

PURCHASERS' PROTECTION.

24° GEO. V., No. XLIV.

No. 44 of 1933.

AN ACT relating to the protection of Purchasers.

[Assented to 4th January, 1934.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Purchasers' Protection Act, 1933.* Short title.

2. Subject to the provisions of section eleven and subsection (2) of section twelve of this Act, this Act shall apply only to contracts made after the commencement of this Act. Operation.

3. In this Act, subject to the context— Interpretation.
 - “Contract” whenever herein used shall mean a contract for the sale and purchase of subdivisational land.
 - “Deposit” means purchase money or other consideration passing from a purchaser to a vendor prior to or simultaneously with the execution of a contract.
 - “House” includes a farm, but does not include an office used for business purposes.
 - “Public utility” includes roads, bridges, water supply, light, power, drainage, schools, parks, reserves, railways, tramways, and other means of transport.

“Sale” includes, in the case of shares, any subscription for shares or undertaking to become a shareholder. The term does not include a sale by auction in the case of a sale of subdivisioinal land.

“Subdivisioinal land” means any allotment or portion of any lands which have been subdivided into lots for the purpose of sale in lots for residential, factory, or shop premises, and which allotment or portion has not previously to such subdivision had erected on it any substantial building.

Representations.

4. (1.) Any representation relating to any subdivision of land or to any land therein shall be deemed to be made for the purpose of inducing purchase of such land by a purchaser, and to be material in inducing the purchaser to enter into a contract for the purchase of land in such subdivision, and, if untrue, shall be deemed to have been made with knowledge of its untruth unless the contrary is proved.

(2.) Any representation, whether oral or written, as to the position or operation, whether actual, proposed, or projected, of any public utility, and any marking or indication thereof on any plan of subdivision of land, shall be deemed to be a representation that the construction and operation thereof in such place has been authorised in manner required by law by the person or body having authority so to do.

Purchaser allowed time after making contract to inspect land and repudiate contract.

5. (1.) Every contract for the sale and purchase of subdivisioinal land shall be deemed to be subject to a condition that, if the land has not been inspected by the purchaser prior to the execution of the contract by the purchaser, a period of seven days after the date of execution of the contract by the purchaser will be allowed to the purchaser for the purpose of making inspection of the land, and that the purchaser may within four days after making inspection repudiate the contract.

(2.) A contract may be repudiated by the purchaser within the last-mentioned period by notice in writing under the hand of the purchaser given to the vendor.

(3.) In the event of a purchaser repudiating a contract under the power conferred by this section, the vendor shall forthwith repay to the purchaser any deposit paid to him by the purchaser.

(4.) Any payments of purchase money payable under the contract by the purchaser during the period allowed to the purchaser for making inspection by subsection (1) of this section shall be postponed until the expiration of such period.

6. (1.) A purchaser of subdivisinal land under a contract shall be allowed a period of fourteen days after the date of execution of the contract by the purchaser within which to examine the title of the vendor in and to such land; and, in case such land is subject to any mortgage or encumbrance whereby money is owing on the security thereof, the purchaser may by notice in writing delivered to the vendor within the last-mentioned period require the vendor to procure the assent to the contract of the mortgagee or encumbrancer in writing.

Purchaser allowed time to examine vendor's title. Vendor to procure assent of mortgagee or encumbrancer.

(2.) Where the purchaser finds any defect in the title of the vendor in and to the land, or has requested the vendor to procure the assent of the mortgagee or encumbrancer as aforesaid, the vendor shall be allowed fourteen days after the receipt of notice in writing of such defects in title or after receipt of such request, within which to rectify such defect, or to procure and make available to the purchaser the assent in writing of the mortgagee or encumbrancer as requested by the purchaser.

(3.) If the vendor shall fail or neglect within the last-mentioned period to rectify the defect in the title to the land, or to procure and make available to the purchaser the assent aforesaid, the purchaser may within four days after the expiration of the said period repudiate the contract by notice in writing under his hand given to the vendor.

(4.) In the event of a purchaser repudiating a contract under the power conferred by this section, the vendor shall forthwith repay to the purchaser any deposit paid to him by the purchaser.

(5.) Any payments of purchase money payable under the contract by the purchaser during the periods of fourteen days mentioned in subsections (1) and (2) of this section shall be postponed until the expiration of such periods.

7. In every contract of sale of subdivisinal land, a condition shall be inserted that the purchaser shall pay to the vendor on the execution by the purchaser of the contract of

sale, a deposit of not less than five pounds, or, alternatively, five per centum of the total purchase price of the lands, whichever is the lesser sum. The vendor shall actually receive that deposit on such execution.

If any contract is entered into in contravention of the provisions of this section, or if the prescribed deposit is not actually received by the vendor on the execution of the contract by the purchaser, the contract shall be absolutely null and void, and any deposit paid, which is less than that prescribed under this section, may be recovered back by the purchaser from the vendor in any court of competent jurisdiction.

8. (1.) It shall be incumbent on the vendor of any subdivisational land which is sold under contract of sale to have the signature of the purchaser attested immediately it is made to the contract of sale. The attestation shall be made by a person who is a person duly authorised to attest instruments under the provisions of the Transfer of Land Act, 1893, and its amendments, or by a person who is authorised to attest instruments under the provisions of the Declarations and Attestations Act, 1913. The person attesting shall not be a person in the employ of the vendor, or a person who is in any way interested in the business of the vendor.

(2.) If the vendor, by act or omission, commits a breach of any of the provisions of this section, he shall be guilty of an offence.

Penalty: Fifty pounds.

(3.) If any contract is not properly attested under the provisions of this section it shall not be enforceable against the purchaser.

Contracts by
married women.

9. (1.) Any contract or agreement whereby a married woman agrees to purchase subdivisational land, or to become liable for payment of purchase moneys payable in respect of the purchase of subdivisational land shall, unless ratified by the husband of such married woman, be subject to repudiation by such married woman at any time before completion of the contract or agreement.

(2.) A contract or agreement may be repudiated under this section by notice in writing under the hand of the married woman repudiating the same given to the vendor.

(3.) Where a contract or agreement is repudiated under this section, all moneys whatsoever paid to the vendor under

or in pursuance of such contract or agreement shall forthwith be repaid by the vendor to the married woman from whom he received the same.

(4.) In this section "married woman" means a married woman who is residing with her husband and who is maintained by him, and who has no substantial separate estate or income reasonably adequate to enable her to complete such contract or agreement.

In this subsection the term "residing" shall extend to any case where the husband is periodically absent from the place where his wife resides in connection with any trade, profession, business, or vocation carried on by him or in which he is interested.

10. (1.) If in any proceedings taken in any court for recovery of purchase money or enforcement of any other remedy against the purchaser under a contract for sale of subdivisinal land, or for performance of such contract by the purchaser, the court is satisfied that the payment of such purchase money, or the enforcement of such remedy against the purchaser, or the performance of the contract by the purchaser, will inflict hardship on the purchaser by reason of his poverty or other inability to perform his obligations under the contract, and that the land which is the subject of such contract can be restored to the vendor in substantially similar condition to that in which it was at the time of the sale, the court may, on the application of the purchaser, in lieu of adjudging that all or any part of the purchase money be paid, or that any remedy shall be enforced, or that the purchaser shall perform the contract, order that possession of the land shall be delivered to the vendor, that the contract shall be cancelled, and that any deposit paid by the purchaser to the vendor shall be forfeited to the vendor. In such case also the court may also award damages to be paid by the purchaser to the vendor for non-performance of the contract in addition to the forfeiture of the deposit:

Powers of court
in proceedings to
enforce contract.

Provided that, where damages are awarded by the court as aforesaid, the amount thereof shall not in any case exceed the amount of one-fourth part of the total purchase price payable under the contract.

(2.) Any purchaser who is threatened with any such proceedings as are mentioned in the preceding subsection may

make application in the prescribed manner to any court in which the vendor is entitled to bring such proceedings, and the court may, on such application, grant the purchaser the same relief, but subject to the same conditions as if proceedings had actually been taken by the vendor under the preceding subsection.

11. The court may grant relief to any purchaser who has entered into a contract of sale prior to the commencement of this Act, and in such case the provisions of the next ensuing section shall apply with the necessary modifications.

Certain property of purchasers protected from seizure unless court otherwise orders.

12. (1.) Where any proceeding is taken in any court for the recovery of purchase money under a contract of sale of subdivisinal land, and the court gives judgment or makes an order against the purchaser for payment of such purchase money or any part thereof, with or without costs, then, unless the court, when giving judgment or making such order, specifically orders that—

(a) any dwelling-house owned or occupied by the judgment debtor as his home and the land appurtenant to such dwelling-house, or any estate or interest of the judgment debtor therein; and

(b) the household furniture and domestic utensils of the judgment debtor in or about such dwelling-house,

shall be available to satisfy such writ or warrant, the same shall not be seized or taken in execution or otherwise realised or made available towards the satisfaction of the judgment debt and costs.

(2.) The protection afforded by the preceding subsection shall also apply in the case of any judgment obtained or order made before the commencement of this Act for payment of purchase money, or any part thereof, in respect to a contract of sale of subdivisinal land, with or without costs, but the vendor shall have the right at any time, within six months from the date of the commencement of this Act, to apply to the court which gave such judgment or made such order, for an order that the vendor be entitled to execute the same against the assets mentioned in paragraphs (a) and (b) of the preceding subsection.

Prohibition of contracting out.

13. The provisions of this Act shall apply and have effect in all cases of contracts to which this Act relates, notwith-

standing any contract, agreement, or condition made or entered into to the contrary.

14. This Act shall not apply to a sale by auction of subdivis-
 ional land, nor to a sale of any lot in any subdivision
 made by or for or on behalf of a seller who has not himself
 created the subdivision for the purpose of effecting the sale
 of the land in subdivis-
 ional lots or acquired the land for that
 purpose after the subdivision thereof. If any person acquires
 land after subdivision, and sells or causes to be sold two or
 more lots of such land, the onus shall be upon him in any pro-
 ceedings to establish that he did not acquire such land for the
 purpose of selling the same in subdivis-
 ional lots.

Restriction of
 application of
 Act

15. Any person who, with the intention of inducing a
 prospective purchaser to buy any subdivis-
 ional land, or any
 interest in such subdivis-
 ional land—

Prohibition of
 promises to rebuy
 land or to resell
 land for a pur-
 chaser at a profit.

(a) knowingly makes any false representation; or

(b) states that he or some other person named by him
 will buy at a profit to be received in the future by
 such prospective purchaser the said subdivis-
 ional land; or

(c) states that he or some other person named by him
 will at some future time obtain for the prospec-
 tive purchaser a profit on the sale of such allot-
 ment or any part thereof or any interest therein

shall be guilty of an offence.

Penalty: Fifty pounds.

16. (1.) No person shall himself go, or employ or procure
 another person to go, from house to house offering for sale
 subdivis-
 ional land or shares, or canvassing, persuading or in-
 ducing persons to go to view any subdivis-
 ional land with a
 view to sale.

Certain property
 offered for sale
 at houses to be
 available for in-
 spection.

Penalty: One hundred pounds.

(2.) Where a contract is made by reason of the accep-
 tance of an offer made by a person making the same in con-
 travention of subsection (1) of this section, every proprietor,
 vendor, promoter, or selling agent on whose behalf or for
 whose benefit such contract is made, shall be deemed to have
 procured such person to make such offer in contravention of
 the said subsection, unless and until it is proved that the act

constituting the offence was committed without his knowledge or consent.

(3.) Where the proprietor, vendor, promoter, or selling agent on whose behalf or for whose benefit a contract has been made as aforesaid is a company, then every director, manager, and secretary thereof shall be deemed to be a principal, and shall be liable as such principal under this section, unless and until it is proved that the act constituting the offence was committed without his knowledge or consent.

Provisions relating to contracts made by a person acting in contravention of s. 16.

17. Where a contract is made by reason of the acceptance of an offer made by a person making the same in contravention of section sixteen of this Act, and in subsequent proceedings taken in any court in respect of such contract against the purchaser thereunder, it comes to the knowledge of the court that such contract was made in consequence of or in the course of such contravention, the court shall declare such contract to be null and void, and may give such directions and make such orders as it may deem necessary or proper for repayment of purchase money paid under the contract upon the retransfer or redelivery of the property sold.