



ANNO TRICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1989

No. 13 of 1989

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

[Assented to 20 April 1989]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Law of Property Act Amendment Act, 1989*.
- (2) The *Law of Property Act, 1936*, is in this Act referred to as "the principal Act".

Commencement

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

Substitution of ss. 41 and 41aa

3. Section 41 of the principal Act is repealed and the following sections are substituted:

Execution and attestation of deeds

41. (1) The following rules govern the execution of a deed:
 - (a) a natural person executes a deed by signing, or making a mark, on the deed;
 - (b) a body corporate executes a deed by affixation of the common seal of the body corporate to the deed in accordance with the rules governing the use of the common seal;
 - (c) a deed may be executed on behalf of a party to a deed—
 - (i) by an attorney acting in pursuance of an authority conferred by deed;
 - or
 - (ii) where a party is a natural person—by a person acting at the direction, and in the presence, of the party.
- (2) The execution of a deed must be attested—
 - (a) where the deed is executed by a natural person—by at least one witness who is not a party to the deed;
 - (b) where the deed is executed by a person acting at the direction, and in the presence, of the party—by a person who is authorized by law to take affidavits.

(3) Delivery and indenting are not necessary in any case.

(4) Notwithstanding the defective execution of a deed by or on behalf of a party to the deed, the execution will be taken to be valid if it appears from evidence external to the deed that the party intended to be bound by it.

(5) Notwithstanding any other law, an instrument executed in accordance with this section is a deed if—

(a) the instrument is expressed to be an indenture or deed;

(b) the instrument is expressed to be sealed and delivered or, in the case of an instrument executed by a natural person, to be sealed;

or

(c) it appears from the circumstances of execution of the instrument or from the nature of the instrument that the parties intended it to be a deed.

Execution and attestation of other instruments

41aa. (1) A party may execute an instrument (not being a will)—

(a) subject to a condition that the execution is not to be effective until the party gives (personally or by an agent) some further indication of the party's intention to be bound by the instrument;

or

(b) subject to some other condition on the fulfilment of which the execution is to become effective.

(2) The conditional execution of an instrument may be expressed orally, in writing, or by conduct evincing an intention that the execution should be conditional.

(3) Where an instrument is conditionally executed, then, subject to subsection (4) and any contrary intention that appears from the instrument—

(a) the execution cannot be recalled;

and

(b) on the fulfilment of the condition, the execution takes effect—

(i) from the time of execution;

or

(ii) if it appears from the instrument or the condition of execution that the execution is intended to take effect from some later time—
from that later time.

(4) Where an instrument is conditionally executed and the fulfilment of the condition is within the control of the party by whom the instrument was conditionally executed, then—

(a) any party to the instrument may, without breach of obligation, recall execution of the instrument at any time prior to the fulfilment of the condition;

and

(b) on the fulfilment of the condition, the execution (if not previously recalled) takes effect—

(i) from the time of fulfilment of the condition;

or

(ii) if it appears from the instrument or the condition of execution that the execution is intended to take effect from some later time—
from that later time.

(5) Notwithstanding subsections (3) and (4), where the conditional execution of an instrument is not expressed in the instrument itself, the party by whom the instrument was conditionally executed cannot rely on the condition to defeat the claim of—

(a) another party who has acted on the instrument or relied on its execution without actual notice of the condition;

or

(b) a person claiming under any such party.

(6) In any legal proceedings—

(a) if the execution of an instrument is proved, the execution will be presumed, in the absence of proof to the contrary, to have been unconditional;

and

(b) if it appears from an instrument or evidence external to an instrument that the instrument was executed conditionally, it will be presumed, in the absence of proof to the contrary, that the condition of execution has been fulfilled.

(7) The common law doctrine of escrow is abolished.

Retrospectivity and transitional provision

4. New sections 41 and 41aa inserted by this Act—

(a) do not apply to instruments executed before the commencement of this Act;

(b) do not alter the effect of any act or omission occurring before the commencement of this Act.

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

D. B. DUNSTAN, Governor