# Clandestine Mortgages Act (Ireland) 1697

## Chapter 11

An Act to prevent Frauds by clandestine Mortgages.[1]

WHEREAS great frauds and deceits are too often practised by necessitous and evil disposed persons, in borrowing of money, and giving judgments, statutes, and recognizances privately, for securing the repayment of the said money, and the same persons do afterwards borrow money, upon security of their lands, of other persons, and do not acquaint the latter lender thereof with the same, whereby such latter lender is very often in danger to lose his whole money, or forced to pay off the debts secured by the said judgments, statutes, and recognizances, before they can have any benefit of the said mortgages: and whereas divers persons do many times mortgage their lands more than once, without giving notice of their first mortgage, whereby lenders of money upon second or after mortgages do often lose their money, and are put to great charges in suits, and otherwise:

Mortgagor not giving notice in writing to mortgagee of prior judgments, statutes, or recognizances, shall not have equity of redemption.

[I.] For remedy whereof, and preventing the same as much as may be for the future, if any person or persons, from and after the first day of April which shall be in the year of our Lord God one thousand six hundred and ninety eight, shall borrow any money, or for any other valuable consideration for the payment thereof voluntarily give, acknowledge, permit, or suffer to be entred against him or them one or more judgment or judgments, statute or statutes, recognizance or recognizances, to any person or persons, creditor or creditors, and if the same borrower or borrowers, debtor or debtors, shall afterwards take up or borrow any other sum or sums of money of any other person or persons, or for other valuable consideration become indebted to such person or persons, and for securing the repayment and discharge thereof shall mortgage, his, her, or their lands or tenements, or any part thereof, to the said second, or other lender or lenders of the said money,

creditor or creditors, or to any other person or persons in trust for, or to the use of such second, or other lender or lenders, creditor or creditors, and shall not give notice to the said mortgagee or mortgagees of the said judgment or judgments, statute or statutes, recognizance or recognizances, in writing under his, her, or their hand or hands, before the execution of the said mortgage or mortgages, unless such mortgager or mortgagers, his, her, or their heirs, upon notice to him, her, or them, given by the mortgagee or mortgagees of the said lands and tenements, his, her, or their executors, administrators, or assigns, in writing under his, her, or their hands and seals, attested by two or more sufficient witnesses, of any such former judgment or judgments, statute or statutes, recognizance or recognizances, shall within six months after such notice given pay off and discharge the said judgment or judgments, statute or statutes, recognizance or recognizances, and all interest and charges due thereupon, and cause or procure the same to be vacated or discharged by record; that then the mortgager or mortgagers of the said lands and tenements, his, her, or their heirs, executors, administrators, or assigns, shall have no benefit or remedy against the said mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, or any of them, in equity or elsewhere, for redemption of the said lands and tenements, or any part thereof; but the said mortgagee and mortgagees, his, her, or their heirs, executors, administrators, and assigns, shall and may hold and enjoy the said lands and tenements, for such estate, and term therein, as were or was granted and settled to the said mortgagee or mortgagees, against the said mortgager or mortgagers, and all person and persons lawfully claiming from, by or under him, her or them, freed from equity of redemption, and as fully to all intents and purposes whatsoever, as if the same had been purchased absolutely, and without any power or liberty of redemption.

Unless in six months after notice to him in writing by mortgagee under hand and seal, attested by two witnesses, he discharges or procures the same to be vacated.

II. AND further if any person or persons, who have or hath once mortgaged, or from and after the said first day of April shall mortgage, any lands or tenements to any person or persons, for security of money lent, or otherwise accrued, or become due, or for other valuable considerations; and if the said mortgager or mortgagers shall again mortgage the same lands or tenements, or any part thereof, to any other person or persons for valuable considerations, the said former mortgage being in force and not discharged, and shall not discover to the said second or other mortgagee or mortgagees, or some or one of them, the former mortgage or mortgages, in writing under his or their hands; that then, and in those cases also, the said mortgager or mortgagers, his, her, or their heirs, executors, administrators or assigns shall have no relief or equity of redemption against the said second or after mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, upon the said after mortgage or mortgages, but that such mortgagee or mortgagees, his, her, or their heirs, executors, administrators, and assigns, shall and may hold and enjoy such, more than once mortgaged lands and tenements, for such estate and term therein, as were or was granted and conveyed by the said mortgager or mortgagers,

Subsequent mortgagees, without notice given of prior, shall also hold free from equity of redemption.

against him, her, or them, his, her, or their heirs, executors, or administrators respectively, freed from equity of redemption, and as fully to all intents and purposes as if the same had been an absolute purchase, and without any power or liberty of redemption.

Subsequent mortgagees may redeem the former.

III. PROVIDED always, That nevertheless if it so happen that there be more than one mortgage at the same time, made by any person or persons to any person or persons of the same lands and tenements, the several late or under mortgagees, his, her, or their heirs, executors, administrators, or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, interest, and costs of sute to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns; any thing herein contained to the contrary thereof in any wise notwithstanding.

*S.IV rep. by SLR 1973*

**Reference**

1. Short title "The Clandestine Mortgages Act (Ireland) 1697", 1951 c.1 (NI)