
PURCHASERS' PROTECTION.

No. 44 of 1933.

(Affected by Acts No. 46 of 1940 and 113 of 1965.)

[As amended by Acts

No. 43 of 1934, assented to 4th January, 1935;

No. 41 of 1936, assented to 11th December, 1936;

No. 37 of 1946, assented to 24th January, 1947.

No. 57 of 1948, assented to 21st January, 1949.

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT relating to the protection of Purchasers.

[Assented to 4th January, 1934.]

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

1. This Act may be cited as the *Purchasers' Protection Act, 1933-1948.*

Short title.
No. 44 of
1933, s. 1.
Amended by
No. 57 of
1948, s. 2.
Operation.

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

3. In this Act, subject to the context—

“Contract” whenever herein used shall mean a contract for the sale and purchase of subdivisinal land.

Interpre-
tation.

“Deposit” means purchase money or other consideration passing from a purchaser to a vendor prior to or simultaneously with the execution of a contract.

“House” includes a farm, but does not include an office used for business purposes.

“Public utility” includes roads, bridges, water supply, light, power, drainage, schools, parks, reserves, railways, tramways, and other means of transport.

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

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

Representations.

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

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

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

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

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

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

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

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

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

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

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or after receipt of such request, within which to rectify such defect, or to procure and make available to the purchaser the assent in writing of the mortgagee or encumbrancer as requested by the purchaser.

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

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

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

Condition
in contract
of sale for
payment of
deposit
by the
purchaser.
Amended by
No. 113 of
1965, s. 8.

7. In every contract of sale of subdivisational land, a condition shall be inserted that the purchaser shall pay to the vendor on the execution by the purchaser of the contract of sale, a deposit of not less than ten dollars, or alternatively, five per centum of the total purchase price of the lands, whichever is the lesser sum. The vendor shall actually receive that deposit on such execution.

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

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

Obligation of vendor to have signature of purchaser on contract of sale attested.
Amended by No. 113 of 1965, s. 8.

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

Penalty: One hundred dollars.

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

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

Contracts by married women.

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

(3) Where a contract or agreement is repudiated under this section, all moneys whatsoever paid to the vendor under or in pursuance of such contract or agreement shall forthwith be repaid by the vendor to the married woman from whom he received the same.

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

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

Powers of court in proceedings to enforce contract.
Amended by No. 41 of 1936, s. 2; No. 37 of 1946, s. 2; No. 57 of 1948, s. 3.

10. (1) (a) For the purposes of this section—

"vendor" means the vendor mentioned in the contract, and his executors and administrators and assigns;

"purchaser" means the purchaser mentioned in the contract and his executors and administrators.

(b) If in any proceedings taken in any court—

for recovery of purchase money, or enforcement of any other remedy against the purchaser under the provisions of a contract, or for performance by the purchaser of his part of a contract,—

the court is satisfied—

that the payment of the purchase money, or the enforcement of the remedy against the purchaser, or performance by the purchaser of his part of the contract, will inflict hardship on the purchaser, by reason of his poverty or other inability to carry out his obligations under the contract or,—

on the application of the purchaser, that the amount of the valuation,—

made by the Commissioner of Taxation pursuant to the provisions of the Land and Income Tax Assessment Act, 1907-1945¹,—

¹ Now Land Tax Assessment Act, 1907-1968.

of the subdivisinal land, the subject of the contract, was, within three months prior to the application, less than fifty per centum of the purchase price under the contract;—

instead of adjudging—

that all or any part of the purchase money shall be paid, or that the remedy be enforced against the purchaser, or that the purchaser shall perform his part of the contract,—

the court, on the application of the purchaser—

- (i) in the case of subdivisinal land which can be restored to the vendor in substantially similar condition to that in which it was at the time of sale;

may order that—

- (A) the contract shall be cancelled;
and
 - (B) possession of the land shall be delivered to the vendor; and
 - (C) the amount of any consideration by way of purchase price, paid by or on behalf of the purchaser to the vendor, shall be forfeited to the vendor; and
 - (D) in addition, if the court thinks fit, that damages, not exceeding in amount one fourth part of the amount of the purchase price, shall be paid by the purchaser to the vendor, for non-performance of the purchaser's part of the contract;
- (ii) in the case of subdivisinal land which cannot be restored to the vendor in substantially similar condition to that in which it was at the time of sale because of its resumption pursuant to the provisions of any Act;

may order that—

- (A) the contract shall be cancelled;
and
- (B) the amount of any consideration by way of purchase price, paid by or on behalf of the purchaser to the vendor, shall be forfeited to the vendor; and
- (C) subject as hereinafter in this subsection provided, the amount of any compensation for the resumption of the interests of the vendor and the purchaser, shall be payable to the vendor; and
- (D) in addition, if the court thinks fit, that damages, not exceeding in amount one fourth part of the amount of the purchase price, shall be paid by the purchaser to the vendor, for non-performance of the purchaser's part of the contract:

Provided that in any order made pursuant to the provisions of this paragraph, the total of the amounts included pursuant to any of those provisions, contained in items (B), (C) and (D), shall not be in excess of the amount of the purchase price, but if in any order so made there be an excess, the order shall to the extent of that excess only, be a nullity, but otherwise shall be valid and operative;

- (E) when the total of—
the amount of any consideration by way of purchase price paid by the purchaser to the vendor,—
plus—

any amount payable as compensation for the resumption of the interests of the vendor and the purchaser,—

exceeds the purchase price,—

the vendor shall have only such part of that total as shall equal the purchase price and the purchaser shall have the balance of that total—

and the court may make such order by way of adjustment between the vendor and purchaser on that basis, as shall be necessary.

*(2) Any purchaser who is threatened with any such proceedings as are mentioned in the preceding subsection, or who, having had judgment awarded against him in any such proceedings, is threatened with execution or any other proceeding on or under the judgment, may make application in the prescribed manner to any court in which the vendor is entitled to bring such proceedings, or to the court in which judgment was obtained or out of which any warrant of execution or commitment thereunder is issued, and the court may on such application grant the purchaser the same relief, but subject to the same conditions as if proceedings had actually been taken by the vendor under the preceding subsection.

Provided that no such relief shall be granted after judgment, unless the court is satisfied—

- (a) that the proceedings in which judgment was obtained were not contested by the purchaser because of poverty; or
- (b) that evidence which the purchaser for any reason was unable to produce when judgment was given against him, is available;

OR

* It is enacted by subsection (2) of section 2 of the Act No. 41 of 1936, that this subsection is in substitution for the original subsection (2) and shall have effect as from the date of the commencement of the principal Act.

- (c) that the purchaser had not a reasonable opportunity of contesting the proceedings on which judgment was given against him by reason that—
- (i) he was in ill-health; or
 - (ii) he resided at such distance from the court that the court was not reasonably accessible to him; or
 - (iii) for any other reason, which the court deems sufficient.

Court may grant relief. Amended by No. 43 of 1934, s. 2.

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

Provided that no relief shall be granted under the preceding section in the case of a contract of sale entered into more than seven years before the fourth day of January, one thousand nine hundred and thirty-four.

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

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

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

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

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

13. The provisions of this Act shall apply and have effect in all cases of contracts to which this Act relates, notwithstanding any contract, agreement, or condition made or entered into to the contrary.

Prohibition of contracting out.

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

Restriction of application of Act.

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

Prohibition of promises to rebuy land or to resell land for a purchaser at a profit.

(a) knowingly makes any false representation;

Amended by No. 113 of 1965, s. 8.

or

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

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

shall be guilty of an offence.

Penalty: One hundred dollars.

Certain property offered for sale at houses to be available for inspection. Amended by No. 113 of 1965, s. 8.

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

Penalty: Two hundred dollars.

(2) Where a contract is made by reason of the acceptance of an offer made by a person making the same in contravention of subsection (1) of this section, every proprietor, vendor, promoter, or selling agent on whose behalf or for whose benefit such contract is made, shall be deemed to have procured such person to make such offer in contravention of the said subsection, unless and until it is proved that the act constituting the offence was committed without his knowledge or consent.

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

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

17. Where a contract is made by reason of the acceptance of an offer made by a person making the same in contravention of section sixteen of this Act, and in subsequent proceedings taken in any court in respect of such contract against the purchaser thereunder, it comes to the knowledge of the court

that such contract was made in consequence of or in the course of such contravention, the court shall declare such contract to be null and void, and may give such directions and make such orders as it may deem necessary or proper for repayment of purchase money paid under the contract upon the retransfer or redelivery of the property sold.
