

## SALE OF LAND (VENDORS' OBLIGATIONS).

4° and 5° GEO. VI., No. XLVI.

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No. 46 of 1940.

**AN ACT to impose certain obligations on vendors under contracts of sale of land, and for other purposes.**

[Assented to 30th December, 1940.]

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

**Short title.** 1. This Act may be cited as the *Sale of Land (Vendors' Obligations) Act, 1940*.

**Interpretation.** 2. In this Act, subject to the context—

“Contract of sale” means an agreement for the sale and purchase of land where the terms of the sale provide that payment by the purchaser for the land shall be extended over a period of time and shall be made by weekly, monthly, or other periodical instalments, whether described as rent or otherwise, and where the instrument of sale is not a registrable instrument under the Transfer of Land Act, 1893-1939.

“Court” means—

- (a) where the consideration expressed in the contract of sale in respect of the land in question does not exceed one thousand pounds the local court constituted pursuant to the Local Courts Act, 1904-1930, and held nearest to the residence of the purchaser, or the court nearest the place where the land is situate; and
- (b) where such consideration exceeds one thousand pounds, the Supreme Court or a Judge thereof.

“Land” includes any estate or interest in land.

“Owner” means the owner or registered proprietor of the land and includes any person who is entitled to be registered as registered proprietor of the land or who is a purchaser under agreement of sale from the owner or registered proprietor, and in like manner includes a sub-purchaser.

“Purchaser” means a purchaser under a contract of sale and, where necessary, includes a sub-purchaser.

“Vendor” means an owner who, under a contract of sale, sells land.

3. (1) Every vendor of land, when such land is being or is about to be sold by means of a contract of sale, shall notify the purchaser in writing before the purchaser executes the contract of sale, of any mortgage or encumbrance, lien, or charge on the land, and of any writ of *feri facias* or warrant of execution entered in the register book or registered against such land. Any notification as aforesaid will be deemed sufficient if clearly contained in the contract of sale or in any separate writing.

Notification of condition of title to be given.

Penalty: Fifty pounds.

(2) In this section the word “charge” shall not include rates or taxes charged on the land.

4. So long as the land remains subject to the contract of sale, the vendor of the land shall not, except pursuant to an order of the court, mortgage or otherwise encumber such land unless—

Except under certain conditions vendor not to encumber land after entering into contract of sale.

- (a) a caveat protecting the rights of the purchaser under the contract of sale has been duly

- lodged against the land by the purchaser and the transaction is subject to the caveat; or  
(b) the purchaser has consented thereto by memorandum in writing.

Penalty: One hundred pounds or imprisonment for six months or both such fine and such imprisonment.

Where purchaser refuses to consent to mortgage vendor may appeal to the court.

5. (1) Where the vendor has requested the purchaser to give the consent required by the last preceding section to the vendor mortgaging or otherwise encumbering the land sold under a contract of sale, and the purchaser has refused or neglected to give such consent, or where for any other reason such consent cannot be obtained by the vendor, or where such consent has been given but by reason of some act or default of the purchaser the vendor is unable to mortgage or encumber such land or to register a mortgage or encumbrance thereon, the vendor may, by application in the prescribed manner, apply to the court, and the court in its discretion shall have power and authority and jurisdiction to make such order as it deems fit and proper under the circumstances.

(2) Every such order shall have authority and effect as an order of the court and shall be obeyed accordingly by all persons concerned, and any disobedience to such order shall carry the same consequences as in the case of disobedience to an order of the court.

(3) The costs of any application under this section shall be in the absolute discretion of the court, and any order made or purporting to be made under the provisions of this Act shall be final and conclusive and without appeal.

Offences.

6. All proceedings in respect of offences under this Act shall be heard and determined in a summary manner under the provisions of the Justices Act, 1902-1936.

Provided that notwithstanding anything contained in such last-mentioned Act, proceedings in respect of an offence against any provision of this Act may be brought at any time within twelve years next after the commission of the offence, or within six months next after the first discovery thereof, by the person aggrieved, whichever period is the shorter.

Provided further, that no such proceedings may be brought after the expiry of one month from the date when a transfer of the land in respect of which the offence has been committed executed by the vendor in favour of the purchaser, or by the direction of the purchaser indorsed on the transfer, has been registered at the Titles Office.

7. (1) Nothing contained in this Act, and no proceedings taken thereunder against any person, shall in any way prejudice or interfere with any right or remedy by civil process which any person aggrieved might have had if this Act had not been passed.

Saving of  
civil and  
criminal  
remedies.

(2) The provisions of the Criminal Code shall not be limited or prejudiced or affected by the provisions of this Act.

(3) Nothing in this Act shall be construed as placing any duty or liability whatsoever upon the Commissioner or Registrar of Titles or upon any officer acting under the authority of the Transfer of Land Act, 1893-1939, or any other enactment relating to the registration or recording of title in land, or as in any way amending any such Act, or as affecting the validity of any registration thereunder, and every such enactment shall have the same force and effect as if this Act had not been passed.

Saving of  
Transfer of  
Land Act.