

An Act relating to the Law of Property
and for other purposes.

[11th December, 1918.]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Real Property Act* 1918 and shall come into operation on the first day of January One thousand nine hundred and nineteen. Short title.

2. (1) In this Act unless a contrary intention appears— Interpretation.

“Court” means the Supreme Court. “Court.”

“Disposition” includes an assent disclaimer surrender or release; “conveyance” means any disposition otherwise than by will; “convey” has a corresponding meaning. “Disposition”;
“conveyance”;
“convey.”

“Land” includes all corporeal hereditaments; also a rent and other incorporeal hereditaments and an easement right privilege or benefit in over or derived from land; and also an undivided share in land. “Land.”
“Personal”

"Personal representative."

"Personal representative" means the executor original or by representation or administrator for the time being of a deceased person.

"Possession."

"Possession" includes receipt of rents and profits.

"Property."

"Property" includes any thing in action and any interest in real or personal property.

"Purchaser."

"Purchaser" includes a mortgagee lessee and any other person who for valuable consideration acquires any interest in property; but "sale" means a sale properly so called.

"Sale."

"Registered land."

"Registered land" means land registered under the *Transfer of Land Act 1915* and "Registrar" means Registrar of Titles under that Act.

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"Registrar."

"Rent."

"Rent" includes a rent service or a rent charge or other rent toll duty royalty or annual or periodical payment in money or money's worth issuing out of or charged upon land.

"Will."

"Will" includes codicil.

Application to
court how made.
Costs &c.

(2) Every application to the court under this Act shall except where it is otherwise expressed and subject to any rules of court to the contrary be by summons at chambers and the court shall have full power and discretion to make such order as it thinks fit respecting the costs charges and expenses of all or any of the parties to any application.

Power to
dispose of fee-
simple by deed
without words of
inheritance.

3. (1) A disposition of freehold land by deed to any person without words of limitation or any equivalent expression shall pass to the grantee the fee-simple or other the whole interest which the disposer had power to dispose of by deed in such land unless a contrary intention appears in the disposition.

(2) A disposition of freehold land by deed to a grantee to uses without words of limitation or any equivalent expression shall be construed as if the land had been expressed to be disposed of to the grantee in fee simple to the uses declared.

(3) Under a disposition of freehold land by deed to the use of any person without words of limitation or any equivalent expression the person in whose favour the use is declared shall unless a contrary intention appears in the disposition take the whole estate or interest which under the disposition is taken by the grantee to uses.

(4) A disposition

(4) A disposition by deed to a corporation to any use shall operate in the same way as if the disposition had been made to a natural person to the same use.

(5) A disposition of freehold land to a corporation sole by his corporate designation without the word "successors" shall pass to the corporation the fee-simple or other the whole interest which the disposer had power to dispose of in such land unless a contrary intention appears in the disposition.

(6) This section applies only to deeds executed after the commencement of this Act.

4. (1) A corporation aggregate may execute a deed by having their seal affixed thereto in the presence of and attested by their clerk secretary or other permanent officer or his deputy and a member of the board of directors or other governing body of the corporation; and where the seal of the corporation is affixed to a deed then if the requirements of this sub-section appear to have been complied with the deed shall in favour of a purchaser be deemed to have been executed in the presence of the proper persons and to have taken effect accordingly.

Execution of
instruments by
or on behalf of
corporations.

(2) The board of directors or other governing body of a corporation aggregate may by resolution or otherwise appoint an agent either generally or in any particular case to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the governing body.

(3) Where a person is authorized under a power of attorney or under any statutory or other power to convey any interest in land in the name or on behalf of a corporation sole or aggregate he may as attorney sign the name of the corporation in the presence of at least one witness, and in the case of a deed affix his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance of the interest in the land.

(4) Where a corporation aggregate is authorized under a power of attorney or under any statutory or other power to convey any interest in land in the name or on behalf of any person (including another corporation) then an officer appointed for that purpose by the board of directors or other governing body of the corporation by resolution or
otherwise

otherwise may execute the deed or other instrument in the name of such person; and where an instrument purports to be executed by an officer so appointed then unless the contrary appears the instrument shall in favour of a purchaser be deemed to have been executed by an officer duly authorized.

(5) This section applies only to deeds and instruments executed after the commencement of this Act, and in the case of powers whether the power (if any) was conferred before or after the commencement of this Act.

(6) Notwithstanding anything contained in this section any mode of execution or attestation authorized by law or by the statute charter memorandum or articles deed of settlement or other instrument constituting or regulating the affairs of the corporation shall be as effectual as if this section had not been passed.

Power to tenants in tail in possession to dispose of land by specific devise or bequest.

5. (1) A tenant in tail shall have power to dispose by will by means of a devise or bequest referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally—

- (a) of lands of which he is tenant in tail in possession at his death ; and
- (b) of lands to be sold where the money arising from the sale is subject to be invested in the purchase of lands to be settled so that if purchased he would at his death have been tenant in tail in possession thereof ; and
- (c) of money subject to be invested in the purchase of lands of which if it had been so invested he would have been tenant in tail in possession at his death,

in like manner as if he had (either at law or in equity as the case may be) been tenant in fee simple or absolute owner thereof at his death ; but subject to and in default of any such disposition by will such lands or money shall devolve in the same manner as if this enactment had not been passed.

(2) This section does not extend to a tenant in tail after possibility of issue extinct and shall not render any interest which is not disposed of by the will of the tenant in tail liable for his debts or other liabilities.

(3) In .

(3) In this section the expressions "tenant in tail" and "money subject to be invested in the purchase of lands" have the same meanings as in the *Real Property Act 1915*.

No. 2719.

(4) This section only applies to wills executed after the commencement of this Act or confirmed or republished by codicil executed after such commencement.

6. (1) If under a mortgage deed by subdemise a leasehold nominal reversion consisting of a term of years absolute or any part of such term is held in trust for the mortgagee or would on a sale be held in trust for a purchaser from him then on a sale by the mortgagee the conveyance (made after the commencement of this Act) shall operate to convey not only the mortgage term but also (unless expressly excepted) the aforesaid nominal reversion, and the mortgage term and any subsequent mortgage term shall subject to any express provision to the contrary contained in the conveyance merge in the leasehold reversion.

Effect of conveyance on sale by mortgagee by subdemise.

(2) This section shall take effect without prejudice to any prior incumbrance or trust of the nominal reversion and shall apply whether the mortgage deed is executed before or after the commencement of this Act but shall not apply where the mortgage term does not comprise the whole of the land included in the leasehold reversion unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land conveyed or the rent is of no money value or no rent is reserved and unless the covenants (if any) entered into for the benefit of the reversion have been apportioned (either expressly or by implication) as respects the land conveyed; and in this section "mortgagee" includes any person entitled to exercise the statutory or other power of sale.

7. (1) A deed executed by a mortgagee purporting to transfer the mortgage or the benefit thereof shall unless a contrary intention is therein expressed and subject to any provisions therein contained operate to transfer to the transferee the right to demand sue for recover and give receipts for the mortgage money or the unpaid part thereof and the interest then due (if any) and thenceforth to become due thereon and the benefit of all securities for the same, and the benefit of and the right to sue on all

Transfer of mortgages.

covenants

covenants with the mortgagee and the right to exercise all powers of the mortgagee and all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption, but as to such estate and interest subject to the rights of redemption then subsisting.

(2) In this section the expressions "mortgagee" and "mortgage money" have the same meanings as in the *Conveyancing Act 1915*; and the expression "transferee" includes his executors administrators and assigns.

No. 2633.

First Schedule.

(3) A transfer of mortgage may be made in the form contained in the First Schedule to this Act with such variations and additions (if any) as the circumstances require.

(4) This section applies whether the mortgage transferred was made before or after the commencement of this Act and whether by way of statutory mortgage or not, but applies only to transfers made after the commencement of this Act.

(5) This section does not extend to a transfer of a bill of sale of chattels by way of security or a transfer of a mortgage under the *Transfer of Land Act 1915*.

No. 2740.

Re-conveyances
of mortgages
by indorsed
receipts under
seal.

8. (1) A receipt under seal indorsed on written at the foot of or annexed to a mortgage for all money thereby secured which states the name of the person who pays the money and is executed by the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate without any re-conveyance re-assignment surrender or release—

(a) in the case of freehold land in fee simple comprised in the mortgage as a re-conveyance of the land to the person (if any) who immediately before the execution of the receipt was entitled in fee simple to the equity of redemption or otherwise to the mortgagor in fee simple to the uses (if any) upon the trusts and subject to the powers and provisions which at that time are subsisting or capable of taking effect with respect to the equity of redemption or to uses (if any) which correspond as nearly as may be with the limitations then affecting the equity of redemption;

(b) in

- (b) in the case of a mortgage by demise or sub-demise as a surrender of the term as respects the subject-matter of the mortgage so as to merge in the reversion immediately expectant on that term ;
- (c) in the case of other property as a re-assignment thereof to the extent of the interest which is the subject-matter of the mortgage to the person who immediately before the execution of the receipt was entitled to the equity of redemption ;
- (d) and in all cases as a discharge of the mortgaged property from all principal money and interest secured by and from all claims under the mortgage.

(2) Provided that (except as hereinafter mentioned) where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption then unless it is otherwise expressly provided the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him ; but this provision shall not apply where the mortgage is paid off out of capital money or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage unless it is expressly provided that the receipt is to operate as a transfer.

(3) Nothing in this section shall confer on a mortgagor a right to keep alive a mortgage paid off by him so as to affect prejudicially any subsequent incumbrancer, and where there is no right to keep the mortgage alive the receipt shall not operate as a transfer.

(4) This section shall not affect the right of any person to require a re-conveyance re-assignment surrender release or transfer to be executed in lieu of a receipt.

(5) A receipt under seal may be given in the form contained in the Second Schedule to this Act with such variations and additions (if any) as are deemed expedient.

Second
Schedule.

(6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee.

(7) Where

(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed it shall be sufficient for the purposes of this section if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and is indorsed on written at the foot of or annexed to one of the mortgage deeds.

(8) In this section the expressions "mortgage" "mortgage money" "mortgagor" and "mortgagee" have the same meanings as in the *Conveyancing Act 1915*.

No. 2688.

(9) This section applies to the discharge of a mortgage whether made by way of statutory mortgage or not executed before or after the commencement of this Act but only as respects discharges effected after such commencement.

(10) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building friendly industrial or provident society or a successory trust) apply to the re-conveyance or discharge of a mortgage made to any such society or trust, provided that the receipt is executed in the manner required by the Act relating to the society or trust.

(11) This section shall not apply to the discharge of a mortgage or charge under the *Transfer of Land Act 1915*.

No. 2740.

Infant entitled contingently on attaining full age to be entitled to maintenance.
No. 2741 s. 84.

9. (1) Where an infant will become beneficially entitled to land in possession on his attaining full age section thirty-four of the *Trusts Act 1915* shall (without prejudice to any express limitation or trust affecting the income) apply during the minority, but if the infant dies while an infant the accumulated fund shall be held on the trusts which would have affected the income accumulated if this section had not been passed.

(2) This section applies only where the infant becomes contingently entitled under an instrument coming into operation after the commencement of this Act.

Power for court to modify or discharge restrictive covenants affecting land.

10. (1) The court shall have power from time to time on the application of any person interested in any land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon by order

See also
s. 415
Property Law
act 1928

order wholly or partially to discharge or modify any such restriction upon being satisfied—

(a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court deems material the restriction ought to be deemed obsolete or that the continued existence thereof would impede the reasonable user of the land without securing practical benefits to other persons or (as the case may be) would unless modified so impede such user ; or

(b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed have agreed either expressly or by implication by their acts or omissions to the same being discharged or modified or that the proposed discharge or modification will not substantially injure the persons entitled to the benefit of the restriction.

(2) The court shall have power on the application of any person interested—

(a) to declare whether or not in any particular case any land is affected by a restriction imposed by any instrument ; or

(b) to declare what upon the true construction of any instrument purporting to impose a restriction is the nature and extent of the restriction thereby imposed and whether the same is enforceable and if so by whom.

(3) The court may before making any order under this section direct such inquiries (if any) to be made of any local authority or such notices (if any) whether by way of advertisement or otherwise to be given to such of the persons who appear to be entitled to the benefit of the restriction intended to be discharged modified or dealt with as having regard to any inquiries notices or other proceedings previously made given or taken the court thinks fit.

(4) Any order made under this section shall be binding on all persons whether of full age or capacity or not then entitled or thereafter (subject to the order) becoming entitled

entitled to the benefit of any restriction which is thereby discharged modified or dealt with and whether such persons are parties to the proceedings or have been served with notice or not.

(5) An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged modified or dealt with may not have been produced to the court and the court may act on any evidence of such instrument as it thinks fit.

(6) This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter and whether the land affected thereby is registered or not and in the case of registered land the Registrar shall if the restriction has been noted on the register give effect on the register to the order when made.

(7) Where any proceedings by action or otherwise are taken to enforce a restrictive covenant any person against whom the proceedings are taken may in such proceedings apply to the court for an order to be made under this section.

As to the validation and variation of certain testamentary gifts void for remoteness.

11. (1) Where in a will the absolute vesting either of capital or income of property or the ascertainment of a beneficiary or class of beneficiaries is made to depend on the attainment by the beneficiary or members of the class of an age exceeding twenty-one years and thereby the gift to that beneficiary or class or any member thereof or any gift over remainder executory limitation or trust arising on the whole or partial failure of the original gift is or but for this section would be rendered void for remoteness the will shall take effect for the purposes of such gift, gift over, remainder executory limitation or trust as if the absolute vesting or ascertainment aforesaid had (without prejudice to any provision for earlier vesting or ascertainment) been made to depend on the beneficiary or members of the class attaining the age of twenty-one years, and that age shall be substituted for the age stated in the will.

(2) This section applies to any testamentary appointment (whether made in exercise of a general or special power) devise or bequest contained in the will of a person dying after the commencement of this Act whether the will is made before or after such commencement.

(3) This section applies notwithstanding that the absolute vesting or ascertainment is also made to depend on

on the marriage of any person or on any other event which may occur before the age stated in the will is attained.

12. The time limited by Part II. of the *Real Property Act* 1915 or any corresponding enactment previously in force to any person for making an entry or distress or bringing an action or suit to recover any land or rent shall not in any case after the commencement of this Act be extended or enlarged by reason of the absence from Victoria during all or any part of that time of the person having the right to make such entry or distress or to bring such action or suit or of any person through whom he claims.

No time to be allowed for absence from Victoria.
No. 2719, Part II.

SCHEDULES.

FIRST SCHEDULE.

Section 7.

FORM OF TRANSFER OF MORTGAGE.

This Indenture made the _____ day of _____ 19____
Between M of [&c.] of the one part and T of [&c.] of the other part, supplemental to an Indenture of Mortgage dated [&c.] and made between [&c.], and to an Indenture of Further Charge dated [&c.] and made between [&c.] affecting [&c.] [*here state short particulars of mortgaged property*].

WITNESSETH that in consideration of the sums of £ _____ and £ _____ now paid by T to M being the respective amounts of the mortgage money and interest owing in respect of the said mortgage and further charge (the receipt of which sums M hereby acknowledges), M, as mortgagee, hereby conveys and transfers to T the benefit of the said mortgage and further charge.

In Witness, &c.

SECOND SCHEDULE.

Section 8.

FORM OF RECEIPT UNDER SEAL ON DISCHARGE OF A MORTGAGE.

I, A.B. of [&c.] hereby acknowledge that I have this _____ day of _____ 19____, received the sum of £ _____ representing the aggregate [*or balance remaining owing in respect of the, as the case may be*] principal money secured by the within [*or above, as the case may be*] written [*or annexed, as the case may be*] mortgage (and by an Indenture of Further Charge dated &c. *or otherwise as required*) together with all interest and costs, the payment having been made by C.D. of [&c.] and E.F. of [&c.] out of money in their hands properly applicable for the discharge of the mortgage (*or otherwise as required*).

In Witness &c.

No. 2963.