Western Australia

Property Law Act 1969

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Defined terms

Western Australia

Property Law Act 1969

An Act to amend and consolidate the law relating to property and for incidental purposes.

Part I — Preliminary

1. Short title

This Act may be cited as the *Property Law Act 1969*.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation.

*[**3.** Deleted: No. 10 of 1998 s. 76.]*

4. Repeals

On the coming into operation of this Act —

(a) the Acts of England and the United Kingdom specified in the First Schedule cease to have effect in the State and the provisions of the Acts by which the first mentioned Acts were adopted in the State are repealed; and

(b) the Acts specified in the Second Schedule are repealed to the extent mentioned in that Schedule.

5. Savings

Without prejudice to the operation of the *Interpretation Act 1918* [1], any alteration, by this Act, of the law whether by the repeal of an enactment, or otherwise, does not, unless otherwise expressly provided by this Act affect —

(a) any right accrued, or obligation incurred, before the date of the coming into operation of this Act under the law so altered; or

(b) the validity or invalidity, or any operation, effect or consequence, of any instrument executed or made, or of anything done or suffered before that date; or

(c) any action, proceeding or thing pending on that date or uncompleted on that date and that action, proceeding and thing may be carried on and completed as if the

enactment had not been repealed, or the law otherwise altered.

6. Application of this Act to certain Acts

Except as in this Act expressly provided, this Act so far as inconsistent with the *Transfer of Land Act 1893*, the *Community Titles Act 2018* or the *Strata Titles Act 1985*, does not apply to land that is under the provisions of any of those Acts.

[Section 6 inserted: No. 42 of 2011 s. 21; amended: No. 32 of 2018 s. 228.]

7. Terms used in this Act

In this Act unless the contrary intention appears —

bankruptcy includes insolvency and liquidation by arrangement, and also any other act or proceeding in law having under any law for the time being in force, effects or results similar to those of bankruptcy;

conveyance includes a mortgage, charge, lease, assignment, appointment, transfer, assent, vesting declaration, disclaimer, release, surrender, extinguishment and every other assurance of property or of an interest therein by any instrument, except a will; and ***convey*** has a corresponding meaning;

Court means the Supreme Court or a Judge;

deed in relation to land under the *Transfer of Land Act 1893*, includes an instrument having the effect of a deed under that Act;

disposition includes a conveyance and also a devise, bequest or an appointment of property contained in a will; and ***dispose of*** has a corresponding meaning;

encumbrance includes a legal or equitable mortgage, a trust for securing money, a lien and a charge of a portion, annuity, or other capital or annual sum; and ***encumbrancee*** has a corresponding meaning, and includes every person entitled to the benefit of an encumbrance or entitled to require payment or discharge of the encumbrance;

fine includes a premium or foregift and any payment, consideration or benefit in the nature of a fine, premium or foregift;

income in relation to land includes rents and profits;

instrument includes deed and will but does not include a statute, unless the statute creates a settlement;

land includes land of any tenure and mines and minerals whether or not they are held apart from the surface of the land, a building or part of a building, whether the division of the building is horizontal, vertical or made in any other way, and other corporeal hereditaments, and also includes a rent and other incorporeal hereditaments and an easement, right, privilege or benefit in, over or derived from the land and an undivided share in land;

land under the Transfer of Land Act 1893 means any estate or interest registered, or incorporated in the Register, under that Act;

lease includes an under-lease or other tenancy;

lessee includes an under-lessee and a person deriving title under a lessee or under-lessee;

lessor includes an under-lessor and a person deriving title under a lessor or under-lessor;

mines and minerals include any strata or seam of minerals or substances in or under any land and the right to work and get the minerals and substances;

mortgage includes a charge or lien on any property for securing money or money's worth;

mortgage, **"mortgagee"** and **"mortgagor"** in relation to land under the *Transfer of Land Act 1893*, have the same respective meanings as they have in that Act;

mortgage money means the principal interest or other money or money's worth secured by a mortgage;

mortgagee includes any person from time to time deriving title under the original mortgagee and ***mortgagee in possession*** means a mortgagee who in right of the mortgage has entered into and is in possession of the mortgaged property;

mortgagor includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage, according to his estate, interest, or right in the mortgaged property;

notice includes constructive notice;

periodic tenancy means a tenancy of no fixed duration and in respect of which the rent is payable weekly, monthly, yearly or for any other recurring period;

personal representative means the executor, original or by representation or the administrator for the time being of a deceased person;

possession in relation to land includes the receipt of income therefrom or the right to receive the income;

property includes real and personal property and any estate or interest therein and any thing or chose in action;

purchaser means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property; and where the context so requires "purchaser" includes an intending purchaser and ***purchase*** has a corresponding meaning;

registered or duly registered means registered in the manner provided by the *Transfer of Land Act 1893* where the land affected is under that Act, and otherwise means registered in the manner provided by, or incorporated in the Register under, the *Registration of Deeds Act 1856* (19 Vic. No. 14);

rent includes a rent service or a rent charge, or other rent, toll, duty, royalty or annual or periodical payment or money or money's worth reserved or issuing out of or charged upon land but does not include fee-farm rent;

represented person means a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*;

right of redemption in relation to a mortgage includes an option to repurchase only if the option in effect creates a right of redemption;

sale means a sale properly so called;

securities include stocks, funds and shares;

valuable consideration includes marriage but does not include a nominal consideration in money;

will includes codicil and every other testamentary disposition.

[Section 7 amended: No. 24 of 1990 s. 123; No. 32 of 2018 s. 229.]

Part II — Deeds and other instruments

8. Construction of expressions used in deeds and other instruments

In every deed, contract, will, order and other instrument that is executed, made or comes into operation after the coming into operation of this Act, unless the context otherwise requires —

(a) ***month*** means a calendar month;

(b) ***person*** includes a body corporate;

(c) every word in the singular number shall be construed as including the plural number;

(d) every word in the plural number shall be construed as including the singular number;

(e) every word of the masculine gender shall be construed as including the feminine gender;

(f) every word of the feminine gender shall be construed as including the masculine gender;

(g) every word in either of the said genders or numbers shall be construed as including a body corporate as well as an individual;

(h) where the effect of a provision, however expressed, is by the terms of that instrument made to depend upon the value placed or to be placed upon property —

(i) in the assessment of death duty or any other duty or tax which by the law of any place is or may be payable consequent upon the death of a person in respect of any property, or which would or might have been payable had the duty or tax to which reference is made in the instrument not ceased to be payable at the time the valuation is required; or

(ii) in any valuation obtained or to be obtained for the purposes of any such duty or tax,

and by reason of any change in the relevant legislation since that instrument was executed, made, or came into operation a value is not placed thereon for that purpose, the instrument shall take effect as if it directed that a valuation of the property be made by a duly qualified person and the valuation so made shall, subject to the provisions of section 8A, be adopted for the purposes of that provision.

[Section 8 amended: No. 102 of 1979 s. 3.]

8A. Other valuation procedures

(1) On the application of a person having a proper interest in respect of a provision of the kind to which section 8(h) refers, the Court may, if it considers it desirable in all the circumstances (including any question as to the person who is to be responsible for causing the valuation to be made, any proposal for the making of such a valuation, or the circumstances attending any valuation made), direct that in lieu of that paragraph taking effect the provisions of the instrument shall be varied in such manner as the Court considers most likely to give practical effect to the intention underlying the instrument, and the Court may, in addition or in the alternative, make any other order in relation to the matter that the Court thinks desirable.

(2) Where for the purposes of the *Administration Act 1903*, or any other Act by which no method of making such a valuation is prescribed, a value is required to be placed on any property the provision of that Act requiring the valuation shall have effect as though the provision had been contained in an instrument of the kind to which section 8(h) refers.

[Section 8A inserted: No. 102 of 1979 s. 4.]

9. Formalities of deed

(1) Every deed, whether or not affecting property —

(a) shall be signed by the party to be bound thereby; and

(b) shall be attested by at least one witness not being a party to the deed but no particular form of words is required for the attestation.

(2) It is not necessary to seal any deed except in the case of a deed executed by a corporation under its common or official seal.

(3) Formal delivery and indenting are not necessary in any case.

(4) Every instrument expressed or purporting to be an indenture or a deed or an agreement under seal or otherwise purporting to be a document executed under seal and which is executed as required by this section has the same effect as a deed duly executed in accordance with the law in force immediately prior to the coming into operation of this Act.

10. Execution of instruments by or on behalf of corporations

(1) A deed shall be deemed to have been duly executed by a corporation aggregate in favour of a purchaser, if the seal of that corporation is affixed to the deed in the presence of and attested by a person who is its clerk, secretary or other permanent officer or his deputy, and a member of its board of directors, council or other governing body.

(2) Where a seal purporting to be the seal of a corporation aggregate has been affixed to a deed, attested by a person and a member purporting to be such a person and such a member as is referred to in subsection (1), the deed shall be deemed to have been duly executed and to have taken effect accordingly.

(3) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not

under seal in relation to any matter within the powers of the corporation.

(4) When a person is authorised under a power of attorney or under any statutory or other power to execute any instrument in the name of, or on behalf of a corporation, sole or aggregate, he may as attorney for the corporation execute the instrument by signing the name of the corporation and adding the words "by its attorney" and his own signature in the presence of at least one witness and subject to the compliance by such person with the provisions of section 85(3), an instrument so executed takes effect as if duly executed by the corporation.

(5) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to execute any instrument in the name or on behalf of any other person (including another corporation), an officer of the corporation aggregate appointed for that purpose by the board of directors, council or other governing body of that corporation by resolution or otherwise, may execute the instrument in the name of that other person; and if the instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

(6) The foregoing provisions of this section apply to transactions wherever effected, but only to instruments executed after the date of the coming into operation of this Act, except that, in the case of powers or appointments of an agent or officer, those provisions apply whether the power was conferred or the appointment was made before or after that date.

(7) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed or settlement or other instrument constituting the corporation or regulating the affairs thereof, are (in addition to the modes authorised by this section) as effectual as if this section had not come into operation.

11. Persons taking who are not parties

(1) A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property, although he is not named as a party to the conveyance or other instrument that relates to the land or property.

(2) Except in the case of a conveyance or other instrument to which subsection (1) applies, where a contract expressly in its terms purports to confer a benefit directly on a person who is not named as a party to the contract, the contract is, subject to subsection (3), enforceable by that person in his own name but —

(a) all defences that would have been available to the defendant in an action or proceeding in a court of competent jurisdiction to enforce the contract had the plaintiff in the action or proceeding been named as a party to the contract, shall be so available;

(b) each person named as a party to the contract shall be joined as a party to the action or proceeding; and

(c) such defendant in the action or proceeding shall be entitled to enforce as against such plaintiff, all the obligations that in the terms of the contract are imposed on the plaintiff for the benefit of the defendant.

(3) Unless the contract referred to in subsection (2) otherwise provides, the contract may be cancelled or modified by the mutual consent of the persons named as parties thereto at any time before the person referred to in that subsection has adopted it either expressly or by conduct.

12. Description of deeds

Any deed, whether or not it is an indenture, may be described (at the commencement thereof or otherwise) as a deed simply or as an agreement under seal, or as a conveyance, deed of exchange, settlement, mortgage, charge, transfer of mortgage,

appointment, lease or otherwise according to the nature of the transaction intended to be effected.

13. Conditions and certain covenants not implied

(1) An exchange, a partition or other conveyance of land made by deed does not imply any condition in law.

(2) The word "give" or "grant" does not imply any covenant in law, save where otherwise provided by an Act.

14. Receipt in deed sufficient

A receipt for any consideration, money or securities in the body of a deed is a sufficient discharge therefor to the person giving, paying or delivering the consideration, money or securities, without any further receipt therefor being endorsed on that deed.

15. Receipt in deed or endorsed evidence

A receipt for consideration, money or other consideration in the body of a deed or endorsed thereon is, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, sufficient evidence of the payment or giving of the whole amount thereof.

16. Construction of supplemental or annexed instrument

Any instrument expressed to be supplemental to a previous instrument, or directed to be read as an annexure thereto, shall, as far as may be, be read and have effect, as if the instrument so expressed or directed were made by way of endorsement on the previous instrument, or contained a full recital thereof.

Part III — General rules affecting property

17. Tenant for life without impeachment of waste, not to commit equitable waste

An estate for life, without impeachment of waste, does not confer upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer that right expressly appears by the instrument creating that estate.

18. No merger at law where none in equity

There shall not be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

19. Suits for possession of land by mortgagors

(1) Subject to subsection (2) a mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter upon the receipt of the rents and profits thereof has been given by the mortgagee, may sue for that possession, or for the recovery of those rents or profits, or to prevent or to recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

(2) This section does not apply to a mortgagor or a mortgage to which section 117 of the *Transfer of Land Act 1893* applies.

20. Assignment of debts and choses in action

(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or

claim that debt or chose in action, is effectual in law (subject to equities having priority over the right of the assignee), to pass and transfer from the date of the notice —

(a) the legal right to that debt or chose in action;

(b) all legal and other remedies for the debt or chose in action; and

(c) the power to give a good discharge for the debt or chose in action, without the concurrence of the assignor.

(2) Where the debtor, trustee, or other person liable in respect of the debt or chose in action referred to in subsection (1) has notice —

(a) that the assignment so referred to is disputed by the assignor, or any person claiming under him; or

(b) of any other opposing or conflicting claims, to the debt or chose in action,

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the debt or chose in action, or pay the debt or other chose in action into court, under the provisions of the *Trustees Act 1962*.

(3) For the purposes of this section ***any debt or other legal chose in action*** includes a part of any debt or other legal chose in action.

21. Stipulations not of the essence of a contract

Stipulations in a contract, as to time or otherwise, that according to rules of equity are not deemed to be or to have become of the essence of the contract, shall be construed and have effect at law in accordance with the rules of equity.

22. Satisfied terms, whether created out of freehold or leasehold land, to cease

(1) Where the purposes of a term of years, created or limited at any time out of freehold land, become satisfied (whether or not that term either by express declaration or by construction of law

becomes attendant upon the freehold reversion), that term of years merges in the reversion expectant thereon and ceases accordingly.

(2) Where the purposes of a term of years, created or limited at any time out of leasehold land, become satisfied, that term merges in the reversion expectant thereon and ceases accordingly.

(3) Where the purposes are satisfied as respects part only of the land comprised in a term, this section has effect as if a separate term had been created in regard to that part of the land.

23. Estates tail abolished

(1) In any instrument coming into operation after the coming into operation of this Act, a limitation which, if this section had not operated would have created an estate tail (legal or equitable) in any land in favour of any person shall be deemed to create an estate in fee simple (legal or equitable, as the case may be) in that land in favour of that person to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail.

(2) Where at the coming into operation of this Act any person is entitled to an estate tail (legal or equitable), whether in possession, reversion, or remainder, in any land, that person, except as hereinafter mentioned in this section, shall be deemed to be entitled to an estate in fee simple (legal or equitable, as the case may be) in that land, to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail.

(3) In subsection (2) the expression ***estate tail*** includes that estate in fee into which an estate tail is converted where the issue in tail is barred, but the persons claiming estates by way of remainder are not barred; also an estate in fee voidable or determinable by the entry of the issue in tail; but does not include the estate of a tenant in tail after possibility of issue extinct.

24. Creation by deed of freehold *in futuro*

An estate of freehold to take effect at a future time may be created by any deed by which a present estate of freehold may be created.

25. Creation by deed of estate in chattel real

Any estate or interest that is capable of being created by will in any chattel real may also be created by deed.

26. Contingent remainders to take effect notwithstanding premature failure of preceding estate

(1) A contingent remainder is and shall be deemed to have been capable of taking effect notwithstanding the destruction or determination by forfeiture, surrender or merger of any preceding estate of freehold in the same manner and in all respects as if the destruction or determination had not happened.

(2) Every contingent remainder in tenements or hereditaments of any tenure that would have been valid as a springing or shifting use or executory devise or other limitation had it not had a sufficient estate to support it as a contingent remainder, is capable, in the event of the particular estate determining before the contingent remainder vests, of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other limitation.

27. Rule in Shelley's Case abolished

Where in an instrument that comes into operation after the coming into operation of this Act a remainder is limited mediately or immediately to the heir or heirs of the body of a person to whom an estate for any life in the same property is expressly given, the estate of that person shall be an estate for that life with remainder to the persons who on the death of that person intestate would be beneficially entitled to his property and in the same shares.

28. Restriction on executory limitations

(1) Where there is a person entitled to land for an estate in fee, or for a term of years absolute, or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation is or shall become void and incapable of taking effect if and as soon as there is living any issue that has attained the age of 21 years, of the class on default or failure whereof the limitation over was to take effect.

(2) This section applies only where the executory limitation is contained in an instrument coming into operation on or after the date of the coming into operation of this Act.

29. Corporations may hold as joint tenants

(1) Subject to subsection (2) a body corporate is capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual, and where a body corporate and an individual or 2 or more bodies corporate become entitled to any property under circumstances or by virtue of any instrument that would, if the body corporate had been an individual, have created a joint tenancy they are entitled to the property as joint tenants.

(2) The acquisition and holding of property by a body corporate in joint tenancy is subject to the like conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

(3) Where a body corporate is a joint tenant of any property, then on its dissolution the property devolves on the other joint tenant.

(4) For the purposes of this section and section 227 of the *Transfer of Land Act 1893*, the dissolution of a corporation has the same effect as the death of a joint proprietor.

30. Receipts for income by married minors

A married minor has power to give valid receipts for all income (including accumulations of income made during the minority) to which the minor may be entitled in like manner as if the minor were of full age.

*[**31.** Deleted: No. 28 of 2003 s. 125(2).]*

31A. Illegitimates to be included in class references

(1) This section shall come into operation on a date to be fixed by proclamation [2].

(2) This section applies only if and so far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions thereof.

(3) In this Act, and in any conveyance made after the coming into operation of this section —

(a) any reference (whether express or implied) to the child or children of any person shall be construed as, or as including, a reference to any illegitimate child of that person; and

(b) any reference (whether express or implied) to a person or persons related in some other manner to any person shall be construed as, or as including a reference to anyone who would be so related if he, or some other person through whom the relationship is deduced, had been born legitimate.

(4) Subsection (3) applies only where the reference in question is to a person who is to benefit or to be capable of benefiting under the disposition or, for the purpose of designating such a person, to someone else to or through whom that person is related.

(5) For the purposes of this section, the relationship between a parent and his or her illegitimate child, and any other relationship traced in any degree through that relationship, shall be recognised only if parentage is admitted by or established

against the parent in his or her lifetime; and where the purpose for which the relationship is to be determined is a purpose that enures for the benefit of the parent the relationship shall be recognised only if parentage has been so admitted or established in the lifetime of the child.

(5a) Subsection (5) does not apply to or in respect of a relationship established by the *Artificial Conception Act 1985*.

(6) In any proceedings where a person relies on a matter of fact made relevant by the provisions of subsection (3), that fact shall not be taken to be proved unless it is established to the reasonable satisfaction of the Court.

(7) As respects conveyances executed on or after the date of the coming into operation of this section, any rule of law that a disposition in favour of illegitimate children not in being when the disposition takes effect is void as contrary to public policy is hereby abolished.

(8) Notwithstanding the provisions of subsection (3), a person who conveys or distributes any real or personal property to or amongst the persons entitled thereto without having ascertained that there is no person who is or may be entitled to any interest in that property by virtue of that subsection is not liable to any such person of whose claim he did not have notice at the time of the conveyance or distribution; but nothing in this section prejudices the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

[Section 31A inserted: No. 19 of 1971 s. 3; amended: No. 14 of 1985 s. 8; No. 28 of 2003 s. 160.]

Part IV — Conveyances and other instruments

32. Lands lie in grant only

(1) All lands and all interests therein lie in grant and are incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale.

(2) A conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.

(3) The use of the word "grant" is not necessary to convey land or to create any interest therein and any word or words that was or were prior to the commencement of this subsection, sufficient in law to convey land or to create any interest therein or any other word or words evidencing an intention to convey land or create any interest therein is or are sufficient for the purpose.

33. Conveyances to be by deed

(1) All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.

(2) This section does not apply to —

(a) assents by a personal representative;

(b) disclaimers made in accordance with the provisions of any law relating to bankruptcy or not required to be evidenced in writing;

(c) surrenders by operation of law, including surrenders that may, by law, be effected without writing;

(d) leases or tenancies or other assurances not required by law to be made in writing;

(e) receipts not required by law to be under seal;

(f) vesting orders of the Court or other competent authority;

(g) conveyances taking effect by operation of law.

34. Instruments required to be in writing

(1) Subject to the provisions hereinafter contained in this Act with respect to the creation of interests in land by parol —

(a) no interest in land is capable of being created or disposed of except by writing signed by the person creating or conveying the interest, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;

(b) a declaration of trust respecting any land or any interest therein shall be manifested and proved by writing signed by a person who is able to declare the trust or by his will;

(c) a disposition of an equitable interest or trust subsisting at the time of the disposition shall be in writing signed by the person disposing of the interest, or by his agent thereunto lawfully authorised in writing or by will.

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts.

35. Creation of interests in land by parol

(1) Any interest in land created by parol and not put in writing and signed by the person so creating it, or by his agent thereunto lawfully authorised in writing, has notwithstanding any consideration having been given for the interest, the force and effect of an interest at will only.

(2) Nothing in the foregoing provisions of this Part affects the creation by parol of leases taking effect in possession for a term not exceeding 3 years, whether or not the lessee is given power to extend the term.

36. Savings in regard to sections 34 and 35

Nothing in sections 34 and 35 —

(a) invalidates dispositions by will;

(b) affects any interest validly created before the coming into operation of this Act;

(c) affects the right to acquire an interest in land by virtue of taking possession; or

(d) affects the operation of the law relating to part performance.

37. Power to dispose of fee simple by deed without words of inheritance

(1) A disposition of freehold land by deed to a person without words of limitation or any equivalent expression passes to the grantee the fee simple or other the whole interest that the disposer had power to dispose of by deed in that land, unless a contrary intention appears in the disposition.

(2) In the limitation of an estate in fee simple it is sufficient to use the words "in fee" or "in fee simple" without the use of the word "heirs" or in the case of a corporation without the word "successors".

(3) A deed in or to the effect of a duly completed form in the Fourth Schedule is effectual to convey the land or the estate or interest in the land that is expressed to be conveyed by such deed.

(4) This section applies only to deeds executed after the coming into operation of this Act.

38. No use to result from absence of consideration

No use shall be held to result merely from the absence of consideration in a conveyance of land as to which no uses or trusts are therein declared.

39. Limitations may be by direct conveyance without uses

Every limitation that may be made by way of use operating under the *Statute of Uses* or this Act may be made by direct conveyance without the intervention of uses.

40. No conveyance to have tortious operation

No conveyance of any land shall have a tortious operation.

41. General words implied in conveyances

(1) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights and all advantages of whatsoever kind, appertaining or reputed to appertain to the land, or any part thereof, at the time of conveyance.

(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights and all advantages of whatsoever kind, appertaining or reputed to appertain to the land, houses or other buildings conveyed, or any of them, or any part thereof at the time of conveyance.

(3) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions thereof.

(4) This section shall not be construed as giving to a person a better title to any property, right or thing in this section mentioned, than the title which the conveyance gives to him to the land expressed to be conveyed, or as conveying to him any property, right or thing in this section mentioned, further or otherwise than the property, right or thing could have been conveyed to him by the conveying parties.

(5) This section applies to conveyances made after the coming into operation of this Act.

42. All estate clause implied

(1) Every conveyance is effectual to pass all the estate, right, title, interest, claim and demand that the conveying parties respectively have, in, to or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the property.

(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions thereof.

(3) This section shall apply to conveyances made after the coming into operation of this Act.

43. Partial release of land from rent

(1) A release from a rent of part of the land out of which it is payable does not extinguish the whole rent, but operates only to bar the right to recover any part of the rent out of the land released, without prejudice to the rights of any persons interested in the land remaining unreleased, and not concurring in or confirming the release.

(2) This section applies to releases made after the coming into operation of this Act.

44. Power to person to convey property to himself etc.

A person may convey property to himself or to himself and another person or persons.

Part V — Covenants

45. Covenants for title implied

(1) In a conveyance there shall, in the several cases mentioned in this section, by virtue of this Act, be implied, a covenant to the effect stated in this section by the person or by each person who conveys, as far as regards the subject matter or share of subject matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants or with each of the persons, if more than one, to whom the conveyance is made, as tenants in common namely —

(a) in a conveyance for valuable consideration, other than a mortgage, a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part I of the Third Schedule;

(b) in a conveyance of leasehold property for valuable consideration, other than a mortgage, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part II of the Third Schedule;

(c) in a conveyance by way of mortgage a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part III of the Third Schedule;

(d) in a conveyance by way of mortgage of leasehold property, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part IV of the Third Schedule;

(e) in a conveyance by way of settlement, a covenant by a person who conveys and is expressed to convey as settlor in the terms set out in Part V of the Third Schedule;

(f) in any conveyance, a covenant by every person who conveys and is expressed to convey as trustee or

mortgagee, or as personal representative of a deceased person, or as administrator of the estate of a represented person or under an order of the Court, in the terms set out in Part VI of the Third Schedule, which covenant shall be deemed to extend to every such person's own acts only, and may be implied in an assent by a personal representative in like manner as in a conveyance by deed.

(2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, for the purposes of this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3) In every conveyance subject to an encumbrance, there shall be implied a covenant by the person to whom the property is conveyed with the person making the conveyance, to pay the moneys or perform the obligations secured by the encumbrance, and to perform and observe the covenants and provisions of the encumbrance and to indemnify and keep indemnified the person making the conveyance in respect of all such moneys, obligations, covenants and provisions.

(4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person or as administrator of the estate of a represented person or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying is, by virtue of this section, implied in the conveyance.

(5) In this section a conveyance does not include a demise by way of lease at a rent.

(6) The benefit of a covenant implied by virtue of this section is annexed and incident to, and goes with, the estate or interest of the implied covenantee, and is capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(7) A covenant implied by virtue of this section may be varied or extended by a deed or an assent, and, as so varied or extended, operates, as far as may be, in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

(8) This section applies to conveyances made after the coming into operation of this Act.

[Section 45 amended: No. 24 of 1990 s. 123.]

46. Construction of implied covenants

In the construction of a covenant, or other provision, implied in a deed by virtue of this Part, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

47. Benefits of covenants relating to land

(1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and has effect as if those successors and other persons were expressed.

(2) For the purposes of subsection (1) in connection with covenants restrictive of the user of land, ***successors in title*** shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

(3) This section applies only to covenants made after the coming into operation of this Act.

48. Burden of covenants relating to land

(1) Unless a contrary intention is expressed, a covenant relating to any land of a covenantor or capable of being bound by him, shall be deemed to be made by the covenantor on behalf of himself, his successors in title and the persons deriving title under him or them, and, has effect as if those successors and other persons were expressed.

(2) Subsection (1) extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

(3) For the purposes of this section in connection with covenants restrictive of the user of land ***successors in title*** shall be deemed to include the owners and occupiers for the time being of the land.

(4) This section applies only to covenants made after the coming into operation of this Act.

49. Construction of covenants affecting land

(1) It is hereby declared that when the benefit of a restriction as to the user of or the building on any land is or has been annexed or purports to be annexed by any instrument to other land the benefit shall, unless it is expressly provided to the contrary, be deemed to be and always to have been annexed to the whole and to each part of that other land capable of benefiting from the restriction.

(2) In this section ***land*** includes land that is under the provisions of the *Transfer of Land Act 1893*.

50. Covenants to be joint and several

Where under a covenant whether express or implied under this or any other Act more persons than one are covenantors, the covenant shall unless a contrary intention is expressed be deemed to bind all the covenantors jointly and each of them severally.

51. Effect of covenant with 2 or more jointly

(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with 2 or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Part, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond or obligation devolves, and if the covenant, contract, bond or obligation is made after the coming into operation of this Act it shall be construed as being made with each of them.

(2) This section extends to a covenant implied by virtue of this Part.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and has effect subject to the covenant, contract, bond or obligation, and to the provisions thereof.

(4) Except as otherwise expressly provided, this section applies to a covenant, contract, bond or obligation made or implied after the coming into operation of this Act.

52. Covenants and agreements entered into by a person with himself and another or others

(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

(2) This section applies to covenants or agreements entered into before or after the coming into operation of this Act.

Part VI — Mortgages

53. Foreclosure extinguishes right of action for mortgage debt and equity of redemption

(1) On a decree, judgment or order absolute for foreclosure, the mortgagee shall be deemed to have taken the property mentioned in the decree, judgment or order in full satisfaction of the mortgage debt and his right or equity to bring any action or to take other proceedings for the recovery of the mortgage money from the debtor, surety or other person is extinguished and the right or equity of the mortgagor to redeem the property is also extinguished.

(2) In the case of mortgages of land under the *Transfer of Land Act 1893* ***order absolute*** includes an order for foreclosure under the hand of the registrar when entered in the Register within the meaning of that Act.

(3) Nothing in this section shall be deemed to disentitle the mortgagee (on such terms and conditions as to the Court seems just) from obtaining foreclosure of any other property over which he holds security by way of mortgage for the mortgage money or part thereof or from enforcing all or any rights, powers and remedies expressed or implied in that mortgage except the right to sue the mortgagor or any surety for the mortgagor either for the mortgage money or on any bill or note given as security for the mortgage money as if this section had not commenced.

(4) This section has effect notwithstanding any stipulation to the contrary.

[Section 53 amended: No. 81 of 1996 s. 153(1).]

54. Realisation of equitable charges by the Court

(1) Where an order for sale is made by the Court in reference to an equitable mortgage on land the Court may, in favour of a purchaser, make a vesting order conveying the land or may

appoint a person to convey the land, or may create and vest in the mortgagee a legal estate in the land to enable him to carry out the sale as the case requires, in like manner as if the mortgage had been made by deed by way of legal mortgage, but without prejudice to any encumbrance having priority to the equitable mortgage unless the encumbrancee consents to the sale.

(2) This section applies to equitable mortgages made or arising before or after the coming into operation of this Act.

55. Sale of mortgaged property in action for redemption or foreclosure

(1) A person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.

(2) In an action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding that —

(a) any other person dissents; or

(b) the mortgagee or any person so interested does not appear in the action,

and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms, subject to subsection (3), as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.

(3) In an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the

conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of encumbrances.

(5) This section applies to actions brought either before or after the coming into operation of this Act.

(6) In this section ***mortgaged property*** includes the estate or interest that a mortgagee would have had power to convey if the statutory power of sale were applicable.

(7) For the purpose of this section the Court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any encumbrance, as the Court thinks fit; or, in the case of an equitable mortgage, may create and vest in the mortgagee a legal estate to enable him to carry out the sale in like manner as if the mortgage had been made by deed by way of legal mortgage.

56. Restriction on consolidation of mortgages

(1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage that he seeks to redeem.

(2) This section has effect notwithstanding any stipulation to the contrary.

(3) This section applies only where the mortgages or one of them are or is made after the coming into operation of this Act.

57. Implied powers of mortgagees

(1) A mortgagee, where the mortgage is made by deed, has, by virtue of this Part, the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further, namely —

(a) a power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, and for a sum payable either in one amount or by instalments, subject to such conditions respecting title, or evidence of title, or other matter, as he, the mortgagee, thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby, with power to make such roads, streets and passages and grant such easements of right of way or drainage over the mortgaged property as the circumstances may require and he thinks fit; and

(b) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire, storm, tempest and earthquake any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance is a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

(c) where the mortgage is executed after the coming into operation of this Act a power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged property consists of an interest in income, or

of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof.

(2) Where the mortgage is executed after the coming into operation of this Act, the power of sale referred to in subsection (1), includes the following powers as incident thereto, namely —

(a) a power to impose or reserve or make binding, as far as the law permits, by covenant, condition or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing;

(b) a power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface —

(i) with or without a grant or reservation of rights of way, rights of water, easements, rights and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof or to any property sold; and

(ii) with or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold; and

(iii) with or without covenants by the purchaser to expend money on the land sold.

(3) The provisions of this Part relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects and consequences as if such variations or extensions were contained in this Part.

(4) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and has effect subject to the terms of the mortgage deed and to the provisions thereof.

58. Power to appoint receiver in the case of mortgage under the *Transfer of Land Act 1893*

The provisions of section 57(1) so far as they relate to the power to appoint a receiver apply to a mortgage registered under the *Transfer of Land Act 1893* and in applying those provisions the expression "mortgage deed" shall be construed as including an instrument of mortgage under that Act.

59. Regulation of exercise of power of sale

(1) A mortgagee shall not exercise the power of sale conferred by this Part unless and until —

(a) where the mortgage money is not payable on demand, default has been made in payment of the mortgage money or part thereof or in the performance or observance of a covenant or condition in the mortgage; and

(b) in any case, notice requiring payment of the mortgage money has been served on the mortgagor and default has been made in payment thereof for one month after service of the notice or for such other period as may be stipulated in the mortgage.

(2) This section does not apply to a mortgage that is registered under the provisions of the *Transfer of Land Act 1893*.

60. Conveyance in exercise of power of sale

(1) A mortgagee exercising the power of sale conferred by this Part has power, by deed, to convey to and vest in the purchaser the property sold for all the estate (including the legal estate) and interest therein that the original mortgagor had power to dispose of, freed from all estates, interests and rights to which the mortgage has priority, but subject to all estates, interests and rights that have priority to the mortgage.

(2) Where a conveyance is made in exercise of the power of sale conferred by this Part, or any corresponding previous enactment, the title of the purchaser is not impeachable on the ground —

(a) that no case had arisen to authorise the sale; or

(b) that due notice was not given to the mortgagor; or

(c) that the power was otherwise improperly or irregularly exercised,

and a purchaser shall not, either before or on conveyance, be concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power has his remedy in damages against the person exercising the power.

(3) A conveyance on sale by a mortgagee, made after the coming into operation of this Act, shall be deemed to have been made in exercise of the power of sale conferred by this Part unless a contrary intention appears.

61. Application of proceeds of sale

The money that is in fact received by the mortgagee, arising from the sale, after discharge of prior encumbrances to which

the sale is not made subject (if any) shall be held by him in trust to be applied by him —

(a) firstly, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and

(b) secondly, in discharge of the mortgage money, interest and costs, and other money (if any) due under the mortgage,

and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

62. Provisions as to exercise of power of sale

(1) The power of sale conferred by this Part may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(2) The power of sale conferred by this Part does not affect the right of foreclosure.

(3) The mortgagee is not answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Part, or of any trust connected therewith, or of any power or provision contained in the mortgage deed.

(4) At any time after the power of sale conferred by this Part has become exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an estate, interest or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, that a purchaser under the power of sale would be entitled to demand and recover from him.

63. Mortgagee's receipts, discharges etc.

(1) The receipt in writing of a mortgagee is a sufficient discharge for any money arising under the power of sale conferred by this

Part, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the money or securities to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage or as to the application of the money or securities so paid or transferred.

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Part directed respecting money received by him arising from a sale under the power of sale conferred by this Part, except that the costs, charges and expenses payable shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

64. Amount and application of insurance money

(1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Part shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, the full insurable value of the buildings upon the mortgaged land or the amount owing to the mortgagee in respect of the mortgage.

(2) An insurance shall not, under the power conferred by this Part, be effected by a mortgagee in any of the following cases, namely —

(a) where there is a declaration in the mortgage deed that no insurance is required;

(b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;

(c) where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Part authorised to insure.

(3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Part or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, unless the mortgage deed otherwise provides, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

65. Appointment, powers, remuneration and duties of receiver

(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Part shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Part, or by the *Transfer of Land Act 1893*, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2) A receiver appointed under the powers conferred by this Part, shall be deemed to be the agent of the mortgagor; and the mortgagor is solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.

(3) The receiver has power to demand and recover all the income of which he is appointed receiver, by action or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest that the mortgagor could dispose of, and to give effectual receipts accordingly for the income, and to exercise any powers that may have been delegated to him by the mortgagee pursuant to this Part.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6) The receiver is for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, entitled to retain out of any money received by him, a commission at such rate, not exceeding 5% on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of 5% on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent (if any) to which the mortgagee might have insured and keep insured against loss or damage by fire, storm, tempest and earthquake, out of the money received by him, any building, effects or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

66. Application of money received by receiver

Subject to the provisions of this Part as to the application of insurance money, the receiver shall apply all money received by him as follows, namely —

(a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property;

(b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(c) in payment of his commission, and of the premiums on fire, life or other insurances (if any) properly payable under the mortgage deed or under this Part, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;

(d) in payment of the interest accruing due in respect of any principal sum due under the mortgage; and

(e) in or towards discharge of the principal money if so directed in writing by the mortgagee,

and shall pay the residue (if any) of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

67. Effect of advance on joint account

(1) Where —

(a) in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account; or

(b) a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly and not in shares,

the mortgage money, or other money or money's worth, for the time being due to those persons on the mortgage or obligation, shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor is a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2) This section applies if and so far as a contrary intention is not expressed in the mortgage, obligation or transfer, and has effect subject to the terms of the mortgage, obligation, or transfer, and to the provisions thereof.

(3) This section applies to any mortgage, obligation or transfer made after the coming into operation of this Act.

(4) In the case of mortgages under the *Transfer of Land Act 1893* this section applies subject to the provisions of that Act relating to the entry of survivorship and the registration of a discharge.

68. Notice of trusts affecting mortgage money

(1) Where a mortgage has been discharged, released or postponed as to the whole or any part of the mortgaged property a person dealing in good faith with the mortgagee or with the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume unless the contrary is expressly stated in the instruments relating to the mortgage,

(a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and

(b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof,

without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

(2) This section applies to mortgages made before or after the date of the coming into operation of this Act, but only with respect to dealings effected after that date.

(3) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

Part VII — Leases and tenancies

Division 1 — Application of this Part

[Heading inserted: No. 128 of 1987 s. 89.]

68A. Limitation

This Part has effect subject to the *Residential Tenancies Act 1987* and the *Strata Titles Act 1985*.

[Section 68A inserted: No. 128 of 1987 s. 89; amended: No. 30 of 2018 s. 172.]

Division 1a — General

[Heading inserted: No. 35 of 1973 s. 3; amended: No. 128 of 1987 s. 89.]

69. This Part to apply to leases under the *Transfer of Land Act 1893*

Subject to section 83B(1), the provisions of this Part apply to leases and sub-leases of land under the *Transfer of Land Act 1893*, notwithstanding anything contained in that Act, and for the purposes of this Part ***lease*** includes so far as circumstances will admit any instrument of letting whether under seal or not.

[Section 69 amended: No. 35 of 1973 s. 3.]

70. Tenant not prejudiced by assignment before notice

A lessee shall not be prejudiced or damaged by payment of any rent to any grantor, transferor or assignor of any reversion or by breach of any condition for non-payment of rent before notice is given to him by the grantee, transferee or assignee to whom the grant, transfer or assignment is made by the grantor, transferor or assignor.

71. Tenancy from year to year not implied

No tenancy from year to year is implied by payment of rent.

72. Termination of tenancies

(1) Without prejudice to any other lawful mode of termination available or to any express agreement by the parties to a periodic tenancy or tenancy of uncertain duration as to its termination, a periodic tenancy or a tenancy of uncertain duration may be terminated by one month's written notice by either party thereto to the other expiring at any time whether at the end of a rent period or not.

(2) Notwithstanding anything in this section any mode of termination of a periodic tenancy or a tenancy of uncertain duration that was lawful before the date of the coming into operation of this Act whether by shorter notice than that provided for by subsection (1) or otherwise is as effectual as if this Act had not come into operation.

73. Waiver of a covenant in a lease, not to operate as general waiver

(1) Where any actual waiver by a lessor or the persons deriving title under him, of the benefit of any covenant or condition in any lease, is proved to have taken place in any particular instance, the waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition except that to which the waiver specially relates, nor operate as a general waiver of the benefit of the covenant or condition.

(2) Subsection (1) applies unless a contrary intention appears and shall extend to waivers effected after the coming into operation of this Act.

(3) After the giving of a notice to quit acceptance of rent expressed to be without prejudice to the notice does not operate as a waiver of the notice or revive or create a tenancy.

74. Abolition of *interesse termini*, and as to reversionary leases and leases for lives

(1) The doctrine of *interesse termini* is abolished.

(2) As from the date of the coming into operation of this Act all terms of years absolute are, whether the interest is created before or after that date, capable of taking effect at law or in equity, according to the estate, interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

(3) A term, at a rent or granted in consideration of a fine, limited after the date of the coming into operation of this Act to take effect more than 21 years from the date of the instrument purporting to create it, is void, and any contract made after that date to create such a term is likewise void; but this subsection does not apply to any term taking effect under a settlement, or created out of an interest under a settlement, or under a power for mortgage, indemnity or other like purposes.

(4) Nothing in subsections (1) and (2) prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or, as respects terms or interests created before the coming into operation of this Act, operates to vary any statutory or other obligations imposed in respect of those terms or interests.

(5) Nothing in this Part affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term and that rule is hereby confirmed.

75. Effect of extinguishment of reversion

(1) Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same

incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

(2) This section shall apply to surrenders or mergers effected after the coming into operation of this Act.

76. Apportionment of conditions on severance

(1) Notwithstanding —

(a) the severance by conveyance, surrender or otherwise of the reversionary estate in any land comprised in a lease; and

(b) the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein,

every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each several part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) In this section ***right of re-entry*** includes a right to determine the lease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.

77. Rent and benefit of lessee's covenants to run with reversion

(1) Rent reserved by a lease, and the benefit of every covenant or provision contained in the lease, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.

(2) Any rent, covenant or provision referred to in subsection (1) is capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or of any part as the case may require, of the land leased.

(3) Where that person becomes entitled by conveyance or otherwise, the rent, covenant or provision referred to in subsection (1) may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before that person becomes so entitled.

(4) This section applies to leases made before or after the date of the coming into operation of this Act, but does not affect the operation of —

(a) any severance of the reversionary estate; or

(b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision, effected before that date.

78. Obligation of lessor's covenants to run with reversion

(1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, that obligation may be taken advantage of and enforced against any person so entitled.

(2) This section applies to leases made before or after the date of the coming into operation of this Act but not to any severance of the reversionary estate which was effected before that date.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

79. Effect of licences granted to lessees

(1) Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only —

(a) to the permission actually given thereby;

(b) to the specific breach of any provision or covenant specified in the licence; or

(c) to any other matter so specified and authorised thereby,

and the licence does not prevent any proceeding for any subsequent breach unless otherwise so specified.

(2) Notwithstanding any such licence —

(a) all rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant,

condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and

(b) the condition or right of entry remains in force in all respects as if the licence had not been granted, except in respect of the particular matter authorised to be done.

(3) Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting or doing any other specified act without a licence, and a licence is granted —

(a) to any one of 2 or more lessees to do any act, or to deal with his share or interest; or

(b) to any lessee, or to any one of 2 or more lessees, to assign or underlet part only of the property, or to do any act in respect of part only of the property,

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the lessee or lessees of the rest of the property, as the case may be, in respect of those shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests or property not the subject of the licence.

(4) This section applies to licences granted after the coming into operation of this Act.

80. Consent to assign or sublet not to be unreasonably withheld

(1) In every lease containing a covenant, condition or agreement against assigning, underletting or parting with the possession, or disposing of the land or property leased without licence or consent, that covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a condition to the effect that the consent shall not be unreasonably withheld and that no fine or sum of money in the nature of a fine shall be payable for or in respect of the licence or consent, but the last mentioned condition does not

preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to the licence or consent.

(2) In any instrument executed before or after the coming into operation of this Act a reference to section 4 of the *Landlord and Tenant Act 1912* [3] shall be read and construed as a reference to this section.

81. Restrictions and relief against forfeiture of leases and under-leases

(1) A right of re-entry or forfeiture under any provision or stipulation in a lease for a breach of any covenant or condition in the lease is not enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice —

(a) specifying the particular breach complained of;

(b) where the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach,

and the lessee fails, within a reasonable time after the service of the notice on him, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a lessor is proceeding, by action or otherwise, to enforce or has enforced without the aid of the Court such a right of re-entry or forfeiture, the lessee may, in the lessor's action (if any) or in any action brought by himself apply to the Court for relief, and the Court —

(a) may grant or refuse relief, as the Court having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances thinks fit; and

(b) in case of relief may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty or

otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case, thinks fit.

(3A) A lessor is entitled to recover as a debt due to him from a lessee and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture that, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Part either by the Court or by the operation of subsection (1).

(3B) The lessor is so entitled to recover whether the lessee has or has not rendered forfeiture unenforceable against him under that subsection.

(4) Where a lessor is proceeding by action or otherwise to enforce or has enforced a right of re-entry or forfeiture —

(a) under any covenant, provision or stipulation in a lease; or

(b) for non-payment of rent,

the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action brought by that person for that purpose, make an order vesting for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in the property, upon such conditions,

(c) as to execution of any deed or other document;

(d) payment of rent, costs, expenses, damages, compensation or giving security or otherwise,

as the Court in the circumstances of each case thinks fit, but in no case is the under-lessee entitled to require a lease to be

granted to him for any longer term than he had under his original sub-lease.

(5) For the purposes of this section except so far as is otherwise provided —

lease includes an original or derivative under-lease; an agreement for a lease where the lessee has become entitled to have his lease granted, and a grant securing a rent by condition;

lessee includes an original or derivative under-lessee, and the persons deriving title under a lessee, and a grantee under any grant securing a rent by condition and the persons deriving title under him;

lessor includes an original or derivative under-lessor, and the persons deriving title under a lessor, a person making a grant securing a rent by condition and the persons deriving title under him;

under-lease includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

under-lessee includes any person deriving title under an under-lessee.

(6) This section applies although the condition or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act.

(7) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant is and takes effect as a lease to continue for any longer term for which it could subsist, but determinable by a condition for re-entry on the breach.

(8) This section does not extend —

(a) to a covenant or condition against assigning, underletting, parting with the possession or disposing of the land leased;

(b) to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest; or

(c) in the case of a lease of any licensed premises as defined in the *Liquor Control Act 1988*, to a covenant not to do or omit any act or thing by which the licence granted in respect thereof, may be forfeited.

(9) This section does not except as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(10) This section has effect notwithstanding any stipulation to the contrary.

[Section 81 amended: No. 73 of 2006 s. 115; No. 19 of 2010 s. 51.]

82. Certain assignments not to be deemed a breach

No assignment or underletting —

(a) by the official assignee of a bankrupt;

(b) by the liquidator of a company (except in the case of a member's voluntary winding up);

(c) by the sheriff or bailiff under an execution; or

(d) by a personal representative pursuant to a bequest in a will,

shall be deemed a breach of a covenant, condition or agreement against assigning, underletting, parting with possession or disposing of the land leased unless the contrary is expressly declared in the lease.

83. Surrender of head lease to grant new lease not to prejudice under-lease

(1) A lease not being a lease registered under the *Transfer of Land Act 1893*, may be surrendered with a view to the acceptance of a

new lease in place thereof, without a surrender of any under-lease derived out of the lease so surrendered.

(2) A new lease may be granted and accepted, in place of a lease so surrendered, without a surrender of an under-lease as provided in subsection (1), and the new lease operates as if all under-leases derived out of the surrendered lease had been surrendered before the surrender of that lease was affected.

(3) The lessee under the new lease and any person deriving title under him is entitled to the same rights and remedies in respect of the rent reserved by and the covenants, agreements and conditions contained in any under-lease as if the original lease had not been surrendered but was or remained vested in him.

(4) Each under-lessee and any person deriving title under him is entitled to hold and enjoy the land comprised in his under-lease (subject to the payment of any rent reserved by and to the observance of the covenants, agreements and conditions contained in the under-lease) as if the lease out of which the under-lease was derived had not been surrendered.

(5) The lessor granting the new lease and any person deriving title under him is entitled to the same remedies by entry in and upon the land comprised in any such under-lease for rent reserved by or for breach of any covenant, agreement or conditions contained in the new lease (so far only as the rents reserved by or the covenants, agreements or conditions contained in the new lease do not exceed or impose greater burdens than those reserved by or contained in the original lease out of which the under-lease is derived) as he would have had —

(a) if the original lease had remained on foot; or

(b) if a new under-lease derived out of the new lease had been granted to the under-lessee or a person deriving title under him,

as the case may require.

(6) This section does not affect the powers of the Court to give relief against forfeiture.

Division 2 — Options in leases

[Heading inserted: No. 35 of 1973 s. 3.]

83A. Interpretation

In this Division —

(a) a reference to an option contained in a lease is a reference to a right on the part of the lessee to require the lessor —

(i) to sell, or offer to sell, to the lessee the reversion expectant on the lease; or

(ii) to grant, or offer to grant, to the lessee a renewal or extension of the lease, or a further lease, of the demised premises or a part thereof,

whether the right is conferred by the lease or by an agreement collateral to the lease; and

(b) a reference to a breach by a lessee of his obligations under a lease containing an option is a reference to a breach of those obligations by act or omission in so far as the act or omission would constitute a breach of those obligations if there were no option contained in the lease.

[Section 83A inserted: No. 35 of 1973 s. 3.]

83B. Construction and application of Division

(1) In respect of leases of land under the *Transfer of Land Act 1893*, this Division shall be read and construed subject to section 68 of that Act.

(2) This Division applies to and in respect of leases granted only after the coming into operation of the *Property Law Act Amendment Act 1973* and options contained therein.

(3) This Division has effect notwithstanding any stipulation to the contrary.

[Section 83B inserted: No. 35 of 1973 s. 3.]

83C. Breach of certain obligations not to preclude lessee from exercising option in certain circumstances

(1) In this Division ***prescribed notice*** means a notice in writing that —

(a) specifies an act or omission; and

(b) states that, subject to any order of the Court under section 83D, a lessor giving the notice proposes to treat that act or omission as having precluded a lessee on whom the notice is served from exercising an option contained in the lease.

(2) Where an act or omission that constituted a breach by a lessee of his obligations under a lease containing an option would, but for this section, have had the effect of precluding the lessee from exercising the option, the act or omission shall be deemed not to have had that effect where the lessee purports to exercise the option unless, during the period of 14 days next succeeding the purported exercise of the option, the lessor serves on the lessee prescribed notice of the act or omission and —

(a) an order for relief against the effect of the breach in relation to the purported exercise of the option is not sought from the Court before the expiration of the period of one month next succeeding service of the notice; or

(b) where such relief is so sought —

(i) the proceedings in which the relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting relief; or

(ii) where relief is granted upon terms to be complied with by the lessee before compliance by the lessor with the order granting relief, the lessee

fails to comply with those terms within the time stipulated by the Court for the purpose.

[Section 83C inserted: No. 35 of 1973 s. 3.]

83D. Court may grant relief from breach of certain obligations

(1) Relief referred to in section 83C may be sought —

(a) in proceedings instituted in the Court for the purpose; or

(b) in proceedings in the Court in which —

(i) the existence of an alleged breach by the lessee of his obligations under the lease; or

(ii) the effect of the breach from which relief is sought,

is in issue.

(2) The Court may, in proceedings in which relief referred to in section 83C is sought —

(a) make such orders (including orders affecting an assignee of the reversion) as it thinks fit for the purpose of granting the relief sought; or

(b) refuse to grant the relief sought.

(3) The Court may, in proceedings referred to in subsection (2), take into consideration —

(a) the nature of the breach complained of;

(b) the extent to which, at the date of the institution of the proceedings, the lessor was prejudiced by the breach;

(c) the conduct of the lessor and the lessee, including conduct after the giving of the prescribed notice;

(d) the rights of persons other than the lessor and the lessee;

(e) the operation of section 83E; and

(f) any other circumstances considered by the Court to be relevant.

(4) The Court —

(a) may make an order under subsection (2) on such terms as to costs, damages, compensation or penalty, or on such other terms, as the Court thinks fit; and

(b) may make any consequential or ancillary order it considers necessary to give effect to an order made under that subsection.

[Section 83D inserted: No. 35 of 1973 s. 3.]

83E. Lease to continue in force until issue decided

(1) Subject to any order of the Court and to this section —

(a) where —

(i) an option is contained in a lease;

(ii) the lessee exercises, or purports to exercise, the option; and

(iii) the lease would, but for this paragraph, expire within the period of 14 days after the exercise, or purported exercise, of the option,

the lease shall be deemed to continue in force until the expiration of that period;

(b) where —

(i) a prescribed notice is duly served on a lessee; and

(ii) the lease in respect of which the notice is served would, but for this paragraph, expire within the period of one month referred to in section 83C(2)(a),

the lease shall be deemed to continue in force until the expiration of that period; and

(c) where, in relation to a lease continued in force under paragraph (b), relief referred to in section 83C is sought

by a lessee, the lease shall, subject to subsections (2) and (3), be deemed to continue in force until —

(i) the proceedings in which the relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting the relief; or

(ii) effect is given to orders made by the Court in granting that relief in so far as they affect the lessor or relate to an assurance to the lessee.

(2) Paragraph (c) of subsection (1) —

(a) does not apply to or in respect of a lease that, but for that paragraph, would continue in force for a period longer than the period for which it is, by the operation of that paragraph, continued in force; and

(b) does not, where a lessee fails to comply with terms imposed upon him pursuant to section 83D(4)(a), operate to continue the lease in force beyond the time of that failure by the lessee.

(3) Where, under subsection (1), a lease continues in force after the day on which, but for that subsection, it would expire, the lease so continues in force subject to the provisions, stipulations, covenants, conditions and agreements in the lease (other than those relating to the term and the option contained in the lease) but without prejudice to any rights or remedies of the lessor or lessee in relation to the lease.

(4) Subject to subsection (5) where, pursuant to an option contained in a lease continued in force under subsection (1), the lease is renewed or a new lease is granted, the period during which the lease was so continued in force shall be deemed to be part of the term for which the lease was renewed or the new lease granted, and any lease granted pursuant to an exercise of the option shall be expressed to have commenced when the lease containing the option would, but for subsection (1), have expired.

(5) Subsection (4) does not apply to or in respect of a lease that stipulates for the commencement of any lease granted pursuant

to an exercise of the option contained therein on a day that is later than the day on which the lease so granted would, but for this subsection, commence under subsection (4).

[Section 83E inserted: No. 35 of 1973 s. 3.]

Part VIII — Powers of attorney

84. Execution by attorney in his own name

(1) The donee of a power of attorney may execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal (where sealing is required) by the authority of the donor of the power.

(2) Every assurance, instrument and thing so executed and done shall be as effectual in law to all intents as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(3) This section applies to powers of attorney created by instruments executed either before or after the coming into operation of this Act.

85. Continuance until notice of death or revocation received

(1) Subject to any stipulation to the contrary contained in the instrument creating a power of attorney, the power, so far as concerns any act or thing done or suffered thereunder in good faith, operates and continues in force until notice of the death of the donor of the power or until notice of other revocation thereof has been received by the donee of the power.

(2) Every act or thing within the scope of the power done or suffered in good faith by the donee of the power after the death of the donor of the power or other revocation referred to in subsection (1), and before notice thereof has been received by him, is effectual in all respects as if that death or other revocation had not happened or been made.

(3) A statutory declaration by the donee of a power under the power of attorney to the effect that he has not received any notice or information of the revocation of the power of attorney by death or otherwise is, if made immediately before or if made after any such act as is mentioned in subsection (2), conclusive proof of the non-revocation at the time when the act was done or suffered

in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of the death of the donor of the power or other revocation of the power of attorney.

(4) Where the donee of the power is a corporation aggregate the statutory declaration is sufficient if —

(a) it is made by any director, manager, or secretary of the corporation or by any officer thereof discharging the functions usually appertaining to any of those offices or by any officer of the corporation appointed for that purpose either generally or in the particular instance by the board of directors, council or other governing body by resolution or otherwise; and

(b) it is to the effect that to the best of the declarant's knowledge and belief neither the donee of the power nor any servant or agent of the donee of the power has received any such notice or information as is mentioned in subsection (3).

(5) Where the statutory declaration referred to in subsection (4) contains a statement that the declarant is a director, manager, or secretary of the corporation or is an officer of the corporation discharging the functions usually appertaining to any of those offices or is an officer of the corporation appointed for the purpose of making the declaration, that statement is conclusive evidence in favour of the persons mentioned in subsection (3).

(6) This section applies to powers of attorney created by instruments executed in or out of the State and whether executed before or after the coming into operation of this Act.

(7) Nothing in this section prejudices or affects the operation of section 143 of the *Transfer of Land Act 1893*.

86. Irrevocable power of attorney for value

(1) Where a power of attorney given for valuable consideration (whether executed in or out of the State) is in the instrument

creating the power expressed to be irrevocable, then, in favour of a purchaser —

(a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, mental incapacity or bankruptcy of the donor; and

(b) any act done at any time by the donee of the power in pursuance of the power is as valid as if anything done by the donor without the concurrence of the donee, or the death, mental incapacity or bankruptcy of the donor, had not been done or had not happened; and

(c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor without the concurrence of the donee, or of the death, mental incapacity, or bankruptcy of the donor.

(2) This section applies to powers of attorney created by instruments executed either before or after the coming into operation of this Act.

87. Power of attorney made irrevocable for fixed time

(1) Where a power of attorney (whether executed in or out of the State, and whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding 2 years from the date of the instrument, then, in favour of a purchaser —

(a) the power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, mental incapacity or bankruptcy of the donor; and

(b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee, or the death, mental

incapacity or bankruptcy of the donor had not been done or had not happened; and

(c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice, either during or after that fixed time, of anything done by the donor of the power during that fixed time without the concurrence of the donee, or of the death, mental incapacity or bankruptcy of the donor within that fixed time.

(2) This section applies to powers of attorney created by instruments executed either before or after the coming into operation of this Act.

88. Application to corporations

(1) The provisions of this Part apply with the necessary modifications with respect to any power of attorney executed by any corporation to the same extent as if the corporation were an individual and the dissolution of the corporation (however occurring) were the death of that individual within the meaning of this Part.

(2) The provisions of subsection (1) are in addition to the provisions of the *Corporations Act 2001* of the Commonwealth.

(3) The provisions of subsection (1) do not apply to a corporation that is dissolved before the date of the coming into operation of this Act, but do apply to powers of attorney created by instruments executed either before or after that date.

[Section 88 amended: No. 20 of 2003 s. 41.]

Part IX — Voidable dispositions

89. Voluntary conveyances to defraud creditors voidable

(1) Except as provided in this section, every alienation of property made, whether before or after the coming into operation of this Act, with intent to defraud creditors is voidable, at the instance of any person thereby prejudiced.

(2) This section does not affect the law of bankruptcy for the time being in force.

(3) This section does not extend to any estate or interest in property alienated for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the alienation, notice of the intent to defraud creditors.

90. Voluntary disposition to defraud purchasers voidable

Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

91. Subsequent conveyance not to be evidence of intent to defraud

For the purposes of section 90, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent disposition for valuable consideration was made.

92. Acquisitions of reversions at an under value

(1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property, for money or money's worth, is liable to be opened or set aside merely on the ground of under value.

(2) In this section ***reversionary interest*** includes an expectancy or possibility.

(3) This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

Part X — Powers of appointment

93. Disclaimer etc. of powers

A person to whom any power, whether coupled with an interest or not, is given may by deed disclaim, release or contract not to exercise the power, and after the disclaimer, release or contract is not capable of exercising or joining in the exercise of the power.

94. Effect of disclaimer etc.

On such disclaimer, release or contract as is referred to in section 93 being effected, the power may be exercised by the other person or persons or the survivor or survivors of the other persons to whom the power is given unless the contrary is expressed in the instrument creating the power.

95. Protection of purchasers claiming under certain void appointments

(1) An instrument purporting to exercise a power of appointment over property, that, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, is not, except as provided in subsection (2), void on the ground of fraud on the power as against a purchaser in good faith.

(2) If the interest appointed exceeds, in amount or value, the interest in that property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any hotchpot provision, the protection afforded by this section to a purchaser does not extend to such excess.

(3) In this section ***a purchaser in good faith*** means a person dealing with an appointee of the age of not less than 25 years for valuable consideration in money or money's worth, and without notice of the fraud, or of any circumstances from which, if

reasonable inquiries had been made, the fraud might have been discovered.

(4) Persons deriving title under any purchaser entitled to the benefit of this section are entitled to the like benefit.

(5) This section applies only to dealings effected after the coming into operation of this Act.

96. Validation of appointments where objects are excluded or take illusory shares

(1) An appointment made in exercise of a power to appoint any property among 2 or more objects is not invalid on the ground that —

(a) an unsubstantial, illusory or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or

(b) any object of the power is thereby altogether excluded —

but the appointment is valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section does not affect any provision in the instrument creating the power that declares the amount of any share from which any object of the power is not to be excluded.

(3) This section applies to any appointment made before or after the coming into operation of this Act.

97. Execution of powers not testamentary

(1) A deed executed in the manner in which a deed is required to be executed by this Act, so far as respects the execution and attestation thereof, is a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or instrument in writing, made in exercise of the power, is

to be executed or attested with some additional or other form of execution or attestation or solemnity.

(2) This section does not operate to defeat any direction in the instrument creating the power that —

(a) the consent of any particular person is to be necessary to a valid execution;

(b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

(3) This section does not prevent the donee of a power from executing it in accordance with the power by writing, or otherwise than by an instrument executed and attested as a deed, and if a power is so executed this section does not apply.

(4) This section shall apply to appointments by deed made after the coming into operation of this Act.

98. Application of this Part to existing powers

This Part applies to powers created or arising either before or after the coming into operation of this Act.

Part XI — Perpetuities and accumulations

99. Application

(1) Except where otherwise expressly provided in this Part, this Part —

(a) insofar as it applies to wills, applies only to the wills of testators dying after 6 December 1962; and

(b) insofar as it applies to instruments other than wills, applies only to instruments executed after that date.

(2) This Part binds the Crown.

100. Terms used in this Part

In this Part, unless the context otherwise requires —

Court means the Supreme Court or a Judge;

decision of the Court includes the decision of a court hearing an appeal from the Court;

instrument includes a will and also includes an instrument, testamentary or otherwise, exercising a power of appointment, whether general or special, even if the power were created before this Part comes into operation; but does not include an Act of Parliament;

limitation includes any provision in an instrument by which any property, or any interest in any property, or any right, power, authority or discretion in or over or in connection with any property, is or purports to be devised or bequeathed to, or created for, or given or granted or appointed to or conferred upon, or otherwise limited to, any person or purpose, and whether subject to a condition, precedent or subsequent, or not;

property includes any thing in action, and any interest in real or personal property;

trust and ***trustee*** have the same meaning as in the *Trustees Act 1962*;

will includes a codicil.

101. The perpetuity period

In determining whether any limitation is invalid as infringing the rule against perpetuities, the perpetuity period is, for the purposes of that rule, such period of years not exceeding 80 as may be specified in the instrument creating that limitation or, if no such period of years is specified, the period that is applicable under the rule at law.

102. Capacity to procreate or bear a child

(1) This section applies whenever, in determining whether any limitation is invalid as infringing the rule against perpetuities, or in determining the right of any persons to put an end to a trust or accumulation, or generally in the management or administration of any trust, estate or fund, or for any purposes relating to the disposition, transmission or devolution of property, it becomes relevant to enquire whether any person is or at a relevant date was or will be capable of procreating or bearing a child or whether any person would on or after a relevant date adopt a child.

(2) Where this section applies, there is a presumption, rebuttable by sufficient evidence to the contrary tendered at the time at which the matter falls for decision (but not subsequently), that —

(a) a woman who has attained the age of 55 years is incapable of bearing a child;

(aa) a woman will not, after she has attained the age of 55 years, adopt a child; and

(b) a male or female who has not attained the age of 12 years is incapable of procreating or bearing a child.

(3) Where this section applies, medical evidence that a male or female of any age is or at a relevant date was or will be incapable of procreating or bearing a child is admissible in proceedings in order to establish that incapacity, and the Court may accept any such evidence of a high degree of improbability of procreating or child-bearing as it thinks proper as establishing the incapacity.

(4) Any decision of the Court, in which any such presumption as is mentioned in subsection (2) is applied or in which any such evidence as is mentioned in subsection (3) is accepted remains effective notwithstanding the subsequent birth of a child or, in the case of the presumption mentioned in paragraph (aa) of that subsection (2), the subsequent adoption of a child; but if a limitation, that is not itself invalid as infringing the rule against perpetuities, confers upon that child or his spouse or de facto partner, or upon his issue or the spouse or de facto partner of any of his issue, a right to any property, that right (including any right to follow or trace the property) is not affected by the decision of the Court.

[Section 102 amended: No. 25 of 1972 s. 3; No. 28 of 2003 s. 161.]

103. Wait and see rule

(1) A limitation shall not be declared or treated as invalid, as infringing the rule against perpetuities, unless and until it is certain that the interest that it creates cannot vest within the perpetuity period or, if the limitation creates or confers a general power of appointment over or in connection with property, that the power cannot become exercisable within the perpetuity period, but if the power becomes exercisable, within that period, it is valid.

(2) Where a limitation creates a power exercisable over or in connection with any property, whether that power be a special power of appointment, or a power of advancement or of distribution under a discretionary trust, or any other power (not being a general power of appointment or a power that is exempted from the application of the rule against perpetuities by section 29 of the *Trustees Act 1962*), that limitation is valid, so far as the rule against perpetuities is concerned —

(a) if the power is exercisable only during the perpetuity period; or

(b) if and to the extent that the power is exercised during the perpetuity period.

(3) Nothing in this section makes any person a life in being for the purpose of ascertaining the perpetuity period unless that person would have been reckoned a life in being for that purpose if this section had not been enacted.

104. Power of Court to make declaration as to validity of limitations

(1) A trustee of any property, or any person interested under, or on the invalidity of a limitation of property, may at any time apply to the Court for a declaration as to the validity, in respect of the rule against perpetuities, of a limitation of that property.

(2) The Court may, on an application under subsection (1), make a declaration, on the basis of facts existing and events that have occurred at the time the declaration is made, as to the validity or otherwise of the limitation in respect of which the application is made; but the Court shall not make a declaration in respect of any limitation the validity of which cannot be determined at the time at which the Court is asked to make the declaration.

105. Invalid age contingencies

(1) Where in an instrument the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is made to depend on the attainment by any person of an age exceeding 21 years, and the gift to that beneficiary or class or any member thereof, or any gift over, remainder, executory limitation or trust arising on the total or partial failure of the original gift, would, but for this section, be rendered invalid as infringing the rule against perpetuities, the instrument takes effect for the purposes of that gift, gift over, remainder, executory limitation or trust as if the absolute vesting or ascertainment had been made to depend on the person attaining the age of 21 years, and that age shall be substituted for the age stated in the instrument.

(2) This section applies to any instrument other than a will executed after 24 October 1942 and to any testamentary appointment (whether made in exercise of a general or special power), devise or bequest contained in the will of a person dying after that date, whether the will was made before or after that date; but, in the case of an instrument executed, and the will of a person dying, after 6 December 1962, this section applies only to the extent provided in section 107.

(3) This section applies without prejudice to any provision whereby the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is also made to depend on the marriage of any person, or on any person entering into a de facto relationship, or any other event which may occur before the age stated in the instrument is attained.

[Section 105 amended: No. 28 of 2003 s. 162.]

106. Class gifts

(1) A limitation to a class of persons is not invalid as infringing the rule against perpetuities by reason of the failure of the limitation as to some only of the members of the class, but the limitation shall, in that case, be construed and take effect as a limitation only to those members of the class who attain a vested interest within the perpetuity period.

(2) This section applies only to the extent provided in section 107.

107. Order of applying rules

(1) The provisions of section 105 shall not be applied —

(a) unless and until it is certain that a limitation as worded is invalid as infringing the rule against perpetuities; and

(b) unless either —

(i) the application of the provisions of that section would render the limitation valid; or

(ii) the application of the provisions of that section, in conjunction with the provisions of section 106, would render the limitation valid.

(2) The provisions of section 106 shall not be applied unless and until —

(a) it is certain that a limitation as worded is invalid as infringing the rule against perpetuities; and

(b) any invalid age contingency in that limitation has been reduced in accordance with the provisions of section 105 as applied by subsection (1).

108. Unborn spouses or de facto partners

(1) The widow or widower of a person who is a life in being for the purpose of the rule against perpetuities shall be deemed a life in being for the purpose of —

(a) a limitation in favour of that widow or widower; and

(b) a limitation in favour of a person who attains, or of a class the members of which attain, according to the limitation, a vested interest on or after the death of the survivor of that person and his spouse.

(2) The de facto partner of a person who is a life in being for the purpose of the rule against perpetuities shall be deemed a life in being for the purpose of —

(a) a limitation in favour of that de facto partner; and

(b) a limitation in favour of a person who attains, or of a class the members of which attain, according to the limitation, a vested interest on or after the death of the survivor of that person and the person's de facto partner.

[Section 108 amended: No. 28 of 2003 s. 163.]

109. Dependent limitations

(1) A limitation, that itself complies with the rule against perpetuities, is not invalidated solely by reason of its being

preceded by one or more invalid limitations, whether or not it expressly or by implication, takes effect after, or subject to, or is dependent upon, those invalid limitations or any of them.

(2) Where a limitation is invalid as infringing the rule against perpetuities, any subsequent valid limitation is thereby accelerated.

110. Options

(1) The rule against perpetuities does not apply to —

(a) an option granted to a lessee in respect of the property demised, being an option exercisable only during the currency of the lease or within one year after the expiration thereof and enabling the lessee or the lessee for the time being to purchase the freehold or other superior interest in the demised property; or

(b) an option to acquire an interest in land, not being an option to which paragraph (a) refers.

(2) An option to which subsection (1)(b) refers, and which according to its terms is, or may be, exercisable at a date more than 21 years from the date of its grant, becomes void, on the expiry of 21 years from the date of its grant, as between the original parties to that grant and all persons claiming through them.

(3) Nothing in this section affects an option for renewal contained in a lease or a pre-emptive right to acquire an individual unit or individual units of accommodation in a building containing several units.

111. Application of the rule to possibilities of reverter, rights of entry and resulting trusts

(1) The rule against perpetuities as amended by this Part applies —

(a) to a possibility of reverter in land consequent upon a fee simple determinable; and so that, if the fee simple does

not determine within the perpetuity period, it thereafter continues as a fee simple absolute;

(b) to a right of entry for condition broken the exercise of which may determine a fee simple subject to a condition subsequent; and so that, if the right of entry is not exercised within the perpetuity period, the fee simple thereafter continues as a fee simple absolute; and

(c) to an interest in property by way of resulting trust analogous to a possibility to a reverter in land; and so that, if the initial trust does not determine within the perpetuity period, the interest it creates thereafter continues as an absolute interest.

(2) The provisions of subsection (1) apply as therein provided, whether the determinable or conditional estate or interest is charitable or not, except that the rule against perpetuities does not apply to a gift over from one charity to another.

112. Powers of appointment

For all purposes connected with the rule against perpetuities, a power of appointment under which there is a sole donee who is at all times free, without the concurrence of any other person, to appoint the whole of the property to himself is a general power, and every other power of appointment is a special power; but, notwithstanding the foregoing provisions of this section, an appointment made by will under a power that would, but for the fact that it was made exercisable only by will, have been a general power is to be treated as having been made under a general power for all purposes connected with the rule against perpetuities.

113. Accumulations of income

(1) Where property is settled or disposed of in such manner that the income thereof may or shall be accumulated wholly or in part, the power or direction to accumulate that income is valid if the

disposition of the accumulated income is, or may be, valid and not otherwise.

(2) Nothing in this section affects the right of any person or persons to terminate an accumulation that is for his or their benefit or any jurisdiction or power of the Court to maintain or advance out of accumulations or any powers of a trustee under Part V of the *Trustees Act 1962*.

(3) For the avoidance of doubt, it is hereby declared that this section has effect only as provided by section 99.

114. Rule in Whitby v. Mitchell abolished

The rule of law prohibiting the limitation after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

115. Superannuation funds etc.

(1) The rule against perpetuities does not apply and shall be deemed never to have applied to —

(a) a trust or fund established for the purpose of making provision by way of assistance, benefits, superannuation, allowances, gratuities or pensions for the employees of any employer or the widows, widowers, de facto partners, children, grandchildren, parents or dependents of any of those employees or for any persons duly selected or nominated for that purpose pursuant to the provisions of the trust or fund; and

(b) a trust or fund established for the purpose of making provision by way of superannuation for persons (not being employees) engaged in any lawful profession, trade, occupation or calling or the widows, widowers, de facto partners, children, grandchildren, parents or dependents of any of those persons or for any persons duly selected or nominated for that purpose pursuant to the provisions of the trust or fund.

(2) In subsection (1)(a) ***employee*** includes any director, officer, servant or person at any time in the employment —

(a) of an employer;

(b) of an employer that is a subsidiary of an employer; or

(c) of an employer that is allied to, or associated with, an employer; or

(d) of an employer that is allied to, or with, a subsidiary of an employer; or

(e) of an employer having a subsidiary; or

(f) of an employer whose business is acquired by an employer,

that establishes or contributes to a trust or fund such as is mentioned in that paragraph; and in this subsection ***employer*** includes a company.

[Section 115 amended: No. 28 of 2003 s. 164.]

Part XII — Succession

*[**116-117.** Deleted: No. 12 of 1970 s. 3.]*

118. Intermediate income of executory or contingent gifts

(1) A contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property upon trust for a person whose interest is contingent or executory, carries the intermediate income of that property from the death of the testator, except so far as the income or any part thereof may be otherwise expressly disposed of.

(2) Where, under an instrument other than a will, property stands limited to a person for a contingent or future interest, or stands limited to trustees upon trust for a person whose interest is contingent or executory, that interest carries the intermediate income of that property from the time when the instrument comes into operation, except so far as the income or any part thereof may be otherwise expressly disposed of.

(3) In determining whether any devise or bequest or other limitation of property carries the intermediate income of that property any uncertainty whether the devise or bequest or limitation will ultimately prove void for perpetuity shall be disregarded.

(4) Subsection (1) applies only in relation to wills made after 6 December 1962.

119. Application of section 120

(1) Section 120 applies in respect of —

(a) all property of any person that devolves according to the law of this State;

(b) all appointments of trustees where the appointments have to be made according to the law of this State.

(2) Section 120 so applies whether the deaths occurred in this State or elsewhere.

120. Devolution of property in cases of simultaneous deaths

Where, after 6 December 1962, 2 or more persons have died at the same time or in circumstances that give rise to reasonable doubts as to which of them survived the other or others —

(a) the property of each person so dying shall devolve and if he left a will it shall take effect, unless a contrary intention is shown by the will, as if he had survived the other person or persons so dying and had died immediately afterwards;

(b) every *donatio mortis causa* made by a person so dying to another person so dying is void and of no effect;

(c) if the life of a person so dying is insured under any policy of life or accident insurance, and any other person or persons so dying would be entitled (otherwise than under a will or on the intestacy of any person) to the proceeds payable under the policy or any part of the proceeds if he or they survived the person so insured, the proceeds shall, unless a contrary intention is shown by the instrument governing the distribution of the proceeds, be distributed as if the person so insured had survived every other person so dying and had died immediately afterwards;

(d) any property owned jointly and exclusively by 2 or more of the persons so dying, other than property so owned by them as trustees, shall devolve as if it were owned by them when they died as tenants in common in equal shares;

(e) where, under any will or trust or other disposition, any property would have passed, whether in consequence of section 33 of the *Wills Act 1837* of the United Kingdom Parliament or otherwise to any of 2 or more possible beneficiaries (being persons who have so died) if any of them could be shown to have survived the other or others of them, then, unless a contrary intention is shown by the will, trust or disposition, it takes effect as

if the property were given to those possible beneficiaries as tenants in common in equal shares, and the property devolves accordingly, but this paragraph does not apply in any case to which paragraph (c) or paragraph (f) applies;

(f) where a power of appointment could have been exercised in respect of any property by any of 2 or more persons so dying if any of them could be shown to have survived the other or others of them, unless a contrary intention is shown by the instrument creating the power, the power may be exercised as if an equal share of that property had been set apart for appointment by each of those persons, and as if each of those persons had the power of appointment in respect of the share of the property so set apart for appointment by him, and that share shall devolve in default of appointment by him in the manner in which the property would have devolved in default of appointment by him if he had been the survivor of those persons, but this paragraph does not apply in any case to which paragraph (c) applies;

(g) where, by any will or other testamentary disposition, any property is devised or bequeathed or appointed to the survivor of 2 or more of the testator's children or other issue within the meaning of section 117 [4] and all or the last survivors of those children or issue are persons so dying that section (where it applies) takes effect as if the devise or bequest or appointment were in equal shares to those of them who so die and leave a child or children living at the death of the testator;

(h) where the persons so dying include a testator and one or more of his issue, however remote, then for the purpose of section 33 of the *Wills Act 1837* of the United Kingdom Parliament where that section applies, the testator shall be deemed to have survived all his issue so dying and to have died immediately afterwards, and accordingly, unless a contrary intention is shown by the

will, a devise or bequest by the testator to any of his issue who so dies or has already died in the testator's lifetime —

(i) lapses unless any of the donee's issue, other than the persons so dying, is living at the time of the death of the testator;

(ii) takes effect in accordance with the provisions of section 33 of the *Wills Act 1837* of the United Kingdom Parliament if any such other issue of the donee is living at that time;

(i) for all other purposes affecting the title to property or the appointment of trustees, the deaths of the persons so dying shall be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

[Section 120 amended: No. 27 of 2007 s. 25.]

Part XIII — Easements, encroachments and mistake

121. Easement of light and air only by registered grant or instrument

After the coming into operation of this Act no right to the access or use of light or air to or for any land shall be granted or be capable of coming into existence —

(a) for a term exceeding 21 years, without the written consent of the Governor; and

(b) in any case, unless the grant or other instrument creating the right, is registered against the title to the servient tenement.

122. Power of Court to grant special relief in cases of encroachment

(1) Where any building on land encroaches on a part of adjoining land, whether the building was erected by the owner of the first mentioned land (in this section referred to as the encroaching owner) or by any of his predecessors in title, either the encroaching owner or the owner of the adjoining land may apply to the Court, whether in an action or proceeding then pending or in progress and relating to the land encroached upon or by an originating summons, to make an order in accordance with this section.

(2) If it is proved to the satisfaction of the Court that the encroachment was not intentional and did not arise from gross negligence, or, where the building was not erected by the encroaching owner, if in the opinion of the Court it is just and equitable in the circumstances that relief should be granted to the encroaching owner or any other person, the Court, without ordering the encroaching owner or any other person to give up possession of the piece of land encroached upon or to pay

damages, and without granting an injunction, may if it thinks fit make an order —

(a) vesting in the encroaching owner or any other person any estate or interest in any part of the adjoining land; or

(b) creating in favour of the encroaching owner or any other person any easement over any part of the adjoining land; or

(c) giving the encroaching owner or any other person the right to retain possession of any part of the adjoining land.

(3) Where the Court makes an order under this section the Court may, in the order, declare any estate or interest so vested to be free from any mortgage or other encumbrance affecting the adjoining land, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, or contract affecting or relating to that piece of land.

(4) An order under this section, or any provision of the order, may be made upon, and subject to such terms and conditions, as the Court thinks fit, whether as to the payment by the encroaching owner or any other person of any sum or sums of money, or the execution by the encroaching owner or any other person of any mortgage, lease, easement, contract or other instrument, or otherwise.

(5A) Every person having any estate or interest in the adjoining land or in the adjoining land of the encroaching owner, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, contract, or easement affecting or relating to any such land, is entitled to apply for an order in accordance with this section or to be heard in relation to any application for or proposal to make any order under this section.

(5B) For the purposes of subsection (5A), the Court may, if in its opinion notice of the application or proposal should be given to any person referred to in subsection (5A), direct that such

notice, as it thinks fit, shall be so given by such person as the Court directs.

(6) The Court shall not make an order under this section without the prior consent of the Western Australian Planning Commission established under the *Planning and Development Act 2005* and the local government of the district in which the land to which the order will relate, lies.

(7) For the purposes of this section ***building*** includes any structure and **"land"** includes the surface and the subsurface of and the airspace above the land.

[Section 122 amended: No. 84 of 1994 s. 46(11); No. 14 of 1996 s. 4; No. 38 of 2005 s. 15; No. 19 of 2010 s. 51.]

123. Relief in cases of mistake as to boundaries or identity of land

(1) Where (whether before or after the coming into operation of this Act) a person who has or had an estate or interest in any piece of land (in this section referred to as the original piece of land) has, while he had that estate or interest, erected a building on any other piece of land (that other piece together with any land reasonably required as curtilage and for access to the building being in this section referred to as the piece of land wrongly built upon), if the building has been so erected because of a mistake as to any boundary or as to the identity of the original piece of land, that person, or any other person for the time being in possession of the building or having an estate or interest in either the original piece of land or the piece of land wrongly built upon, or any other person mentioned in subsection (6), may apply to the Court, whether in any action or proceeding then pending or in progress and relating to the piece of land wrongly built upon or by an originating summons, to make an order in accordance with this section.

(2) If in the opinion of the Court it is just and equitable in the circumstances that relief should be granted to the applicant or any other person, the Court may if it thinks fit make an order —

(a) vesting the piece of land wrongly built upon in the person or persons specified in the order;

(b) allowing any person or persons specified in the order to remove the building and any chattels and fixtures or any of them from the piece of land wrongly built upon;

(c) where it allows possession of the building to any person or persons having an estate or interest in the piece of land wrongly built upon, requiring all or any of the persons having an estate or interest in that piece of land to pay compensation in respect of the building and other improvements to the piece of land wrongly built upon to such person or persons as the Court may specify in the order;

(d) giving the person who erected the building or any person or persons claiming through him the right to possession of the piece of land wrongly built upon for such period and on such terms and conditions as the Court may specify in the order.

(3) Where appropriate, the Court may make any such order without ordering the applicant or any other person to give up possession of the piece of land wrongly built upon, or to pay damages, and without granting an injunction.

(4) Where the Court makes any order under this section, the Court may, in the order, declare any estate or interest in the piece of land wrongly built upon to be free from any mortgage, lease, easement, or other encumbrance affecting that piece of land, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, easement, contract, or other instrument affecting or relating to that piece of land.

(5) Any order under this section, or any provision of the order, may be made upon and subject to such terms and conditions as the

Court thinks fit, whether as to the payment by any person of any sum or sums of money, or the execution by any person of any mortgage, lease, easement, contract, or other instrument, or otherwise.

(6) Every person for the time being in possession of the building or having any estate or interest in the piece of land wrongly built upon or in the original piece of land, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, easement, contract, or other instrument affecting or relating to any such land, and the local government concerned, is entitled to apply for an order in accordance with this section, or to be heard in relation to any application for or proposal to make any order under this section.

(7) For the purposes of subsection (6) the Court may, if in its opinion notice of the application or proposal should be given to any person, whether referred to in that subsection or not, direct that such notice as it thinks fit be so given by such persons as the Court directs.

(8) The Court shall not make an order under this section, other than an order under subsection (2)(b), without the prior consent of the Western Australian Planning Commission established under the *Planning and Development Act 2005*, and the local government of the district in which the land to which the order will relate, lies.

[Section 123 amended: No. 84 of 1994 s. 46(11); No. 14 of 1996 s. 4; No. 38 of 2005 s. 15.]

124. Recovery of payments made under mistake of law

(1) Subject to the provisions of this section, where relief in respect of any payment that has been made under mistake is sought in any court, whether in an action or other proceeding or by way of defence, set off, counterclaim or otherwise, and that relief could be granted if the mistake were wholly one of fact, that relief shall not be denied by reason only that the mistake is one of law whether or not it is in any degree also one of fact.

(2) Nothing in this section enables relief to be given in respect of any payment made at a time when the law requires or allows, or is commonly understood to require or allow, the payment to be made or enforced, by reason only that the law is subsequently changed or shown not to have been as it was commonly understood to be at the time of payment.

125. Payments made under mistake of law or fact not always recoverable

(1) Relief, whether under section 124 or in equity or otherwise, in respect of any payment made under mistake, whether of law or fact, shall be denied wholly or in part if the person from whom relief is sought received the payment in good faith and has so altered his position in reliance on the validity of the payment that in the opinion of the Court, having regard to all possible implications in respect of the parties (other than the plaintiff or claimant) to the payment and of other persons acquiring rights or interests through them, it is inequitable to grant relief, or to grant relief in full.

(2) Where the Court makes an order for the repayment of any money paid under a mistake, the Court may in that order direct that the repayment shall be by periodic payments or by instalments, and may fix the amount or rate thereof, and may from time to time vary, suspend or discharge the order for cause shown, as the Court thinks fit.

Part XIV — Partition of land and division of chattels

126. In action for partition Court may direct land to be sold

(1) Where in an action for partition the party or parties interested, individually or collectively, to the extent of a half share or upwards in the land to which the action relates request the Court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale accordingly.

(2) The Court may, if it thinks fit, on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the Court that, by reason of the nature of the land, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.

(3) The Court may also, if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, or some of them, undertake to purchase the share of the party requesting a sale; and, on such an undertaking being given, may direct a valuation of the share of the party requesting a sale.

(4) On directing a sale or valuation to be made under subsection (3) the Court may give also all necessary or proper consequential directions.

(5) Any person may maintain such an action as is referred to in subsection (1) against any one or more of the parties interested without serving the other or others, and —

(a) it is not competent to any defendant in the action to object for want of parties; and

(b) at the hearing of the cause the Court may direct such inquiries as to the nature of the land and the persons

interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further consideration,

but all persons who, if this Act had not come into operation would have been necessary parties to the action —

(c) shall be served with notice of the decree or order on the hearing;

(d) are bound, after the notice is so served, by the proceedings, as if they had originally been parties to the action and shall be deemed parties to the action; and

(e) have liberty to attend the proceedings and any of those persons may within a time limited by rules of Court apply to the Court to add to the decree or order.

(6) On any sale under this section the Court may allow any of the parties interested in the land to bid at the sale, on such terms as the Court deems reasonable as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part thereof instead of paying the same, or as to any other matters.

127. Proceeds of sale, how applied

(1) All money received under any sale under section 126 may, if the Court thinks fit, be paid to trustees appointed by the Court, and applied, as the Court from time to time directs —

(a) in the discharge of any encumbrance affecting the land directed to be sold; and

(b) subject to that encumbrance, in the payment of the residue to the parties interested.

(2) Where the Court so directs, the trustees (if any) may apply the money in manner referred to in subsection (1), but if the Court does not so direct, any party interested may apply to the Court for an order that the money be so applied.

(3) Until the money can be applied as referred to in subsection (1) it shall be from time to time invested in such securities as the Court may approve and the income thereof shall be paid to the parties interested.

128. Costs in partition suits

In an action for partition the Court may make such order as it thinks just respecting costs up to the time of the hearing.

129. Division of chattels

Where any chattels belong to persons jointly or in undivided shares, the persons interested to the extent of a half share or upwards may apply to the Court for an order for division of the chattels or of any of them, according to a valuation or otherwise or for sale and division of the proceeds and the Court may make such order and give such consequential directions as the Court thinks fit.

Part XV — Apportionment

130. Terms used in this Part

(1) In this Part, unless the contrary intention appears —

annuities includes salaries and pensions;

dividends includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other companies or corporations, divisible between all or any of the members thereof, whether those payments are usually made or declared at any fixed times or otherwise; but "dividends" does not include payments in the nature of a return or reimbursement of capital;

rent includes rents and all periodical payments or renderings in lieu of or in the nature of rent.

(2) All such divisible revenue as is referred to in the interpretation "dividends" shall for the purposes of this section be deemed to have accrued by equal daily increments during and within the period for or in respect of which the payment of the same revenue is declared or expressed to be made.

131. Income apportionable in respect of time

All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

132. Time when apportioned part payable

The apportioned part of any such rent, annuity, dividend, or other payment as is referred to in section 131 is payable or recoverable in the case of a continuing rent, annuity, or other payment as soon as the entire portion of which the apportioned part forms part becomes due and payable, and not before; and where the payment is determined by re-entry, death, or

otherwise, as soon as the next entire portion of the rent, annuity, dividend or other payment would have become payable if it had not so determined, and not before.

133. Recovery of apportioned parts

(1) Subject to subsection (2) all persons and their respective personal representatives and assigns, and also the personal representatives and assigns respectively of persons whose interests determined with their own death, have such or the same remedies, legal and equitable, for recovering such apportioned parts as are referred to in section 132 when payable (allowing for a proportionate part of all just allowance) as they respectively would have had for recovering such entire portions as are so referred to if entitled thereto respectively.

(2) Where a person is liable to pay rent reserved out of or charged on lands or other hereditaments of any tenure, that person and the lands or other hereditaments shall not be resorted to for any apportioned part forming part of an entire or continuing rent as provided in section 132; but the entire or continuing rent, including the apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under this Part or otherwise, would have been entitled to the entire or continuing rent; and the apportioned part is recoverable from the last mentioned person by the personal representatives, or other parties entitled thereto under this Part.

134. Exceptions and application

(1) Nothing in this Part renders apportionable any annual sums payable under policies of assurance of any description.

(2) This Part does not extend to any case in which it is expressly stipulated that apportionment shall not take place.

Part XVI — Service of notices

135. Mode of service

(1A) A notice required or authorised by this Act to be served on any person or any notice served on any person under any instrument or agreement that relates to property may be served on that person —

(a) by delivering the notice to him personally;

(b) by leaving it for him at his usual or last known place of abode, or if he is in business as a principal, at his usual or last known place of business;

(c) by posting it to him as a letter addressed to him at his usual or last known place of abode, or if he is in business as a principal, at his usual or last known place of business; or

(d) in the case of a corporation by leaving it or by posting it as a letter addressed in either case to the corporation at its registered office or principal place of business in the State.

(1B) A notice posted as provided in subsection (1A) shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post the notice would be delivered.

(2A) If the person is absent from the State, the notice may be delivered as provided in subsection (1A) to his agent in the State.

(2B) If the person is deceased, the notice may be delivered as provided in subsection (1A) to his personal representative.

(3) If the person is not known, or is absent from the State and has no known agent in the State or is deceased and has no personal representative, the notice shall be delivered in such manner as may be directed by an order of the Court.

(4) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any notice is to be delivered, or dispensing with the delivery thereof.

(5) This section does not apply to notices served in proceedings in the Court, or to notices served pursuant to the provisions of the *Transfer of Land Act 1893*.

(6) This section applies unless a contrary method of service of a notice is provided in the instrument or agreement.

[Section 135 amended: No. 19 of 2010 s. 51.]

First Schedule — Adopted Acts ceasing to have effect

[s. 4(a)]

[Heading amended: No. 19 of 2010 s. 26(2).]

Reference to Acts	Subject or Title
8 and 9 Vic. Cap. 106 Adopted by 12 Vic. No. 21	An Act to amend the Law of Real Property.
8 and 9 Vic. Cap. 119 Adopted by 12 Vic. No. 21	An Act to facilitate the Conveyance of Real Property.
8 and 9 Vic. Cap. 124 Adopted by 12 Vic. No. 21	An Act to facilitate the granting of certain Leases.
22 and 23 Vic. Cap. 35 Adopted by 31 Vic No. 8	An Act to further amend the Law of Property and to relieve Trustees.
23 and 24 Vic. Cap. 38 Adopted by 31 Vic. No. 8	An Act to further amend the Law of Property.
23 and 24 Vic. Cap. 145 Adopted by 31 Vic. No. 8	An Act to give to Trustees, Mortgagees and others certain Powers now commonly inserted in Settlements, Mortgages and Wills.

Second Schedule — Acts repealed

[s. 4(b)]

[Heading inserted: No. 19 of 2010 s. 26(3).]

Reference to Act	Subject or Title	Extent of Repeal
2 Gul. IV No. 7.	*Real Property Transfer Act 1832.*	The Whole.
7 Vict. No. 4.	*Freehold Estates Conveyancing Act 1843.*	The Whole.
42 Vict. No. 1.	The *Partition Act 1878.*	The Whole.
42 Vict. No. 2.	*Contingent Remainders Act 1878.*	The Whole.
54 Vict. No. 8.	The *Apportionment Act 1891*.	The Whole.
60 Vict. No. 3.	*Powers of Attorney Act 1896.*	The Whole.
1 & 2 Edw. VII No. 29 as amended by Act No. 26 of 1922.	*Light and Air Act 1902-1922.*	The Whole.
No. 63 of 1912.	*Landlord and Tenant Act 1912.*	The Whole.
No. 36 of 1935 as amended up to and including Act No. 39 of 1964.	*Supreme Court Act 1935-1964.*	Subsections (3), (4), (5), (7) & (8) of section 25.
No. 60 of 1960 as amended by Act No. 85 of 1962.	*Simultaneous Deaths Act 1960-1962.*	The Whole.
No. 83 of 1962.	*Law Reform (Property, Perpetuities and Succession) Act 1962.*	The Whole.

Third Schedule — Implied covenants

[s. 45(1)]

[Heading inserted: No. 19 of 2010 s. 26(4).]

Part I — Conveyance for valuable consideration

[Heading inserted: No. 19 of 2010 s. 26(4).]

Covenant implied in a Conveyance for Valuable Consideration other than a Mortgage, by a Person who conveys and is expressed to Convey as Beneficial Owner.

That, notwithstanding anything by the person who so conveys or any one through whom he derives title otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person (if any) conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made), through whom the person who so conveys derives title, otherwise than by purchase for value:

And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, encumbrances, claims and demands, other than those subject to which the conveyance is expressly made, as, either before or after the date of the conveyance, have been or shall be made, occasioned or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under or in trust for the person who so conveys, or by, through or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value:

And further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

Part II — Conveyance of leasehold

[Heading inserted: No. 19 of 2010 s. 26(5).]

Further Covenant implied in a Conveyance of Leasehold Property for Valuable Consideration, other than a Mortgage, by a Person who Conveys and is expressed to Convey as Beneficial Owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and has in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

Part III — Conveyance by way of mortgage

[Heading inserted: No. 19 of 2010 s. 26(6).]

Covenant implied in a Conveyance by way of Mortgage by a person who Conveys and is expressed to Convey as Beneficial Owner.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed:

And also that, if default, is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thence forth quietly hold, occupy and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made);

And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, encumbrances, claims and demands whatever other than those subject whereto the conveyance is expressly made:

And further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

Part IV — Conveyance by way of mortgage of leasehold

[Heading inserted: No. 19 of 2010 s. 26(7).]

Covenant implied in a Conveyance by way of Mortgage of Leasehold Property by a Person who Conveys and is expressed to Convey as Beneficial Owner.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed and is in full force, unforfeited and unsurrendered and has in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance:

And also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains owing on the security of the conveyance, pay, observe and perform, or cause to be paid, observed and performed all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands (if any) to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions and agreements, or any of them.

Part V — Conveyance by way of settlement

[Heading inserted: No. 19 of 2010 s. 26(8).]

Covenant implied in a Conveyance by way of Settlement, by a Person who conveys and is expressed to Convey as Settlor.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter

of the conveyance to the persons to whom the conveyance is made and those deriving title under them, as by them or any of them shall be reasonably required, subject as if so expressed, and in the manner in which the conveyance is expressed to be made.

Part VI — Conveyance by person other than beneficial owner

[Heading inserted: No. 19 of 2010 s. 26(9).]

Covenant implied in any Conveyance, by every Person who Conveys and is expressed to Convey as Trustee or Mortgagee, or as Personal Representative of a Deceased Person, or as Administrator of the Estate of a represented person or under an Order of the Court.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to any deed or thing, whereby or by means whereof the subject-matter of the conveyance or any part thereof, is or may be impeached, charged, affected or encumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

The foregoing covenant may be implied in an assent in like manner as in a conveyance by deed.

[Third Schedule amended: No. 24 of 1990 s. 123.]

Fourth Schedule — Conveyance

[s. 37]

[Heading amended: No. 19 of 2010 s. 26(10).]

This Deed made this day of 20
Between A. B. of (address and occupation) of the one part and C. D. of (address and occupation) of the other part Witnesseth that in consideration of the sum of dollars paid by the said C. D to the said A. B (the receipt whereof is hereby acknowledged) the said A. B. as beneficial owner (if it is not intended to include the usual covenants for title, omit the words "beneficial owner") hereby conveys to the said C. D. in fee simple (or as the case may be) all that piece of land being —

(description of land)

SIGNED by the said A.B. }
in the presence of: }

Notes

This is a compilation of the *Property Law Act 1969* and includes amendments made by other written laws [5]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Property Law Act 1969	32 of 1969	19 May 1969	1 Aug 1969 (see s. 2 and *Gazette* 27 Jun 1969 p. 1873)
Wills Act 1970 s. 3	12 of 1970	29 Apr 1970	1 Jul 1970 (see s. 2 and *Gazette* 5 Jun 1970 p. 1521)
Property Law Act Amendment Act 1971	19 of 1971	1 Dec 1971	1 Dec 1971
Property Law Act Amendment Act (No. 2) 1971	25 of 1971	1 Dec 1971	22 Dec 1972 (see s. 2 and *Gazette* 22 Dec 1972 p. 4755)
Property Law Act Amendment Act 1973	35 of 1973	18 Oct 1973	18 Oct 1973
Reprint of the *Property Law Act 1969* approved 1 Apr 1976 (includes amendments listed above)			
Property Law Act Amendment Act 1979	102 of 1979	17 Dec 1979	24 Apr 1980 (see s. 2 and *Gazette* 24 Apr 1980 p. 1180)
Artificial Conception Act 1985 s. 8	14 of 1985	12 Apr 1985	1 Jul 1985 (see s. 2 and *Gazette* 28 Jun 1985 p. 2291)
Reprint of the *Property Law Act 1969* as at 17 Mar 1987 (includes amendments listed above)			
Residential Tenancies Act 1987 s. 89	128 of 1987	21 Jan 1988	1 Oct 1989 (see s. 2 and *Gazette* 18 Aug 1989 p. 2748)
Guardianship and Administration Act 1990 s. 123	24 of 1990	7 Sept 1990	20 Oct 1992 (see s. 2 and *Gazette* 2 Oct 1992 p. 4811)
Planning Legislation Amendment Act (No. 2) 1994 s. 46(11)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and *Gazette* 21 Feb 1995 p. 567)
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)

Short title	Number and year	Assent	Commencement
Transfer of Land Amendment Act 1996 s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint of the *Property Law Act 1969* as at 21 May 1999 (includes amendments listed above)			
Corporations (Consequential Amendments) Act (No. 2) 2003 Pt. 21	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and Cwlth *Gazette* 13 Jul 2001 No. S285)
Acts Amendment (Equality of Status) Act 2003 s. 125 [6] and Pt. 49	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Liquor and Gaming Legislation Amendment Act 2006 s. 115	73 of 2006	13 Dec 2006	7 May 2007 (see s. 2(2) and *Gazette* 1 May 2007 p. 1893)
Reprint 4: The *Property Law Act 1969* as at 24 Aug 2007 (includes amendments listed above)			
Wills Amendment Act 2007 s. 25	27 of 2007	26 Oct 2007	9 Feb 2008 (see s. 2 and *Gazette* 8 Feb 2008 p. 313)
Standardisation of Formatting Act 2010 s. 26 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 3 Div. 3	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)
Strata Titles Amendment Act 2018 Pt. 3 Div. 15	30 of 2018	19 Nov 2018	1 May 2020 (see s. 2(b) and SL 2020/39 cl. 2)
Community Titles Act 2018 Pt. 14 Div. 15	32 of 2018	19 Nov 2018	30 Jun 2021 (see s. 2(b) and SL 2021/69 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
Assisted Reproductive Technology and Surrogacy Act 2025 Pt. 17 Div. 14	19 of 2025	18 Dec 2025	To be proclaimed (see s. 2(c))

Other notes

[1] Repealed by the *Interpretation Act 1984*.

[2] Section 31A proclaimed 21 January 1972, see *Gazette* 21 January 1972 p 72.

[3] Repealed by the *Property Law Act 1969*.

[4] Section 117 repealed by the *Wills Act 1970* s. 3.

[5] Marginal notes in the *Property Law Act 1969* referring to earlier Western Australian legislation and legislation of other jurisdictions have been omitted.

[6] The *Acts Amendment (Equality of Status) Act 2003* s. 125(3) reads as follows:

“

(3) A restriction upon anticipation or alienation attached to the enjoyment of any property by a woman which —

(a) at the time it was attached, could not have been attached to the enjoyment of that property by a man; and

(b) continued to have effect after the commencement of section 31 of the *Property Law Act 1969*,

is of no effect.

”.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
a purchaser in good faith	95(3)
annuities	130(1)
any debt or other legal chose in action	20(3)
bankruptcy	7
building	122(7)
convey	7
conveyance	7
Court	7, 100
decision of the Court	100
deed	7
dispose of	7
disposition	7
dividends	130(1)
employee	115(2)
employer	115(2)
encumbrance	7
encumbrancee	7
estate tail	23(3)
fine	7
income	7
instrument	7, 100
land	7, 49(2)
land under the Transfer of Land Act 1893	7
lease	7, 69, 81(5)
lessee	7, 81(5)
lessor	7, 81(5)
limitation	100
mines and minerals	7
month	8
mortgage	7, 7
mortgage money	7
mortgaged property	55(6)
mortgagee	7
mortgagee in possession	7
mortgagor	7
notice	7
order absolute	53(2)
periodic tenancy	7
person	8
personal representative	7

possession 7
prescribed notice ..... 83C(1)
property 7, 100
purchase 7
purchaser 7
registered or duly registered 7
rent ..... 7, 130(1)
represented person 7
reversionary interest ..... 92(2)
right of redemption 7
right of re-entry ..... 76(2)
sale 7
securities 7
successors in title ..... 47(2), 48(3)
trust 100
trustee 100
under-lease ..... 81(5)
under-lessee ..... 81(5)
valuable consideration 7
will 7, 100

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