26. Lender’s Rights and Remedies

Land Law: Text, Cases & Materials (4th edn)
Ben McFarlane and Sarah Nield

Publisher: Oxford University Press  Print Publication Date: Aug 2018
Print ISBN-13: 9780198806066  Published online: Sep 2018
DOI: 10.1093/he/9780198806066.003.0026  © B McFarlane, NP Hopkins, SA Nield 2018

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All books in this flagship series contain carefully selected substantial extracts from key cases, legislation, and academic debate, providing able students with a stand-alone resource. This chapter concentrates on the rights and powers conferred upon the lender to enforce its security over land. A lender’s rights and remedies arise from the nature of its security, the powers implied by the Law of Property Act 1925, and any express powers. The lender’s right to take possession originated at common law but is now conferred by s 87(1) of the 1925 Act. The lender’s power of sale and to appoint a receiver are implied by s 101(1)(i) and (iii) of the 1925 Act respectively and can only be exercised if the borrower has defaulted. The duties that a lender or receiver owes when selling the mortgaged property are explained, as well as the position of a purchaser from a lender or receiver where there has been a breach of duty.
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