

a statutory condition which provides against the insured premises being assigned without the company's consent (d).

In order to come within a condition providing against the assignment of the insured premises, an assignment must be an absolute transfer of the subject matter. An assignment by way of mortgage (e) or an agreement to sell, the vendor retaining the legal estate (f), does not constitute a breach of the condition.

A mortgagee, unpaid vendor or other person having a limited interest in property, may effect insurance either (1) on his own interest merely, or (2) on his own interest as well as the interests of all other persons in the property. For instance, a mortgagee may effect insurance either (1) on his own interest as mortgagee or (2) on the property as a whole, including the equity of redemption (g).

It has been held in New Brunswick that the interest of the mortgagee as such ends on foreclosure absolute, and that if a loss occurs thereafter the mortgagee cannot recover on a policy issued to him as mortgagee (h).

2. Right or obligation to insure.

It is usual in Ontario to insert in a mortgage the short form of covenant provided by the Short Forms of Mortgages Act (i), as follows:—

And that the said mortgagor will insure the buildings on the said lands to the amount of not less than _____ of lawful money of Canada.

In the case of a mortgage expressed to be made in pursuance of the statute, the foregoing covenant has the same effect as if it were in the following terms (j):—

And also that the said mortgagor or his heirs, executors, administrators or assigns shall and will forthwith insure unless already insured and during the continuance of this security keep insured against loss or damage by fire, in such proportions upon each building as may be required by the said mortgagee his heirs, executors, administrators or assigns, the messuages and buildings erected on the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, in the sum of _____ of lawful money of Canada, at the least, in some insurance office to be approved of by the said mortgagee, his heirs, executors, administrators or assigns, and pay all premiums and sums of money necessary for such purpose, as the same shall become due, and will on demand assign, transfer and deliver over unto the said mortgagee, his heirs, executors, administrators or assigns the policy or policies of insurance, receipt or receipts thereto appertaining; and if the said mortgagee, his heirs, executors, administrators or assigns, shall pay any

(d) *Pinkey v. Mercantile Fire Insurance Co.*, 1901, 2 O.L.R. 296.

(e) *Sands v. Standard Insurance Co.*, 1879, 26 Gr. 113, 27 Gr. 167; *Sovereign Fire Insurance Co. v. Peters*, 1885, 12 Can. S.C.R. 33.

(f) *Keefer v. Phoenix Insurance Co.*, 1901, 31 Can. S.C.R. 144; *I'valler and Douglas v. Calgary Fire Insurance Co.*, 1910, 3 A.L.R. 12.

(g) *Castellan v. Preston*, 1833, 11 Q.B.D. 380, at p. 398; *Keefer v. Phoenix Insurance Co.*, 1901, 31 Can. S.C.R. 144, at pp. 145, 149. As to insurance of limited interests, see an article by William Harvey in 10 L.Q.R. 48 (Jan., 1894). As to insurance in the name of the mortgagee, see § 6, *infra*.

(h) *Goslin v. Phoenix Insurance Co.*, 1886, 11 N.B.R. (6 Allen) 249.

(i) R.S.O. 1914, c. 117, schedule B, clause 12.

(j) R.S.O. 1914, c. 117, s. 3.