the Law of Property Act 1925

S85(1):

A mortgage of an estate in fee simple shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage.

S86(1):

A mortgage of a term of years absolute shall only be capable of being effected at law either by a subdemise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; and where a licence to subdemise by way of mortgage is required, such licence shall not be unreasonably refused.



The LPA and sale

S88(1) Where an estate in fee simple has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale

(a) the conveyance by him shall operate to vest in the purchaser the fee simple in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;

(b) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land conveyed; and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.



The charge by deed by way of legal mortgage

S87(1):

Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if—(a) where the mortgage is a mortgage of an estate in fee simple, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and (b) where the mortgage is a mortgage of a term of years absolute, a sub-term less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee.



Mortgages and the Land Registration Act 2002

S27(2)(f): the grant of a legal charge

S51: on completion of the relevant registration requirements, a charge created by means of a registrable disposition of a registered estate has effect, if it would not otherwise do so, as a charge by deed by way of legal mortgage.



Transfer by the borrower

- Transfer subject to the mortgage
- Restrictions





Transfer by the lender

- S58(1) LRA 2002

If, on the entry of a person in the register as the proprietor of a legal estate, the legal estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of the registration.
- *Peverell v Pender* [2005] EWCA Civ 760
- *Promontoria (Oak) Ltd v Emmanuel* [2020] EWHC 563 (Ch)
- (S114 LPA 1925 does not apply for registered land)

Lender's remedies

- Money claim
- Foreclosure
- Possession
- Sale
- Receivership



The money claim

- Principal
- Interest
- Costs





Possession

- Before the ink is dry?
- *Ropaigealach v Barclays Bank Plc* [2000] QB 263
- Criminal Law Act 1977 s6
- Parties
- Part 55
- Pre-action protocol/pre-action steps
- S36 of the Administration of Justice Act 1970
- Effect of being in possession: account on the basis of willful default



Sale

- LPA 1925 S88, s89
- S104
- S2



- S103: A mortgagee shall not exercise the power of sale conferred by this Act unless and until
- (i) Notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or
- (ii) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or
- (iii) There has been a breach of some provision contained in the mortgage deed or in this Act, or in an enactment replaced by this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.



LPA 1925 s91

Palk v Mortgage Services Funding Plc [1993] Ch 330



Receivership

- LPA s109: receiver of income
- (2) A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.

Express receivership

- Purpose of receivership: *Gaskell v Gosling* [1897] AC 575
- Nature of agency
- Borrower insolvency: *Sowman v David Samuel* [1978] 1 WLR 22
- Receiver's duties
- Receiver and possession: *Menon v Pask* [2019] EWHC 2611 (Ch)



Redemption

- Tender the whole sum sought
- Right to challenge after payment
- Claim for redemption: take an account



An introduction to regulation

- Financial Services and Markets Act 2000
- S19: requires authorisation of lender for regulated activities
- S26, s28: unenforceable without an order of the court
- Financial Services and Markets Act (Regulated Activities) Order 2001 (RAO)
- Art 61: regulated mortgage contracts

Regulation and court claims

- Breach of the Handbook/MCOB
- Ombudsman
- S28 FSMA 2000
- S126 Consumer Credit Act 1974

Falcon Chambers

Falcon Court
London
EC4Y 1AA

T: 020 7353 2484

F: 020 7353 1261

Email: clerks@falcon-chambers.com

DX: 408 Lond/Chancery Lane

