

# Sale of Land (Allotments) Bill (No. 3)

No.

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# LEGISLATIVE COUNCIL

Read 1° 19 November 1985

*(Brought from the Legislative Assembly)*

(No. 3)

## A BILL

*for*

An Act to amend the *Sale of Land Act* 1962 with respect to the preselling of allotments of land and to amend the *Strata Titles Act* 1967, the *Transfer of Land Act* 1958, the *Local Government Act* 1958 and the *Building Control Act* 1981 and for other purposes.

### **Sale of Land (Allotments) Act 1985**

The Parliament of Victoria enacts as follows:

#### **Purpose.**

1. The purpose of this Act is—
  - 5 (a) to facilitate the sale of land prior to approval of a plan of subdivision or strata subdivision; and
  - (b) to simplify the procedures involved in the resealing of plans of subdivision.

#### **Commencement.**

- 10 2. This Act shall come into operation on a day or days to be proclaimed.

#### **Principal Act.**

3. In this Act the *Sale of Land Act* 1962 is called the Principal Act.

Act No. 6975.  
Reprinted to No.  
9858.  
Subsequently  
amended by No.  
10087.

**Sale of subdivided land.****4. Section 9 of the Principal Act is amended as follows:****(a) For sub-section (1) substitute—**

“(1) If—

(a) a notice of intention to subdivide land into three or more allotments in the form of the Thirtieth Schedule to the *Local Government Act 1958* has been given (whether before or after the commencement of the *Sale of Land (Allotments) Act 1985*); or

(b) in respect of any land such a notice is required to be given—

a person shall not sell such an allotment unless—

**(c) the land—**

(i) is under the operation of the *Transfer of Land Act 1958*; or

(ii) is the subject of an application to bring the land under the operation of the *Transfer of Land Act 1958* and the conditions and requirements relating to the making of the application and to the lodging of the plan of subdivision in the Office of Titles prescribed by the regulations have been complied with; and

(d) the allotment is on a plan of subdivision which has been—

(i) sealed by the council of the municipality concerned; and

(ii) approved by the Registrar pursuant to section 97 of the *Transfer of Land Act 1958*.”;

(b) In sub-section (3), for “The Registrar” substitute “For the purposes of section 29 of the *Cluster Titles Act 1974*, the Registrar”.

(c) Sub-sections (4) and (5) are repealed.

**New sections 9AA to 9AF inserted.****5. After section 9 of the Principal Act insert—****Sale of land prior to approval of plan.**

‘9AA. (1) Section 9 (1) (d) (ii) does not apply to the sale of an allotment on a plan of subdivision where—

(a) the contract for the sale of that allotment provides that the deposit moneys payable by the purchaser are to be paid—

- (i) to a solicitor or licensed estate agent acting for the vendor to be held by the solicitor or licensed estate agent on trust for the purchaser until the approval of the plan of subdivision; or
- 5 (ii) into a special purpose banking account in a bank in Victoria specified by the vendor in the contract in the joint names of the purchaser and the vendor until the approval of the plan of subdivision; and
- 10 (b) the deposit moneys payable under the contract do not exceed 10 per cent of the purchase price of the allotment.
- (2) The deposit moneys paid by the purchaser prior to the approval of the plan under a prescribed contract of sale of an allotment shall be paid (as the case requires)—
- 15 (a) to the solicitor or licensed estate agent acting for the vendor; or
- (b) into a special purpose banking account in the bank in Victoria specified in the contract in the joint names of the purchaser and the vendor.
- 20 (3) A banking account established under sub-section (2) (b) may be drawn upon only with the signature of both the vendor and the purchaser or the personal representative of the vendor or purchaser (as the case may be).
- (4) Nothing in this section shall impose any additional liability upon the bank in respect of any money deposited pursuant to
- 25 sub-section (2) (b).
- (5) In this section and in sections 9AB to 9AE “**approval**” in relation to a plan of subdivision means the approval of the plan by the Registrar under section 97 of the *Transfer of Land Act 1958*.
- 30 (6) In this section and in section 9AF “**deposit moneys**” in relation to the sale of an allotment includes any moneys which are part of the purchase price received by the vendor or on behalf of the vendor before the purchaser becomes entitled to a transfer or conveyance of the allotment and, in the case of any moneys paid into a special purpose
- 35 banking account pursuant to sub-section (2) (b), includes any interest from time to time accruing to that account in respect of those moneys.
- (7) In this section and in sections 9AB to 9AF “**prescribed contract of sale**” means a contract of sale of a kind referred to in sub-section (1) of this section.’

#### Disclosure of works.

- 40 “9AB. (1) The vendor shall disclose in a prescribed contract of sale of an allotment details of any works affecting the natural surface level of the land in the allotment or any land abutting the allotment which is in the same subdivision as the allotment which to the vendor’s knowledge—

- (a) have been carried out on that land after the sealing of the plan of subdivision and before the date of the contract; or
- (b) are at the date of the contract being carried out or proposed to be carried out on that land.

(2) The vendor under a prescribed contract of sale of an allotment shall disclose to the purchaser details of any works affecting the natural surface level of the land in the allotment or of any land abutting the allotment which is in the same subdivision as the allotment which have not been disclosed in the prescribed contract of sale and which to the vendor's knowledge— 5  
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- (a) have been carried out on that land after the date of the contract and before the approval of the plan of subdivision; or
- (b) after the date of the contract and before the approval of the plan of subdivision have been commenced to be carried out or are proposed to be carried out on the land. 15

(3) The vendor shall make a disclosure under sub-section (2) in writing as soon as practicable after the details required to be disclosed come to the knowledge of the vendor.

(4) If— 20

- (a) any works referred to in sub-section (1) or (2) have been, are being or are to be carried out at the direction of a municipality or public authority; and
- (b) the vendor has been required to submit plans of the works or proposed works to the municipality or public authority— 25

the vendor shall—

- (c) in the case of a disclosure under sub-section (1), include a copy of the plans in the prescribed contract of sale; and
- (d) in the case of a disclosure under sub-section (2), provide the purchaser with a copy of the plans at the time of that disclosure. 30

(5) If the vendor under a prescribed contract of sale knowingly or recklessly—

- (a) supplies false information to the purchaser under this section; or 35
- (b) fails to supply all the information required to be supplied to the purchaser under this section—

the vendor shall be guilty of an offence and liable to a penalty of not more than 50 penalty units.”.

**Amendments to plan.** 40

“9AC. (1) If after a prescribed contract has been entered into and before the approval of the relevant plan of subdivision an amendment to the plan is required by the Registrar or requested by the vendor, the

vendor shall within 14 days after the receipt of the requirement of the Registrar or the making of the request by the vendor (as the case requires) advise the purchaser in writing of the proposed amendment.

- 5 (2) The purchaser may rescind a prescribed contract of sale within 14 days after being advised by the vendor under sub-section (1) of an amendment to the plan of subdivision which will materially affect the allotment to which the contract relates.”.

**Possession.**

- 10 “9AD. (1) The purchaser under a prescribed contract of sale is not entitled to possession of the allotment to which the contract relates before the approval of the relevant plan of subdivision.

- 15 (2) The vendor under a prescribed contract of sale shall not require the purchaser under the contract to take possession of the allotment to which the contract relates before the approval of the relevant plan of subdivision.

Penalty: 50 penalty units.

- (3) The vendor shall allow the purchaser under a prescribed contract of sale reasonable access to the allotment for any purpose connected with the proposed development or use of the allotment.”.

20 **Rescission of prescribed contract.**

“9AE. (1) If the vendor under a prescribed contract of sale of an allotment fails to comply with section 9AA or 9AB the purchaser may rescind the contract of sale at any time before the approval of the plan of subdivision.

- 25 (2) If the plan of subdivision is not approved within 12 months after the date of the prescribed contract of sale of an allotment on that plan of subdivision, the purchaser may, at any time after the expiration of that period of 12 months but before the plan is so approved, rescind the contract.”.

30 **Repayment of deposit moneys.**

“9AF. (1) If—

- 35 (a) the vendor rescinds a prescribed contract of sale of an allotment as a result of a default by the purchaser, the vendor shall be immediately entitled to be paid the deposit money in the vendor’s own right; or
- (b) the purchaser rescinds a prescribed contract of sale of an allotment as a result of a default by the vendor or pursuant to section 9AC or 9AE, the purchaser shall be entitled to the immediate return of the deposit moneys.

- 40 (2) Nothing in sub-section (1) shall limit or affect the power of the court—

- (a) to order the repayment of the deposit moneys (whether that order is made pursuant to section 49 (2) of the *Property Law Act 1958* or otherwise); or
- (b) to relieve a purchaser against forfeiture of the deposit.”.

#### Arbitration of disputes.

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6. (1) After section 14A of the Principal Act insert—

#### Further powers of arbitrator with respect to subdivisinal land.

“14B. (1) If any difference or dispute arises between the vendor and the purchaser with respect to—

- (a) the non-compliance by either party with any of the requirements of sections 9AA to 9AF; or 10
- (b) a purported rescission by the purchaser of the contract of sale pursuant to section 9AC or 9AE—

either party may refer the difference or dispute to an arbitrator for determination. 15

(2) Without affecting the generality of section 21, the arbitrator may make an order under this section requiring the vendor to pay compensation to the purchaser in respect of any loss suffered by the purchaser arising out of the contract.”.

- (2) In section 14A (1) of the Principal Act, paragraph (a) is repealed. 20

#### Holding of deposit moneys.

7. In section 27 (11) of the Principal Act after “8A” insert “9AA”.

#### Vendor’s statement.

8. After section 32 (3) (b) of the Principal Act insert—

“(ba) in the case of land which is the subject of a subdivision other than a subdivision referred to in paragraphs (c), (d) or (e), a copy of the plan of subdivision which has been approved by the Registrar under section 97 of the *Transfer of Land Act 1958*, or where the plan has not been approved, a copy of the plan of subdivision which has been sealed by the council of the municipality concerned together with details of any amendments proposed to the sealed plan.”. 25 30

#### Amendment of section 7 of the *Strata Titles Act 1967*.

9. For sub-sections (1) to (5) of section 7 of the *Strata Titles Act 1967* there shall be substituted the following sub-sections: 35

‘(1) A person shall not sell a unit before the relevant plan of strata subdivision has been sealed by the council of a municipality and—

(a) approved by the Registrar pursuant to section 97 of the *Transfer of Land Act 1958*; or

(b) registered under Part II. of this Act.

(2) Sub-section (1) shall not apply to the sale of a unit if—

(a) the contract for the sale of the unit provides that the deposit moneys payable by the purchaser are to be paid—

(i) to a solicitor or licensed estate agent acting for the vendor to be held by the solicitor or licensed estate agent on trust for the purchaser until the plan of strata subdivision has been so approved or registered; or

(ii) into a special purpose banking account in a bank in Victoria specified by the vendor in the contract in the joint names of the purchaser and the vendor until the plan of subdivision has been so approved or registered; and

(b) the deposit moneys payable under the contract do not exceed 10 per cent of the purchase price of the unit.

(3) The deposit moneys paid by the purchaser prior to the approval or registration of the plan under a prescribed contract of sale of a unit shall be paid (as the case requires)—

(a) to the solicitor or licensed estate agent acting for the vendor; or

(b) into a special purpose banking account in Victoria specified in the contract in the joint names of the purchaser and the vendor.

(4) A banking account established under sub-section (3) (b) may be drawn upon only with the signature of both the vendor and the purchaser or the personal representative of the vendor or purchaser (as the case may be).

(5) Nothing in this section shall impose an additional liability upon the bank in respect of any money deposited pursuant to sub-section (3) (b).

(5A) In this section and in sections 7AA, 7AB and 7AC—

“**Approval**” in relation to a plan of strata subdivision means approval by the Registrar under section 97 of the *Transfer of Land Act 1958*.

“**Prescribed contract of sale**” in relation to a unit means a contract of sale of a kind referred to in sub-section (2).

“**Registration**” in relation to a plan of strata subdivision means registration of the plan under Part II. of this Act.

(5B) In this section and section 7AC “**deposit moneys**” in relation to a prescribed contract for the sale of a unit includes any moneys which are part of the purchase price received by the vendor or on behalf of the vendor before the purchaser becomes entitled to a transfer of the



unit and, in the case of any moneys paid into a special purpose banking account pursuant to sub-section (3) (b), includes any interest from time to time accruing to that account in respect of those moneys.

**New sections 7AA, 7AB and 7AC inserted into the *Strata Titles Act 1967*.**

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**10. After section 7 of the *Strata Titles Act 1967* insert—**

**Amendments to plan.**

“7AA. (1) If after a prescribed contract has been entered into and before the approval of the relevant plan of strata subdivision or the registration of the plan an amendment to the plan is required by the Registrar or requested by the vendor, the vendor shall within 14 days after the receipt of the requirement of the Registrar or the making of the request by the vendor (as the case requires) advise the purchaser in writing of the proposed amendment.

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(2) The purchaser may rescind the prescribed contract of sale within 14 days after being advised by the vendor under sub-section (1) of an amendment to the plan of strata subdivision which will materially affect the unit to which the contract relates.”.

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**Rescission of prescribed contract.**

“7AB. (1) If the vendor under a prescribed contract of sale of a unit fails to comply with section 7, the purchaser may at any time before the plan of strata subdivision is approved or registered, rescind the contract of sale.

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(2) If the plan of strata subdivision is not so approved or registered within 12 months after the date of the prescribed contract of sale of a unit on that plan of strata subdivision the purchaser may, at any time after the expiration of that period of 12 months but before the plan is so approved or registered, rescind the contract.”.

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**Repayment of deposit moneys.**

“7AC. (1) Where—

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(a) the vendor rescinds a prescribed contract of sale as a result of a default by the purchaser, the vendor shall be immediately entitled to be paid the deposit moneys in the vendor’s own right; or

(b) the purchaser rescinds a prescribed contract of sale as a result of a default by the vendor or pursuant to section 7AA or 7AB the purchaser shall be entitled to the immediate return of the deposit moneys.

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(2) Nothing in sub-section (1) shall limit or affect the power of the court—

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- (a) to order the repayment of the deposit moneys (whether that order is made pursuant to section 49 (2) of the *Property Law Act 1958* or otherwise); or
- (b) to relieve a purchaser against forfeiture of the deposit.

5 (3) If a purchaser rescinds a prescribed contract of sale under section 7AA or 7AB, the purchaser shall be liable to pay an occupation rent for the period (if any) during which the purchaser was in actual occupation of the unit or entitled to the receipt of the rents and profits thereof.”.

**Amendment of the *Transfer of Land Act 1958*.**

10 11. In section 97 (2A) of the *Transfer of Land Act 1958* paragraph (b) is repealed.

**New section 569BAA inserted in the *Local Government Act 1958*.**

12. After section 569B of the *Local Government Act 1958* insert—

**Resealing of plans.**

15 ‘569BAA. (1) If any person requires an amendment to a sealed plan of subdivision before the approval of the plan by the Registrar of Titles under section 97 of the *Transfer of Land Act 1958*, that person may apply to the council for its consent to the amendment and resealing of the plan.

20 (2) Within 7 days after an application, is made to the council under sub-section (1), the engineer shall refer the amended plan to any relevant authority specified in section 569B (2) for the consent of that authority to the amendment.

25 (3) If within 14 days after the referral of the amended plan to a relevant authority under sub-section (2), no consent or refusal has been received from the authority, the authority shall be deemed to have consented to the amendment.

30 (4) The council shall not reseal the amended plan if a relevant authority to which the plan has been referred under sub-section (2) has refused to consent to the amendment.

(5) The council, within 45 days after receipt of the amended plan, shall—

- (a) cause the amended plan to be resealed with the seal of the municipality and forwarded to the applicant; or
- (b) serve on the applicant notice in writing of the council’s refusal to reseal the plan and the council’s reasons for that refusal.

35 (6) A plan of subdivision resealed by the council under this section shall for the purposes of this Act and any other Act be deemed—

40 (a) to be the sealed plan of subdivision; and

(b) to have been resealed on the day that the plan of subdivision was first sealed.

(7) Any action taken under this Act or any other Act in relation to the sealed plan of subdivision before its resealing under this section shall be deemed to have been taken in relation to the resealed plan of subdivision. 5

(8) The resealing of a plan under this section shall be conclusive evidence for all purposes that there has been compliance with this Act with respect to the resealing and that all preliminary steps required to be taken in connexion with the resealing have been duly and properly taken. 10

(9) Except as provided in this section the provisions of this subdivision other than this section shall not apply to or in relation to the resealing of a plan of subdivision under this section.

(10) In this section “**relevant authority**” means an authority which or the services provided by which the engineer considers will be directly affected by the amendment to the sealed plan of subdivision.’. 15

#### **Amendment of *Building Control Act 1981*.**

13. The *Building Control Act 1981* is amended as follows:

(a) In section 20— 20

(i) in sub-section (2) for “(2) An” substitute “(2) Subject to sub-section (2A), an”; and

(ii) after sub-section (2) insert—

“(2A) An application for approval to construct demolish or remove a building may be made by the purchaser under a contract for the sale of an allotment of a kind referred to in section 9AA (1) of the *Sale of Land Act 1962*.”; and 25

(iii) after sub-section (15) insert—

“(15A) The Co-ordinator shall not grant building approval in respect of an application relating to an allotment on a plan of subdivision to which section 9 (1) of the *Sale of Land Act 1962* applies unless the sealed plan of subdivision has been approved by the Registrar of Titles under section 97 of the *Transfer of Land Act 1958*.”; 30

(b) After section 55 (6) insert—

“(7) In this section “**owner**” includes a purchaser under a contract for the sale of an allotment of a kind referred to in section 9AA (1) of the *Sale of Land Act 1962*.’. 35 40



