

**CAP. 233.**

**CYPRUS**

**SALE OF MORTGAGED PROPERTY**

**CHAPTER 233 OF THE LAWS**

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1959

## CHAPTER 233.

## SALE OF MORTGAGED PROPERTY.

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TO AMEND THE LAW RELATING TO THE POWERS OF MORTGAGEES AND ATTORNEYS TO SELL MORTGAGED PROPERTY.

[20th May, 1890.]

1949  
Cap. 239.  
54 Vol. II  
604.

Short title.

Sale of mortgaged property where attorney to sell named by mortgagor.

1. This Law may be cited as the Sale of Mortgaged Property Law.

2. Where immovable property is mortgaged for the payment of a debt, whether before or after the passing of this Law, and the person mortgaging it shall have named any person his attorney to sell it if the debt be not paid to the person to whom it is due at the time when it becomes payable, the property may be sold on application to be made either by the person so named attorney as aforesaid or by the person to whom the money is due to the District Lands Officer of the district within which the property is situate (hereinafter called the District Lands Officer), and on evidence to the satisfaction of the officer being forwarded to him:—

- (a) that the debt for the payment of which the property is mortgaged has actually become payable;
- (b) that the person named attorney for the sale of the

property, or the person to whom the debt is due, or some person representing them or one of them has, two months at least prior to the time when the application for the sale of the property is made, served upon the person mortgaging the property a notice in writing calling upon him to pay the money for which the property is mortgaged and informing him that if default shall be made in payment thereof for the space of two months from the time when the notice is served the property mortgaged may thereupon be put up for sale;

- (c) that the debt for the payment of which the property is mortgaged, or some part thereof, remains unpaid at the date when the application is made.

3. Where immovable property is at any time after the time when this Law shall come into operation mortgaged for the payment of a debt, then, whether or not any person has been named attorney as aforesaid, the property may be sold on such application and the furnishing of such evidence as is prescribed by the last preceding section, such application to be made and such evidence to be furnished by the person to whom the debt is due.

Where no attorney is named.

4. Notwithstanding anything contained in the contract of mortgage, the interest on the debt in respect of which an application is made under the provisions of section 2 or 3 of this Law shall, as from the date of such application, be calculated at the rate of nine per centum per annum:

Rate of interest after application.  
2 of 38/44.

Provided that if the mortgage provides for interest at a rate lower than nine per centum, the interest shall be calculated at such lower rate.

5. Evidence of the several matters mentioned in paragraphs (a), (b), and (c) of section 2 shall be furnished by affidavit, unless the person testifying shall object to be sworn, in which case the evidence shall be furnished by affirmation, the several facts to which the person affirming can testify being stated in writing and the statement so prepared being affirmed by him to be true. Every affirmation shall state that the person affirming objects to be sworn and the grounds on which he so objects.

Evidence.

6. Affidavits under this Law shall be made in the same manner and form as affidavits are required to be made under

Form of affidavit or affirmation.

any Rules of Court for the time being in force for regulating the procedure of the Courts in civil actions, except that they shall be intituled with a statement showing in relation to what matter they are made, and for that purpose shall set forth the name of the person for the sale of whose property application is made and his surname, if any, or, if none, the name of his father; also his place of residence; and in other respects they may be in the form A in the Schedule.

Schedule.  
Form A.

Affirmations under this Law shall be made as nearly as possible in the same manner and form as affidavits.

Affidavits  
and  
affirmations,  
how to be  
made.

7. Affidavits and affirmations under this Law shall be sworn and affirmed before the Registrar of any District Court, and no fee shall be chargeable in respect to the swearing or affirming thereof.

Form of  
notice and  
mode of  
service.  
Schedule.  
Form B.

8. The notice mentioned in section 2 may be in the form B in the Schedule.

Service of any such notice shall be effected by delivering it into the hands of the person to be served therewith or by tendering it to him personally or by leaving it at his usual or last known place of abode in Cyprus, or, if he is not an inhabitant of Cyprus and cannot be found therein, by posting it on some conspicuous place on the property charged with the payment of the debt which is sought to be recovered or, if the property consists of several separate parcels, on each of the separate parcels.

If the person to be served is an infant, lunatic, or person of unsound mind, service of the notice shall be effected in the same manner as service of a writ of summons is required to be effected under the Rules of Court for the time being in force for regulating the procedure of the Courts in civil actions.

Punishment  
for false  
statement.

9. Any person who shall knowingly make any false statement in any affidavit or affirmation made under this Law shall be liable to the same penalty as if he had given false evidence in a judicial proceeding.

Discretion of  
District  
Lands  
Officer with  
respect to  
sales.

10. If the District Lands Officer on the statements contained in any affidavit or affirmation shall consider that the notice to pay the money sought to be recovered has not come to the knowledge of the person whose property is mortgaged for the payment thereof or that owing to his absence from Cyprus or otherwise he has not had sufficient

time to comply with the demand made by the notice, he may refuse to put the property up for sale and may defer the sale either generally or for some specified time as he may think good, and he may require the person applying for the sale of the property to furnish further evidence of any of the matters mentioned in paragraphs (a), (b) and (c) of section 2; but whether he shall defer the sale or not, or whether he shall or shall not require the production of further evidence; or whatever course he may in the *bonâ fide* discharge of his duty as a Lands Officer pursue in relation to the sale, he shall not be responsible either to the person for the sale of whose property application is made or to the person applying for the sale for any damage or loss that may occur to them or either of them in consequence of his acts in relation to the sale.

11. Every sale made on any such application as is mentioned in section 2 shall be by public auction in accordance with the Rules of Sale for the time being in force under the Civil Procedure Law.

Sales to be in accordance with Rules of Sale. Cap. 6.

12. Where any property is sold on application under this Law, the registration thereof in the name of the purchaser shall indefeasibly transfer to him all the estate and title of the person by whom the property was mortgaged for the payment of the debt in satisfaction whereof the property is sold, notwithstanding any false statement made without the knowledge of the purchaser or any informality contained in any affidavit or affirmation presented to the District Lands Officer in conformity with the provisions of this Law; and if the person whose estate and title in the property is transferred as aforesaid shall be in any way prejudiced, by any such false statement or informality as aforesaid his remedy shall be in damages only against the person on whose application the property was sold.

Sale transfers indefeasibly the estate and title of the debtor.

13. Nothing in this Law contained shall operate to prevent any person claiming a right to have mortgaged property sold in satisfaction of a debt charged thereon from enforcing his right by a civil action, and any such action may be instituted at any time, either before or after application to the District Lands Officer under the provisions of this Law.

Sale of mortgaged property may be enforced by civil action.

Provided always that where the Court shall be of opinion that the institution and prosecution of the action was not reasonably necessary for enforcing the plaintiff's right it

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shall have power to direct that the whole of the costs of the action, including the costs of the defendant, be paid by the plaintiff.

SCHEDULE.

(Sections 6 and 8.)

FORM A.

In the matter of the mortgage of *A. B.* of

To the District Lands Officer for the district of

*I, L. M.*, of hereby make oath and say as follows:—

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, *A.B.*, of \_\_\_\_\_ mortgaged his property situate at \_\_\_\_\_ [*Here describe the property.*] for the payment to me of the sum of £\_\_\_\_\_ with interest thereon at the rate of \_\_\_\_\_ per cent. per annum and the said *A. B.* agreed to pay the said principal sum of £\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and he named \_\_\_\_\_ of \_\_\_\_\_ attorney for the sale of the said property if he the said *A. B.* should make default in payment of the said sum of £\_\_\_\_\_ and interest on the said \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

2. On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I served upon the said *A. B.* a notice in writing whereof the document produced to me at the time of my swearing this affidavit and marked \_\_\_\_\_ is a true copy. The said notice was served upon the said *A. B.* by \_\_\_\_\_ [*Here state what was done with the document in order to bring it to the knowledge of debtor.*]

3. There is now due to me on the security of the above-mentioned mortgage a sum of £\_\_\_\_\_

(Signed.) *L. M.*

Sworn before me,

FORM B.

To *A. B.* of \_\_\_\_\_

Take notice that there is now due to me the sum of £\_\_\_\_\_ on the security of a mortgage made by you on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, whereby you secured to me the repayment of a sum of £\_\_\_\_\_ with interest thereon at the rate of \_\_\_\_\_ per cent. per annum and nominated \_\_\_\_\_ your attorney to sell the property hereinafter described, that is to say,

[*Here describe the property according to registered description.*]

if you should fail to pay the said sum of £\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

And take notice that you are hereby required to pay the sum of £\_\_\_\_\_ now due as aforesaid; and that if you shall not within \_\_\_\_\_ calendar months hereof pay the said sum in full together with such further interest as may accrue due on the said principal sum up to the day of payment, the said property may be sold without further notice to you.

(Signed.) *L. M.*,  
Mortgagee.