

Approved for Reprint: 8th May, 1978.

WESTERN AUSTRALIA.

SALE OF LAND.

No. 119 of 1970¹.

[As amended by Acts—

No. 9 of 1973, assented to 25th May, 1973;

No. 70 of 1974², assented to 9th December, 1974,
and reprinted pursuant to the Amendments In-
corporation Act, 1938.]

AN ACT to consolidate and amend the Law
relating to the Sale of Land.

[Assented to 10th December, 1970.]

BE it enacted:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sale of Land Act, 1970-1974*.

Short title.
Amended by No.
70 of 1974, s. 1.

2. This Act shall come into operation on a date
to be fixed by proclamation¹.

Commencement.

1. Came into operation 1st February, 1971; See *Gazette* 22/1/71, p.149.

2. Came into operation 28th February, 1975; See *Gazette* 28/2/75, p.719.

Arrangement.

Amended by No.
70 of 1974, s. 3.

3. This Act is divided into Parts as follows—

PART I.—PRELIMINARY, ss. 1-5.

PART II.—SALE OF LAND UNDER TERMS CONTRACT, ss. 6-10.

PART III.—RESTRICTIONS ON SALE OF SUBDIVISIONAL LAND, ss. 11-15.

PART IV.—OFFENCES IN RELATION TO SALE OF LAND, ss. 16-19.

PART IVA.—DEALINGS IN UNDIVIDED SHARES IN LAND, ss. 19A-19D.

PART V.—APPLICATION TO THE COURT BY VENDOR OR PURCHASER, s. 20.

PART VI.—RULES RELATING TO TITLE OF GENERAL LAW LAND, ss. 21-23.

SCHEDULE.

Repeals.

4. The Acts mentioned in the Schedule to this Act are repealed.

Interpretation.

5. In this Act, unless the contrary intention appears—

“advertise” includes—

(a) issue, deliver, or publicly exhibit in writing; and

(b) publish, or disseminate, by broadcasting, television, cinematograph, or any other means whatsoever,

and with corresponding meanings also includes cause to be advertised;

“advertisement” includes corresponding meanings to “advertise”;

“Court” means the Supreme Court;

“land” includes land of any tenure and buildings or parts of buildings;

“section” means a section of this Act; and

“terms contract” means an executory contract for the sale and purchase of land under which the purchaser is—

- (a) obliged to make two or more payments to the vendor (over and above any deposit) before he is entitled to a conveyance or transfer of the land; or
- (b) entitled to possession or occupation of the land before he becomes entitled to a conveyance or transfer of the land,

and for the purpose of this interpretation “deposit” includes any part of the purchase price which the contract specifies as being a deposit and provides is to be paid, whether by one or more payments, within twenty-eight days of the execution of the contract.

PART II.—SALE OF LAND UNDER TERMS CONTRACT.

6. (1) Notwithstanding any stipulation to the contrary, a terms contract shall not be determined or rescinded on account of a breach by the purchaser of any term of the contract unless and until the vendor has served on the purchaser a notice in writing specifying the breach complained of and requiring the purchaser to remedy the breach within the time mentioned in subsection (2) of this section and the purchaser has failed to do so.

Restriction on
rescission.

(2) The time referred to in subsection (1) of this section within which the purchaser is required to remedy a breach is—

- (a) where the breach consists of a failure to pay a sum of money—a date stipulated by the vendor being a date not less than twenty-eight days from the date of service of the notice; and
- (b) in any other case—a reasonable time from the date of service of the notice.

Notification of
condition of title.
[No. 46 of 1940,
s. 3.]

7. (1) Where it is proposed to sell land under a terms contract, the proposed vendor of the land shall, before the proposed purchaser of the land executes the contract, give notice in writing to him of any mortgage, encumbrance, lien, or charge on the land, and of any writ of *fieri facias* or warrant of execution that is entered in the Register Book referred to in section 48 of the Transfer of Land Act, 1893 or that is otherwise registered against the land.

Penalty: Seven hundred and fifty dollars.

(2) In subsection (1) of this section—

“charge” does not include rates or taxes charged on the land; and

“notice in writing” includes a statement that is clearly contained in the contract.

Limitation on
encumbrances.
[No. 46 of 1940,
s. 4.]

8. A vendor of land under a terms contract shall not encumber the land by mortgage or otherwise unless—

(a) within the period of twenty-eight days before he does so, the purchaser of the land consented in writing thereto; or

(b) the Court, on the application of the vendor pursuant to section 9, gives him leave to do so.

Penalty: Seven hundred and fifty dollars.

Power of Court
on application
for leave to en-
cumber the land.

9. A vendor of land under a terms contract may make an application to the Court by summons at chambers for leave to encumber the land by mortgage or otherwise and on the application the Court may make an order accordingly, subject to such conditions as are necessary to protect the interest of a purchaser under the contract.

10. Where a vendor of land under a terms contract contravenes section 7 or section 8, the purchaser of the land under the contract may, at any time prior to conveyance or the registration of a transfer of the land to the purchaser, but within one year of the purchaser becoming aware of the contravention, commence an action in the Court for the rescission of the contract, and the Court having regard to the equities of the case may exercise such discretion and make any such order as it could have exercised or made had it been alleged and established that the contract had been induced by fraudulent misrepresentation.

Remedy of purchaser on contravention by vendor.

PART III.—RESTRICTIONS ON SALE OF
SUBDIVISIONAL LAND.

11. In this Part, unless the contrary intention appears—

Interpretation.

“lot” has the same meaning as it has in section 2 of the Town Planning and Development Act, 1928 and includes an area of land in respect of which it is represented, by or on behalf of any person attempting to promote the sale of that area of land, that it will constitute a lot in a proposed subdivision;

“proprietor” has the same meaning as it has in section 4 of the Transfer of Land Act, 1893; and

“sell” includes—

(a) for valuable consideration—

- (i) assign an interest in;
- (ii) assign the benefit of a contract relating to;
- (iii) confer a right to purchase, to acquire an interest in, or to acquire the benefit of a contract relating to; and

- (b) offer, hold oneself out or advertise as being willing, or agree to sell or, for valuable consideration, to do as mentioned in subparagraphs (i), (ii) or (iii) of paragraph (a) of this section,

and “selling” and “sold” include corresponding meanings.

Application of
this Part.

12. This Part does not apply to the sale of a lot as defined in section 3 of the Strata Titles Act, 1966.

Restriction on
sale of subdivi-
sional land.

13. (1) A person who would, but for this Act, have the right to sell five or more lots in a subdivision or proposed subdivision shall not sell any of such lots unless—

- (a) he is the proprietor thereof;
- (b) he is selling as agent of the proprietor;
- (c) he sells the lot as one of five or more lots sold to one person in the one transaction;
- (d) he is empowered by or under an Act to execute a transfer thereof that is registrable under the Transfer of Land Act, 1893; or
- (e) he is presently entitled to become the proprietor of the lot.

Penalty: Seven hundred and fifty dollars.

(2) A person shall be deemed not to be presently entitled to become the proprietor of a lot unless he is, at the date he sells the lot, entitled to be registered as proprietor of it under one or more registrable instruments or under one or more applications made under the Transfer of Land Act, 1893 which have been lodged in the Office of Titles.

(3) For the purpose of this section an instrument or an application which was at the relevant time

lodged at the Office of Titles shall be deemed to be and to always have been registrable notwithstanding any defect in the instrument or application—

- (a) if the instrument has subsequently been registered or the application granted without having been returned by the Registrar of Titles or withdrawn from the Office of Titles; or
- (b) if the Registrar of Titles certifies in writing that he is satisfied that the defect was not of a substantial nature and that it has been remedied.

14. (1) A person who has the right to sell five or more lots in a subdivision or proposed subdivision shall not sell any of such lots that is subject to a mortgage unless the mortgage relates only to that lot and he sells the lot under a contract which provides that the consideration for the sale of the lot shall be satisfied, to the extent of any money owing under the mortgage at the date upon which the purchaser is entitled to possession or receipt of the rents and profits of the lot sold, by the purchaser assuming on and from that date the obligations of the mortgagor under the mortgage.

Restriction on sale of mortgaged subdivided land.

Penalty: Seven hundred and fifty dollars.

(2) Subsection (1) of this section does not apply to a person who sells the lot—

- (a) as one of five or more lots sold to one person in the one transaction; or
- (b) under a contract which provides that—
 - (i) any mortgage affecting the lot sold is to be discharged as to that lot before the purchaser becomes, or upon the purchaser becoming, entitled to possession or to receipt of the rents and profits under the contract; and

- (ii) the deposit and all other moneys payable under the contract, other than any money payable in excess of the amount required to so discharge the mortgage, are to be paid to a certificated practitioner, as defined in section 3 of the Legal Practitioners Act, 1893, or to a licensee, as defined in section 2 of the Land Agents Act, 1921, to be applied by him in or towards so discharging the mortgage,

but where the mortgage is not discharged as to that lot before the purchaser becomes, or upon the purchaser becoming, entitled to possession or to receipt of the rents and profits under the contract and the purchaser of the lot under the contract is not in default under it, he may, by notice in writing served on the vendor of the lot under the contract at any time prior to the mortgage being discharged as to that lot, rescind the contract and thereupon may, in a court of competent jurisdiction, recover from that vendor all moneys paid by that purchaser under the contract.

(3) In subsections (1) and (2) of this section "mortgage" does not include any floating charge on the whole or any part of the undertaking or property of a corporation.

Exemptions.

15. (1) Where the Minister considers that a person had, immediately prior to the coming into operation of this Act, legal obligations or other commitments in respect of any land, by reason of which it would be unreasonable for the restrictions of sections 13 and 14, or any one of them, to apply to the sale of that land, or any part of it, by that person, the Minister may, by a notice published in the *Government Gazette* within twelve months after the coming into operation of this Act, exempt that person from those restrictions in respect of the sale of that land or any part of it, on such terms and conditions as the Minister thinks fit and are specified in the notice.

(2) Where the Minister has granted an exemption under subsection (1) of this section, he may by a notice published in the *Government Gazette* at any time, revoke the exemption or vary it, as specified in the notice, as to the land or any part of it in respect of which, or the terms and conditions on which, it was granted.

PART IV.—OFFENCES IN RELATION TO SALE OF LAND.

16. A person shall not, in relation to any land for sale, advertise that the land may be put to a specified use if that use of the land would be contrary to any town planning scheme, or any by-law relating to town planning, in force under the Town Planning and Development Act, 1928 or contrary to any by-law in force under section 248 of the Local Government Act, 1960.

Limitation on advertisement.

Penalty: Two hundred dollars.

17. (1) A vendor of land or his agent shall not, on or in connection with the sale of land, make a statement as to the proposed or projected position of any public amenity unless, at the time he makes the statement, either—

Misrepresentation concerning public amenity.

Amended by No. 9 of 1973, s. 2.

- (a) all approvals required by law of the siting of the amenity in that position have been given; or
- (b) he indicates as part of that statement, if such is the case, that all or some of such approvals have not yet been given, or that he is not aware whether or not they have all been given.

Penalty: Two hundred dollars.

(2) In subsection (1) of this section—

“position” includes, in relation to railways and other means of transport, the route to be followed by that amenity;

“public amenity” includes roads, bridges, churches, shops, petrol stations, shopping centres, hotels, water supply, sewerage, light, power, gas, drainage, schools, hospitals, parks, reserves, swimming pools, railways, and other means of transport; and

“statement” includes a marking or indication in a brochure, pamphlet, or advertisement, issued, or in any sign publicly exhibited, before the sale.

House to house selling prohibited.

[No. 44 of 1933, s. 16.]

18. A person shall not go, or employ or procure another person to go, from house to house offering for sale or seeking offers for the purchase of vacant land, or for the purpose of persuading or inducing persons to go to inspect any vacant land with a view to purchase.

Penalty: Two hundred dollars.

Remedy of purchaser on contravention of s. 18.

[No. 44 of 1933, s. 17.]

19. Where a contract for the sale of land is made as a result of a contravention of section 18, the purchaser of the land under the contract may, by notice in writing served on the vendor of the land under the contract within fourteen days after the date of the making of the contract, rescind the contract and thereupon may, in a court of competent jurisdiction, recover from that vendor all moneys paid under the contract.

Heading added by No. 70 of 1974, s. 4.

Interpretation, etc.

Added by No. 70 of 1974, s. 4.

PART IVA.—DEALINGS IN UNDIVIDED SHARES IN LAND.

19A. (1) In this Part—

“offeror” includes invitor;

“option to purchase” includes a gratuitous option to purchase; and

“Registrar” means the Registrar of Companies¹ under the Companies Act, 1961 and includes any Deputy or Assistant Registrar of Companies under that Act.

1. Now Commissioner for Corporate Affairs, see Act No. 22 of 1975, s. 28(2).

(2) For the purposes of this Part—

- (a) an undivided share in land includes any interest or right, whether legal or equitable, in an undivided share in land and includes an option to purchase such an interest or right;
- (b) a reference to an interest in land is a reference to any interest in the land of whatever kind, legal or equitable, and whether represented by undivided shares or otherwise;
- (c) “offer to the public for purchase”, or “offer to the public options to purchase” or “invite the public to purchase” includes—
 - (i) offer to any section of the public for purchase, offer to any section of the public options to purchase, or invite any section of the public to purchase, whether the section of the public is selected as clients of the person making the offer or invitation, as the case requires, or in any other manner;
 - (ii) going from place to place, whether by appointment or otherwise, offering for purchase to the public or any member of the public, offering options to purchase to the public or any member of the public, or inviting the public or any member of the public to purchase, as the case requires; and
 - (iii) by telephone, offering to any member of the public for purchase, offering options to purchase to any member of the public, or inviting any member of the public to purchase, as the case requires; and
- (d) another person is an associate of an offeror where—
 - (i) if the offeror and that other person are both corporations, the corporations would, within the meaning of subsection (5) of section 6 of the Companies Act, 1961, be deemed to be related to each other;

- (ii) the offeror is a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to any interest in the land;
- (iii) the offeror is a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to any interest in the land;
- (iv) the offeror is a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to any interest in the land; or
- (v) the offeror is a body corporate that is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to any interest in the land,

but a person shall not be regarded as a person in accordance with whose directions or by whose instructions another person is accustomed to act by reason only that that other person acts on advice given by the firstmentioned person in a professional capacity.

(3) Without limiting the generality of paragraph (c) of subsection (1) of section 19B, a person shall, for the purposes of this Part, be regarded at any particular time as carrying on the business of selling undivided shares in land if within the immediately preceding period of twelve months, the total number of transactions entered into as vendor by that person and his associates or any one or more of

them for the sale of undivided shares in land exceeded three, except where the purchasers in each of those transactions are identical.

19B. (1) A person shall not directly or indirectly offer to the public for purchase, offer to the public options to purchase, or invite the public to purchase any undivided share in land unless—

Certain offers to the public prohibited.

Added by No. 70 of 1974, s. 5.

- (a) there is in force in relation to the undivided share a deed that is an approved deed under and for the purposes of Division 5 of Part IV of the Companies Act, 1961;
- (b) the offer or invitation relates to a specified building (whether then in existence or proposed to be erected) and any purchaser of the undivided share will have the right to the exclusive occupation or use of that building or a specified part of that building;
- (c) neither the offeror nor any of his associates is carrying on the business of selling or dealing in undivided shares in land; or
- (d) the Minister has, pursuant to section 19C, exempted the offer or invitation from the provisions of this Part.

Penalty: Imprisonment for twelve months or one thousand dollars.

(2) Proceedings for any offence against this section may be taken by the Registrar or, with the written consent of the Minister, by any person.

(3) Notwithstanding the provisions of any other Act, proceedings for any offence against this section may be brought within the period of three years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

(4) A person shall not be relieved from any liability to a purchaser of, or the holder of an option to purchase, an undivided share in land by reason of any contravention of this section.

(5) It is a defence to a complaint for an offence against this section for the defendant to show—

- (a) that at the time the offer or invitation was made it related to the total interest of the offeror and his associates, if any, in the land;
- (b) that the offeror and his associates, if any, proposed to sell that total interest in one transaction or grant an option to purchase that total interest in one transaction, as the case requires; and
- (c) that since the offer or invitation was first made after the coming into operation of the Sale of Land Act Amendment Act, 1974, neither the offeror nor any of his associates has, in any one transaction or in any number of simultaneously executed transactions which can fairly be regarded as one transaction, sold or granted options to purchase anything less than that total interest.

Transitional provision.
Added by No. 70
of 1974, s. 6.

19C. (1) Where—

- (a) prior to the coming into operation of the Sale of Land Act Amendment Act, 1974 but not later than the tenth day of September, 1974, a person had offered to the public for purchase, offered to the public options to purchase, or invited the public to purchase any undivided share or shares in land; and
- (b) the Minister is satisfied that—
 - (i) immediately prior to the coming into operation of the Sale of Land Act Amendment Act, 1974, that person had legal obligations or other commitments in respect of the land the subject of the offer or invitation by reason of which it would be unreasonable for the restrictions of this Part to apply to the making of further offers or invitations in relation to the land; or

- (ii) it would be contrary to the interests of persons who entered into contracts for the purchase of, or obtained options to purchase, undivided shares in the land prior to the coming into operation of the Sale of Land Act Amendment Act, 1974 that the provisions of this Part should apply so as to restrict the making of further offers or invitations by the offeror in relation to the land,

the Minister may, by notice published in the *Government Gazette* within twelve months after the coming into operation of the Sale of Land Act Amendment Act, 1974, exempt the offeror from the restrictions of this Part and in that event section 19D does not apply to any contract entered into, or any option granted, while that exemption remains in force.

(2) Where a person who was the owner of an undivided share in land on the tenth day of September, 1974, satisfies the Minister that it would be unreasonable for the provisions of this Part to apply so as to restrict him from making offers or invitations relating to the whole or any part of that undivided share, the Minister may exempt that person from the restrictions of this Part in relation to the whole or any part of that undivided share, and in that event section 19D does not apply to any contract entered into or any option granted by that person in relation to that undivided share or any part thereof while that exemption remains in force.

(3) Any exemption granted by the Minister pursuant to subsection (1) or subsection (2) of this section—

- (a) shall be granted subject to such conditions, if any, as the Minister determines and specifies in the instrument of exemption; and
- (b) may be revoked by the Minister at any time and shall, in any event, determine forthwith upon any breach of those conditions.

Rescission.

Added by No. 70
of 1974, s. 7.

19D. Where a contract for the sale of an undivided share in land is made but prior to the making of the contract an offer or invitation relating to the land was made in contravention of section 19B the purchaser under the contract—

- (a) by notice in writing served on the vendor under the contract within three years after the making of the contract, may rescind the contract; and
- (b) thereupon, may recover in a court of competent jurisdiction all moneys paid under the contract,

unless the vendor shows to the satisfaction of the court that—

- (c) the offer or invitation did not contribute to the making of the contract; or
- (d) the defence referred to in subsection (5) of section 19B would be available to him in any proceedings under that section concerning the offer or invitation.

PART V.—APPLICATION TO THE COURT BY VENDOR OR PURCHASER.

Application to
Court.

[No. 10 of 1878,
s. 9.]

20. A vendor or purchaser of any interest in land or their personal representatives may make an application to the Court by summons at chambers in respect of any requisitions, or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract) and the Court may make such order upon the application as to the Court may appear just, and may order how and by whom all or any of the costs of and incidental to the application are to be borne and paid.

PART VI.—RULES RELATING TO TITLE OF GENERAL LAW LAND.

Application of
this Part.

21. This Part does not apply to land or any estate or interest in land which is registered under the Transfer of Land Act, 1893.

22. In the completion of a contract of sale of land made after the coming into operation of this Act thirty years is, subject to any stipulation to the contrary in the contract, substituted as the period of commencement of title which a purchaser may require in the place of forty years, but earlier title than thirty years may be required in cases similar to those in which earlier title than forty years might have been required immediately prior to the coming into operation of this Act.

Thirty years title substituted for forty years. [No. 10 of 1878, s. 1.]

23. In the completion of a contract made after the coming into operation of this Act the obligations and rights of vendor and purchaser are, subject to any stipulation to the contrary in the contract, to be regulated by the following rules—

Rights of vendor and purchaser as to title. [No. 10 of 1878, s. 2.]

- (a) under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assignee is not entitled to call for the title to the freehold;
- (b) recitals, statements and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations twenty years old at the date of the contract, unless and except so far as they are proved to be inaccurate, are to be taken to be sufficient evidence of the truth of such facts, matters and descriptions;
- (c) the inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title is not an objection to title where the purchaser will, on the completion of the contract, have an equitable right to the production of such documents;
- (d) such covenants for production as the purchaser can and does require are to be furnished at his expense, but the vendor is to

bear the expense of perusal and execution on behalf of, or by himself, and on behalf of or by necessary parties other than the purchaser; and

- (e) where the vendor retains any part of an estate, to which any documents of title relate, he may retain such documents.

S. 4.

SCHEDULE.

Number of Act.	Title of Act.
42 Victoriae No. 10.	The Vendor and Purchaser Act, 1878.
43 Victoriae No. 3.	An Act to amend The Vendor and Purchaser Act, 1878.
44 of 1933.	Purchasers' Protection Act, 1933.
43 of 1934.	Purchasers' Protection Act Amendment Act, 1934.
41 of 1936.	Purchasers' Protection Act Amendment Act, 1936.
37 of 1946.	Purchasers' Protection Act Amendment Act, 1946.
57 of 1948.	Purchasers' Protection Act Amendment Act, 1948.
46 of 1940.	Sale of Land (Vendors' Obligations) Act, 1940.