### **Table of Contents**

#### CHAPTER 1. INTRODUCTION

- § 1:1 Purpose and scope
- § 1:2 Abbreviations

#### CHAPTER 2. HISTORICAL DEVELOPMENT

- § 2:1 Lien theory of mortgage
- § 2:2 The "principal-incident" rule

### CHAPTER 3. THE SECURED OBLIGATION

- § 3:1 Personal liability
- § 3:2 Form and description of the obligation
- § 3:3 Consideration
- § 3:4 Nature of the obligation
- § 3:5 Acceleration
- § 3:6 Future advances

#### CHAPTER 4. THE MORTGAGE

- § 4:1 Formal requisites
- § 4:2 Parties
- § 4:3 Defenses
- § 4:4 Consideration
- § 4:5 Fraud
- § 4:6 Forgery
- § 4:7 Duress
- § 4:8 Usury
- § 4:9 Mortgage covenants

# CHAPTER 5. SUBJECT MATTER OF THE MORTGAGE

- § 5:1 The mortgagor's interest
- § 5:2 Executory contract vendee and vendor mortgages
- § 5:3 Leasehold mortgages
- § 5:4 Leases or rents
- § 5:5 Accessions, accretions and appurtenances
- § 5:6 After-acquired real property
- § 5:7 Mortgage covering both real and personal property
- § 5:8 After-acquired personal property; general considerations

- § 5:9 —Non-fixture personal property; priorities § 5:10 —Fixtures; priorities
- § 5:11 —Accessions
- § 5:12 Interests in decedents' estates
- § 5:13 Mortgage of property adversely held
- § 5:14 Crops, timber and the like

# CHAPTER 6. SPECIAL TYPES OF MORTGAGE; MORTGAGE ALTERNATIVES

- § 6:1 Introduction
- § 6:2 Open end mortgage
- § 6:3 Blanket mortgage
- § 6:4 Building loan mortgage
- § 6:5 Deed or mortgage in trust
- § 6:6 Graduated payment mortgage
- § 6:7 Purchase-money mortgage
- § 6:8 Reverse mortgage
- § 6:9 Variable rate mortgage
- § 6:10 Wrap-around mortgage
- § 6:11 Sale-leaseback; sale-buyback

### CHAPTER 7. EQUITABLE MORTGAGES

- § 7:1 Introduction
- § 7:2 Vendee's lien
- § 7:3 Grantor's lien
- § 7:4 Vendor's lien
- § 7:5 Agreements to execute a mortgage
- § 7:6 Deed absolute, intended as mortgage

# CHAPTER 8. MODIFICATIONS, SUBORDINATIONS, RELEASES

- § 8:1 Modifications
- § 8:2 —Effect on junior lienors
- § 8:3 Subordinations
- § 8:4 —Purchase-money mortgages
- § 8:5 —Partial assignments; contemporaneous mortgages
- § 8:6 Consolidations
- § 8:7 Co-obligors
- § 8:8 Agreement for partial release; right to demand release
- § 8:9 Effect of executed partial release

#### CHAPTER 9. MORTGAGE RECORDING TAX

- § 9:1 General considerations
- § 9:2 Instruments subject to tax
- § 9:3 Computation of tax; persons liable therefor
- § 9:4 The obligation secured
- § 9:5 Supplemental mortgage
- § 9:6 Payment of tax; effect of nonpayment thereof
- § 9:7 Enforcement; tax lien

### CHAPTER 10. RECORDING

- § 10:1 Definitions; recordable instruments
- § 10:2 Requisites for recording
- § 10:3 Priorities; introduction
- § 10:4 Mortgage recorded; mortgagee prevails against adverse claimant
- § 10:5 Mortgage recorded; mortgagee loses to adverse claimant
- § 10:6 Mortgage not recorded; mortgagee prevails against adverse claimant
- § 10:7 Mortgage not recorded; mortgagee loses to adverse claimant

# CHAPTER 11. PRIORITIES APART FROM THE RECORDING STATUTE

- § 11:1 Introduction
- § 11:2 Judgment liens; characteristics
- § 11:3 —Priorities
- § 11:4 Mechanic's liens; characteristics
- § 11:5 —Priorities
- § 11:6 Real property tax liens; characteristics
- § 11:7 —Priorities
- § 11:8 State tax liens; characteristics
- § 11:9 —Priorities
- § 11:10 Federal liens; characteristics
- § 11:11 —Priorities
- § 11:12 Circular priorities

# CHAPTER 12. DISCHARGE OF THE MORTGAGE OR THE OBLIGATION

- § 12:1 Introduction
- § 12:2 Merger

Tender § 12:3 § 12:4 Payment; prepayment § 12:5 Discharge Assignment in lieu of discharge; right to demand § 12:6 assignment § 12:7 Reinstatement; reissue MORTGAGOR

### CHAPTER 13. TRANSFERS BY THE

- § 13:1 Generally; forms of transfer
- § 13:2 —Transfers in which the grantee takes "subject to" the mortgage
- —Transfers in which the grantee "assumes" the § 13:3 mortgage
- —Transfers in which the grantee takes subject to "in § 13:4 the third sense"
- § 13:5 Successive transfers
- § 13:6 Transfers of part of mortgaged premises
- Transfers by devise or descent § 13:7
- Grantee defenses § 13:8
- § 13:9 Transfers to the mortgagee
- § 13:10 Suretyship defenses
- § 13:11 —Successive transfers
- —Negotiable instruments § 13:12
- § 13:13 Due-on-sale clauses

### CHAPTER 14. ASSIGNMENTS

- § 14:1 Form
- § 14:2 Validity
- § 14:3 Assignee's rights against assignor: absolute assignment
- § 14:4 —Assignment for security
- § 14:5 Assignee's rights against mortgagor
- § 14:6 Assignee's rights against third parties: generally
- —Latent equities § 14:7
- —Successive assignments § 14:8
- —Assignments for security § 14:9
- § 14:10 Payment problems
- § 14:11 Partial assignments
- § 14:12 Assignability after consolidation

#### CHAPTER 15. REDEMPTION

§ 15:1 Generally

#### TABLE OF CONTENTS

- § 15:2 Prohibition against limitations on right to redeem
- § 15:3 Persons who may redeem; persons subject to redemption
- § 15:4 Premises subject to redemption
- § 15:5 Amount required for redemption
- § 15:6 Enforcement; time within which to redeem
- § 15:7 Redemption by omitted necessary party to foreclosure action
- § 15:8 Redemption by United States

#### CHAPTER 16. POSSESSION AND RENTS

- § 16:1 The right to possession
- § 16:2 Mortgagee in possession
- § 16:3 —Rights and duties; rents
- § 16:4 —Effect of possession and rents clause
- § 16:5 —Effect of receivership clause; receivers

### CHAPTER 17. MORTGAGEE RESPONSES TO DEFAULT

- § 17:1 Introduction
- § 17:2 Deed in lieu of foreclosure
- § 17:3 Mortgagee's "election" of remedies
- § 17:4 The action at law to recover any part of the mortgage debt

#### CHAPTER 18. STATUTE OF LIMITATIONS

- § 18:1 General considerations
- § 18:2 Accrual of cause of action
- § 18:3 Extension or revival of cause of action; generally
- § 18:4 The effect of bankruptcy
- § 18:5 Acknowledgment or part payment of debt; waiver of statute
- § 18:6 The effect of GOL Article 17

# CHAPTER 19. THE ACTION TO FORECLOSE THE MORTGAGE

- § 19:1 Nature of and bases for action
- § 19:2 Plaintiffs
- § 19:3 Defendants; generally
- § 19:4 —Junior lienors
- § 19:5 —Possessory claimants

§ 19:6	—Owners
§ 19:7	—Paramount title; prior liens
§ 19:8	—Permissible defendants
§ 19:9	Notice of pendency
§ 19:10	Foreclosure of mortgage by power of sale

## CHAPTER 20. JUDGMENT AND SALE IN FORECLOSURE

§ 20:1	Purpose and scope of judgment
§ 20:2	Purpose and scope of judgment; generally—Sale of
	premises as a whole or in parcels
§ 20:3	—Judgment where mortgage debt not all due
§ 20:4	Conduct of sale
§ 20:5	Distribution of proceeds of sale
§ 20:6	Report of sale; confirmation
§ 20:7	Setting aside the sale
§ 20:8	—Inadequacy of the price
§ 20:9	—Collusive bidding agreements

### CHAPTER 21. MARSHALLING

- § 21:1 Two-funds rule of marshalling
- § 21:2 Inverse order of alienation rule of marshalling

# CHAPTER 22. THE FORECLOSURE PURCHASER

- § 22:1 Who may purchase
  § 22:2 Effect of conveyance to purchaser
  § 22:3 Purchaser's right to possession
- § 22:4 Bases for purchaser not completing sale
- § 22:5 Liability of defaulting purchaser

### CHAPTER 23. SURPLUS; DEFICIENCY JUDGMENT

- § 23:1 Surplus; general considerations
- § 23:2 Claimants to surplus
- § 23:3 Deficiency judgment; RPAPL § 1371
- § 23:4 Amount of deficiency judgment
- § 23:5 Effect of failure to move for deficiency judgment

# CHAPTER 24. OMITTED OWNERS AND LIENORS

§ 24:1 Remedies of omitted owners and lienors

#### Table of Contents

- § 24:2 Remedies of foreclosure purchaser
- § 24:3 Lessee non-joinder

### **APPENDIX**

Appendix 1. Table of Disposition of Sections in Former Article

Table of Laws and Rules
Table of Cases
Index