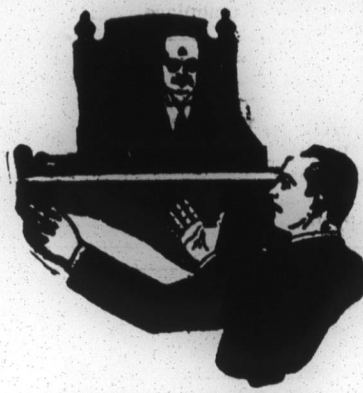


This is the Law



BY WILLIAM JOSLIN
(For the N. C. Bar Association)

MORTGAGES

The word "mortgage" has a definite meaning for almost everyone. The law concerning mortgages is continually growing in response to changing uses made of this device. This discussion will deal solely with mortgages on real estate, although many of the principles discussed apply equally to mortgages on personal property, or "chattel mortgages," as they are known.

A mortgage has been defined as any form of instrument whereby title to real estate is reserved or conveyed as security for the payment of a debt or the fulfillment of other obligation. Thus, a mortgage can be used as security for the performance of the conditions of a bond or other agreement. However, the most frequent use made of the mortgage is to secure the repayment of a loan of money made to the borrower, or mortgagor. His obligation to repay the loan is usually contained in a note or notes, which are separate from the mortgage. The mortgage itself refers to the note or notes executed by the borrower, and states that the title to the property has been conveyed to the lender or mortgagee, who may, under certain conditions, enforce the payment of the note or notes through the foreclosure of the mortgage and the sale of the property.

Deeds of Trust

In North Carolina, the term "mortgage" is commonly used to include, in addition to the conventional mortgage, another paper known as a "deed of trust." Instead of being a two-party instrument like the mortgage, the deed of trust is a three-party paper. The borrower in this type of instrument conveys the title to his property to a trustee to secure the repayment of his note or notes to the lender. The trustee has no direct interest in the security; he merely holds the legal title to the property so long as the deed of trust is outstanding. It is his duty to foreclose the deed of trust if a default occurs and if the lender demands foreclosure. For purposes of this article the term "mortgage" will include "deed of trust" as well, except where indicated otherwise.

A mortgage must ordinarily meet certain formal requisites. First of all, it must be properly signed by the owners of the real estate included in the mortgage. Secondly, the property conveyed as security must be described sufficiently to permit its identification. Thirdly, the mortgage must state that the conveyance is conditional upon the payment of a certain sum, or the fulfillment of certain conditions. Finally, a mortgage should be recorded in the Register of Deeds office in order to give all persons notice of its existence and to establish its priority. Failure of a mortgage

to meet these requirements ordinarily renders it invalid and unenforceable.

Foreclosure

So long as the borrower meets the payments on the mortgage, the lender cannot foreclose.

Upon the failure of the borrower to comply with the terms of the mortgage, the lender has the right to foreclose on the property. Default in meeting the terms of payment is the main cause of foreclosure. However, the mortgagor may have failed to perform other conditions of the mortgage, such as the payment of taxes on the property.

Most mortgages for the payment of money in installments contain what is known as an "acceleration clause." This clause provides that, upon default in making any payment under the mortgage, the mortgagee has an option to declare the full unpaid balance of the indebtedness due, and to foreclose for the payment of this entire balance.

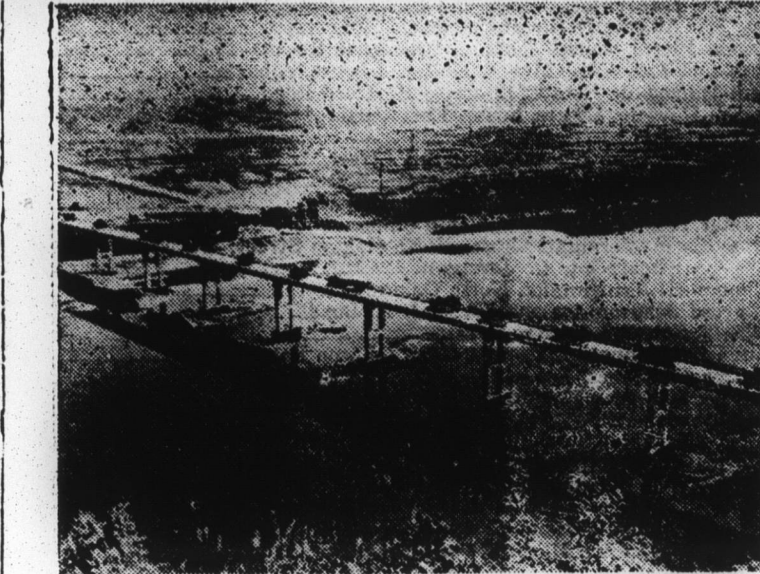
Foreclosure may be accomplished in either of two principal ways: (1) Through the filing of a law suit; (2) Through the power of sale set out in the mortgage itself. The second of these two procedures is the one usually employed.

The requirements of foreclosure under the terms of the mortgage are carefully set out in our laws. The foreclosure sale must be advertised for at least 30 days by posting a notice of sale at the courthouse and by newspaper advertisement. The actual foreclosure sale is held at the courthouse and is in the form of a public auction, unless the court order or notice of sale provides otherwise.

At the sale, the property is sold to the highest bidder. The borrower can, of course, bid at the sale. The sale does not become final until ten days have elapsed, during which time the bid may be raised. Upon the filing of a raise of bid, the property must be readvertised and resold at public auction. This procedure may be repeated as often as raises of bid are filed on the property. At any time prior to the final expiration of time for raise of bid, the borrower can stop the foreclosure proceedings by paying off the debt, plus accrued costs.

Deficiency Judgments

What can the lender do if the property fails to bring a price sufficient to pay off the indebtedness? Subject to one important exception noted below, the lender can sue the borrower and obtain a judgment requiring him to pay the difference between the mortgage debt and the amount realized from the foreclosure sale. Such a judgment is spoken of as a "deficiency judgment."



BUILT UNDER ENEMY FIRE, Libby Bridge spanning the Imjin River in Korea was completed by U.S. Army Engineers in five months, 11 days. The 1,974-foot span was named for the late Sergeant George D. Libby of Linden, N.J., winner of the Medal of Honor. The 84th Army Engineer Construction Battalion was awarded the Republic of Korea Presidential Unit Citation for building the bridge.

Under North Carolina law a lender cannot bring suit for a deficiency judgment where the mortgage was originally given to secure the payment of the balance due upon the purchase price of real estate. In other words, the lender must rely solely upon the real estate to recover the balance due upon a purchase money mortgage.

This rule of law was enacted during the depression of the 1930's. Transfer of Mortgaged Property Can the borrower on real estate transfer the property without paying off the debt? Ordinarily, the borrower can sell or otherwise dispose of the property as he sees fit, leaving the mortgage debt unaffected. The new owner of the property must, of course, keep up the payments on the mortgage. The holder of the note secured by the mortgage must accept payments of the debt from the new owner of the property.

If the new owner of the mortgaged real estate default in his payments, can the original borrower still be forced to make these payments? As a practical matter, the question seldom arises. The holder of the debt ordinarily depends only on the real estate for payment. As a matter of law, he is required first of all to foreclose against the real estate. If the mortgage, as shown on its face, was originally a "purchase money mortgage," then, as noted above, the land alone must stand for the debt. The fact that the original borrower has transferred his interest to another does not alter this fact. If the mortgage was not originally a "purchase money mortgage," then, the borrower can be required to make up any deficiency of the mortgage debt after foreclosure. Any subsequent owner of the real estate, who expressly agreed to pay the debt, can likewise be required to make up any deficiency.

Paying off the Mortgage

The usual method of disposing of a mortgage debt is, of course, by payment in full. At the time of payment the mortgage or deed of trust, and the accompanying notes, should be marked

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Hot news from Detroit!

PLYMOUTH

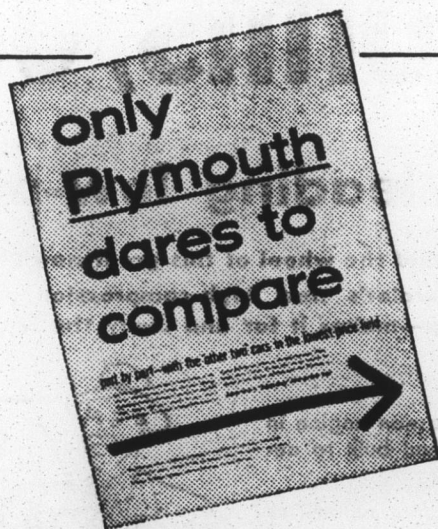
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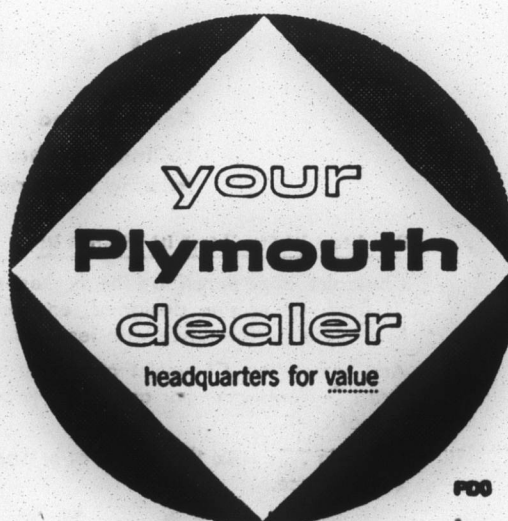
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"satisfied and paid in full" by the holder of the debt, and should be presented to the Register of Deeds for cancellation. Failure to have the papers promptly presented for cancellation may give rise to trouble later, should the original papers be misplaced.

Sack Sewing Skill To Bring Rewards

Special recognition and awards for home sewing skill will be offered at major state and regional fairs throughout the nation in 1954.

A "Save With Cotton Bags" Sewing Contest will be a feature of the women's department program of 45 fairs held in 34 states during late summer and early fall, the National Cotton Council explains. The program is sponsored by the Cotton Council and the Textile Bag Manufacturers Association in cooperation with the Pfaff Sewing Machine Company.

A deluxe portable sewing machine,

cash prizes, and gift certificates will be among the awards offered at each participating fair. Entry classifications highlight the versatile re-usfulness of cotton packaging and include such items as mother and daughter dress ensemble, curtains, stuffed toy, pajamas, and luncheon sets.

The winning entry from each fair will be judged in national competition, with the 1954 "International Cotton Bag Sewing Queen" and two runners-up named in ceremonies during the International Dairy Show in Chicago's amphitheater, October 9-16. The three national finalists win all-expense paid trips, a week's stay in the nation's second largest city, and gifts valued at more than \$2,500.

Contest details will appear in fair premium books or may be obtained by addressing requests to the National Cotton Council, P. O. Box 18, Memphis, Tennessee.

Education is a process of driving a set of prejudices down your throat. —Martin H. Fischer.

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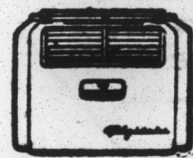
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