



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 138 of 1972

An Act to amend the Law of Property Act, 1936-1972.

[Assented to 7th December, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Law of Property Act Amendment Act (No. 2), 1972".

(2) The Law of Property Act, 1936-1972, as amended by this Act, may be cited as the "Law of Property Act, 1936-1972".

(3) The Law of Property Act, 1936-1972, is hereinafter referred to as "the principal Act".

Commencement.

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

Amendment of principal Act, s. 41—
Execution and attestation of deeds.

3. Section 41 of the principal Act is amended—

(a) by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) The signature or mark of a party to a deed, or of a person executing the deed on behalf of a party to the deed, must be attested by at least one witness who is not a party to the deed.;

and

(b) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) Where it appears in any proceedings—

(a) that a deed has not been duly executed by, or on behalf of, a party to the deed;

or

(b) that the signature or mark of a party to a deed, or a person acting on his behalf, has not been duly attested,

but that the party to the deed, or person acting on his behalf, purported or intended to execute the deed, and that party has taken a benefit under the deed, then, for the purposes of this section, the deed shall be deemed to have been duly executed by or on behalf of that party to the deed, and the execution shall be deemed to have been duly attested.

4. Section 55a of the principal Act is amended—

(a) by inserting after the passage “shall not be enforceable by the mortgagee” the passage “under a mortgage to which this section applies”;

(b) by striking out from subsection (1) the passage “twenty-eight days” wherever it occurs and inserting in lieu thereof, in each case, the passage “one month”;

(c) by striking out paragraph (b) of subsection (1) and inserting in lieu thereof the following paragraph:—

(b) where requirements are made of the mortgagor in the notice, he has failed to comply with those requirements.;

(d) by inserting in subsection (2) after the passage “a mortgage” the passage “to which this section applies”;

(e) by striking out from subsection (2) the passage “and the mortgagor has failed to comply with the requirements of the notice” and inserting in lieu thereof the passage “and where requirements are made of the mortgagor in the notice, he has failed to comply with those requirements”;

(f) by inserting after subsection (2) the following subsections:—

(2a) Upon the application of a mortgagee, a court by which the jurisdiction conferred by this section is exercisable may dispense, upon such terms and conditions as it thinks fit, with the requirement of notice under this section

Amendment of
principal Act,
s. 55a—
Enforcement of
rights against
mortgagor.

(2b) Where such a dispensation has been granted, the provisions of subsection (1) and subsection (2) of this section shall not apply in respect of the mortgage;

and

(g) by inserting after subsection (4) the following subsections:—

(5) This section applies to a mortgage of land (whether or not the land has been brought under the provisions of the Real Property Act) where—

(a) the mortgagor is a natural person;

and

(b) the land is appropriated for domestic or agricultural use.

(6) For the purposes of this section—

(a) land shall be deemed to be appropriated for domestic or agricultural use unless the mortgagor has made a statutory declaration that during the currency of the mortgage—

(i) no part of the land is to be used as a place of dwelling for the mortgagor's own personal occupation;

and

(ii) in the case of land exceeding two hectares in area, no part of the land is to be used by the mortgagor for the business of primary production;

and

(b) where such a declaration has been made it shall be conclusively presumed that the land is not appropriated for domestic or agricultural use.

(7) In this section—

“business of primary production” means the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry, or any other business consisting of the cultivation of the soil, the gathering in of crops, or the rearing of livestock.

(8) This section shall not apply to any mortgage granted before the commencement of the Law of Property Act Amendment Act (No. 2), 1972.

5. Section 55b of the principal Act is amended—

Amendment of
principal Act,
s. 55b—
Collateral
covenants.

- (a) by striking out from subsection (2) the passage “a mortgage” where it occurs for the second time and inserting in lieu thereof the passage “the mortgage”;
- (b) by striking out from subsection (2) the passage “become invalid” and inserting in lieu thereof the passage “have no further force or effect”;

and

- (c) by inserting in subsection (3) after the passage “the foreclosure” the passage “of the mortgage”.

6. Section 95a of the principal Act is amended by striking out the figures “1971” and inserting in lieu thereof the figures “1972”.

Amendment
principal Act,
s. 95a—
Dispositions of
property to
husband and
wife.

In the name and on behalf of Her Majesty, I hereby assent
to this Bill.

M. L. OLIPHANT, Governor