

Index

ACCELERATION OF PAYMENT

- Consolidation and, **9:2**
- Covenant to pay and
see ACTION ON THE COVENANT TO PAY
- Insurance money and, **38:11**
- Judgment for foreclosure, **26:22**

ACCOUNTING IN MORTGAGE ACTION

- Actions for foreclosure or sale, in, **31:1**
- Action to redeem, in, **31:1**
- Binding nature of, **31:2**
- Calculating account
 - generally, **31:3**
 - collateral advantage, **31:3**
 - costs and expenses of mortgagee, **31:3**
 - interest payable, **31:3**
 - participation payments, **31:3**
 - payments made on mortgage, **31:3**
 - payments to encumbrancer, **31:3**
 - principal amount, disputes re, **31:3**
 - taxes, **31:3**
 - timing of payments, **31:3**
- Direction of by court, **31:1**
- Interest issues, **31:3, 31:5**
- Judgment, through, **31:1**
- Mortgage documents terms re, **31:2**
- Mortgagor in possession, accounting by, **31:6**
 - duties of mortgagor, **31:6**
 - waste, committal of, **31:6**
- Mortgagor's right, **31:1**
- Practice in taking, **31:2**
- Reference, through, **31:1**
- Requirement for, **31:1**
- Sale proceeds, accounting for, **31:4**
- Set-offs or counterclaims, **31:2**

ACTION FOR FORECLOSURE OR SALE

- See also FORECLOSURE ACTION; JUDGMENT FOR FORECLOSURE
- Arrears of taxes and, **24:2**

ACTION FOR FORECLOSURE OR SALE—Cont'd

- Conduct of sale
see SALE
- Costs, **24:3**
- Defeasance proviso, **24:2**
- Demand or notice, **24:3**
- Directed sale, procedure re, **27:2**
- Entitlement re, **24:2**
- Foreclosure as remedy for redemption right, **24:1**
- Judgment for sale
 - generally, **27:2**
 - court's power to direct, **27:2**
 - entered at instance of defendant or party added on reference, **27:2**
 - final order, requirement re, **27:4**
 - plaintiff's right to final judgment, **27:3**
 - subsequent encumbrancer, requested by, **27:2**
 - types available, **27:3**
- Loss of right, **24:4**
 - foreclosure/sale on part of lands, where, **24:4**
 - lapse of time, **24:4**
- Mere charges or liens, **24:2**
- Nova Scotia order of foreclosure and sale, **27:6**
- Request to redeem by original party to action, **27:2**
 - effects of, **27:3**
- Subsequent mortgagee, rights of, **24:2**
- Time for bringing action, **24:3**

ACTION FOR POSSESSION

- Common law, at, **22:1**
- Court procedure, **22:5**
- Default requirement, **22:12**
 - notice of default, **22:13**
- Defendants to, **22:7**
 - mortgagor as, **22:8**
 - spouses as, **22:9**
 - tenants as, **22:10**
- History of, **22:1**

ACTION FOR POSSESSION—Cont'd

- Land Registration Reform Act provision, **22:1**
- Limitations on right, generally, **22:12**
- Mortgagee in possession
 - acts required to show, **22:4**
 - actual re-entry requirement, **22:4**
 - intention, **22:4**
 - nature of property, **22:4**
 - obligations of, onerous, **22:4**
 - reasons against, **22:4**
 - reasons for, **22:4**
 - test of what constitutes, **22:4**
- Mortgagor in possession, rights of, **22:3**
 - Land Registration Reform Act provision re, **22:3**
- Obtaining possession, **22:6**
- Possession, elements of, **22:4**
- Privacy concerns, **22:14**
- Prohibited period (Mortgages Act, s. 42), actions during, **22:5, 22:12**
 - Mortgages Act provision, **22:5, 22:12**
- Quiet possession until default, proviso for, **22:2**
 - attornment clause, **22:2**
 - entry prior to default, **22:2**
- Receivers, **22:6**
- Self-help remedies, **22:5**
- Tenants, position of, **22:6, 22:10**
- Third parties, mortgagee's rights against, **22:11**
- Vacant land, **22:6**
- Writ of possession, **22:6**

ACTION FOR REDEMPTION

- See also EQUITY OF REDEMPTION
- Accounting re, **31:1**
- Default
 - giving notice after, **29:5**
 - paying interest after, **29:5**
- Defendants in action, **29:8**
 - mortgagee as, **29:8**
 - persons who must be named, **29:8**
 - subsequent mortgagee as, **29:8**
- Effect of redemption, **29:1**
- Mortgage action, redemption in, **29:3**
 - procedural rules re, **29:3**
 - sale versus redemption proceedings, **29:3**
- Parties in, **29:7**

ACTION FOR REDEMPTION—Cont'd

- Payment to redeem
 - generally, **29:4**
 - agent, to, **29:4**
 - failure to pay, consequences of, **29:4**
 - multiple mortgagees, where, **29:4**
 - procedural rules re, **29:4**
 - requirement re, **29:4**
 - solicitor, to, **29:4**
 - whole mortgage requirement, **29:4**
- Plaintiffs in action
 - generally, **29:7**
 - assignee as, **29:7**
 - co-owner mortgagors, **29:7**
 - equity of redemption, person with interest in, **29:7**
 - execution creditor, as, **29:7**
 - joint holders of mortgage as, **29:7**
 - mortgagee as, **29:7**
 - mortgagor as, **29:7**
 - persons entitled to bring action, **29:7**
 - priorities, **29:7**
 - subsequent encumbrancer as, **29:7**
- Practice and procedure, **29:9**
- Right to redeem
 - generally, **29:1**
 - bars against, **29:1**
 - equitable right of redemption, **29:1**
 - laches, **29:1**
 - limitations statute, **29:1**
 - Mortgages Act provisions re, **29:1**
 - original mortgagor, as right of, **29:1**
 - refusal, circumstances permitting, **29:1**
 - relief against forfeiture, as, **29:1**
 - requirements of, **29:1**
 - timing
 - see timing of right to redeem
- Tender on refusal to discharge
 - generally, **29:6**
 - actual production of money requirement, **29:6**
 - amount, **29:6**
 - mortgagee's interest and costs, **29:6**
 - person required to tender, **29:6**
- Timing of right to redeem
 - generally, **29:2**
 - extension of redemption period, **29:2**
 - five-year rule, **29:2**
 - loss of right to redeem, **29:2**
 - Mortgages Act provisions re, **29:2**

INDEX

ACTION FOR REDEMPTION—Cont'd

- Timing of right to redeem—Cont'd
 - power of sale or foreclosure proceedings, **29:2**
 - sale arrangements, where, **29:2**
 - security protection proceedings, **29:2**
 - statutory rules of procedure re, **29:2**

ACTION FOR SALE

- See also **SALE**
- Action for foreclosure versus, **27:1**
- Commencement of, **27:1**
- Originating process for, **27:1**
- Right to redeem, **27:1**
- Statements of claim, forms re, **27:1**
- Subsequent encumbrancer, rights of, **27:1**

ACTION ON THE COVENANT TO PAY

- Acceleration of payment
 - generally, **23:5**
 - absence of clause re, **23:5**
 - clauses re, types of, **23:5**
 - notice re statement of amounts due, **23:5**
 - penalty, whether considered, **23:5**
 - recovery of possession, **23:5**
 - statutory relief for mortgagor, **23:5**
- Amounts recoverable, **23:1**
- Context of, **23:1**
- Covenant to repay, **23:1**
- Disentitlement to sue
 - generally, **23:6**
 - inability to reconvey, where, **23:6**
 - judgment against transferee of equity of redemption, where, **23:6**
 - lapse of time, where, **23:6**
 - merger of equity of redemption and mortgage, where, **23:6**
 - payment, where, **23:6**
 - release of equity of redemption, where, **23:6**
 - release of mortgage debt, where, **23:6**
- Entitlement to sue
 - generally, **23:2**
 - mortgagee's right, **23:2**
 - multiple mortgagees, **23:2**
 - trustee as mortgagee, **23:2**
- Environmental liability and, **10:26**
- Evidence of debt, **23:1**
- Guarantor
 - generally, **23:7**

ACTION ON THE COVENANT TO PAY—Cont'd

- Guarantor—Cont'd
 - demand requirement, **23:7**
 - principal debtor and not surety, where, **23:7**
 - strict construction of guarantee, **23:7**
 - variations to contract, effects of, **23:7**
- Limitation of actions, **30:5, 30:6**
- Non-recourse clauses, **23:1**
- Parties, joined, **23:2**
- Parties subject to suit
 - generally, **23:3**
 - estate trustee, **23:3**
 - guarantor, **23:7**
 - mortgage under sealed contract, where, **23:3**
 - mortgagor as, **23:3**
 - multiple covenantors, **23:3**
 - transferee of property, **23:3**
 - transfer of equity of redemption, where, **23:3**
 - trustee, **23:3**
- Right to sue, commencement of
 - generally, **23:4**
 - breach of covenant, requirement re, **23:4**
 - default requirement, **23:4**
 - demand for payment, **23:4**
- Separate action, as, **23:1**
- Statutory limitation, **23:1**
- Sub-mortgage and, **11:2**

ARREARS

- Distrain, recoverability on, **37:5**
- Limitation period re interest, **30:12, 30:13**
- Payment of
 - see **JUDGMENT FOR FORECLOSURE**
- Taxes, of, **24:2**

ASSIGNEE OF MORTGAGE

- See also **ASSIGNMENT OF MORTGAGE**
- Absolute assignment, **11:3**
- Account, assignment subject to state of, **11:6**
 - Conveyancing and Law of Property Act provision re, **11:6**
- Action for redemption and, **29:7**

ASSIGNEE OF MORTGAGE—Cont'd

- Assignor's liability to, **11:10**
 - covenant that mortgage valid and subsisting security, **11:10**
 - guarantees, **11:11**
 - reservation of rights clause, **11:11**
- Charge, effect of, **11:3**
- Concurrence of mortgagor, **11:6**
- Debt and conveyance of land
 - assignment of, **11:1**
 - separate assignment of, **11:1**
- Derivative mortgage, **11:1**
- Foreclosure action, plaintiff in, **25:2**
- Form of assignment, **11:1**
- Instrument in writing under seal, assignment by, **11:1**
- Joining assignor as party, circumstances, **11:4**
- Land Titles Act, application of, **11:1**
- "Legal assignment" under Conveyancing and Law of Property Act, **11:3**
- Mortgage as form of charge, **11:1**
- Mortgage debt
 - and conveyance of land, **11:1**
 - assignment of, **11:3**
 - choses in action, assignment of, **11:3, 11:4**
 - notice to/concurrence of mortgagor, **11:5**
- Notice to mortgagor re assignment, **11:5**
- Powers of, **11:12**
- Purchaser for value without notice, as, **11:9**
- Registry Act, application of, **11:1**
- Rights of, **11:6, 11:12**
- Seizure of assignee's interest, **12:2**
- Set-off, mortgagor's right of
 - generally, **11:7, 11:8**
 - debitum in praesenti, **11:8**
 - equitable set-off, availability of, **11:8**
 - legal set-off, availability of, **11:8**
 - legal versus equitable set-off, **11:8**
- Statutory form of assignment, **11:3**
- Statutory requirements of assignment, **11:1**
- Sub-charge, **11:2**
- Subject to equities affecting mortgage account, **11:6**
- Subject to equity or set-off, **11:7**
- Subject to equity to reform/set aside mortgage, **11:7**

ASSIGNEE OF MORTGAGE—Cont'd

- Sub-mortgage, **11:1, 11:2**
 - action on the covenant and, **11:2**
- Transfer by mortgagee, **11:1**

ASSIGNMENT

- By mortgagee in possession, **32:4, 32:6**
- Of equity of redemption, **14:2**
- Of leases
 - see LEASE OF MORTGAGED LANDS
- Of mortgage
 - see ASSIGNMENT OF MORTGAGE
- Of term, **6:3**

ASSIGNMENT OF MORTGAGE

- See also ASSIGNEE OF MORTGAGE
- Common law, at, **20:1**
- Discharge of assigned mortgage, **19:9**
- Historical background, **20:3**
 - "instead of reconveying," meaning of, **20:3**
- Mortgagee in possession, position of, **20:7, 32:4, 32:6**
- Mortgages Act provisions, **20:2, 20:3**
 - mortgagee in possession, non-application to, **20:7**
- Persons interested, priorities as between, **20:5**
- Reconveyance, assignment on same terms as, **20:6**
- Reconveyance to person best entitled, **20:1**
- Rights as between encumbrancers, **20:4**
- Statutory right to, **20:2**

ASSIGNOR

- Joining of as party, **11:4**
- Liability of
 - see ASSIGNEE OF MORTGAGE

ATTORNMENT

- See also DISTRAIN, POWER TO
- Acts necessary to create, **37:2**
- Attornment clause, form of, **37:2**
- Distress in case of, **37:3**
- Landlord/tenant relationship, modes of creation, **37:2**
- Land Titles Act, under, **37:6**
- Multiple attornments, **37:2**
- Notice requirements, **37:3**
- Rent, requirements re, **37:3**

INDEX

ATTORNMEN—Cont'd

Tenancy created by, **37:2**

BANKRUPTCY

See **INSOLVENCY, MORTGAGE
ENFORCEMENT RE**

BREACH OF CONDITION

Forfeiture on, **2:2**

BREACH OF COVENANT

Generally, **23:4**

CHARGE

Assignment of mortgage and, **11:3**

Discharge of
see **DISCHARGE OF MORTGAGE**

Floating
see **EQUITABLE MORTGAGES**

Mortgage as form of, **11:1**

Mortgagee in possession and, **32:1**

Mortgages versus, **1:7**

Purchaser with notice of subsequent
charges, **21:5**

Sub-charge, **11:2**

CHATTEL MORTGAGE

Choses in action versus, **6:1**

Described, **2:4**

CHATTELS

Annexation of, **2:4**

Mortgagee of, **25:14**

Priorities re, **2:4**

CLOGGING EQUITY OF REDEMPTION

See **EQUITY, MORTGAGE IN**

COMMERCIAL TITLE INSURANCE

See **INSURANCE**

Comprehensive coverage, **43:12**

Contents
generally, **43:3 to 43:10**
conditions, **43:8**
coverage statement, **43:4**
covered risks, **43:5**
duty to defend, **43:6**
exclusions from coverage, **43:7**
Schedule "A," **43:9**
Schedule "B," **43:10**

Endorsements

generally, **43:14 to 43:46**
access endorsement, **43:15**

COMMERCIAL TITLE INSURANCE

—Cont'd

Endorsements—Cont'd

address endorsement, **43:16**

aggregation endorsement, **43:17**

assignment of rents, **43:18**

coinsurance, **43:19**

condominium, **43:20**

construction lien, **43:21**

contiguity, **43:22**

doing business, **43:25**

due Execution, **43:26**

easement and damage or forced
removal endorsement, **43:27**

first loss, **43:28**

future insurance endorsement, **43:27**

government response, **43:30**

leasehold, **43:31**

lender's group endorsement, **43:32**

post policy fraud coverage endorse-
ment, **43:34**

restrictions, encroachments, minerals,
43:35

revolving credit, **43:36**

special measure of damages, **43:37**

subdivision endorsement, **43:38**

successor insured endorsement, **43:39**

suffered, **43:40**

survey, **43:41**

tax lot/tax parcel, **43:41**

usury, **43:42**

variable rate, **43:43**

zoning, **43:44**

Issuing guidelines, **43:11, 43:12**

Policy of indemnity, **43:2**

Search requirements, **43:11, 43:12**

COMMON LAW, MORTGAGES AT

Accretions, **2:4**

Annexation of chattels, **2:4**

Capacity

generally, **2:5**

Children's Law Reform Act provisions,
2:5

Family Law Act amendments re, **2:8**

infants, **2:5**

married women, **2:8**

Conveyance of legal estate, **2:1**

Defeasance, **2:2**

Fixtures, entitlement to, **2:4**

Forfeiture on breach of condition, **2:2**

**COMMON LAW, MORTGAGES AT
—Cont'd**

Possession of land and title deeds, **2:3**

Reconveyance, **2:2**

CONDITIONAL SALES ACT

Generally, **2:4**

CONDOMINIUMS

Blanket mortgages, **39:5**

enforceability of, **39:5**

partial discharge of, **39:5**

Common expenses, statutory lien for, **39:6**

default by owner, **39:6**

priority of, **39:6**

written notice of lien, **39:6**

Condominium corporation

actions by, **39:4**

compliance with Act, **39:2**

expropriation of common elements by, **39:4**

insurance, obligation to maintain, **39:8**

mortgagee's entitlement to notices, **39:4**

notices by, **39:4**

records of, inspection of, **39:7**

Creation of, **39:1**

Declaration and description

amendments to, **39:3**

mortgagee consent to, **39:1**

Deemed statutory provisions in mortgages, **39:9**

Description of, **39:1**

Encumbrance defined, **39:2**

Insurance, mortgagee's entitlement to proceeds, **39:8**

Meetings, mortgagee's attendance, **39:7**

Mortgagee in possession, **39:2**

Mortgagee of unit, rights of, **39:2**

Owner defined, **39:2**

Voting rights

mortgagee's, **39:7**

multiple mortgagees, where, **39:7**

owner's, **39:7**

CONFLICT OF LAWS

Application to mortgage law, **40:1**

Contracts relating to land, **40:5**

capacity to contract, **40:6**

choice of law, **40:5**

lex rei sitae, application of, **40:5**

CONFLICT OF LAWS—Cont'd

Foreign law, application/exclusion of, **40:7**

Jurisdiction

generally, **40:3**

Canadian position, **40:3**

foreign immovables, over, **40:3**

immovables, jurisdiction over, **40:3**

in personam jurisdiction, **40:3**

lex rei sitae, **40:3**

torts, re, **40:3**

Uniform Court Jurisdiction and

Proceedings Transfer Act, **40:4**

Limitations of action, **40:8**

Movables versus immovables, **40:2**

lex situs as determining distinction, **40:2**

Procedure, **40:7**

lex fori, **40:7**

Public policy, **40:7**

Purpose of, **40:1**

Realty versus personalty, **40:1**

CONSOLIDATION

Assertion of, **9:7**

Availability of, **9:1**

Default requirement, **9:2**

acceleration clause and, **9:2**

continuing default requirement, **9:2**

Different mortgages made to one

mortgagee, **9:4**

Doctrine described, **9:1**

Equitable concept, as, **9:2, 28:7**

Equitable right of redemption and, **9:1**

Mortgaged parcels transferred to one person, **9:5**

Mortgagee, right of, **9:1**

Mortgages made to different mortgagees, **9:5**

Notice in writing, by, **9:2, 9:7**

Registry Act, under, **9:6**

Scope of right, **9:5**

Transfer of equities or mortgages, **9:3**

Types of mortgages, application to, **9:1**

Use of, **9:8**

CONVEYANCE

Equitable mortgages and

see EQUITABLE MORTGAGES

Legal estate, of, **2:1**

Mortgage debt and, **11:1**

INDEX

CONVEYANCE—Cont'd

- Power of sale and
see POWER OF SALE
- Reconveyance, **2:2**

CONVEYANCING AND LAW OF PROPERTY ACT

- Assignment subject to state of account,
11:6
- Definitions under, **1:4**
- “Grant,” meaning of, **1:8**
- “Legal assignment” under, **11:3**
- Mortgages, effect on, **1:8**

COSTS

- Action for foreclosure or sale, on, **24:3**
- Assessment of, **34:5**
- Disclaiming defendant, **34:4**
- English practice, **34:1**
- Foreclosure or redemption action, **34:4**
- General principles re, **34:1**
- Mortgage action, in, **34:4**
 - court’s discretion, **34:4**
 - mortgagee deprived of costs, **34:4**
- Mortgages Act provisions re assessment,
34:5
- Negotiating and completing loan, re, **34:2**
- Party-and-party costs, circumstances for,
34:4
- Procedural rules re, **34:1**
- Protection of security, re, **34:3**
- Redemption action, in, **34:4**
- Reference, of, **26:3**
- Solicitors Act provisions re, **34:1, 34:5**
- Subsequent encumbrancer, of, **34:4**
- Taxation of, **26:13**
- Trustee’s, **34:3**

COUNTERCLAIM IN MORTGAGE ACTIONS

- Generally, **31:2**

COURTS

- Court-appointed receiver
generally
see RECEIVER
environmental liability
see ENVIRONMENTAL
LIABILITY
- Direction by re
accounting, **31:1**
discharge, **19:10**

COURTS—Cont'd

- Direction by re—Cont'd
judgment for sale, **27:2**
- Discretion re
costs, **34:4**
stay, grant of, **28:14**
- Divisional Court, establishment of, **4:5**
- Jurisdictional development, **4:4, 4:5**
- Sale, duty re conduct of, **27:4**
- Spousal claims, powers re, **18:6**

COVENANT

- Action on
see ACTION ON THE COVENANT
TO PAY
- Breach of, **23:4**
- Environmental issues and, **10:59**
- Transfer of equity of redemption and,
14:4

CREDITORS

- See EXECUTION CREDITORS OF
MORTGAGEE; EXECUTION
CREDITORS OF MORTGAGOR

CURTESY

- See SPOUSAL RIGHTS IN
MORTGAGED LAND

DEATH OF MORTGAGEE

- Devolution of Estates Act, **13:3**
- Escheat, **13:2**
- Estates Administration Act, effects of,
13:3
- Mortgage as realty, **13:2**
- Mortgage security as personal estate, **13:1**
- Surviving mortgagee, payment to, **13:4**
- Transmission under Land Titles Act, **13:5**

DEATH OF MORTGAGOR

- Beneficiaries, **17:2, 17:3**
- Equity of redemption, devolution of, **17:1**
- Escheat, possibilities of, **17:1**
- Estates Administration Act, effect of, **17:2**
- Intestacies, **17:1**
- Locke King’s Act, **17:3**
- Personal representative, vesting in, **17:2**
- Succession Law Reform Act, effects of,
17:3

DEFAULT

- Action for possession and, **22:2, 22:12**
- Action for redemption and, **29:5**

DEFAULT—Cont'd

- Action on the covenant to pay and, **23:4**
- Condominium common expenses, re, **39:6**
- Consolidation and, **9:2**
- Default judgment in foreclosure action, **25:1, 26:2**

DEFEASANCE

- Generally, **2:2, 24:2**

DEVOLUTION OF ESTATES

- See DEATH OF MORTGAGEE; DEATH OF MORTGAGOR

DISCHARGE OF MORTGAGE

- Assigned mortgages, **19:9**
- Certificate of discharge, effect of, **19:5**
- Court-ordered discharge, **19:10**
- Death of mortgagee, discharge after, **19:11**
- Execution creditors of mortgagee, **12:3**
- Form of, **19:3**
- Historical background to, **19:2**
- Land Registration Reform Act, effects of, **19:1, 19:3**
- Land Titles Act provisions re, **19:1, 19:3**
- Mortgage by grantee to uses, discharge of, **19:6**
- Mortgage seized under execution, discharge of, **19:12**
- Partial discharge of blanket mortgage, **39:5**
- Partial discharges
 - see SUBDIVISION CONTROL
- Pre Land Registration Reform Act, 1984 discharges, **19:4**
- Principles re, **19:1**
- Reconveyance, right to, **19:7**
- Registration, effect of, **19:5**
- Registry Act provisions re, **19:1, 19:3**
- Revesting of legal estate, **19:2**
- Statutory form of discharge, **19:3**
- Subrogation, right of, **19:8**
 - equitable remedy, **19:8**
 - nature of remedy, **19:8**
 - scope of, **19:8**
- Tender on refusal to discharge, **29:6**

DISTRAIN, POWER TO

- See also ATTORNMEN
- Arrears recoverable, **37:5**
- Commercial Tenancies Act provisions re, **37:3, 37:4**

DISTRAIN, POWER TO—Cont'd

- Distress clause in mortgage, form of, **37:1**
- Effect of distraint, **37:1**
- Express power to, **37:1**
- Goods subject to distress, **37:4**
- Lessor's position, **37:4**
- Licence to distraint, **37:1**
- Mortgagee's right re goods of mortgagor's lessee, **37:4**
- Mortgages Act provision re, **37:4, 37:5**
- Personal licence, as, **37:4**
- Provincial variations, **37:4**
- Residential tenancies, unavailability re, **37:1**

DISTRESS

- See DISTRAIN, POWER TO

DOWER AND CURTESY

- See SPOUSAL RIGHTS IN MORTGAGED LAND

ENVIRONMENTAL LIABILITY

- Action on the covenant, **10:26**
- Attornment, effect of, **10:27**
- Bankruptcy and Insolvency Act, **10:36, 10:39**
- Bankruptcy of borrower, consequences of, **10:39**
 - clean-up costs, priority of, **10:40**
 - Crown as secured creditor, **10:40**
 - MOE, special security, **10:40**
- Brownfields Statute Law Amendment Act, 2001 (Ontario), **10:15**
- Canadian Environmental Protection Act, 1999, **10:28, 10:29**
- Comprehensive environmental audit
 - generally, **10:55**
 - privileged information and, **10:57**
 - purpose of, **10:56**
- Constitution Act, 1867 (ss. 91, 92), **10:1**
- "Control" question, **10:27**
- "Emergencies," **10:29**
- Enforcement of security without taking possession, **10:27**
- Environmental Assessment Act (Ontario), **10:21**
- Environmental Bill of Rights, 1993 (Ontario), **10:22**
- Environmental Protection Act (Ontario)
 - generally, **10:2**
 - clean-up costs, priority of, **10:11**

ENVIRONMENTAL LIABILITY

—Cont'd

- Environmental Protection Act (Ontario)
 - Cont'd
 - control orders under, **10:3, 10:4, 10:6**
 - costs, order to pay, **10:10**
 - directors and officers, personal liability of, **10:14**
 - Director's s. 12 order, **10:6**
 - Director's s.18 order, **10:7**
 - penalties, **10:4, 10:13**
 - receivers, liability of, **10:17**
 - remedial orders, **10:8**
 - removal of waste order, **10:9**
 - secured creditors, liability of, **10:16**
 - "Spills Bill" statutory cause of action, **10:12**
 - stop orders under, **10:5, 10:6**
 - trustee in bankruptcy, liability of, **10:17**
- Environmental searches
 - generally, **10:50**
 - Environmental Protection Act s. 46 request, **10:50**
 - index of orders, **10:51**
 - Record of Site Condition, **10:52**
 - underground storage tanks, **10:53**
- Federal jurisdiction re, **10:1**
- Federal legislation, **10:28 to 10:33, 10:33**
- Fisheries Act (Canada), **10:31**
 - civil liability, **10:31**
 - penal sanctions, **10:31**
- Foreclosure, acquisition of liability on, **10:38**
- Insurance
 - see INSURANCE
- Lender/mortgagee just prior to realization of security, **10:63 to 10:65**
 - court-appointed versus private receivers, **10:64**
 - "Global Agreement," **10:65**
 - "Standard Agreement with Lenders," **10:65**
- Lender/mortgagee post-default, position of, **10:35 to 10:40**
- Lender/mortgagee prior to default, position of, **10:34**
- Lender/mortgagee taking possession, liability of, **10:37**
- Miscellaneous statutes (Ontario), **10:25**
- Mortgagee in possession, liability of, **32:8**

ENVIRONMENTAL LIABILITY

—Cont'd

- Nutrient Management Act, 2002 (Ontario), **10:20**
- Ontario Water Resources Act, **10:13, 10:18**
- Pesticides Act (Ontario), **10:19**
- Preventative measures
 - generally, **10:41 to 10:62**
 - borrower purchasing property, where, **10:44**
 - costs re environment, **10:59**
 - covenants requested of borrower, **10:59**
 - due diligence, **10:42**
 - environmental audit
 - see comprehensive environmental audit
 - indemnity, **10:60**
 - information from borrower, obtaining, **10:43**
 - insurance, **10:61**
 - minimizing risk, **10:41**
 - preliminary environmental site review, **10:45**
 - representations and warranties, **10:58**
 - searches
 - see searches
- Provincial jurisdiction re, **10:1**
- Receivers, position of court-appointed, **10:17, 10:27, 10:36, 10:64**
 - Bankruptcy and Insolvency Act priorities, **10:36**
 - opportunity to control test, **10:36**
- Searches
 - generally, **10:46**
 - environmental
 - see environmental searches
 - environmental audit
 - see comprehensive environmental audit
 - limited effect of, **10:54**
 - litigation, **10:49**
 - municipal, **10:48**
 - real estate, **10:47**
- Storage tanks, **10:23**
- Technical Standards and Safety Act, 2002 (Ontario), **10:23**

EQUITABLE MORTGAGES

- See also EQUITY, MORTGAGE IN
- Agreement to give mortgage, **5:7**

EQUITABLE MORTGAGES—Cont'd

- Conveyance contrary to law, where, **5:9**
- Conveyance defective in form, where, **5:6**
- Creation of, **5:2**
- Defined, **5:1**
- Deposit of title deeds, mortgage by, **5:10**
- Enforceability of, **5:2, 5:12**
- Equitable interests, mortgage of, **5:4**
- Equity of redemption, mortgage of, **5:3**
- Floating charge, **5:12**
 - described, **5:12**
 - displacement by specific security, **5:12**
 - priorities re, **5:12**
- Future interest, mortgage of, **5:5**
- Instrument not amounting to conveyance, **5:8**
- Interest, no express provision re, **33:2**
- Lease of mortgaged lands, **15:11**
- Priorities
 - see **PRIORITIES**
- Remedies of, **5:11**
- Status of, **5:2**

EQUITY

- Assignee of mortgage as subject to, **11:7**
- Limitation of actions and, **30:2**
- Priorities in
 - see **PRIORITIES**
- Upper Canada, in
 - see **LAW AND EQUITY IN UPPER CANADA**

EQUITY, MORTGAGE IN

- Collateral advantage, stipulation for, **3:4**
- Conveyance absolute, form of, **3:3**
- Disguised mortgage, **3:3**
- Irredeemability, prohibition re, **3:2**
- “Once a mortgage always a mortgage,” doctrine re, **3:1, 3:3**
- Prepayment, right of, **3:2**
- Priorities
 - see **PRIORITIES**
- Redemption
 - clogging equity of, **3:5**
 - postponement of right, **3:2**
 - right of, **3:2**
 - rules re, **3:1**
- Rental participation clauses, **3:4**
- Security, mortgage as, **3:1**
- Unconscionability, **3:2, 3:4**

EQUITY OF REDEMPTION

- See also **ACTION FOR REDEMPTION; EQUITY, MORTGAGE IN**
- Absolute transfer of
 - see **TRANSFER OF EQUITY OF REDEMPTION**
- Assignment of, **14:2**
- Consolidation and
 - see **CONSOLIDATION**
- Devolution of, **17:1**
- Foreclosure action, persons interested in, **25:3**
- Merger of, **23:6**
- Mortgage of, **5:3, 14:1**
- Part owner of, **25:2**
- Reference and, **26:10**
- Release of, **23:6**
- Subdivision control and, **41:7**
- Transfer of
 - see **TRANSFER OF EQUITY OF REDEMPTION**

EXECUTION CREDITORS OF MORTGAGEE

- Discharge by sheriff or bailiff, **12:3**
- Rights of, **12:1**
- Seizure of mortgage under execution, **12:2**
 - assigned mortgages, **12:2**
 - Execution Act provision, **12:2**
 - Land Titles Act provisions, **12:2**

EXECUTION CREDITORS OF MORTGAGOR

- Generally, **16:1**
- Joint tenant, execution against single, **16:8**
- Rights of execution creditors, **16:2**
 - creditors’ relief legislation, **16:4**
- Seizure and sale of mortgagor’s interest, **16:5**
 - case law, **16:7**
 - Execution Act provisions re, **16:6**
 - historical background, **16:5**
- Sheriff’s sale
 - mortgagee as purchaser under, **16:10**
 - purchaser’s rights under, **16:9**

FIXTURES

- Generally, **2:4**

INDEX

FLOATING CHARGE

See **EQUITABLE MORTGAGES**

FORECLOSURE

Abortive sale and, **27:5**

Action for

see **ACTION FOR FORECLOSURE OR SALE; FORECLOSURE ACTION**

Environmental liability on, **10:38**

Expired leasehold mortgage, **6:6**

Judgment for

see **JUDGMENT FOR FORECLOSURE**

Leasehold mortgages and, **6:6**

Limitations

see **LIMITATION OF ACTIONS**

Sale

see **ACTION FOR FORECLOSURE OR SALE**

Subdivision control and

see **SUBDIVISION CONTROL**

Summary form of, **28:3**

FORECLOSURE ACTION

Combined claims in, **25:1**

Defendants in

generally, **25:3**

Crown as, **25:5**

litigant pendente lite, **25:3**

original mortgagee, **25:3**

persons interested in equity of redemption

generally, **25:3**

guarantor of mortgagor, **25:8**

mortgagor, **25:4**

personal representatives, **25:6**

present owner of equity, **25:5**

spouse of mortgagor, **25:7**

tenant of mortgagor, **25:9**

persons with interests affected, **25:3**

prior mortgagees, **25:3**

subsequent encumbrancers

generally, **25:10**

construction lienholders, **25:13**

execution creditors, **25:12**

mortgagee of chattels, **25:14**

municipal liens, **25:14**

subsequent mortgagees, **25:3, 25:11**

Final order of foreclosure, effect of, **25:1**

FORECLOSURE ACTION—Cont'd

Judgment

see **JUDGMENT FOR FORECLOSURE**

Nova Scotia order of foreclosure and sale, **27:6**

Plaintiffs in

generally, **25:2**

assignee of mortgagee's estate, **25:2**

bank, **25:2**

deceased person, **25:2**

executors and trustees, **25:2**

multiple mortgagees, where, **25:2**

part owner of equity of redemption, **25:2**

Pleadings in, **25:15**

default judgment, **25:1**

statement of claim, **25:1**

FORFEITURE

Breach of condition, on, **2:2**

Relief against, **29:1**

FRAUD

Generally, **30:14**

GUARANTOR

Covenant to pay and

see **ACTION ON THE COVENANT TO PAY**

Equity of redemption, interest in, **25:8**

Notice of sale under power of sale, **35:16**

IMMOVABLES

See **CONFLICT OF LAWS**

INSOLVENCY, MORTGAGE ENFORCEMENT RE

See also **RECEIVER**

Bankruptcy and Insolvency Act (BIA) regime

generally, **28:1 to 28:7**

application of, **28:1**

consolidation, equitable rights of, **28:7**

judgment for possession, enforcement of, **28:3**

marshalling, doctrine of, **28:7**

notice of intention to enforce security, **28:6**

post-bankruptcy proceedings, **28:3**

priorities

effect of bankruptcy on, **28:4**

INSOLVENCY, MORTGAGE

ENFORCEMENT RE—Cont'd

- Bankruptcy and Insolvency Act (BIA)
 - regime—Cont'd
 - priorities—Cont'd
 - Personal Property Security Act application, **28:5**
 - personalty versus realty issues, **28:5**
 - proof of claim, **28:2**
 - scope of protection under, **28:1**
 - secured creditor, mortgagee as, **28:1**
 - summary form of foreclosure, **28:3**
 - trustee's right to inspect security, **28:3**
- BIA proposals, mortgage enforcement in
 - generally, **28:8 to 28:11**
 - post-proposal stay, **28:11**
 - pre-proposal stay, **28:11**
 - proceedings under BIA, **28:8 to 28:11**
 - proposals generally, **28:9**
 - secured creditors and, **28:10**
 - stay of proceedings, **28:11**
- Companies' Creditor Arrangement Act (CCAA) regime
 - generally, **28:12 to 28:15**
 - court discretion re granting stay, **28:14**
 - lifting of stay, grounds for, **28:14**
 - plan of arrangement under, **28:15**
 - purpose of CCAA, **28:13**
 - reorganizations under, **28:12 to 28:15**
 - secured creditors, classification of, **28:15**
 - stay orders, **28:14**

INSURANCE

- Business interruption
 - generally, **38:17**
 - continuity plan, **38:17**
 - coverage, **38:17**
 - fixed operating costs, **38:17**
 - indemnity period, **38:17**
 - principle, **38:17**
 - recover plan, **38:17**
 - waiting period, **38:17**
- Coverage issues, **38:12**
 - condominium losses, **38:12**
 - privity of contract issues, **38:12**
 - subrogation and, **38:12**
- Environmental insurance
 - generally, **38:13**
 - American policies, **38:13**
 - "brown field" restoration, **38:13**

INSURANCE—Cont'd

- Environmental insurance—Cont'd
 - CGL policy "absolute" pollution exclusion clause, **38:13**
 - "Cleanup Cost Cap Insurance," **38:13**
 - "Cleanup Cost Contamination Insurance," **38:13**
 - contamination exclusion, **38:13**
 - "Environmental Insurance for Real Property Transfer," **38:13**
 - "Financial Institution Environmental Liability Insurance," **38:13**
 - Kemper Environmental, **38:13**
 - "Post Acquisition Real Property Insurance," **38:13**
- Flood
 - generally, **38:18**
 - commercial properties, **38:18**
 - iNational Flood Insurance Act/i, **38:18**
 - National Flood Insurance Program, **38:18**
 - residential properties, **38:18**
 - multi-risk, **38:18**
 - unavailability, **38:18**
- Insurable interest
 - generally, **38:1**
 - assignment, **38:4**
 - beneficial ownership, **38:2**
 - definition of insured, **38:3**
 - nature of the interest, **38:1**
 - proprietary rights, **38:5**
- Insurance money, application of
 - generally, **38:11**
 - acceleration of payment and, **38:11**
 - mortgagee's rights re, **38:11**
 - Mortgages Act provision re, **38:11**
- Mortgage clause in policy
 - generally, **38:7**
 - contractual effect of, **38:7**
 - insurer's defences, **38:7**
 - insurer's right to subrogation, **38:7**
 - standard clause re, **38:7**
- Mortgagee, in name of, **38:9**
- Mortgage fraud
 - generally, **38:14**
 - alterations, **38:14**
 - apparent mortgagor, **38:14**
 - artifice, **38:14**
 - Canada Mortgage and Housing Corporation, **38:14**

INDEX

INSURANCE—Cont'd

- Mortgage fraud—Cont'd
 - conditions, **38:14**
 - Conveyancing and Law of the Property Act, **38:14**
 - defence, **38:14**
 - duress, **38:14**
 - electronic registration, **38:14**
 - exclusions, **38:14**
 - false pretense, **38:14**
 - financial institution bond, **38:14**
 - forgery, **38:14**
 - Form 24, **38:14**
 - Land Registration Reform Act, **38:14**
 - lien, **38:14**
 - mortgage loss, **38:14, 38:15**
 - physical possession of documents, **38:14**
 - standardized wording, **38:14**
 - Statute of Frauds Act, **38:14**
 - Surety amp Fidelity Association of America, **38:14**
 - title insurance, **38:14**
 - trick, **38:14**
- Mortgage loss
 - generally, **38:15**
 - Canada Mortgage and Housing Corporation, **38:14, 38:15**
 - condominium, **38:15**
 - default, borrower, **38:15**
 - down payment, **38:15**
 - duplex, **38:15**
 - high ratio mortgage, **38:15, 38:16**
 - loan, **38:15**
 - mandated, when, **38:15**
 - manufactured home, **38:15**
 - mobile home, **38:15**
 - multi-residential property, **38:15**
 - owner occupied property, **38:15**
 - value coverage, **38:15**
- Mortgagor, in name of
 - generally, **38:8**
 - assignment of policy by mortgagee, **38:8**
 - loss payee provision re mortgagee, **38:8**
 - mortgagee's rights, extent to, **38:8**
 - notice of cancellation/alteration of policy, **38:8**
 - priorities, **38:8**
 - right of action by mortgagee, **38:8**

INSURANCE—Cont'd

- Mortgagor, in name of—Cont'd
 - surplus insurance moneys, right to, **38:8**
 - trust relationship, creation of, **38:8**
- Portfolio, of
 - generally, **38:16**
 - bulk insurance, **38:16**
 - Canada Mortgage and Housing Corporation, **38:14 to 38:16**
 - covered bonds, **38:16**
 - default, **38:16**
 - financial institution, **38:16**
 - high ratio mortgage, **38:16**
- Requirements, usual
 - generally, **38:19**
 - binder of insurance, **38:19**
 - boiler, **38:19**
 - builders all risk, **38:19**
 - cancellation, **38:19**
 - certificate of insurance, **38:19**
 - co-insurance, **38:19**
 - construction, **38:19**
 - contractor's liability, **38:19**
 - damage, **38:19**
 - deductible, **38:19**
 - errors, **38:19**
 - fraud, **38:14, 38:19**
 - general, **38:19**
 - insurance
 - generally, **38:19**
 - casualty, **38:19**
 - liability, **38:19**
 - property, **38:19**
 - loan, **38:19**
 - loss, **38:15, 38:19**
 - machinery, **38:19**
 - maintenance of policy, **38:19**
 - mortgage, **38:19**
 - priority, **38:19**
 - notice, **38:19**
 - omissions, **38:19**
 - performance, **38:19**
 - labour payment bonds, **38:19**
 - material payment bonds, **38:19**
 - property, **38:19**
 - commercial, **38:19**
 - completed, **38:19**
 - industrial, **38:19**
 - multi-residential, **38:19**

INSURANCE—Cont'd

- Requirements, usual—Cont'd
 - replacement cost, **38:19**
- Right or obligation re, **38:6**
 - liability re, **38:6**
 - Mortgages Act, under, **38:6**
- Subrogation
 - generally, **38:7, 38:10, 38:12**
 - equitable doctrine, as, **38:10**
 - full indemnity, recovery more than, **38:10**
 - Insurance Act provision re, **38:10**
 - multiple policies, where, **38:10**
 - recoverable amounts, **38:10**
 - scope of right to, **38:10**

INTEREST

- Accounting re, **31:3, 31:5**
- Accrual of, **33:6**
- Apportionment of, **33:6**
- Arrears of, actions to recover, **30:5, 30:12, 30:13**
- “Blended payments,” meaning of, **33:3**
- Bonus, payment of, **33:3**
- Calculation of, **33:6**
- Compound interest, **33:7**
- Constitution Act, 1867 provisions re, **33:1**
- Criminal Code provision re, **33:1, 33:10**
 - purpose of, **33:10**
- Criminal rate of interest
 - generally, **33:10**
 - calculation of rate, period for, **33:10**
 - disclaimer clauses, **33:10**
 - severability of offending mortgage provision, **33:10**
 - subsequent acts of borrower, effect of, **33:10**
- “Deemed reinvestment principle,” **33:6**
- Default, payment after, **29:5**
- Disclosure of interest rate, **33:3**
 - Interest Act provisions re, **33:3**
- Equitable mortgage without express provision re, **33:2**
- Express provision in mortgage re, **33:2**
- Federal jurisdiction re, **33:1**
- “Interest,” meaning of, **33:3**
 - Interest Act provisions re, **33:1, 33:3, 33:5**
- Limitation period re arrears, **30:12, 30:13**
- Mortgages Act provisions re, **33:1, 33:5**
- Notice, interest in lieu of, **33:8**

INTEREST—Cont'd

- Post-default rate of interest, **33:5**
 - bonus, mortgagee's entitlement to, **33:5**
 - Mortgages Act provision re, **33:5**
 - penal devices, prohibition of, **33:5**
- Post-maturity rate of interest, **33:4**
- Pre-judgment interest, statutory, **33:4**
- Provincial jurisdiction re, **33:1**
- Rates of
 - after default, **33:5**
 - criminal, **33:1, 33:10**
 - pre-judgment, **33:4**
- Unconscionable transactions, **33:9**
- Unconscionable Transactions Relief Act, **33:9**
 - excessive cost of loan, **33:9**
 - factors considered re granting relief, **33:9**

JUDGMENT FOR FORECLOSURE

- Generally, **26:1**
- After foreclosure
 - enforcing payment, **26:33**
 - status of assets, **26:27**
 - status of subsequent encumbrancers, **26:31**
 - taking possession, **26:28**
- Application to set aside
 - generally, **26:32**
 - discretionary power re, **26:32**
 - grounds for granting, **26:32**
 - procedure re, **26:32**
 - promptness requirement, **26:32**
- Conversion of foreclosure to judicial sale
 - generally, **26:5**
 - aborted sale, foreclosure after, **26:6**
 - redemption right and, **26:24**
 - sale conditions, setting of, **26:6**
- Conversion of judicial sale to foreclosure, **26:25**
- Default judgment, **26:2**
 - preconditions to obtaining, **26:2**
 - rules re, **26:2**
 - strict adherence to rules re, **26:2**
- Defences to action, **26:4**
- Final order of foreclosure
 - generally
 - see order for foreclosure
 - application for, **26:26**
 - entitlement to, **26:26**
 - ex parte grant of, **26:26**

JUDGMENT FOR FORECLOSURE

—Cont'd

- Final order of foreclosure—Cont'd
 - ordinary form of, **26:26**
 - refusal of, **26:26**
- Foreclosure of real and personal property, **26:7**
 - part security, foreclosure of, **26:7**
 - Personal Property Security Act provisions, **26:7**
 - statement of claim, **26:7**
- Immediate judgment
 - generally, **26:3**
 - default
 - see default judgment
- Judgment for foreclosure with reference
 - generally, **26:3**
 - costs of reference, **26:3**
 - forms of judgment, **26:3**
 - infants' rights, **26:3**
 - married women, special rules re, **26:3**
 - request for sale, filing of, **26:3**
 - request to redeem, filing of, **26:3**
 - rule re, **26:3**
 - sixty-day redemption period, variations re, **26:3**
 - subsequent encumbrancer, position of, **26:3**
 - writ of possession, leave to issue, **26:3**
- Judicial sale
 - see conversion of foreclosure to judicial sale
- Land transfer tax on foreclosure, **26:29**
- Order for foreclosure
 - effect of, **26:1**
 - obtaining after trial, **26:4**
 - registration of, **26:30**
- Order nisi, **26:1**
- Payment of arrears
 - acceleration clauses and, **26:22**
 - effect of stay of action, **26:22**
 - stay of action on, **26:22**
- Redemption right after sale, **26:24**
- Reference
 - see REFERENCE
- State of account, change before redemption, **26:23**
- Summary judgment motion, **26:4**

JURISDICTION

- Conflict of laws and
 - see CONFLICT OF LAWS
- Courts, of, **4:5**
- Environmental liability, **10:1**
- Equitable, **4:3**
- Interest, re, **33:1**

LACHES

- Generally, **29:1, 30:2**

LANDLORD

- See also LEASE OF MORTGAGED LANDS; LEASEHOLD MORTGAGES; TENANT
- Agreements between landlord and mortgagee, **6:7**
- Landlord/tenant relationship
 - creation of lease by estoppel, **15:16**
 - modes of creation, **37:2**

LAND REGISTRATION REFORM ACT

- Discharge of mortgage and, **19:1, 19:3, 19:4**
- Power of sale and, **35:4**

LAND TITLES ACT

- Assignee of mortgage, provisions re, **11:1**
- Attornment, under, **37:6**
- Discharge of mortgage, **19:1, 19:3**
- Limitation of actions under, **30:34**
- Personal actions for payment, **30:5**
- Power of sale, **35:51**
- Priorities
 - actual notice, **8:34**
 - bankruptcy, **8:19**
 - construction liens, **8:33**
 - equitable interests, **8:35**
 - executions, **8:31**
 - fraud, **8:27, 8:34**
 - legal and equitable mortgages, caveats re, **8:37**
 - mortgages under Act, **8:28**
 - protective disbursements, **8:32**
 - registered estate, **8:29**
 - registration and priorities of mortgages, **8:30**
 - registration of deeds and titles and fraud, **8:27**
- Registry Acts and Land Titles Acts, **8:23, 8:26**
- remedies of mortgagee, **8:38**

LAND TITLES ACT—Cont'd

- Priorities—Cont'd
 - transfers for value, **8:36**
 - trusts, **8:34**
 - unregistered interests, **8:35**
 - voluntary transfers, **8:36**
- Seizure of mortgage under execution, **12:2**
- Spousal mortgages, **18:8**
- Transmission under, **13:5**

LAW AND EQUITY IN UPPER CANADA

- Constitution Act, 1791 (U.K.), enactment of, **4:1**
- Courts, historical development of, **4:4, 4:5**
- English law, introduction of, **4:1**
- Equitable jurisdiction, introduction of, **4:3**
- French Canadian law, superseding of, **4:1**
- Law of mortgages and, **4:2**
- Ontario Judicature Act, 1881, effects of, **4:5**

LEASEHOLD MORTGAGES

- See also LEASE OF MORTGAGED LANDS
- Generally, **6:1**
- Agreements between landlord and mortgagee, **6:7**
- Assignment of term, **6:3**
- Chattel mortgages versus choses in action, **6:1**
- Creation of, **6:1**
- Fee subordination, effects of, **6:7**
- Foreclosure where lease expired, **6:6**
- Lease
 - assignment of, **6:7**
 - termination of, **6:7**
 - terms, **6:7**
- Redemption of reversion, **6:6**
- Renewal of mortgaged leasehold, **6:5**
- Sublease, mortgage by, **6:4**
- Sublease versus assignment of lease, **6:2**
- Transfer to third party, **6:2**

LEASE OF MORTGAGED LANDS

- See also LEASEHOLD MORTGAGES
- Assignment of leases to mortgagee
 - generally, **15:31 to 15:33**
 - enforceability against subsequent owners and tenants, **15:33**

LEASE OF MORTGAGED LANDS

—Cont'd

- Assignment of leases to mortgagee
 - Cont'd
 - privity of contract issue, **15:31**
 - privity of estate, no creation of, **15:32**
- Lease by mortgagor after mortgage, **15:15 to 15:26**
 - lease, binding nature of
 - between landlord and tenant by estoppel, **15:16**
 - on mortgagee, **15:17**
 - liability of mortgagee who evicts tenant, **15:20**
 - mortgagee's remedies, **15:18**
 - mortgagee's rights paramount, **15:15**
 - new tenancy between mortgagee and tenant, **15:22**
 - effect of on previous lease, **15:23**
 - remedies when new tenancy created, **15:24**
 - year-to-year tenancy rule, **15:24, 15:25**
 - payment of rent by tenant to mortgagee, **15:19**
 - residential tenancies, rules re, **15:26**
 - tenant's remedies against mortgagee entitled to possession, **15:21**
- Lease by owner before mortgage
 - generally, **15:1 to 15:14**
 - Apportionment Act, effects of, **15:6**
 - enforcement of rent by mortgagee, **15:7**
 - equitable mortgagee, rights of, **15:11**
 - liability of mortgagee demanding rent, **15:8**
 - mortgagor while in possession, rights of, **15:12**
 - no lease, claim by mortgagee where, **15:10**
 - notice to attorn to mortgagee, **15:4**
 - possession of lands by mortgagee, **15:9**
 - postponement, **15:13**
 - prior lease, binding nature of
 - on mortgagee, **15:3**
 - on tenant at instance of mortgagee, **15:2**
 - rent for which tenant is liable to mortgagee, **15:5**
 - residential tenancies, rules re, **15:14**
 - tenant's rights paramount, **15:1**

INDEX

LEASE OF MORTGAGED LANDS

—Cont'd

- Power to lease, **15:34 to 15:38**
 - generally, **15:34**
 - contractual power to lease
 - by mortgagee under, **15:36**
 - by mortgagor under, **15:35**
 - statutory power to lease
 - by mortgagee, **15:38**
 - by mortgagor, **15:37**
- Priorities between mortgage and lease, **15:27 to 15:30**
 - agreements altering priority rules, **15:30**
 - lands leased before owner has title, where, **15:28**
 - notice of prior interest, **15:27**
 - subsequent lease, consent to, **15:29**
- Subsequent mortgagees, position of, **15:39 to 15:41**
 - lease prior to second mortgage, where, **15:40**
 - second mortgage prior to lease, where, **15:41**

LEGAL MORTGAGEE

- Possessory entitlements of, **2:3**
- Terre tenant, as, **2:3**

LENDER POLICY RESIDENTIAL

- See RESIDENTIAL LENDER POLICY

LIENS

- Condominium common expenses, statutory lien re, **39:6**
- Construction lien, **25:13, 35:20**
- Effect of power of sale conveyance on, **35:49**
- Mortgages versus, **1:6**

LIMITATION OF ACTIONS

- Acquiescence and, **30:2**
- Bankruptcy and Insolvency Act sources of, **30:1**
- Conflict of laws, **40:8**
- Constructive trust claims, **30:21**
- Equity and, **30:2**
- Expiry of limitation period, effects of, **30:1, 30:3**
- Extension of limitation period, **30:4**
- Extinguishment of right at end of limitation period, **30:4**

LIMITATION OF ACTIONS—Cont'd

- Foreclosure
 - see possession or foreclosure, actions for
- Laches and, **30:2**
- Land Titles Acts, under, **30:34**
 - possession adverse to registered title, **30:34**
- Limitation Acts, scope of, **30:1**
- Money charged on land, actions to recover
 - generally, **30:10 to 30:15**
 - acknowledgement, effect of, **30:11, 30:13**
 - arrears of interest, **30:12, 30:13**
 - concealed fraud, **30:14**
 - extending period, **30:14**
 - insurance policy, interest held under, **30:15**
 - limitation re principal, **30:10**
 - part payment, effect of, **30:11**
- Mortgages Act sources of, **30:1**
- Personal actions for payment
 - generally, **30:5 to 30:9**
 - absence from jurisdiction, effect of, **30:7**
 - acknowledgement, effect of, **30:8**
 - action for recovery of interest, **30:5**
 - action re account for surplus, **30:5**
 - action re debt under contract, **30:5**
 - action upon covenant, **30:5, 30:6**
 - demand mortgages, **30:6**
 - disability, effect of, **30:7**
 - guarantee of mortgage, **30:9**
 - Land Titles Act /provisions, **30:5**
 - part payment, effect of, **30:8**
- Possession or foreclosure, actions for
 - generally, **30:16 to 30:28**
 - acknowledgement, effect of, **30:22**
 - action for sale, **30:27**
 - adverse possession, **30:17**
 - bringing action, effect of, **30:24**
 - Crown proceedings, **30:18**
 - deemed accrual of right, **30:19**
 - disabilities, effect of, **30:25**
 - effect of limitation period expiry, **30:26**
 - executions, **30:28**
 - land held on trust, **30:20**
 - part payment, effect of, **30:23**
 - Registry Act, provisions under, **30:16**

LIMITATION OF ACTIONS—Cont'd

- Real property, re, **30:1**
- Redemption, actions for
 - generally, **30:29 to 30:33**
 - acknowledgement of title by mortgagee, **30:33**
 - disability, effect of, **30:30**
 - mortgagee in possession, where, **30:29, 30:31**
 - mortgagee in possession of part of lands, **30:32**
- Statutory versus common law, **30:1**

MARSHALLING

- Generally, **14:8, 14:9, 28:7**

MASTER

- See REFERENCE

MATRIMONIAL HOME

- See SPOUSAL RIGHTS IN MORTGAGED LAND

MERGER

- Common law, at, **21:1**
- Equitable presumption of
 - generally, **21:1**
 - death of mortgagee, on, **21:1**
 - intention requirement, **21:1**
 - rebuttal of, **21:1, 21:3**
 - requirements re, **21:1**
 - stranger paying off debt, where, **21:1**
- Express intention of, **21:2**
- Implied intention of, **21:3**
 - rebuttal of, **21:3**
- Presumed intention of
 - generally, **21:4**
 - Mortgages Act provision, **21:4**
 - rebuttal of, **21:4**
 - subsequent mortgagees, **21:4**
- Purchase with notice of subsequent charges, **21:5**

MORTGAGEE

- Chattels, of, **25:14**
- Death of
 - see DEATH OF MORTGAGEE
- Execution creditors of
 - see EXECUTION CREDITORS OF MORTGAGEE
- In possession
 - see MORTGAGEE IN POSSESSION

MORTGAGEE—Cont'd

- Legal
 - see LEGAL MORTGAGEE

MORTGAGEE IN POSSESSION

- Accounts, manner of taking, **32:9**
- Action for possession and
 - see ACTION FOR POSSESSION
- Assignment of mortgage by, **20:7, 32:4, 32:6**
- Charge, mere holder of, **32:1**
- Circumstances not constituting, **32:1**
- Condominiums, **39:2**
- Described/defined, **32:1**
- Environmental liability of, **32:8**
- Management, responsibilities of, **32:4**
- Nomenclature re, **32:1**
- Obligations of mortgagee, **32:4**
- Occupation rent, liability for, **32:5**
- Redemption, actions for, **30:29, 30:31**
- Reimbursement for expenses,
 - mortgagee's right re, **32:3**
- Rents and profits
 - assignee's liability, **32:6**
 - derivative mortgagee's liability, **32:6**
 - interception of, **32:1**
 - liability for, **32:6**
 - part possession of land, **32:6**
- Residential mortgaged premises, of, **32:4**
- Rights of mortgagee, **32:2, 32:3**
- Waste or deterioration, liability for, **32:7**

MORTGAGES

- Ancient forms of, **1:1**
- Assignment of
 - see ASSIGNEE OF MORTGAGE; ASSIGNMENT OF MORTGAGE
- Charges versus, **1:7**
- Chattel, **2:4**
- Collateral security, as, **1:9**
- Common law, at
 - see COMMON LAW, MORTGAGES AT
- Definitions, **1:4, 3:1**
- Discharge of
 - see DISCHARGE OF MORTGAGE
- Equitable
 - see EQUITABLE MORTGAGES
- Equity, in
 - see EQUITY, MORTGAGE IN

INDEX

MORTGAGES—Cont'd

- Leasehold
 - see LEASEHOLD MORTGAGES
- Legal
 - see LEGAL MORTGAGEE
- Liens versus, **1:6**
- Sources of modern law of, **1:3**
- Spousal
 - see SPOUSAL RIGHTS IN MORTGAGED LAND
- Upper Canada
 - see LAW AND EQUITY IN UPPER CANADA
- Welsh, **1:2**

MORTGAGES ACT

- Action for possession and, **22:5**
- Assignment of mortgage, **20:2, 20:3**
- Conveyance, effects of, **35:49**
- Costs assessment, **34:5**
- Definitions under, **1:4**
- Distrain, power to, **37:4, 37:5**
- Insurance money, **38:6, 38:11**
- Interest, **33:1, 33:5**
- Limitation periods, **30:1**
- Merger, presumed intention of, **21:4**
- Power of sale, **35:2, 35:5, 35:7, 35:49**
- Redemption right, **29:1, 29:2**
- Spousal rights of redemption, **18:5**
- Transfer of equity of redemption, **14:6**

MORTGAGOR

- Death of
 - see DEATH OF MORTGAGOR
- Execution creditors of
 - see EXECUTION CREDITORS OF MORTGAGOR
- In possession
 - accounting by, **31:6**
 - rights of, **15:12, 22:3**
- Insurance in name of
 - see INSURANCE
- Lease by after mortgage
 - see LEASE OF MORTGAGED LANDS
- Set-off, right of
 - see ASSIGNEE OF MORTGAGE

MOVABLES

- See CONFLICT OF LAWS

NOVATION

- Generally, **14:3**

PERSONAL PROPERTY SECURITY ACT

- Generally, **2:4, 26:7, 28:5**

PLANNING ACT (ONTARIO)

- See SUBDIVISION CONTROL

POSSESSION

- Action for
 - see ACTION FOR POSSESSION
- Common law mortgage and, **2:3**
- Enforcement of security without, **10:27**
- Limitations re actions for, **30:16 to 30:28**
- Mortgagee in possession
 - see MORTGAGEE IN POSSESSION
- Mortgagor in possession, **31:6**
- Purchaser's entitlement to, **27:4**
- Writ of possession, **18:5, 26:3**

POWER OF SALE

- See also SALE
- Concurrent proceedings by mortgagee
 - generally, **35:34 to 35:38**
 - actions during redemption period, **35:35**
 - alternative remedies, **35:34**
 - assignment of mortgage, **35:38**
 - partial payments during redemption period, **35:36**
 - payments made pursuant to notice of sale or demand, **35:37**
- Conduct of sale
 - generally, **35:39 to 35:47**
 - advertising, **35:42**
 - appraisals, use of, **35:43**
 - credit, sale on, **35:47**
 - exchange of lands, **35:45**
 - good faith requirement, **35:40**
 - listing agreements, **35:42**
 - mortgagee's responsibility, **35:39**
 - objections to title, answering, **35:46**
 - oppressive conduct by mortgagee, **35:40**
 - public auction, by, **35:41**
 - restraining/setting aside sale, **35:40**
 - sale en bloc, **35:44**
 - sale in parts, **35:44**
 - special conditions, **35:46**
 - vendor take-back mortgage, **35:47**

POWER OF SALE—Cont'd

- Contractual power of sale, **35:3**
 - deeds, **35:3**
 - forms of, **35:3**
 - Land Registration Reform Act form, **35:3**
- Conveyance, effects of
 - generally, **35:49**
 - irregular sale, where, **35:49**
 - liens, on, **35:49**
 - Mortgages Act provisions, **35:49**
 - notice, protection afforded by, **35:49**
 - purchaser in good faith without notice, **35:49**
 - recitals in deed, **35:49**
- Entitlement to exercise
 - generally, **35:5**
 - assignee of mortgage, **35:5**
 - attorney appointed by mortgagee, **35:5**
 - Mortgages Act implied power, **35:5**
 - multiple mortgagees, **35:5**
- Entitlement to purchase
 - generally, **35:48**
 - court-appointed receiver, **35:48**
 - fiduciary relationships, **35:48**
 - mortgagee, **35:48**
 - mortgagor, **35:48**
 - subsequent encumbrancer, **35:48**
- Equitable right of redemption versus, **35:1**
- Land Registration Reform Act, **35:4**
- Land Titles Act, under, **35:51**
- Notice of sale
 - Crown claims, **35:23**
 - debenture situations, **35:27**
 - entitlement to service of, **35:13 to 35:24**
 - actual notice, **35:22**
 - construction lien claimants, **35:20**
 - Crown, **35:23**
 - execution creditor, **35:19**
 - guarantor, **35:16**
 - mortgagor, **35:14**
 - original mortgagor, **35:17**
 - spouse of mortgagor, **35:15**
 - subsequent encumbrancers, **35:18**
 - tenants, **35:21**
 - waiver of notice, **35:24**
 - improper service, **35:25**
 - information in
 - generally, **35:28 to 35:33**

POWER OF SALE—Cont'd

- Notice of sale—Cont'd
 - information in—Cont'd
 - amounts owing, description of, **35:28**
 - bonus, claim for, **35:31**
 - description of mortgaged premises and mortgage, **35:28**
 - errors, **35:29, 35:33**
 - signature, **35:32**
 - length of notice, **35:26**
 - method of service, **35:25**
 - place of service, **35:25**
 - waiver of, **35:24**
- Origin of, **35:1**
- Proceeds of sale, application of, **35:50**
- Statutory implied provisions re, **35:1, 35:2**
 - England, in, **35:2**
 - Mortgages Act provisions, **35:2**
- Timing of exercise, **35:6 to 35:12**
 - generally, **35:6**
 - Bankruptcy and Insolvency Act, under, **35:9**
 - contractual power of sale
 - generally, **35:7**
 - abortive sale, **35:7**
 - Mortgages Act provisions, **35:7**
 - new advances, **35:7**
 - notice requirement, **35:7**
 - Farm Debt Modification Act, **35:10**
 - implied power of sale, **35:8**
 - Mortgages Act, application of s. 22(2), (3), **35:12**
 - opening closed mortgage, **35:11**

PRIORITIES

- Bankruptcy and Insolvency Act priorities, **10:36, 28:4, 28:5**
- Chattels and fixtures, re, **2:4**
- Equity, in
 - generally, **7:1**
 - first equitable and second legal mortgages, **7:4**
 - first legal and second equitable mortgages, **7:3**
 - land registry system, effect of, **7:1**
 - notice
 - actual, **7:5**
 - constructive, **7:5**
 - equitable doctrine of, **7:5**
 - where no, **7:6**

INDEX

PRIORITIES—Cont'd

- Equity, in—Cont'd
 - purchaser for value without notice, **7:6**
 - two equitable mortgages, priorities between, **7:2**
- Floating charge, re, **5:12**
- Land Titles Act priorities
 - see LAND TITLES ACT
- Lease of mortgaged lands, **15:27 to 15:30**
- Protective disbursements, **8:32**
- Redemption, **29:7**
- Reference re, **26:14**
- Registry Act priorities
 - see REGISTRY ACT
- Tacking and
 - see TACKING

RECEIVER

- See also INSOLVENCY, MORTGAGE ENFORCEMENT RE
- Generally, **36:1**
- Bankruptcy and Insolvency Act, under
 - generally, **36:6**
 - defences, **36:6**
 - duties, **36:6**
 - good faith, duty of, **36:6**
 - “insolvent person” defined, **36:6**
 - mortgagee’s position, **36:6**
 - notice of intention to enforce security, **36:6**
 - “receiver” defined, **36:6**
 - strict compliance requirement, **36:6**
- Court-appointed receiver
 - generally, **36:2**
 - circumstances of appointment, **36:2**
 - court discretion re, **36:2**
 - impartiality requirement, **36:2**
 - right to propose, **36:2**
 - role of, **36:2**
 - rules re, **36:2**
- Equitable mortgagee, receiver for
 - generally, **36:4**
 - legal mortgagee’s rights of, **36:4**
 - rents and profits, payment to, **36:4**
- Powers and liabilities of
 - generally, **36:5**
 - agency role, **36:5**
 - dual agency theory, **36:5**
 - duties of, **36:5**
 - officer of court, when, **36:5**

RECEIVER—Cont'd

- Powers and liabilities of—Cont'd
 - private versus court-appointed receiver, **36:1, 36:5**
- Private versus court-appointed receiver, **36:1, 36:5**
- “Receiver and manager,” **36:1**
- Receiver under mortgage, **36:3**
 - contractual requirement re, **36:3**
 - Ontarian versus English positions re, **36:3**
- Statutory duties of, **36:6**

RECONVEYANCE

- Assignment and, **20:1, 20:3, 20:6**
- Common law mortgage, **2:2**
- Discharge of mortgage, right on, **19:7**

REDEMPTION

- Action for
 - see ACTION FOR REDEMPTION
- Equity of
 - see EQUITY OF REDEMPTION

REFERENCE

- Adding parties on
 - generally, **26:10**
 - extension of redemption period, **26:10**
 - pendente lite nihil innovetur rule, **26:10**
 - persons interested in equity of redemption, **26:10**
 - rules re, **26:10**
 - subsequent encumbrancers, **26:10**
- Commencement of, **26:8**
- Conduct of
 - generally, **26:9**
 - date fixed for redemption, **26:11**
 - motions, **26:18**
 - proof of claim
 - affidavits, by, **26:12**
 - amount due, **26:12**
 - by subsequent encumbrancer, **26:11**
 - redemption, effect of, **26:16**
- Rules re, **26:9**
- service, **26:11**
- setting date for reference, **26:15**
- settling priorities, **26:14**
- taxation of costs, **26:13**
- Master’s authority/functions on, **26:9**
 - decision of issues, re, **26:17**
 - motions before, **26:18**

REFERENCE—Cont'd

Master's report on
 generally, **26:9**
 appealing, **26:21**
 confirmation of, **26:20**
 Mediation and arbitration in, **26:19**
 Procedures for conducting, **26:9**

REGISTRY ACT

Assignee of mortgage, **11:1**
 Consolidation under, **9:6**
 Discharge under, **19:1, 19:3**
 Possession or foreclosure actions, limitations provisions, **30:16**
 Priorities
 bankruptcy, **8:19**
 construction liens, **8:22**
 effect of Act on, **8:2**
 actual notice, **8:3**
 mortgage amendments, **8:7**
 notice of trust, **8:5**
 notice to agent, **8:4**
 protection of claimant under subsequent not prior instrument, **8:6**
 effect of failure to register, **8:8**
 extent of invalidity, **8:11**
 restrictive municipal by-laws, **8:10**
 testamentary instruments, **8:9**
 effect of registration as notice, **8:14**
 executions, **8:18**
 Land Titles Act, **8:23**
 legal rights not arising by virtue of instrument under Act, **8:16**
 method of registration under Act, **8:1**
 Personal Property Security Act, security interests under, **8:24**
 priority of registration, **8:12**
 sheltering, **8:13**
 protective disbursements, **8:32**
 scope of Act, **8:1**
 subrogation, **8:20**
 partial payments, **8:21**
 subsequent advances under prior mortgage under Act, **8:17**
 unregistered equitable interests, **8:15**
 Spousal mortgages, registration of, **18:8**
 Tacking, **9:9**

RENTS AND PROFITS

See MORTGAGEE IN POSSESSION

RESIDENTIAL LENDER POLICY

Format
 generally, **44:3**
 conditions, **44:9**
 endorsements, common forms
 generally, **44:11**
 condominium, **44:11**
 controlled substance bylaw, **44:11**
 leasehold, **44:11**
 multi-unit, **44:11**
 septic, **44:11**
 vacant land, **44:11**
 water potability, **44:11**
 exclusions from coverage, **44:7**
 jacket, **44:4**
 legal services coverage, **44:6**
 schedule B, **44:8**
 search requirements, **44:10**
 stipulations, **44:9**
 title risks covered, **44:5**
 Introduction, **44:1**
 Principles, general, **44:2**

RESIDENTIAL TENANCIES

Generally, **15:14, 27:4, 37:1**

SALE

See also ACTION FOR FORECLOSURE OR SALE; ACTION FOR SALE; POWER OF SALE
 Abortive
 generally, **27:5**
 conversion back to foreclosure action, **27:5**
 foreclosure where, **27:5**
 redemption rights, **27:5**
 Conduct of
 generally, **27:4**
 advertisements, **27:4**
 auction or tender, **27:4**
 bid, right to make, **27:4**
 clerical errors, **27:4**
 conditions imposed on purchaser, **27:4**
 court's duty, **27:4**
 deficiency, right to claim payment of, **27:4**
 deposit requirement, **27:4**
 irregularities, effect of, **27:4**
 motion to re-open bidding or set aside sale, **27:4**
 non-compliance with conditions, **27:4**

INDEX

SALE—Cont'd

- Conduct of—Cont'd
 - payment of purchase money, **27:4**
 - purchaser's entitlement to possession, **27:4**
 - report on sale, **27:4**
 - residential rental premises, where, **27:4**
 - rule re, **27:4**
 - time and place, **27:4**
- Nova Scotia order for foreclosure and sale, **27:6**
- Power of sale, under
 - see POWER OF SALE

SEIZURE

- Assignee's interest, of, **12:2**
- Mortgage under execution, of, **12:2**
- Mortgagor's interest, of
 - see EXECUTION CREDITORS OF MORTGAGOR

SET-OFF

- Accounting and, **31:2**
- Mortgagor's right of
 - see ASSIGNEE OF MORTGAGE

SHERIFF

- Discharge by
 - see EXECUTION CREDITORS OF MORTGAGEE
- Sale by
 - see EXECUTION CREDITORS OF MORTGAGOR

SPOUSAL RIGHTS IN MORTGAGED LAND

- Dower and curtesy
 - generally, **18:9**
 - Family Law Act provisions, **18:10**
 - historical explanation of, **18:9**
 - modern application of, **18:10**
- Matrimonial home
 - defined, **18:1**
 - encumbrance or sale of, consent requirements, **18:4**
 - equal right to possession, **18:3**
 - extent of, **18:1**
 - Family Law Act provisions, **18:1-18:4**
 - forged mortgages, **18:4**
 - formal designation as, **18:2**
 - power of sale notice requirements, **18:5**
 - setting aside invalid transactions, **18:4**

SPOUSAL RIGHTS IN MORTGAGED LAND—Cont'd

- Matrimonial home—Cont'd
 - spousal rights to possession of, **18:3**
- Rights of redemption
 - generally, **18:5**
 - Family Law Act provisions, **18:5**
 - Mortgages Act provisions, **18:5**
 - notice requirements, **18:5**
 - power of sale notice requirements, **18:5**
 - Succession Law Reform Act provisions, **18:3**
 - writ of possession requirements, **18:5**
- Spousal claims, court's powers re, **18:6**
 - equitable mortgages, finding of, **18:7**
 - Family Law Act provisions, **18:6**
- Spousal mortgages, registration requirements, **18:8**
 - Land Titles Act, under, **18:8**
 - Registry Act, under, **18:8**

SUBDIVISION CONTROL

- Generally, **41:1**
- Abutting land, prohibited types of interest in
 - generally, **41:5**
 - holding mortgage on abutting lands, **41:8**
 - retaining the equity of redemption, **41:7**
 - retaining the fee, dominion over, **41:6**
 - retaining the fee, technically, **41:5**
- Application to mortgages, **41:4 to 41:8**
- Contravention, effect of, **41:2, 41:3**
 - covenant to pay, on, **41:3**
 - Planning Act (PA) s. 50(21), **41:2**
- Curative provisions, **41:16 to 41:19**
 - PA s. 50(14), **41:17**
 - prescribed statements (PA s. 50(22) to (25)), **41:19**
 - validation certificates (PA s. 57), **41:18**
- Financing acquisitions and, **41:9**
- Foreclosure and
 - loophole re, **41:15**
 - PA (s. 50(18), (18.1)), **41:15**
 - pre-1975, **41:14**
- Partial discharges of mortgages, **41:11 to 41:13**
 - avoidance scheme, as, **41:11**
 - exception to prohibition (PA s. 50(17)), **41:13**
 - prohibition re (PA s. 50(16)), **41:12**

SUBDIVISION CONTROL—Cont'd

- Planning Act (s. 50) discussed, **41:1**
- Power of sale and
 - see foreclosure and
- Twenty-one-year PA prohibition, **41:4**
- Vendor take-back mortgages, **41:10**

SUBROGATION

- Generally, **14:8, 14:9, 19:8, 38:7, 38:10, 38:12**

TACKING

- Advances under first legal mortgage, **9:9**
- Circuitry of action and, **9:10**
- Doctrine of, **9:9**
- Notice and, effect of, **9:9**
 - extent of actual notice, **9:11**
- Registry Act and, **9:9**

TAX

- Accounting, **31:3**
- Arrears of, **24:2**
- Land transfer tax on foreclosure, **26:29**

TAXATION OF COSTS

- Generally, **26:13**

TENANT

- See also LANDLORD; LEASE OF MORTGAGED LANDS
- Action for possession and, **22:6, 22:10**
- Assignment of lease to mortgagee, **15:33**
- Eviction of, liability for, **15:20**
- Landlord/tenant relationship, modes of creation, **37:2**
- Lease with mortgagor, binding nature of, **15:16**
- Mortgagee, tenancy between, **15:19, 15:22**
- Mortgagor, of, **25:9**
- Notice of power of sale to, **35:21**
- Terre tenant, **2:3**

TENDER

- On refusal to discharge, **29:6**
- Sale of mortgaged land, **27:4**

TRANSFER OF EQUITY OF REDEMPTION

- Absolute transfer, **14:2**
- Apportionment of two parcels subject to common mortgage, **14:7**
- Indemnification of transferor by transferee generally, **14:4**

TRANSFER OF EQUITY OF REDEMPTION—Cont'd

- Indemnification of transferor by transferee
 - Cont'd
 - arising from sale, as, **14:4**
 - express covenant re, **14:4**
 - implied covenant, doctrine re, **14:4**
 - infant transferee, **14:4**
- Liability of mortgagor to mortgagee, **14:3**
- Mortgagee's dealings with transferee, **14:3**
- Mortgagee's rights against transferee
 - generally, **14:5**
 - common law rule re, **14:5**
 - indemnification rights, **14:5**
 - modern statutory regime, **14:6**
 - Mortgages Act provisions, **14:6**
- Novation and, **14:3**
- Rights of transferee, **14:2**
- Two parcels subject to common mortgage
 - apportionment between owners after transfer of one parcel, **14:7**
 - marshalling
 - transfer of one parcel, on, **14:8**
 - transfer of parcels to different persons, **14:9**
 - subrogation, **14:8, 14:9**

TRUSTEE

- As mortgagee, **23:2**
- Costs of, **34:3**
- Estate trustee, **23:3**
- Plaintiff in foreclosure action, as, **25:2**

TRUSTS, DEEMED

- Administrative charge, **42:13**
- Critical suppliers, **42:14**
- Crown's deemed trust, **42:1**
- Debtor-in-possession "DIP" financing, **42:12**
- Directors' and officers' charge, **42:15**
- Federal deemed trusts
 - generally, **42:6**
 - Canada pension plan, **42:7**
 - Employment Insurance Act, **42:8**
 - Excise Tax Act, **42:9**
- Insolvency situations, **42:11**
- Key employee retention plan "KERP," **42:12**
- Liability of lenders, **42:5**
- Obligation to deduct, **42:2**

INDEX

TRUSTS, DEEMED—Cont'd

Prescribed security interest, **42:4**

Provincial deemed trusts, **42:10**

Unremitted income tax deductions, **42:1**

UNCONSCIONABLE TRANSACTIONS

Generally, **33:9**

UPPER CANADA

See **LAW AND EQUITY IN UPPER
CANADA**

WASTE

Generally, **31:6, 32:7**

WELSH MORTGAGE

Generally, **1:2**

WRIT OF POSSESSION

Generally, **18:5, 22:6, 26:3**