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Backgrounder

LRC 24—Report on Security Interests in Real Property: Remedies on Default

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In British Columbia, there are two principal devices used to create consensual security interests in land—the mortgage and the agreement for sale. The mortgage is the more familiar of the two. A mortgage is a transfer of property passing conditionally as security for a debt. The conditions are the debtor's (the *mortgagor's*) contractual right to redeem the property upon payment of the debt and its equitable right of redemption granted by the courts. If these conditions are not met, title to the property passes to the lender (the *mortgagee*). An agreement of sale is a contract between a buyer and a seller whereby the seller agrees to sell, and the buyer agrees to buy, the seller's interest in property for a certain sum payable over a specified period of time and, upon payment of the purchase price, to convey legal title to the buyer. Until this time, legal title to the property remains with the seller and the buyer has a right to obtain legal title by fulfilling the terms of the agreement. In British Columbia, both mortgages and agreements for sale may be registered in the land title office as charges on title.

This report's basic position is that mortgages and agreements for sale in British Columbia are functionally identical. Both devices involve the taking or retaining of an interest in land for the purpose of securing payment of a debt. Yet the law contains a number of subtle differences in its treatment of mortgages and agreements for sale.

The report begins with two chapters that briefly describe the law relating to mortgages and agreements for sale. The focus is on the remedies available under each security device. This discussion yields six areas of inconsistency: (1) inconsistent application of statutory rights under the then *Laws Declaratory Act* (now called the *Law and Equity Act*); (2) inconsistent rights of reinstatement; (3) inconsistent redemption periods; (4) inconsistent rights relating to the extension of redemption periods; (5) inconsistent rights relating to proceedings on the personal covenant of the debtor; (6) inconsistent rights under the then *Land Registry Act* (now called the *Land Title Act*).

The report concludes with a chapter setting out the commission's recommendations for reform. These recommendations start by tacking the basic question of whether the agreement for sale should continue to be part of the law. The commission concludes that the agreement for sale should be retained, even though it is not frequently used in practice. But, the commission does recommend a statutory redefinition of "agreement for sale," to make its function as a security device clearer. Other recommendations include extending statutory remedies that are only available for mortgages to agreements for sale, re-aligning the redemption rights under an agreement for sale to be in accordance with those under a mortgage, and making rights on the borrower's personal covenant consistent between mortgages and agreements for sale.

Further Developments

This report's recommendations have been implemented, in part, by the following legislation and court rules:

- *Miscellaneous Statutes (Court Rules) Amendment Act*, S.B.C. 1976, c. 33, s. 94 (a) (now *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 15)
- *Supreme Court Rules*, r. 50 (11)
- *Land Titles Act*, S.B.C. 1978, c. 25, ss. 224–25 (now *Land Title Act*, R.S.B.C. 1996, c. 250, ss. 245–46)
- *Attorney General Statutes Amendment Act*, S.B.C. 1980, c. 1, s. 15 (now *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 25)
- *Property Law Act*, S.B.C. 1978, c. 16, s. 28 (now *Property Law Act*, R.S.B.C. 1996, c. 377, s. 32)
- *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 5 (now *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 16)