



REAL PROPERTY.

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No. 89 of 1973.
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ANALYSIS.

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 AN ACT to amend the *Real Property Act 1862*, the *Real Property Act 1886*, and the *Real Property Act 1893*.
 [22 January 1974.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

- 1—(1) This Act may be cited as the *Real Property Act 1973*. Short title, citation, and commencement.

(2) The *Real Property Act* 1862, as subsequently amended, is in this Act referred to as the Principal Act.

(3) Section nine of this Act shall commence on a date to be fixed by proclamation.

2 Section twelve of the Principal Act is repealed and the following section is substituted therefor:—

Powers and immunities of the Deputy Recorder.

“ 12. Anything that is by law or practice appointed, authorized, or required to be done by the Recorder may lawfully be done by the Deputy Recorder who, when so doing, has the same immunities and protection from suits as the Recorder.”

Other estates and interests when land brought under the provisions of this Act.

3 Section twenty of the Principal Act is amended—

(a) by inserting in subsection (2), after the numerals “ 1935 ”, the words “ or Division VII of Part IV of the *Companies Act* 1962 ”;

(b) by inserting, after subsection (5), the following subsection:—

“(5A) If an instrument is registered under Division VII of Part IV of the *Companies Act* 1962, the Recorder—

(a) is not bound to require production of the instrument for the purposes of paragraph (a) of subsection (4) of this section; and

(b) may comply sufficiently with that paragraph by dealing with a copy lodged under paragraph (b) of subsection (1) of section one hundred or section one hundred and seven of the *Companies Act* 1962 as if it were the instrument itself.”; and

(c) by inserting, after subsection (7), the following subsections:—

“(7A) Where, upon the bringing of land under the provisions of this Act, it appears to the Recorder that the land is subject to an equitable interest incapable of registration under this Act or to an equity, he shall, upon registering a certificate of title to the land, enter a caveat to protect the interest of the person entitled in equity or having an equitable right and shall give notice of the entry of the caveat to that person and to the registered proprietor.

“(7B) A caveat entered pursuant to subsection (7A) of this section—

- (a) may be withdrawn by the Recorder, upon proof to his satisfaction that the equitable interest or equity no longer exists, or by the person thereby protected; and
- (b) is otherwise subject to the same provisions as if it were a caveat entered by that person.”.

4 After section eighty-one of the Principal Act the following section is inserted:—

“81A. Where the personal representative of a deceased proprietor who has become registered as the proprietor of land pursuant to section sixty-three of the *Administration and Probate Act 1935* deals with the land, or an estate or interest therein, by way of—

Recorder not bound to verify personal representative's rights.

- (a) assent;
- (b) mortgage;
- (c) lease; or
- (d) transfer for value to a purchaser who does not appear on the face of the transfer to be a personal representative, or trustee of the will, of the deceased proprietor, or the spouse or child of any such personal representative or trustee,

the Recorder shall not be concerned to consider, or to call for any information concerning, the reason why the assent, mortgage, lease, or transfer is made, or as to the terms of the will, and, whether he has notice or not of its contents, he is entitled to assume that the personal representative is acting correctly and within his powers.”.

5 Section ninety-five of the Principal Act is repealed.

Execution of instruments by corporations.

6 Section one hundred and eleven of the Principal Act is amended by inserting in subsection (1), after the word “this”, the words “or any other”.

Recorder may state case for Supreme Court.

7 Section one hundred and thirty-three of the Principal Act is repealed and the following section is substituted therefor:—

“133—(1) The assurance fund is not liable for compensation for loss, damage, or deprivation—

Assurance fund not liable in certain cases.

- (a) occasioned by the breach by a registered proprietor of any trust, whether express, implied, or constructive;

- (b) where the same land has been included in two or more grants from the Crown;
- (c) arising out of a matter—
 - (i) into which the Recorder or Deputy Recorder is exonerated from inquiry; or
 - (ii) in respect of which either of them is protected from liability,
- by any enactment; or
- (d) occasioned by the inclusion of land with other land in the same certificate of title through misdescription of boundaries or parcels.

“(2) Paragraph (d) of subsection (1) of this section does not apply to protect the assurance fund where the person liable to compensation or damages for the inclusion—

- (a) is dead;
- (b) has absconded;
- (c) has become bankrupt within the meaning of the *Bankruptcy Act* 1966-1970 of the Commonwealth as from time to time amended or any Act passed in substitution therefor; or
- (d) has been certified by the Sheriff to be unable to pay the full amount and costs awarded in an action for recovery of that compensation or those damages.

“(3) In a case to which paragraph (d) of subsection (2) of this section applies, the assurance fund is liable for such amount only as the Sheriff has failed to recover from the judgment debtor.”.

8 After section one hundred and thirty-four of the Principal Act the following section is inserted:—

Protection of Recorder.

“ 134A The Recorder, in registering an instrument or in bringing land under the provisions of this Act—

- (a) need not make any inquiry not required of;
- (b) is not bound by any notice that would not bind; and
- (c) has the same protection as if he were,

a purchaser as defined in the *Conveyancing and Law of Property Act* 1884.”.

9 Section one hundred and fifty-seven of the Principal Act is repealed and the following section is substituted therefor:—

Priority notices.

“ 157—(1) Any of the following persons may lodge with the Recorder a priority notice in accordance with subsection (2) of this section, namely:—

- (a) A registered proprietor;
- (b) A person entitled to deal with land subject to the provisions of this Act;
- (c) A person entitled to execute and lodge instruments as and in the cases prescribed under subsection (2) of section thirty-nine;
- (d) The solicitor for a person referred to in paragraph (a), paragraph (b), or paragraph (c) of this subsection; and
- (e) A person authorized in writing so to do by any of the persons referred to in paragraphs (a), (b), (c), and (d) of this subsection.

“(2) A priority notice—

- (a) shall be in the prescribed form;
- (b) limits a period (not exceeding thirty days) after the day on which the notice is lodged with the Recorder during which priority shall be reserved for registration of the instrument or application specified in the notice;
- (c) shall, when lodged, be dealt with by the Recorder in the prescribed manner; and
- (d) operates to prevent registration of any instrument or document lodged with, or served on, the Recorder after the lodgment of the priority notice, except as is otherwise provided in subsections (3), (5), and (6) of this section.

“(3) If an instrument or application specified in a priority notice is lodged with the Recorder within the period limited in the priority notice (or if that period expires on a day on which the office of the Recorder is closed, on the next day thereafter on which the office is open) and is—

- (a) then in order for registration; or
- (b) put in order for registration within the period limited in the priority notice,

that instrument or application shall, subject to subsection (4) of this section but notwithstanding any other provision of this or any other Act to the contrary, be registered, notwithstanding the lodgment with, or service on, the Recorder after the lodgment of the priority notice of any other instrument or document.

“(4) Subsection (3) of this section does not authorize the registration of an instrument executed by a person entitled to be registered as the proprietor of land under this Act otherwise than as and in the cases prescribed under subsection (2) of section thirty-nine.

“(5) A priority notice ceases to have effect—

(a) after the expiration of the period limited by the notice; or

(b) when all the instruments and applications specified in the notice have been lodged with the Recorder and—

(i) are registered;

(ii) are withdrawn from registration; or

(iii) have been refused registration,

as the case may be,

whichever first happens; and thereafter instruments or documents lodged with, or served on, the Recorder while the priority notice was effective in respect of the land to which the priority notice relates shall be dealt with in the same manner, and shall have the same priority as between themselves, and shall be as effectual, as if the priority notice had not been lodged.

“(6) Notwithstanding the lodgment of a priority notice, the Recorder may register an instrument lodged by the Crown or a statutory public or local authority—

(a) pursuant to a power—

(i) to resume or take land;

(ii) to restrict the use or alienation of land;

(iii) to erect works on land; or

(iv) to give notice of its intention to do any one or more of those things; or

(b) in prescribed circumstances or subject to prescribed conditions.

“(7) Where an instrument or caveat—

(a) is intended to affect land in respect of which a priority notice has been lodged with the Recorder; and

(b) has been lodged with the Recorder,

the Recorder shall, as soon as practicable, notify the person who has lodged the instrument or caveat that it is affected by the priority notice.

“(8) Notwithstanding any other provision of this section, a person by whom or on whose behalf a priority notice has been lodged may, notwithstanding the notice, consent to the registration of a specified instrument, and the instrument to the registration of which he has consented may, if the consent is lodged with it, be registered as if the priority notice had not been lodged.

“(9) For the purposes of this section, ‘ registration ’ includes all methods of recording in the register book and where it refers to an application means the registration of the applicant as proprietor.

“(10) A person who has lodged a priority notice may withdraw it by lodging with the Recorder a notice of withdrawal in the prescribed form.

“(11) The Recorder shall not be concerned to satisfy himself that a person lodging a priority notice is a person entitled or authorized to do so pursuant to subsection (1) of this section.

(12) A person lodging a priority notice with the Recorder who is not entitled or authorized to do so under this section is liable to make to any person who may have sustained damage thereby such compensation as a judge, on a summons in chambers, deems just.

“(13) The costs of such a summons and all proceedings in connection therewith shall be in the discretion of the judge, and execution may issue for the amount of compensation, if any, and of costs ordered by him to be paid in such and the like manner as if the amount thereof had been recovered by a judgment in an action in the Supreme Court.

“(14) A person having an interest in land to which a priority notice relates may take out a summons to the person who lodged the notice to show cause to a judge in chambers why the priority notice should not be removed.

“(15) On the return of a summons under subsection (14) of this section, the judge may refer the matter to the Supreme Court, and the judge or the Court may make such an order as to him or it seems just, and may provide for the costs of the proceedings.

“(16) The Recorder shall, upon being served with an order made under subsection (15) of this section, give effect to the order so far as it relates to matters under his control.”.

10 The first schedule to the Principal Act is amended by omitting forms IV to VII and substituting therefor the following forms:—

Amendments
of the first
schedule.

" FORM IV.
(Section 42.)

Tasmania.

" MEMORANDUM OF TRANSFER.

Grant or certificate.	Vol.	Fol.	If the land to be transferred is part only of an existing title, describe the part. Note here any mortgages, leases, &c., to which this transfer is to be subject.
<p>DESCRIPTION OF LAND. The land to be transferred is ALL the land comprised in the titles listed opposite, unless the contrary is expressed.</p>			
<p>ESTATE or INTEREST intended to be transferred.</p>			
<p>TRANS-FERROR (Full name, postal address, and occupation).</p>			
<p>TRANSFeree (Full name, postal address, and occupation). See Note 1.</p>			
<p>CONSIDERA-TION (to be expressed in words). See Note 2.</p>			

RULE UP ALL BLANK SPACES BEFORE SIGNING

THE TRANSFERROR for the consideration set forth herein (receipt of which from the Transferee is hereby acknowledged*) HEREBY TRANSFERS * See Note 3. to the TRANSFEREE the estate or interest herein specified in the land above described.†

† Here set forth any easements to be appurtenant to the land, or to which it is to be subject, commencing with the words ' Together with ' or ' Subject to ' as the case may require.

Restrictive covenants may only be created by a separate instrument.

In a transfer for value, a fencing provision may be included here in the form: The Transferror hereunder shall not be required to fence.

RULE UP ALL BLANK SPACES BEFORE SIGNING

Dated this _____ day of _____ 19 .

SIGNED by the Transferror }
in the presence of }

(This space for impressed stamps.)

NOTES.

1. If the transfer is to two or more persons, state whether they are to hold as joint tenants or as tenants in common.
If as tenants in common, specify the shares.
2. If the land is to be transferred subject to an existing mortgage, set out the consideration in the following manner: ' The sum of _____ dollars paid to the Transferror and the principal sum of _____ dollars now owing on Mortgage No. _____ .'
3. If the consideration is not money, this acknowledgment may be deleted.
4. *No alteration should be made by erasure.* Alterations must be verified by signature or initials of the signatories and attesting witnesses in the margin.



" FORM V.
(Section 47.)

Tasmania.

" MEMORANDUM OF LEASE.

THE LESSOR named herein leases and THE LESSEE named herein takes the land hereunder described for the term at the rent and upon the terms and conditions hereinafter mentioned.

Grant or certificate.	Vol.	Fol.	If the land to be leased is part only of an existing title, describe the part.
DESCRIPTION OF LAND (by reference to GRANT or CERTIFICATE OF TITLE intended to be leased). Note any subsisting mortgages to which the lease is subject.			

LESSOR
(Full name,
postal
address, and
occupation).

LESSEE
(Full name,
postal address,
and
occupation).

Estate of the
Lessor in the
above land:

Estate in fee simple (*or, as the case may be*).

Date of
commencement
of lease:

Term of lease:

Rent:

This lease is subject to the covenants and powers implied under sections 49 and 50 of the *Real Property Act 1862* (unless hereby negated or modified) and also to the following covenants and conditions:—

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Dated this day of 19 .

SIGNED by the Lessor }
in the presence of }

SIGNED by the Lessee }
in the presence of }

(This space for impressed stamps.)

“FORM VI.
(Section 52 (1).)

Tasmania.

“MEMORANDUM OF MORTGAGE.

Grant or certificate.	Vol.	Fol.	Mortgages, leases, &c., to which this mortgage is to be subject.
<p>DESCRIPTION OF LAND</p> <p>The land intended to be mortgaged is ALL the land comprised in the titles listed opposite, unless the contrary is expressed.</p>			

ESTATE mortgaged.

Estate in fee simple (*or, as the case may be*).

MORTGAGOR (Full name, postal address, and occupation).

MORTGAGEE (Full name, postal address, and occupation).

PRINCIPAL SUM:

How and when principal sum is to be repaid:

Rate of interest to be paid:

How interest is payable:

In consideration of the above principal sum lent to the Mortgagor by the Mortgagee (receipt of which sum is hereby acknowledged) the Mortgagor—**FIRSTLY**, for the purpose of securing to the Mortgagee the payment in manner above-mentioned of the said principal sum and interest thereon, **HEREBY MORTGAGES** to the Mortgagee all the estate and interest of the Mortgagor in the land above described.

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SECONDLY, covenants with the Mortgagee as follows:—
(Here set forth additional covenants, if any.)

And the Mortgagor hereby attorns tenant to the Mortgagee at the rent of

Dated this day of 19 .

SIGNED by the Mortgagor {
 in the presence of }

“ FORM VII.
(Section 52 (2).)

Tasmania.

“ MEMORANDUM OF INCUMBRANCE.

DESCRIPTION OF LAND
The land intended to be incumbered is ALL the land comprised in the titles listed opposite, unless the contrary is expressed.

Grant or certificate.	Vol.	Fol.	Mortgages, leases, &c., to which this instrument is to be subject.

ESTATE incumbered.

Estate in fee simple (*or, as the case may be*).

Registered proprietor of the above land (Full name, postal address, and occupation).

INCUMBRANCER, i.e., the person for whose benefit the land is incumbered (Full name, postal address, and occupation).

* Insert 'sum of money', 'annuity', or 'rent-charge', as the case may be.

The abovenamed Registered Proprietor hereby incumbers the land above described for the benefit of the Incumbrancer with the * to be raised and paid at the times and in the manner following, that is to say:—

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RULE UP ALL BLANK SPACES BEFORE SIGNING

AND, subject as aforesaid, the Incumbrancer shall be entitled to all powers and remedies given to incumbrancers by the *Real Property Act 1862*.

Dated this day of 19 .

SIGNED by the Registered Proprietor }
in the presence of }

”.

11 Section twenty-nine of the *Real Property Act 1886* is repealed. Attestation of instruments.

12 Section seventeen of the *Real Property Act 1893* is amended by omitting therefrom the word “ mention ” and substituting therefor the word “ mentioned ”. Copy of fi. fa. must be registered before transfer from Sheriff produced for registration.