



Western Australia

## **Sale of Land Act 1970**

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## Sale of Land Act 1970

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Western Australia

## **Sale of Land Act 1970**

**An Act to consolidate and amend the law relating to the sale of land.**

## **Part I — Preliminary**

**1. Short title**

This Act may be cited as the *Sale of Land Act 1970*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

[3. Deleted by No. 10 of 1998 s. 76.]

[4. Omitted under the Reprints Act 1984 s. 7(4)(f).]

**5. Interpretation**

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 2 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 28 days of the execution of the contract.

## **Part II — Sale of land under terms contract**

### **6. Restriction on rescission**

- (1) Notwithstanding any stipulation to the contrary, a terms contract shall not be determined or rescinded on account of a breach by the purchaser of any term of the contract unless and until the vendor has served on the purchaser a notice in writing specifying the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) and the purchaser has failed to do so.
- (2) The time referred to in subsection (1) 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 28 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.

### **7. Notification of condition of title**

- (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 judgment, order or memorial that is entered in the Register within the meaning of the *Transfer of Land Act 1893* or that is otherwise registered against the land.  
Penalty for this subsection: a fine of \$100 000.
- (2) In subsection (1) —  
**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.

*[Section 7 amended by No. 81 of 1996 s. 153(1); No. 59 of 2004 s. 141; No. 38 of 2016 s. 4.]*

**8. Limitation on encumbrances**

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

- (a) within the period of 28 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: a fine of \$100 000.

*[Section 8 amended by No. 38 of 2016 s. 5.]*

**9. Power of Court on application for leave to encumber the land**

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. Remedy of purchaser on contravention by vendor**

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.

## **Part III — Restrictions on sale of subdivisional land**

### **11. Interpretation**

In this Part, unless the contrary intention appears —

**ADI** means an authorised deposit-taking institution as defined in the *Banking Act 1959* (Commonwealth) section 5(1);

**approved form** means a form approved by the Registrar of Titles;

**Australian legal practitioner** has the meaning given in the *Legal Profession Act 2008* section 3;

**deposit holder** means a person —

- (a) who accepts or holds any deposit or other amount for and on behalf of one or more of the parties to a contract for the sale of land; and
- (b) who is any of the following —
  - (i) an Australian legal practitioner;
  - (ii) a real estate agent;
  - (iii) a settlement agent;

**future lot contract** means an executory contract for the sale and purchase of one or more lots to be created by subdivision where the vendor is a person —

- (a) who is not the proprietor of the lot or lots to which the contract relates; but
- (b) who will become, or will be entitled to become, the proprietor of that lot or those lots;

**lot** has the meaning given in the *Planning and Development Act 2005* section 4 except that, for the purposes of this Part, it includes —

- (a) a lot in relation to a strata scheme as defined in the *Strata Titles Act 1985*; and
- (b) a lot re-subdivided from lots or common property, or lots and common property, by the registration of a plan

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of re-subdivision under the *Strata Titles Act 1985* section 8; and

- (c) an area of land represented, by or on behalf of any person attempting to promote the sale of that area of land, to be an area of land that 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*;

**real estate agent** means a person who is licensed as a real estate agent under the *Real Estate and Business Agents Act 1978*;

**Registrar of Titles** means the person designated for the time being as the Registrar of Titles under the *Transfer of Land Act 1893* section 7;

**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 paragraph (a)(i), (ii) or (iii),

and **selling** and **sold** include corresponding meanings;

**settlement agent** means a person who is licensed as a settlement agent under the *Settlement Agents Act 1981*;

**vendor's condition** has the meaning given in section 13B(1);

**working day** means a day other than a Saturday, a Sunday or a public holiday.

[Section 11 amended by No. 38 of 2005 s. 15; No. 38 of 2016 s. 6.]

[12. Deleted by No. 40 of 1985 s. 4.]

**13. Restriction on sale of subdivisinal land**

- (1) A person who would, but for this Act, have the right to sell one or more lots in a subdivision or proposed subdivision, or one or more lots in the case of a subdivision or proposed subdivision effected or continued under the *Strata Titles Act 1985*, shall not sell any of such lots unless —
- (a) he is the proprietor thereof;
  - (b) he is selling as agent of the proprietor;
  - [(c) deleted]
  - (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 for this subsection: a fine of \$100 000.

- (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 with the Registrar of Titles.
- (3) For the purpose of this section an instrument or an application which was at the relevant time lodged as described in subsection (2) but was defective is to be taken to give as good an entitlement to be registered as proprietor as it would give if there were no 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 having been withdrawn from the registration process; or

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- (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.

*[Section 13 amended by No. 40 of 1985 s. 5; No. 81 of 1996 s. 153(1) and (2); No. 60 of 2006 s. 157; No. 38 of 2016 s. 7.]*

**13A. Relationship between section 13 and sections 13B to 13D**

Despite section 13, a person may sell one or more lots under a future lot contract as long as sections 13B to 13D are complied with.

*[Section 13A inserted by No. 38 of 2016 s. 8.]*

**13B. Requirement for future lot contract to include vendor's condition**

- (1) A future lot contract must include the condition (the *vendor's condition*) that before the close of the period specified in subsection (2), the vendor will become, or will be entitled to become, the proprietor of the lot or lots to which the contract relates.
- (2) The period referred to in subsection (1) is —
  - (a) the period of 6 months beginning with the day on which the future lot contract is executed by the parties or, if the parties execute the contract on different days, the later of those days; or
  - (b) any other period that the parties may specify in the future lot contract or in a variation to that contract as the applicable period for the purposes of subsection (1).
- (3) If a future lot contract does not include the vendor's condition required under subsection (1) —
  - (a) the contract is illegal and void; and



- (b) the purchaser may recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
  - (i) any deposit or other amount paid by the purchaser under the contract; and
  - (ii) if applicable, any interest accrued on the deposit or other amount.
  
- (4) For the purposes of subsection (1), a vendor is entitled to become the proprietor of the lot or lots to which the future lot contract relates if the vendor is entitled to be registered as proprietor of that lot or those lots under one or more registrable instruments or under one or more applications made under the *Transfer of Land Act 1893* which have been lodged with the Registrar of Titles.
  
- (5) An instrument or application that was at the relevant time lodged as described in subsection (4) but was defective is to be taken to give as good an entitlement to be registered as proprietor as it would give had there been no defect in the instrument or application if —
  - (a) the instrument has subsequently been registered or the application granted without having been returned by the Registrar of Titles or having been withdrawn from the registration process; or
  - (b) the Registrar of Titles certifies in writing that the defect was not of a substantial nature and that it has been remedied.
  
- (6) A vendor who enters into a future lot contract that does not include the vendor's condition required under subsection (1) commits an offence.

Penalty for this subsection: a fine of \$100 000.

*[Section 13B inserted by No. 38 of 2016 s. 8.]*

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**13C. Requirement for future lot contract to include warning**

- (1) A future lot contract must include a warning that contains a statement to the effect that the vendor is not the proprietor of the lot or lots to which the contract relates.
- (2) The warning required under subsection (1) must be in the approved form.
- (3) If a future lot contract does not include the warning required under subsection (1) —
  - (a) the contract is illegal and void; and
  - (b) the purchaser may recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
    - (i) any deposit or other amount paid by the purchaser under the contract; and
    - (ii) if applicable, any interest accrued on the deposit or other amount.
- (4) A vendor who enters into a future lot contract that does not include the warning required under subsection (1) commits an offence.

Penalty for this subsection: a fine of \$100 000.

*[Section 13C inserted by No. 38 of 2016 s. 8.]*

**13D. Requirement for future lot contract to provide that deposit or other amount payable by purchaser must be paid to deposit holder**

- (1) A future lot contract must provide that any deposit or other amount payable by the purchaser under the contract must be —
  - (a) paid by the vendor to a deposit holder specified in the contract within 2 working days after receipt of the payment from the purchaser; and
  - (b) held by the deposit holder on trust for the person entitled to receive it under the contract.

- (2) If a future lot contract does not include the provision required under subsection (1) —
- (a) the contract is illegal and void; and
  - (b) the purchaser may recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
    - (i) any deposit or other amount paid by the purchaser under the contract; and
    - (ii) if applicable, any interest accrued on the deposit or other amount.

*[Section 13D inserted by No. 38 of 2016 s. 8.]*

**13E. Obligations relating to deposit or other amount payable under future lot contract**

- (1) A vendor must pay to the deposit holder specified in a future lot contract any deposit or other amount paid by the purchaser under the contract within 2 working days after receipt of the payment from the purchaser.  
Penalty for this subsection: a fine of \$100 000.
- (2) If a vendor fails to comply with subsection (1), the purchaser may —
- (a) terminate the contract by notice in writing to the vendor; and
  - (b) recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
    - (i) any deposit or other amount paid by the purchaser under the contract; and
    - (ii) if applicable, any interest accrued on the deposit or other amount.

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- (3) A deposit holder must —
- (a) operate a trust account in an ADI to which all deposits or other amounts paid to the deposit holder either directly by a purchaser or by a vendor under subsection (1) must be deposited; and
  - (b) arrange for the trust account to be audited when required under section 13F(1); and
  - (c) hold the amounts in the trust account on trust for the purchaser until —
    - (i) the right to recover the deposit or other amount arises under subsection (2)(b), section 13B(3)(b), 13C(3)(b), 13D(2)(b) or 13I(4); or
    - (ii) the settlement of the relevant future lot contract; or
    - (iii) the completion of the transfer of the lot or lots to which the relevant future lot contract relates; or
    - (iv) the occurrence of any other circumstance that would entitle the vendor or purchaser to be paid the deposit or other amount under the relevant future lot contract.

Penalty for this subsection: a fine of \$100 000.

- (4) A deposit holder must repay the deposit or other amount if the right to recover the deposit or other amount arises under any of the provisions referred to in subsection (3)(c)(i).

Penalty for this subsection: a fine of \$100 000.

- (5) A deposit holder may deduct from any repayment to be made to the purchaser an amount due to the vendor under a future lot contract in respect of any period during which the purchaser was —
- (a) in occupation of the lot or lots to which the future lot contract relates; or

- (b) entitled to receive the rents and profits of that lot or those lots.

*[Section 13E inserted by No. 38 of 2016 s. 8.]*

**13F. Registrar of Titles may require audit of trust accounts**

- (1) The Registrar of Titles may from time to time require an audit of a deposit holder's trust accounts for the purpose of determining compliance with the requirements in section 13E.
- (2) A deposit holder must comply with a requirement for an audit under subsection (1).
- (3) An audit under subsection (1) must be carried out by a person (whether in the public or private sector) who the Registrar of Titles considers to be suitably qualified for the purpose.
- (4) If the deposit holder whose trust accounts are to be audited fails to arrange for the audit, then the Registrar of Titles may —
  - (a) engage a person (whether in the public or private sector) who the Registrar of Titles considers to be suitably qualified to carry out the audit; and
  - (b) require the deposit holder or any other person to provide access to the deposit holder's trust accounts and associated records for the purposes of the audit or, if access is refused within a reasonable time, apply to the Court for an order requiring access; and
  - (c) recover from the deposit holder the costs incurred by the Registrar of Titles in relation to the audit (including the costs of an application, if required, for an order under paragraph (b)).

*[Section 13F inserted by No. 38 of 2016 s. 8.]*

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**13G. All reasonable endeavours must be made to satisfy vendor's condition**

- (1) A vendor and, if applicable, a purchaser must make all reasonable endeavours to ensure that the vendor can satisfy the vendor's condition in a future lot contract.
- (2) Without limiting subsection (1), the vendor must make all reasonable endeavours before the expiry of the period specified in section 13B(2) to —
  - (a) obtain the necessary regulatory approvals for the subdivision or proposed subdivision; and
  - (b) create and lodge the necessary plans for the subdivision or proposed subdivision.
- (3) The vendor must give the purchaser reasonable information about the steps taken by or on behalf of the vendor to satisfy the vendor's condition within a reasonable time after receipt of a written request for the information from the purchaser.
- (4) Despite any agreement to the contrary, the provisions of subsections (1) to (3) must be taken to form part of every future lot contract.

*[Section 13G inserted by No. 38 of 2016 s. 8.]*

**13H. Consequences if vendor's condition is satisfied**

- (1) This section applies if the vendor's condition in a future lot contract is satisfied.
- (2) If this section applies —
  - (a) the vendor must give the purchaser notice in writing that the vendor's condition has been satisfied; and
  - (b) any deposit or other amount paid by the purchaser under the contract may be applied in accordance with the law.
- (3) The notice required under subsection (2)(a) must be given within 10 working days after the date on which the vendor's condition is satisfied.

- (4) If the vendor fails to give the notice required under subsection (2)(a) within the time specified in subsection (3), the vendor's condition is taken not to have been satisfied.

*[Section 13H inserted by No. 38 of 2016 s. 8.]*

**13I. Consequences if vendor's condition is not satisfied or is taken not to have been satisfied**

- (1) If a vendor's condition in a future lot contract is not satisfied —
- (a) the purchaser may terminate the contract by notice in writing to the vendor; or
  - (b) the vendor may terminate the contract by notice in writing to the purchaser but only if the vendor has complied with section 13G.
- (2) If the vendor's condition is taken not to have been satisfied under section 13H(4), the purchaser may terminate the contract by notice in writing to the vendor.
- (3) To avoid doubt, nothing in this section confers on the vendor the right to terminate a future lot contract if the vendor's condition is taken not to have been satisfied under section 13H(4).
- (4) If the contract is terminated under subsection (1)(a) or (b) or subsection (2), the purchaser may recover from the deposit holder specified in the contract or from any other person to whom the deposit was paid —
- (a) any deposit or other amount paid by the purchaser under the contract; and
  - (b) if applicable, any interest accrued on the deposit or other amount.

*[Section 13I inserted by No. 38 of 2016 s. 8.]*

**14. Restriction on sale of mortgaged subdivisioal land**

- (1) A person who has the right to sell one or more lots in a subdivision or proposed subdivision, or one or more lots in the

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case of a subdivision or proposed subdivision effected or continued under the *Strata Titles Act 1985*, 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.

Penalty for this subsection: a fine of \$100 000.

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

*[(a) deleted]*

(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 an Australian legal practitioner or to a licensee, as defined in section 2 of the *Land Agents Act 1921*<sup>2</sup>, 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) *mortgage* does not include any floating charge on the whole or any part of the undertaking or property of a corporation.

*[Section 14 amended by No. 40 of 1985 s. 6; No. 65 of 2003 s. 64(2); No. 21 of 2008 s. 702; No. 38 of 2016 s. 9.]*

## **15. Exemptions**

- (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 12 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), 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.
- (3) Where the Minister considers that a person had, immediately prior to the coming into operation of the *Acts Amendment (Strata Titles) Act 1985*<sup>1</sup>, 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 12 months after the coming into

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operation of the *Acts Amendment (Strata Titles) Act 1985*<sup>1</sup>, 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.

- (4) Where the Minister has granted an exemption under subsection (1), he may by 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.

*[Section 15 amended by No. 40 of 1985 s. 7.]*

## **Part IV — Offences in relation to sale of land**

### **16. Limitation on advertisement**

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 local planning scheme or improvement scheme, or any local law relating to planning, in force under the *Planning and Development Act 2005* or contrary to any local law in force under the *Local Government Act 1995*.

Penalty: a fine of \$100 000.

*[Section 16 amended by No. 14 of 1996 s. 4; No. 38 of 2005 s. 15; No. 28 of 2010 s. 36; No. 38 of 2016 s. 10.]*

### **17. Misrepresentation concerning public amenity**

- (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 —

- (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 for this subsection: a fine of \$100 000.

- (2) In subsection (1) —

***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

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

*[Section 17 amended by No. 9 of 1973 s. 2; No. 38 of 2016 s. 11.]*

**18. House to house selling prohibited**

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: a fine of \$100 000.

*[Section 18 amended by No. 38 of 2016 s. 12.]*

**19. Remedy of purchaser on contravention of s. 18**

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 14 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.

## **Part IVA — Dealings in undivided shares in land**

*[Heading inserted by No. 70 of 1974 s. 4.]*

### **19A. Interpretation, etc.**

- (1) In this Part —
- offeror*, includes invitor;
  - option to purchase* includes a gratuitous option to purchase; and
  - Registrar* means the Commissioner for Corporate Affairs appointed pursuant to section 4 of the *Companies (Administration) Act 1982*, and includes a Deputy or Assistant Commissioner for Corporate Affairs appointed pursuant to that Act, or a person acting in any such office.
- (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,

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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 are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth;
  - (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 section 19B(1)(c), 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 12 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 3, except where the purchasers in each of those transactions are identical.

*[Section 19A inserted by No. 70 of 1974 s. 4; amended by No. 10 of 1982 s. 28; No. 20 of 2003 s. 43.]*

**19B. Certain offers to the public prohibited**

- (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 —
- (a) there is in force in relation to the undivided share a managed investment scheme that is registered under Part 5C.1 of the *Corporations Act 2001* of the Commonwealth;
  - (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

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- (d) the Minister has, pursuant to section 19C, exempted the offer or invitation from the provisions of this Part.

Penalty for this subsection: a fine of \$100 000.

- (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 3 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 charge of an offence against this section for the accused 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*<sup>1</sup>, 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.

*[Section 19B inserted by No. 70 of 1974 s. 5; amended by No. 10 of 1982 s. 28; No. 20 of 2003 s. 44; No. 84 of 2004 s. 80 and 82; No. 38 of 2016 s. 13.]*



**19C. Transitional provision**

(1) Where —

- (a) prior to the coming into operation of the *Sale of Land Act Amendment Act 1974*<sup>1</sup> but not later than 10 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*<sup>1</sup>, 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*<sup>1</sup> 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 12 months after the coming into operation of the *Sale of Land Act Amendment Act 1974*<sup>1</sup>, 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 10 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

**s. 19D**

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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) —
- (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.

*[Section 19C inserted by No. 70 of 1974 s. 6.]*

**19D. Rescission**

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 3 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 section 19B(5) would be available to him in any proceedings under that section concerning the offer or invitation.

*[Section 19D inserted by No. 70 of 1974 s. 7.]*

## **Part V — Application to the Court by vendor or purchaser**

### **20. Application to Court**

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**

### **21. Application of this Part**

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. Thirty years title substituted for 40 years**

In the completion of a contract of sale of land made after the coming into operation of this Act 30 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 40 years, but earlier title than 30 years may be required in cases similar to those in which earlier title than 40 years might have been required immediately prior to the coming into operation of this Act.

### **23. Rights of vendor and purchaser as to title**

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 —

- (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 20 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.

**Part VII — Transitional provisions for *Sale of Land Amendment Act 2016***

*[Heading inserted by No. 38 of 2016 s. 14.]*

**24. Transitional provisions for *Sale of Land Amendment Act 2016***

- (1) In this section —  
***amendment Act*** means the *Sale of Land Amendment Act 2016*;  
***commencement day*** means the day on which sections 6 to 8 of the amendment Act come into operation;  
***future lot contract*** has the meaning given in section 11 (as amended by the amendment Act);  
***post-commencement future lot contract*** means a future lot contract entered into on or after the commencement day;  
***pre-commencement future lot contract*** means a future lot contract entered into before the commencement day.
- (2) Subject to section 13, a pre-commencement future lot contract continues in effect as if the amendment Act had not been enacted.
- (3) Sections 13A to 13I (as inserted by the amendment Act) apply to every post-commencement future lot contract.

*[Section 24 inserted by No. 38 of 2016 s. 14.]*

*[Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]*

## Notes

- <sup>1</sup> This is a compilation of the *Sale of Land Act 1970* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

| Short title  | Number and year | Assent      | Commencement  |
|--|-----------------|-------------|---|
| <i>Sale of Land Act 1970</i>   | 119 of 1970     | 10 Dec 1970 | 1 Feb 1971 (see s. 2 and <i>Gazette</i> 22 Jan 1971 p. 149)             |
| <i>Sale of Land Act Amendment Act 1973</i>   | 9 of 1973       | 25 May 1973 | 25 May 1973   |
| <i>Sale of Land Act Amendment Act 1974</i>   | 70 of 1974      | 9 Dec 1974  | 28 Feb 1975 (see s. 2 and <i>Gazette</i> 28 Feb 1975 p. 719)            |
| <b>Reprint of the Sale of Land Act 1970 approved 8 May 1978</b> (includes amendments listed above) |                 |             |   |
| <i>Companies (Consequential Amendments) Act 1982</i> s. 28   | 10 of 1982      | 14 May 1982 | 1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)         |
| <i>Acts Amendment (Strata Titles) Act 1985 Pt. II</i>  | 40 of 1985      | 13 May 1985 | 30 Jun 1985 (see s. 2 and <i>Gazette</i> 21 Jun 1985 p. 2188)           |
| <i>Local Government (Consequential Amendments) Act 1996</i> s. 4                                   | 14 of 1996      | 28 Jun 1996 | 1 Jul 1996 (see s. 2)   |
| <i>Transfer of Land Amendment Act 1996</i> s. 153(1) and (2)                                       | 81 of 1996      | 14 Nov 1996 | 14 Nov 1996 (see s. 2(1))   |
| <i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 76                              | 10 of 1998      | 30 Apr 1998 | 30 Apr 1998 (see s. 2(1))   |
| <b>Reprint of the Sale of Land Act 1970 as at 25 Jan 2002</b> (includes amendments listed above)   |                 |             |   |
| <i>Corporations (Consequential Amendments) Act (No. 2) 2003 Pt. 22</i>                             | 20 of 2003      | 23 Apr 2003 | 15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285) |

## Sale of Land Act 1970

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| Short title  | Number and year | Assent      | Commencement   |
|--|-----------------|-------------|--|
| <i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 64</i>                      | 65 of 2003      | 4 Dec 2003  | 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)   |
| <i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>                                   | 59 of 2004      | 23 Nov 2004 | 1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)   |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i> | 84 of 2004      | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))                             |
| <i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>       | 38 of 2005      | 12 Dec 2005 | 9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)   |
| <b>Reprint 3: The Sale of Land Act 1970 as at 19 May 2006</b> (includes amendments listed above) |                 |             |  |
| <i>Land Information Authority Act 2006 s. 157</i>  | 60 of 2006      | 16 Nov 2006 | 1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)   |
| <i>Legal Profession Act 2008 s. 702</i>  | 21 of 2008      | 27 May 2008 | 1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)   |
| <i>Approvals and Related Reforms (No. 4) (Planning) Act 2010 s. 36</i>                           | 28 of 2010      | 19 Aug 2010 | 22 Nov 2010 (see s. 2(b) and <i>Gazette</i> 19 Nov 2010 p. 5709)   |
| <i>Sale of Land Amendment Act 2016</i>   | 38 of 2016      | 22 Nov 2016 | s. 1 and 2: 22 Nov 2016 (see s. 2(a));<br>Act other than s. 1 and 2:<br>3 Apr 2017 (see s. 2(b) and <i>Gazette</i> 3 Feb 2017 p. 1107-8) |

<sup>2</sup> Repealed by the *Real Estate and Business Agents Act 1978*.



## 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) |
|---|--------------|
| ADI .....                                     | 11           |
| advertise .....                               | 5            |
| advertisement .....                           | 5            |
| amendment Act .....                           | 24(1)        |
| approved form .....                           | 11           |
| Australian legal practitioner .....           | 11           |
| charge .....                                  | 7(2)         |
| commencement day .....                        | 24(1)        |
| Court .....                                   | 5            |
| deposit .....                                 | 5            |
| deposit holder .....                          | 11           |
| future lot contract .....                     | 11, 24(1)    |
| invite the public to purchase .....           | 19A(2)       |
| land .....                                    | 5            |
| lot .....                                     | 11           |
| mortgage .....                                | 14(3)        |
| notice in writing .....                       | 7(2)         |
| offer to the public for purchase .....        | 19A(2)       |
| offer to the public options to purchase ..... | 19A(2)       |
| offeror .....                                 | 19A(1)       |
| option to purchase .....                      | 19A(1)       |
| position .....                                | 17(2)        |
| post-commencement future lot contract .....   | 24(1)        |
| pre-commencement future lot contract .....    | 24(1)        |
| proprietor .....                              | 11           |
| public amenity .....                          | 17(2)        |
| real estate agent .....                       | 11           |
| Registrar .....                               | 19A(1)       |
| Registrar of Titles .....                     | 11           |
| section .....                                 | 5            |
| sell .....                                    | 11           |
| selling .....                                 | 11           |
| settlement agent .....                        | 11           |
| sold .....                                    | 11           |
| statement .....                               | 17(2)        |
| terms contract .....                          | 5            |
| vendor's condition .....                      | 11, 13B(1)   |
| working day .....                             | 11           |