

Authorised Version No. 135

Property Law Act 1958

No. 6344 of 1958

Authorised Version incorporating amendments as at
1 June 2016

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Authorised Version incorporating amendments as at
1 June 2016

An Act to consolidate the Law relating to Conveyancing and the
Law of Property.

**BE IT ENACTED by the Queen'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 Short title and commencement

This Act may be cited as the **Property Law
Act 1958** and shall come into operation on a
day to be fixed by proclamation of the Governor
in Council published in the Government Gazette.

S. 1
amended by
Nos 8181
s. 2(1)(Sch.
item 156),
59/1986
s. 143(2),
59/1986
s. 143(2),
57/1989
s. 3(Sch.
item 166.1).

2 Repeals and savings

- (1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and

subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;

- (b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any dealing transaction title rule regulation order instrument deposit registration delegation acknowledgment undertaking release covenant proceeding direction trust licence application appointment declaration consent certificate contract agreement notice liability privilege power or right made effected issued granted given presented passed fixed incurred accrued or acquired or existing or continuing by or under any of such Acts before the commencement of this Act.
- (3) Where in any provision of this Act the expression "after the commencement of this Act" (otherwise than in the expression "before or after the commencement of this Act") occurs and the same expression occurs in the corresponding provision of the **Property Law Act 1928** the said expression shall (where the circumstances are applicable) be construed so as to include a reference to the commencement of the **Property Law Act 1928**¹.

3 Definitions

In this Act—

Court means—

- (a) in relation to property or an estate or interest in property the value of which does not exceed the jurisdictional limit of the County Court, the Supreme Court or the County Court;
- (b) in any other case, the Supreme Court;

legal practitioner means an Australian legal practitioner.

S. 3
amended by
No. 16/1986
s. 19(a),
substituted by
No. 18/2005
s. 18(Sch. 1
item 87).

S. 3 def. of
*legal
practitioner*
amended by
No. 17/2014
s. 160(Sch. 2
item 76).

**Part I—Registration of conveyances etc.
affecting land other than land under the
Transfer of Land Act. Deposit of documents²**

Pt 1
(Heading)
amended by
No. 10/1994
s. 6(1)(a).

* * * * *

S. 4
amended by
No. 10/1994
s. 6(1)(b)(i)(ii),
repealed by
No. 85/1998
s. 22(1).

No. 3754 s. 5.

5 Registrar-General

S. 5(1)
repealed by
No. 85/1998
s. 22(1).

* * * * *

S. 5(2)
substituted by
No. 7716 s. 2,
amended by
No. 9427
s. 3(Sch. 2
item 11),
substituted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 164).

(2) A Registrar-General and any Deputy Registrars-General that are necessary for the purposes of this Act may be employed under Part 3 of the **Public Administration Act 2004**.

S. 5(3)
inserted by
No. 7716 s. 2,
repealed by
No. 85/1998
s. 22(1).

* * * * *

S. 5(4)
inserted by
No. 7716 s. 2.

(4) All acts and things by this or any other Act required or authorized to be done by the Registrar-General may be done by any Deputy Registrar-General and every act and thing done by any Deputy Registrar-General shall be as valid and effectual as if the same had been done by the Registrar-General.

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Part I—Registration of conveyances etc. affecting land other than land under the Transfer of Land Act. Deposit of documents

6 Registration of deeds, conveyances etc.

(1) All deeds conveyances and other instruments in writing (except leases for less than three years) of or relating to or in any manner affecting any lands tenements or hereditaments situated lying and being in Victoria may be entered and registered in the office of the Registrar-General in the manner hereinafter directed; and all such deeds conveyances and other instruments in writing as aforesaid, if made and executed bona fide and for a valuable consideration and registered in conformity with the provisions of this Act, shall have and be allowed priority over every other deed conveyance or other instrument in writing (that is to say)—The deed conveyance or other instrument in writing first registered in the office of the Registrar-General, if the same be registered in conformity with this Act, shall have priority in respect of all lands tenements or hereditaments conveyed or affected by such deed conveyance or other instrument in writing over every other deed conveyance or other instrument in writing whatsoever and howsoever conveying or affecting the same lands tenements or hereditaments; and the deed conveyance or other instrument in writing next registered as aforesaid mutatis mutandis shall have priority over every other deed conveyance or instrument in writing as aforesaid; and so on according to the priority of the time of registering such deed conveyance or instrument in writing as aforesaid.

(2) Despite subsection (1), no deed conveyance or other instrument may be registered in the office of the Registrar-General under that subsection on and from the commencement of section 6 of the **Transfer of Land (Single Register) Act 1998**.

No. 3754 s. 6.

S. 6
amended by
No. 85/1998
s. 22(2) (ILA
s. 39B(1)).

S. 6(2)
inserted by
No. 85/1998
s. 22(2).

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S. 7 amended by Nos 9043 s. 2(a)(i)(ii), 110/1986 s. 140(2), 57/1989 s. 3(Sch. items 166.2, 166.3(a)(b)), 35/1996 s. 453(Sch. 1 item 68.1), 23/1998 s. 8(1), repealed by No. 85/1998 s. 22(1).	*	*	*	*	*
S. 8 amended by No. 8181 s. 2(1)(Sch. item 157), repealed by No. 85/1998 s. 22(1).	*	*	*	*	*
Ss 9, 10 repealed by No. 85/1998 s. 22(1).	*	*	*	*	*
S. 11 amended by No. 57/1989 s. 3(Sch. item 166.4 (a)(b)), repealed by No. 85/1998 s. 22(1).	*	*	*	*	*
S. 12 amended by No. 9043 s. 2(b), repealed by No. 85/1998 s. 22(1).	*	*	*	*	*

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13 Fees to be paid on registration

Nos 3754
s. 13, 6012
s. 8(1)(a), 6123
s. 3(e).

S. 13
amended by
No. 9019
s. 2(1)(Sch.
item 192).

(a) There shall be paid to the Registrar-General in respect of matters under this Act such fees as are prescribed by regulations under this section.

S. 13(a)
amended by
Nos 9043 s. 3,
128/1986
s. 14(1).

(b) The Governor in Council may make regulations for or with respect to prescribing fees to be paid to the Registrar-General in respect of any matter under this Act.

S. 13(b)
amended by
Nos 9043 s. 3,
128/1986
s. 14(1).

* * * * *

S. 13(c)
substituted by
No. 128/1986
s. 14(2),
repealed by
No. 85/1998
s. 22(1).

* * * * *

S. 14
substituted by
No. 7716 s. 3,
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 42),
80/1988
s. 55(7)(a)(b),
45/1994
s. 42(Sch.
item 7),
repealed by
No. 10/1994
s. 6(1)(c).

15 Deeds etc. may be deposited with Registrar-General

No. 3754 s. 15.

Any person who now has or shall hereafter have the lawful custody of any deeds or documents relating to the title of any real or personal estate may deposit such deeds or documents with the Registrar-General; and from and after such

deposit such deeds or documents shall be retained by such registrar. And no action or suit at law or in equity shall be brought or maintained upon any covenant or agreement for the production of the deeds or documents so deposited, or upon any agreement to give or enter into a covenant for the production thereof; and if any such action or suit is commenced, it shall be a sufficient answer thereto that such deeds or documents have been deposited under this enactment.

S. 15A
inserted by
No. 128/1986
s. 15.

15A Deposited documents

- (1) Despite anything to the contrary in section 15 the Registrar-General must on request return to the person who deposited it a deed or document—
 - (a) that relates to land brought under the operation of the **Transfer of Land Act 1958** and that is a subsisting lease mortgage or charge under the general law; or
 - (b) that relates to land part of which is, and part of which is not, under the operation of the **Transfer of Land Act 1958**, and—
 - (i) that is a lease mortgage or charge; or
 - (ii) that is the last deed that constitutes or the last deeds that together constitute, the fee or equity of redemption.
- (2) Before returning a document under this section the Registrar-General must take a copy of the document and retain it with the other deeds and documents deposited under section 15.

S. 15B
inserted by
No. 128/1986
s. 15.

15B Court may order deposit of documents

- (1) On the application of the Registrar of Titles or on the application of a person who under a covenant or agreement may compel another person to produce a document the Supreme Court may by order require a person specified in the order to

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Part I—Registration of conveyances etc. affecting land other than land under the Transfer of Land Act. Deposit of documents

deposit with the Registrar-General a document specified in the order.

- (2) Sections 15 and 15A apply to a document deposited in accordance with an order under subsection (1).

15C Person may direct document to be deposited

S. 15C
inserted by
No. 128/1986
s. 15.

- (1) A person who under a covenant or agreement may compel another person to produce a document may direct that other person to deposit the document with the Registrar-General and that other person must comply with the direction.
- (2) Sections 15 and 15A apply to a document deposited under this section.

15D Deposit of document without instructions

S. 15D
inserted by
No. 128/1986
s. 15.

A person who has lawful custody of a document may deposit it with the Registrar-General under section 15 even though the person has not been instructed or authorised to deposit the document by the person on whose behalf the document is held.

16 Deeds etc. deposited may be inspected etc.

No. 3754 s. 15.

Subject to such regulations as may be imposed and to the payment of such sums as may be made payable in that behalf by the Governor in Council, any person may inspect and make copies of and extracts from deeds and documents deposited as aforesaid³.

17 False oaths made punishable

No. 3754 s. 17.

Every person who at any time wilfully forswears himself or states anything contrary to the truth in any oath taken under the authority of this Part shall be liable to the penalties of perjury.

Part II—The general law of property and conveyancing

Nos 3754
s. 18, 4654
s. 3.

18 Definitions

- (1) In this Part unless inconsistent with the context or subject-matter—

bankruptcy includes insolvency and liquidation by arrangement and also any other act or proceeding in law having under any law for the time being in force effects or results similar to those of bankruptcy⁴;

building purposes includes the erecting and improving of and the adding to, and the repairing of buildings; and a *building lease* is a lease for building purposes or purposes connected therewith;

conveyance includes a mortgage, charge, lease, assent, vesting declaration,⁵ disclaimer, release, surrender, extinguishment and every other assurance of property or of an interest therein by any instrument, except a will; *convey* has a corresponding meaning;

disposition includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and *dispose of* has a corresponding meaning;

income includes rents and profits;

incumbrance includes a legal or equitable mortgage and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and *incumbrancer* has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof;

instrument includes deed and will but does not include a statute, unless the statute creates a settlement;

land includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a rent and other incorporeal hereditaments,⁶ and an easement, right, privilege, or benefit in, over, or derived from the land and also an undivided share in land; and ***mines and minerals*** include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same;

limitation includes a trust;

* * * * *

S. 18(1) def. of *lunatic* repealed by No. 55/1987 s. 57(3)(Sch. 5 item 43).

mining lease means a lease for mining purposes, that is the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes;

mortgage includes any charge or lien on any property for securing money or money's worth; ***mortgage money*** means money or money's worth secured by a mortgage; ***mortgagor*** includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right in the mortgaged property; ***mortgagee*** includes any

person from time to time deriving title under the original mortgagee; and *mortgagee in possession* is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property; and *right of redemption* includes an option to repurchase only if the option in effect creates a right of redemption;

notice includes constructive notice;

personal representative means the executor, original or by representation, or administrator for the time being of a deceased person;

possession includes receipt of rents and profits or the right to receive the same (if any);

property includes any thing in action, and any interest in real or personal property;

purchaser means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that where so expressly provided *purchaser* means a person only who acquires an interest in or charge on property for money or money's worth; and where the context so requires *purchaser* includes an intending purchaser; *purchase* has a meaning corresponding with that of *purchaser*; and *valuable consideration* includes marriage but does not include a nominal consideration in money;

registered land means land registered under the **Transfer of Land Act 1958**; and *registrar* means Registrar of Titles under that Act;

rent includes a rent service or a rentcharge, or other rent toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest; *rentcharge* includes a fee farm rent; *fine* includes a premium or foregift and any payment consideration, or benefit in the nature of a fine, premium or foregift; *lessor* includes an under-lessor and a person deriving title under a lessor or under-lessor; and *lessee* includes an under-lessee and a person deriving title under a lessee or under-lessee, and *lease* includes an under-lease or other tenancy;

sale means a sale properly so called;

securities include stocks, funds and shares;

tenant for life, statutory owner, settled land, settlement, capital money, term of years absolute and *trustees of the settlement* have the same meaning as in the **Settled Land Act 1958**;

S. 18 def. of *tenant for life, statutory owner, settled land, settlement, capital money, term of years absolute* and *trustees of the settlement* amended by No. 29/2011 s. 3(Sch. 1 item 74).

trustee company means a trustee company under the **Trustee Companies Act 1958**;

trust for sale, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; *trustees for sale* means the persons (including a personal representative) holding

land on trust for sale; and *power to postpone a sale* means power to postpone in the exercise of a discretion;

will includes codicil and every other testamentary disposition.

- (2) Subject to the savings mentioned in section two of this Act this Part shall except where otherwise expressly provided apply to and in respect of instruments whether made or coming into operation before or after the commencement of this Act.

Cf. [1289–90]
18 Edward I.
(Quia
Emptores)
c. 1.
S. 18A
inserted by
No. 9407
s. 6(a).

18A Land may be assured in fee simple

Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect.

Division 1—General principles

Subdivision 1—Miscellaneous

19A Interests in land under the Statute of Uses

Cf. [1535–6]
27 Henry VIII.
c. X. ss 1, 2, 3,
8 (The Statute
of Uses).
S. 19A
inserted by
No. 9407
s. 6(b).

- (1) Interests in land which under the Statute of Uses could before the commencement of this section have been created as legal interests shall after the commencement of this section be capable of being created as equitable interests.
- (2) Notwithstanding subsection (1) an equitable interest in land shall after the commencement of this section only be capable of being validly created in any case in which an equivalent equitable interest in property real or personal could have been validly created before such commencement.

- (3) In a voluntary conveyance executed after the commencement of this section, a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee.
- (4) Subsection (3) does not limit or affect the operation of any principle or rule of equity relating to the implication of resulting trusts.

19 Power to dispose of all rights and interests in land

No. 3754 s. 19.

- (1) All rights and interests in land may be disposed of, including—
 - (a) a contingent, executory or future interest in any land, or a possibility coupled with an interest in any land, whether or not the object of the gift or limitation of such interest or possibility be ascertained;
 - (b) a right of entry, into or upon land whether immediate or future, and whether vested or contingent—

but no such disposition shall defeat or enlarge an estate tail.

- (2) All rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason may, after the commencement of this Act, be made exercisable by any person and the persons deriving title under him, but, in regard to an estate in fee-simple (not being a rentcharge held for a legal estate) only within the period authorized by the rule relating to perpetuities.

20 Satisfied terms, whether created out of freehold or leasehold land, to cease

No. 3754 s. 20.

- (1) Where the purposes of a term of years, created or limited at any time out of freehold land, become satisfied either before or after the commencement of this Act (whether or not that term either by

express declaration or by construction of law becomes attendant upon the freehold reversion), it shall merge in the reversion expectant thereon and shall cease accordingly.

- (2) Where the purposes of a term of years, created or limited at any time out of leasehold land, become satisfied after the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly.
- (3) Where the purposes are satisfied as respects part only of the land comprised in a term, this section shall have effect as if a separate term had been created in regard to that part of the land.

No. 3754 s. 21.

21 Husband and wife to be counted as two persons

A husband and wife shall, for all purposes of acquisition of any interest in property, under a disposition made or coming into operation after the twenty-eighth day of September One thousand nine hundred and fourteen, be treated as two persons.

No. 3754 s. 22.

22 Vesting orders etc. of legal estates operating as conveyances

S. 22(1)
repealed by
No. 85/1998
s. 23.

* * * * *

- (2) The provisions of the **Trustee Act 1958** relating to vesting orders and orders appointing a person to convey shall apply to all vesting orders authorized to be made by this Division.

No. 3754 s. 23.

23 Abstract of title to legal estates

- (1) Where title is shown to a legal estate in land, it shall be deemed not necessary or proper to include in the abstract of title an instrument relating only to interests or powers which will be overreached

by the conveyance of the estate to which title is being shown; but nothing in this Division shall affect the liability of any person to disclose an equitable interest or power which will not be so overreached, or to furnish an abstract of any instrument creating or affecting the same.

- (2) A legal practitioner delivering an abstract framed in accordance with this Division shall not incur any liability on account of an omission to include therein an instrument which, under this section, is to be deemed not necessary or proper to be included, nor shall any liability be implied by reason of the inclusion of any such instrument.

S. 23(2)
amended by
No. 35/1996
s. 453(Sch. 1
item 68.2).

24 Effect of possession of documents

No. 3754 s. 24.

This Part shall not prejudicially affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, nor affect any question arising out of or consequent upon any omission to obtain or any other absence of possession by any person of any documents relating to a legal estate in land.

25 Interests of persons in possession

No. 3754 s. 25.

Nothing in this Division shall prejudicially affect the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation.

26 Presumption that parties are of full age

No. 3754 s. 26.

The persons expressed to be parties to any conveyance shall, until the contrary is proved, be presumed to be of full age at the date thereof.

No. 3754 s. 27.

27 Alien friends may hold etc. real and personal property

Notwithstanding any law or usage to the contrary every alien friend resident in Victoria may take by representation, acquire and hold either by grant from the Crown or otherwise and may convey, assign, devise, bequeath or otherwise dispose of every description of property whether real or personal in the same manner as if he was a natural born subject of Her Majesty.

No. 3754 s. 28.

28 Power for corporations to hold property as joint tenants

- (1) A body corporate shall be capable of acquiring and holding any real or personal property in joint tenancy in the same manner as if it were an individual, and where a body corporate and an individual or two or more bodies corporate become entitled to any such property in circumstances or by virtue of any instrument which would if the body corporate had been an individual have created a joint tenancy they shall be entitled to the property as joint tenants:

Provided that the acquisition and holding of property by a body corporate in joint tenancy shall be subject to the like conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

- (2) Where a body corporate is joint tenant of any property then on its dissolution the property shall devolve on the other joint tenant.
- (3) This section shall apply in all cases of the acquisition or holding of property on or after the eighth day of August One thousand nine hundred and two.

28A Liability of co-owner to account

- (1) A co-owner is liable, in respect of the receipt by him or her of more than his or her just or proportionate share according to his or her interest in the property, to account to any other co-owner of the property.
- (2) In this section, *co-owner* means a joint tenant, whether at law or in equity, or a tenant in common, whether at law or in equity, of any property.

S. 28A inserted by No. 6814 s. 2, amended by No. 7264 s. 2(1), repealed by No. 9075 s. 5(2), new s. 28A inserted by No. 23/1998 s. 4.

28B Certain contracts with minors to be valid

- (1) Notwithstanding anything to the contrary in section 49 of the **Supreme Court Act 1986** or in any rule of common law or equity the following contracts, whether entered into before or after the commencement of the **Property Law (Loans to Minors) Act 1965** shall be as valid and binding on a minor for all purposes as if the minor were of full age at the time he entered into the contract, namely—
 - (a) any contract at any time entered into by a minor member—
 - (i) of a building society registered under the **Building Societies Act 1986** or any corresponding previous enactment;

S. 28B inserted by No. 7264 s. 2(2), amended by No. 9075 s. 5(1).

S. 28B(1) amended by Nos 9427 s. 5(Sch. 4 item 9), 57/1989 s. 3(Sch. item 166.5(a)).

S. 28B(1)(a) amended by No. 9427 s. 5(Sch. 4 item 9).

S. 28B(1)(a)(i) amended by Nos 9427 s. 6(1)(Sch. 5 item 145), 57/1989 s. 3(Sch. item 166.5(b)).

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S. 28B(1)(a)(ii)
amended by
No. 57/1989
s. 3(Sch. item
166.5(c)),
substituted by
No. 84/1996
s. 467(Sch. 6
item 11.1),
amended by
No. 9/2013
s. 42(Sch. 2
item 15).

(ii) of a co-operative registered under the
Co-operatives National Law (Victoria)
or any corresponding previous
enactment;

(iii) of a co-operative housing society
registered under the **Co-operative
Housing Societies Act 1958** or any
corresponding previous enactment; and

(iv) of any industrial and provident society
registered under the **Industrial and
Provident Societies Act 1958** or any
corresponding previous enactment—

for the repayment of moneys lent or
advanced or to be lent or advanced to the
minor by any such society;

S. 28B(1)(aa)
inserted by
No. 7376 s. 2,
amended by
No. 9427
s. 5(Sch. 4
item 9).

(aa) any contract at any time entered into by a
minor—

S. 28B(1)(aa)(i)
amended by
Nos 9427
s. 6(1)(Sch. 5
item 145),
57/1989
s. 3(Sch. item
166.5(d)).

(i) with a building society registered under
the **Building Societies Act 1986** or any
corresponding previous enactment; or

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(ii) with an industrial and provident society registered under the **Industrial and Provident Societies Act 1958** or any corresponding previous enactment—

for the repayment of moneys lent or advanced or to be lent or advanced to the minor by any such society;

* * * * *

S. 28B(1)
(b)–(e)
repealed by
No. 9075
s. 5(2).

(2) A minor who has entered into any contract referred to in the last preceding subsection, whether before or after the commencement of the **Property Law (Loans to Minors) Act 1965**, shall not at any time be entitled on any ground relating to his minority or former minority to avoid any of his obligations under the contract or under any instrument executed by the minor whereby the repayment of any moneys lent or advanced is secured or to repudiate any contract transfer conveyance or assignment relating to any property charged by any such instrument.

S. 28B(2)
amended by
Nos 9075
s. 5(1)(2), 9427
s. 5(Sch. 4
item 9).

(3) Any instrument executed or purporting to have been executed by a minor by way of security for the repayment of any moneys lent or advanced or to be lent or advanced to the minor in pursuance of a contract of a kind referred to in subsection (1) of this section shall be as valid and effectual for all purposes as if the minor were of full age and capacity at the time he executed the instrument.

S. 28B(3)
amended by
No. 9427
s. 5(Sch. 4
item 9).

(4) For the purposes of this section—

(a) any reference in this section to a contract entered into by a minor shall be read and construed as including reference to a contract entered into by a minor jointly with some

S. 28B(4)(a)
amended by
No. 9427
s. 5(Sch. 4
item 9).

other person or persons (whether of full age or not);

S. 28B(4)(b)
amended by
No. 9427
s. 5(Sch. 4
item 9).

(b) any reference in this section to moneys lent or advanced or to be lent or advanced to a minor shall be read and construed as including reference to moneys lent or advanced or to be lent or advanced to the order of a minor or to a minor jointly with some other person or persons (whether of full age or not); and

S. 28B(4)(c)
amended by
No. 9427
s. 5(Sch. 4
item 9).

(c) any reference in this section to an instrument executed by a minor shall be read and construed as including reference to an instrument executed by a minor jointly with some other person or persons (whether of full age or not).

No. 3754 s. 29.
S. 29
amended by
Nos 9075
s. 5(1), 10087
s. 3(1)(Sch. 1
item 189).

29 Receipts by married minors

A married minor shall have power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the minor may be entitled in like manner as if the minor were of full age⁷.

No. 3754 s. 30.

30 Conveyances on behalf of patients

S. 30(1)
amended by
Nos 59/1986
s. 143(2),
52/1998
s. 311(Sch. 1
item 78),
26/2014
s. 455(Sch.
item 23.1).

(1) Where a legal estate in land (whether settled or not) is vested in a patient within the meaning of the **Mental Health Act 2014** in respect of whose estate an administrator is appointed under the **Guardianship and Administration Act 1986**, either solely or jointly with any other person or persons, the administrator shall, under an order of the Court, or under any statutory power, make or concur in making all requisite dispositions for conveying or creating a legal estate in the name and on behalf of that patient.

- (2) If land held on trust for sale is vested in a patient within the meaning of the **Mental Health Act 2014** in respect of whom a guardian is appointed under the **Guardianship and Administration Act 1986** either solely or jointly with any other person or persons, a new trustee shall be appointed in his place, or he shall be otherwise discharged from the trust, before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees for sale.

S. 30(2)
amended by
Nos 59/1986
s. 143(2),
52/1998
s. 311(Sch. 1
item 78),
26/2014
s. 455(Sch.
item 23.1).

Subdivision 2—Dispositions on trust for sale

31 Duration of trusts for sale

No. 3754 s. 31.

Where land has, either before or after the commencement of this Act, become subject to an express or implied trust for sale, such trust shall, so far as regards the safety and protection of any purchaser thereunder, be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale.

This section shall apply to sales whether made before or after the commencement of this Act, but operates without prejudice to an order of any court restraining a sale.

32 Power to postpone sale

No. 3754 s. 32.

- (1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears⁸.
- (2) Where there is a power to postpone the sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period; nor shall a purchaser of a legal estate be concerned in any

case with any directions respecting the postponement of a sale.

- (3) The foregoing provisions of this section shall apply whether the trust for sale is created before or after the commencement or by virtue of this Part⁹.
- (4) Where a disposition or settlement coming into operation after the commencement of this Act contains a trust either to retain or sell land the same shall be construed as a trust to sell the land with power to postpone the sale.

No. 3754 s. 33.

33 Consents to the execution of a trust for sale

- (1) If the consent of more than two persons is by the disposition made requisite to the execution of a trust for sale of land, then, in favour of a purchaser, the consent of any two of such persons to the execution of the trust or to the exercise of any statutory or other powers vested in the trustees for sale shall be deemed sufficient.
- (2) Where the person whose consent to the execution of any such trust or power is expressed to be required in a disposition is not sui juris or becomes subject to disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power; but the trustees shall, in any such case, obtain the separate consent of the parent or testamentary or other guardian of a minor or of the committee of a lunatic.
- (3) This section shall apply whether the trust for sale is created before or after the commencement of this Act or by virtue of this Part¹⁰.

S. 33(2)
amended by
No. 10087
s. 3(1)(Sch. 1
item 190).

34 Purchaser not to be concerned with the trusts of proceeds of sale

No. 3754 s. 34.

A purchaser of a legal estate from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale or affecting the rents and profits of the land until sale, whether or not those trusts are declared by the same instrument by which the trust for sale is created.

35 Powers conferred on trustees for sale

No. 3754 s. 35.

- (1) Trustees for sale shall, in relation to land and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the **Settled Land Act 1958**, including in relation to the land the powers of management conferred by that Act during a minority,¹¹ and (subject to any express trust to the contrary) all capital money arising under the said powers shall, unless paid or applied for any purpose authorized by the **Settled Land Act 1958**,¹² be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

All land acquired under this subsection shall be conveyed to the trustees on trust for sale.

The powers conferred by this subsection shall be exercised with such consents (if any) as would have been required on a sale under the trust for sale, and when exercised shall operate to overreach any equitable interests or powers which attach to the net proceeds of sale.

- (2) Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance and other outgoings shall be paid or applied, except so far as any part thereof

may be liable to be set aside as capital money under the **Settled Land Act 1958**,¹³ in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested.

- (3) Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may, with the consent of the persons (if any) of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale—
- (a) partition the land remaining unsold or any part thereof; and
 - (b) provide (by way of mortgage or otherwise) for the payment of any equality money—

and, upon such partition being arranged, the trustees for sale shall give effect thereto by conveying the land so partitioned in severalty (subject or not to any legal mortgage created for raising equality money) to persons of full age in accordance with the rights of the persons interested under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given:

Provided that—

- (i) if a share in the net proceeds belongs to a lunatic the consent of his committee shall be sufficient to protect the trustees for sale;
- (ii) if a share in the net proceeds is affected by an incumbrance the trustees for sale may either give effect thereto or provide for the discharge thereof by means of the property

allotted in respect of such share, as they may consider expedient.

- (4) If a share in the net proceeds is absolutely vested in a minor, the trustees for sale may act on his behalf and retain land (to be held on trust for sale) or other property to represent his share, but in other respects the foregoing power shall apply as if the minor had been of full age.
- (5) This section shall apply to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of this Part¹⁴.

S. 35(4)
amended by
No. 10087
s. 3(1)(Sch. 1
item 191).

36 Delegation of powers of management by trustees for sale¹⁵

No. 3754 s. 36.

- (1) The powers of and incidental to leasing, accepting surrenders of leases and management, conferred on trustees for sale whether by this Part or otherwise, may, until sale of the land, be revocably delegated from time to time, by writing, signed by them, to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land during his life or for any less period; and in favour of a lessee such writing shall, unless the contrary appears, be sufficient evidence that the person named therein is a person to whom the powers may be delegated, and the production of such writing shall, unless the contrary appears, be sufficient evidence that the delegation has not been revoked.
- (2) Any power so delegated shall be exercised only in the names and on behalf of the trustees delegating the power.
- (3) The persons delegating any power under this section shall not, in relation to the exercise or purported exercise of the power, be liable for the acts or defaults of the person to whom the power

is delegated, but that person shall, in relation to the exercise of the power by him, be deemed to be in the position and to have the duties and liabilities of a trustee.

- (4) Where, at the commencement of this Act, an order made under section one hundred and thirty-six of the **Settled Estates and Settled Land Act 1915** or any corresponding previous enactment, is in force, the person on whom any power is thereby conferred shall, while the order remains in force, exercise such power in the names and on behalf of the trustees for sale in like manner as if the power had been delegated to him under this section.

No. 3754 s. 37.

37 Powers of Court where trustees for sale refuse to exercise powers

If the trustees for sale refuse to sell or to exercise any of the powers conferred by either of the last two preceding sections, or any requisite consent cannot be obtained, any person interested may apply to the Court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the Court may make such order as it thinks fit.

No. 3754 s. 38.

38 Trust for sale of mortgaged property where right of redemption is barred

- (1) Where any property, vested in trustees by way of security, becomes, by virtue of the statutes of limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption,¹⁶ it shall be held by them on trust for sale.
- (2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until

sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection shall operate without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

- (3) This section shall not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.
- (4) Where the mortgage money is capital money for the purposes of the **Settled Land Act 1958** the trustees shall if the tenant for life or statutory owner so requires instead of selling any land forming the whole or part of such property make such conveyance or execute such declaration of trust of the same as may be required for giving effect to the directions contained in section eighty-two of the said Act and as if the land had been acquired by purchase under that section.
- (5) This section shall apply whether the right of redemption was discharged before or after the first day of January One thousand nine hundred and thirteen, but shall have effect without prejudice to any dealings or arrangements made before that date.

39 Implied trust for sale in personalty settlements

No. 3754 s. 39.

- (1) Where a settlement of personal property or of land held upon trust for sale contains a power to invest money in the purchase of land, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale; and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been

made and the proceeds had been duly invested in personal estate.

- (2) This section shall apply to settlements (including wills) coming into operation after the thirty-first day of December One thousand nine hundred and thirteen, and shall not apply to capital money arising under the **Settled Land Act 1958** or any corresponding previous enactment or money liable to be treated as such.

No. 3754 s. 40.

40 Application of this Division to personal representatives

The provisions of this Division relating to trustees for sale apply to personal representatives holding on trust for sale, but without prejudice to their rights and powers for purposes of administration.

Division 2—Contracts, conveyances and other instruments

Contracts

No. 3754 s. 41.

41 Stipulations in a contract

Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract, shall be construed and have effect at law in accordance with the same rules.

No. 3754 s. 42.

42 Provisions as to contracts

- (1) A stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void, if a title can be made discharged from the equitable interest without such concurrence—
- (a) under a trust for sale; or
 - (b) under this Act, or the **Settled Land Act 1958**, or any other Act.

Property Law Act 1958

No. 6344 of 1958

Part II—The general law of property and conveyancing

- (2) A stipulation that a purchaser of a legal estate in land shall pay or contribute towards the costs of or incidental to obtaining a vesting order, or the appointment of trustees of a settlement, or the appointment of trustees in relation to a trust for sale, shall be void.
- (3) No contract of sale relating to land shall contain a clause or condition stipulating for the payment by the purchaser to the vendor or to the legal practitioner or conveyancer of the vendor of any costs and expenses except—
- (a) costs and expenses incurred by the vendor by reason of default on the part of the purchaser in respect of the observance or performance of any of the terms or conditions of the contract;
 - (b) such costs and expenses as are payable by the purchaser pursuant to—
 - (i) conditions of sale of land not under the operation of the **Transfer of Land Act 1958** which conditions are adopted pursuant to section forty-six of this Act; or
 - (ii) conditions to the like effect of sale of such land; and
 - (c) costs and expenses of perusal and obtaining the execution and registration of any conveyance transfer or other assurance of any land being part only of the land which is the subject-matter of such contract of sale.
- (4) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser, or that no

S. 42(3)
amended by
Nos 35/1996
s. 453(Sch. 1
item 68.2),
23/2016
s. 36(1).

objection is to be taken on account of an outstanding legal estate, shall be void.

- (5) Where a purchaser has power to acquire land compulsorily and a contract, whether by virtue of a notice to treat or otherwise, is subsisting under which title can be made without payment of the compensation money into court, title shall be made in that way unless the purchaser, to avoid expense or delay or for any special reason, considers it expedient that the money should be paid into court.
- (6) A vendor shall not have any power to rescind a contract by reason only of the enforcement of any right under this section.
- (7) In this section—

conveyancer means a licensee under the **Conveyancers Act 2006**.

S. 42(7)
inserted by
No 23/2016
s. 36(2).

No. 3754 s. 43.

43 Application of section 42

The last preceding section shall apply only in favour of a purchaser for money or money's worth.

No. 3754 s. 44.

44 Statutory commencements of title

- (1) Thirty years shall be the period of commencement of title which a purchaser of land may require instead of an earlier title commencing with the Crown grant; nevertheless earlier title than thirty years may be required in cases similar to those in which earlier title than forty years might immediately before the commencement of the **Property Law Act 1928** be required.
- (2) Under a contract to grant or assign a term of years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign shall not be entitled to call for the title to the freehold.

- (3) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.
- (4) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.
- (5) Where by reason of any of the last three preceding subsections, an intending lessee or assign is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not, where the contract is made after the commencement of this Act, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.
- (6) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made inquiries in regard to matters prior to the period of commencement of title fixed by this Act, or by any other Act, or by any rule of law, he might have had notice, unless he actually makes such investigation or inquiries.
- (7) Where a lease, whether made before or after the commencement of this Act, is made under a power contained in a settlement, will, Act of Parliament or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.
- (8) This section, save where otherwise expressly provided, applies to contracts for sale whether made before or after the commencement of this Act, and applies to contracts for exchange in like

manner as to contracts for sale, save that it applies only to contracts for exchange made after such commencement.

- (9) This section shall apply only if and so far as a contrary intention is not expressed in the contract.

No. 3754 s. 45.

45 Other statutory conditions of sale

- (1) A purchaser of any property shall not—
- (a) require the production, or any abstract or copy, of any deed, will or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or
 - (b) require any information, or make any requisition, objection or inquiry, with respect to any such deed, will or document, or the title prior to that time, notwithstanding that any such deed, will or other document, or that prior title, is recited, agreed to be produced, or noticed—

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by acknowledgment, or otherwise:

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of—

- (i) any power of attorney under which any abstracted document is executed; or

- (ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or
 - (iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.
- (2) Where land sold is held by lease (other than an under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.
- (3) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

- (4) On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say—
- (a) the expenses of the production and inspection of all records, proceedings of courts, deeds, wills, probates, letters of administration and other documents, not in possession of the vendor or his mortgagee or trustee, and the expenses of all journeys incidental to such production or inspection; and
 - (b) the expenses of searching for, procuring, making, verifying and producing all certificates, declarations, evidences and information not in the possession of the vendor or his mortgagee or trustee, and all attested, stamped, office or other copies or abstracts of, or extracts from, any records or other documents aforesaid, not in the possession of the vendor or his mortgagee or trustee—
- and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.
- (5) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.
- (6) Recitals, statements and descriptions of facts, matters and parties contained in deeds, instruments, Acts of Parliament or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they

are proved to be inaccurate, or to be inconsistent with any statutory record of any dealing, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

- (7) The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.
- (8) Such acknowledgments of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.
- (9) A vendor shall be entitled to retain documents of title where—
- (a) he retains any part of the land to which the documents relate; or
 - (b) the document is an instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.
- (10) This section shall apply to contracts for sale made before or after the commencement of this Act, and shall apply to contracts for exchange in like manner as to contracts for sale, except that it shall apply only to contracts for exchange made after such commencement:

Provided that this section shall apply subject to any stipulation or contrary intention expressed in the contract.

- (11) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

No. 3754 s. 46.

46 Adoption of conditions of sale in Third Schedule

On any contract for sale whether by public auction or private contract of land not under the operation of the **Transfer of Land Act 1958**, the conditions of sale set out in the Third Schedule hereto may be adopted by inserting in the contract the words "The conditions of sale in the **Property Law Act 1958** shall apply to this contract," or words having an equivalent meaning, and when so adopted the said conditions shall become and be conditions of such contract, subject nevertheless to any other condition or provision contained in the contract expressly or by necessary implication modifying or excluding any of them.

S. 47
repealed by
No. 9858
s. 7(a).

* * * * *

No. 3754 s. 48.

48 Stipulations preventing a purchaser etc. from employing own legal practitioner to be void

S. 48(1)
amended by
No. 35/1996
s. 453(Sch. 1
item 68.2).

- (1) Any stipulation or condition made on the sale of any land or interest in land after the commencement of this Act to the effect that the conveyance or transfer to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a

legal practitioner appointed by or acting for the vendor, and any stipulation which restricts or might restrict a purchaser in the selection of a legal practitioner to act on his behalf in relation to any land or interest in land agreed to be purchased, shall be void.

(2) Any covenant or stipulation contained in or entered into with reference to any lease or under-lease made before or after the commencement of this Act—

(a) whereby the right of preparing, at the expense of a purchaser, any conveyance of the estate or interest of the lessee or under-lessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or under-lessor or his legal practitioner; or

S. 48(2)(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 68.2).

(b) which in any way restricts the right of the purchaser to have such conveyance carried out on his behalf by a legal practitioner appointed by him—

S. 48(2)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 68.2).

shall be void.

(3) This section shall not affect the law relating to the preparation of a lease or under-lease or the draft thereof.

(4) In this section *lease* and *under-lease* shall include any agreement therefor or other tenancy, and *lessee* and *under-lessee* and *lessor* and *under-lessor* shall have corresponding meanings.

No. 3754 s. 49.
S. 49(1)
amended by
No. 110/1986
s. 140(2).

49 Applications to the Court by vendor and purchaser

- (1) A vendor or purchaser of any interest in land, or their representatives respectively, may apply to the Court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Court may make such order upon the application as to the Court may appear just, and may order how and by whom all or any of the costs of and incident to the application are to be borne and paid.
- (2) Where the Court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the Court may, if it thinks fit, order the repayment of any deposit.
- (3) This section shall apply to a contract for the sale or exchange of any interest in land.

No. 3754 s. 50.

50 Discharge of incumbrances by the Court on sales or exchanges

- (1) Where land subject to any incumbrance, whether immediately realizable or payable or not, is sold or exchanged by the Court, or out of court, the Court may, if it thinks fit, on the application of any party to the sale or exchange, direct or allow payment into court of such sum as is hereinafter mentioned, that is to say—
 - (a) in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, the sum to be paid into court shall be of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge; and

(b) in any other case of capital money charged on the land, the sum to be paid into court shall be of an amount sufficient to meet the incumbrance and any interest due thereon—

but in either case there shall also be paid into court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

- (2) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale or exchange, and give directions for the retention and investment of the money in court and for the payment or application of the income thereof.
- (3) The Court may declare all other land (if any) affected by the incumbrance (besides the land sold or exchanged) to be freed from the incumbrance, and this power may be exercised either after or without notice to the incumbrancer, and notwithstanding that on a previous occasion an order, relating to the same incumbrance, has been made by the Court which was confined to the land then sold or exchanged.
- (4) On any application under this section the Court may, if it thinks fit, as respects any vendor or purchaser, dispense with the service of any notice which under this Act or otherwise would apart from this subsection be required to be served on the vendor or purchaser.

- (5) After notice served on the persons interested in or entitled to the money or fund in court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, on such terms as to delivering up of deeds or other documents or on such other terms as the Court thinks fit, and generally may give directions respecting the application or distribution of the capital or income thereof.
- (6) This section shall apply to sales or exchanges whether made before or after the commencement of this Act, and to incumbrances whether created by statute or otherwise.

Conveyances and other Instruments

No. 3754 s. 51.

51 Lands lie in grant only

- (1) All lands and all interests therein shall lie in grant and shall be incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale; and a conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.
- (2) The use of the word "grant" is not necessary to convey land or to create any interest therein.

No. 3754 s. 52.

52 Conveyances to be by deed

- (1) All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.
- (2) This section shall not apply to—
 - (a) assents by a personal representative¹⁷;
 - (b) disclaimers made in accordance with the provisions of any law relating to bankruptcy or insolvency¹⁸ or not required to be evidenced in writing;

- (c) surrenders by operation of law, including surrenders which may, by law, be effected without writing;
- (d) leases or tenancies or other assurances not required by law to be made in writing;
- (e) receipts not required by law to be under seal;
- (f) vesting orders of the Court or other competent authority;
- (g) conveyances taking effect by operation of law.

53 Instruments required to be in writing

No. 3754 s. 53.

- (1) Subject to the provisions hereinafter contained with respect to the creation of interest in land by parol—
 - (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorized in writing, or by will, or by operation of law;
 - (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
 - (c) a disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorized in writing or by will.
- (2) This section shall not affect the creation or operation of resulting, implied or constructive trusts.

No. 3754 s. 54.

54 Creation of interests in land by parol

- (1) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorized in writing, shall have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.
- (2) Nothing in the foregoing provisions of this Division shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine.

No. 3754 s. 55.

55 Savings in regard to sections 53 and 54

Nothing in the last two preceding sections shall—

- (a) invalidate dispositions by will; or
- (b) affect any interest validly created before the commencement of the **Property Law Act 1928**; or
- (c) affect the right to acquire an interest in land by virtue of taking possession; or
- (d) affect the operation of the law relating to part performance.

No. 3754 s. 56.

56 Persons not named as parties may take interest in land etc.

- (1) A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property, although he is not named as a party to the conveyance or other instrument.

- (2) A deed between parties, to effect its objects, shall have the effect of an indenture though not indented or expressed to be an indenture.

57 Description of deeds

No. 3754 s. 57.

Any deed, whether or not being an indenture, may be described (at the commencement thereof or otherwise) as a deed simply, or as a conveyance, deed of exchange, settlement, mortgage, charge, transfer of mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected.

58 Provisions as to supplemental instruments

No. 3754 s. 58.

Any instrument (whether executed before or after the commencement of this Act) expressed to be supplemental to a previous instrument, shall, as far as may be, be read and have effect as if the supplemental instrument contained a full recital of the previous instrument, but this section shall not of itself operate to give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

59 Conditions and certain covenants not implied

No. 3754 s. 59.

- (1) An exchange a partition or other conveyance of land made by deed after the first day of June One thousand eight hundred and sixty-four shall not imply any condition in law.
- (2) The word "give" or "grant" shall not, in a deed made after the date last aforesaid, imply any covenant in law, save where otherwise provided by statute.

No. 3754 s. 60.

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

- (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 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) The foregoing provisions of this section shall apply only to conveyances and deeds executed after the thirty-first day of December One thousand nine hundred and eighteen:

Provided that in a deed executed after the thirty-first day of January One thousand nine hundred and five, it shall be sufficient in the limitation of an estate in fee-simple to use the words "in fee" or "in fee-simple" without the word "heirs" or to use the words "in tail" or "in tail male" or "in tail female" without the words "heirs of the body" or "heirs male of the body" or "heirs female of the body"¹⁹.

61 Definitions of expressions used in deeds and other instruments

No. 3754 s. 61.

In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Act, unless the context otherwise requires—

- (a) *month* means calendar month;
- (b) *person* includes a corporation;
- (c) the singular includes the plural and vice versa;
- (d) the masculine includes the feminine and vice versa.

61A Construction of references to repealed Acts

S. 61A
inserted by
No. 10096
s. 4(4).

Where an Act or a provision of an Act is repealed and re-enacted (with or without modification) then, unless the contrary intention expressly appears, any reference in any deed, contract, will, order or other instrument to the repealed Act or provision shall be construed as a reference to the re-enacted Act or provision.

62 General words implied in conveyances²⁰

No. 3754 s. 62.

- (1) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements,

rights and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

- (2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, houses or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings conveyed, or any of them, or any part thereof.
- (3) This section shall apply only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.
- (4) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the conveyance gives to him to the land expressed to be conveyed, or as conveying to him any property, right or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

- (5) This section shall apply to conveyances made after the thirty-first day of January One thousand nine hundred and five.

63 All estate clause implied

No. 3754 s. 63.

- (1) Every conveyance shall be effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have, in, to or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.
- (2) This section shall apply only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.
- (3) This section shall apply to conveyances made after the thirty-first day of January One thousand nine hundred and five.

64 Production and safe custody of documents

No. 3754 s. 64.

- (1) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.
- (2) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the

obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

- (3) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.
- (4) The obligations imposed under this section by an acknowledgment are—
 - (a) an obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any person by him authorized in writing; and
 - (b) an obligation to produce the documents or any of them at any trial, hearing or examination in any court, or in the execution of any commission, or elsewhere in Victoria, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and
 - (c) an obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

- (5) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.
- (6) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.
- (7) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.
- (8) An acknowledgment shall by virtue of this Part satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.
- (9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

- (10) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss or destruction of, or injury to, the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.
- (11) An undertaking for safe custody of documents shall by virtue of this Part satisfy any liability to give a covenant for safe custody of documents.
- (12) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents, as are not, by virtue of this Part, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.
- (13) This section shall apply only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.
- (14) This section shall apply to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the thirty-first day of January One thousand nine hundred and five.
- (15) Nothing in this section shall be deemed or taken to affect section fifteen of this Act or any corresponding previous enactment.

No. 3754 s. 65.

65 Reservation of legal estates

- (1) A reservation of a legal estate shall without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made,

or any re-grant by him, operate at law so as to create the legal estate reserved, and so as to vest the same in possession in the person (whether being the grantor or not) for whose benefit the reservation is made.

- (2) A conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance, shall operate as a reservation, unless a contrary intention appears.
- (3) This section shall apply only to reservations made after the commencement of this Act.

66 Confirmation of past transactions

No. 3754 s. 66.

- (1) A deed containing a declaration by the owner of a legal estate in fee-simple or a term of years absolute that his estate shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his estate and capable of subsisting as legal estates which, at some prior date, were expressed to have been transferred or created, and any dealings therewith which would have been legal if those interests had been legally and validly transferred or created, shall, to the extent of the estate of such owner, operate to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings aforesaid.
- (2) The powers conferred by this section may be exercised by a trustee for sale or a personal representative (being in each case such an owner as is mentioned in the last preceding subsection) as well as by an absolute owner, but if exercised by any person, other than an absolute owner, only with the leave of the Court.

- (3) This section shall apply only to deeds containing such a declaration as aforesaid if executed after the commencement of this Act.

No. 3754 s. 67.

67 Receipt in deed sufficient

- (1) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.
- (2) This section shall apply to deeds executed after the thirty-first day of January One thousand nine hundred and five.

No. 3754 s. 68.

68 Receipt in deed or indorsed evidence

- (1) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.
- (2) This section shall apply to deeds executed after the thirty-first day of January One thousand nine hundred and five.

No. 3754 s. 69.

69 Receipt in deed or indorsed authority for payment to legal practitioner²¹

S. 69(1)
amended by
Nos 23/1998
s. 8(2),
75/2006
s. 192(Sch. 2
item 4.1).

- (1) Where a banker, legal practitioner or conveyancer produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, or produces a duly executed instrument under the **Transfer of Land Act 1958** the deed or instrument (as the case may be) shall

be a sufficient authority to the person liable to pay or give the same for his paying or giving the same to the banker, legal practitioner or conveyancer, without the banker, legal practitioner or conveyancer producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt or instrument.

- (2) This section shall apply whether the consideration was paid or given before or after the commencement of this Act.
- (3) In this section *instrument* includes a discharge of mortgage and *banker* means a person acting in his or her official capacity as general manager or manager of any company solely or chiefly engaged in the ordinary business of banking or as the manager conducting for such company the business of any branch of an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth.
- (4) In this section, *conveyancer* means a licensee under the **Conveyancers Act 2006**.

S. 69(3)
amended by
No. 11/2001
s. 3(Sch.
item 59.1(a)
(b)).

S. 69(4)
inserted by
No. 75/2006
s. 192(Sch. 2
item 4.2).

70 Partial release of security from rentcharge

No. 3754 s. 70.

- (1) A release from a rentcharge of part of the land charged therewith shall not extinguish the whole rentcharge, but shall operate only to bar the right to recover any part of the rentcharge out of the land released, without prejudice to the rights of any persons interested in the land remaining unreleased, and not concurring in or confirming the release.
- (2) This section shall apply to releases made after the first day of June One thousand eight hundred and sixty-four.

No. 3754 s. 71.

71 Release of part of land affected from a judgment

- (1) A release from an execution of part of any land charged therewith shall not affect the validity of the execution as respects any land not specifically released.
- (2) This section shall operate without prejudice to the rights of any persons interested in the property remaining unreleased and not concurring in or confirming the release.
- (3) This section shall apply to releases made after the first day of June One thousand eight hundred and sixty-four.

No. 3754 s. 72.

72 Conveyances by a person to himself etc.

- (1) In conveyances made after the thirty-first day of December One thousand eight hundred and sixty-four personal property, including chattels real, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.
- (2) In conveyances made after the thirty-first day of January One thousand nine hundred and five, freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.
- (3) After the commencement of this Act a person may convey land to or vest land in himself.
- (4) Two or more persons (whether or not being trustees or personal representatives) may convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they

could have conveyed such property to a third party; provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

73 Execution of deeds by an individual

No. 3754 s. 73.

- (1) Where an individual executes a deed, he shall either sign or place his mark upon the same and sealing alone shall not be deemed sufficient.
- (2) This section shall apply only to deeds executed after the commencement of this Act.

73A Sealing of deeds

S. 73A
inserted by
No. 9043 s. 4.

An instrument executed by an individual on or after the date of commencement of section 4 of the **Property Law (Deeds) Act 1977** expressed to be sealed by that individual but not so sealed shall for all purposes operate and take effect as if it had been so sealed.

73B Abrogation of rule that authority to agent to deliver must be under seal

S. 73B
inserted by
No. 9630 s. 2.

- (1) The rule of law that the authority to an agent to deliver a deed on behalf of another is required to be conferred by an instrument under seal duly executed by the principal is hereby abrogated.
- (2) This section shall apply to authorities conferred before or after the commencement of this Act.

74 Execution of instruments by or on behalf of corporations

No. 3754 s. 74.

- (1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other

governing body of the corporation, and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

- (2) The board of directors, council 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 corporation.
- (3) Where a person is authorized under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.
- (4) Where a corporation aggregate is authorized under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorized.

- (5) The foregoing provisions of this section shall apply to transactions wherever effected, but only to deeds and instruments executed after the thirty-first day of December One thousand nine hundred and eighteen, except that, in the case of powers or appointments of an agent or officer, they shall apply whether the power was conferred or the appointment was made before or after the commencement of this Act or by this Part.
- (6) Notwithstanding anything contained in this section, any mode of execution or attestation authorized by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorized by this section) be as effectual as if this section had not been passed.

75 Rights of purchaser as to execution

No. 3754 s. 75.

- (1) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his legal practitioner, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his legal practitioner.
- (2) Subsection (1) shall apply to sales made after the thirty-first day of January One thousand nine hundred and five.
- (3) The entitlement under subsection (1) to attestation of the execution of a conveyance does not apply to a registry instrument or an electronic instrument within the meaning of the **Transfer of Land Act 1958**.

S. 75(1)
amended by
No. 35/1996
s. 453(Sch. 1
item 68.2).

S. 75(2)
amended by
No. 23/2004
s. 10(1).

S. 75(3)
inserted by
No. 23/2004
s. 10(2),
amended by
No. 7/2013
s. 14.

Covenants

No. 3754 s. 76.

76 Covenants for title

- (1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say—
- (a) in a conveyance for valuable consideration, other than a mortgage, a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part I of the Fourth Schedule to this Act;
 - (b) in a conveyance of leasehold property for valuable consideration, other than a mortgage, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part II of the Fourth Schedule to this Act;
 - (c) in a conveyance by way of mortgage a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part III of the Fourth Schedule to this Act;
 - (d) in a conveyance by way of mortgage of leasehold property, a further covenant by a person who conveys and is expressed to

convey as beneficial owner in the terms set out in Part IV of the Fourth Schedule to this Act;

- (e) in a conveyance by way of settlement, a covenant by a person who conveys and is expressed to convey as settlor in the terms set out in Part V of the Fourth Schedule to this Act;
- (f) in any conveyance, a covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or under an order of the Court, in the terms set out in Part VI of the Fourth Schedule to this Act, which covenant shall be deemed to extend to every such person's own acts only, and may be implied in an assent by a personal representative in like manner as in a conveyance by deed.

- (2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, for the purposes of this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.
- (3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, for the purposes of this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on

the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

- (4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.
- (5) In this section a conveyance does not include a demise by way of lease at a rent, but does include a charge, and *convey* has a corresponding meaning.
- (6) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.
- (7) A covenant implied as aforesaid may be varied or extended by a deed or an assent, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

- (8) This section shall apply to conveyances made after the thirty-first day of January One thousand nine hundred and five, but only to assents by a personal representative made after the commencement of this Act.

77 Implied covenants in conveyances subject to rents

No. 3754 s. 77.

- (1) In addition to the covenants implied under the last preceding section, there shall in the several cases in this section mentioned, be deemed to be included and implied, a covenant to the effect in this section stated, by and with such persons as are hereinafter mentioned, that is to say—
- (a) in a conveyance for valuable consideration, other than a mortgage, of the entirety of the land affected by a rentcharge, a covenant by the grantee or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in Part VII of the Fourth Schedule to this Act. Where a rentcharge has been apportioned in respect of any land, with the consent of the owner of the rentcharge, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rentcharge were the rentcharge referred to, and the document creating the rentcharge related solely to that land;
- (b) in a conveyance for valuable consideration, other than a mortgage, of part of land affected by a rentcharge, subject to a part of that rentcharge which has been or is by that conveyance apportioned (but in either case without the consent of the owner of the rentcharge) in respect of the land conveyed—

- (i) a covenant by the grantee of the land or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part VIII of the Fourth Schedule to this Act;
- (ii) a covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land affected by such rentcharge is retained, with the grantees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part VIII of the Fourth Schedule to this Act;
- (c) in a conveyance for valuable consideration, other than a mortgage, of the entirety of the land comprised in a lease, for the residue of the term or interest created by the lease, a covenant by the assignee or joint and several covenants by the assignees (if more than one) with the conveying parties and with each of them (if more than one) in the terms set out in Part IX of the Fourth Schedule to this Act. Where a rent has been apportioned in respect of any land, with the consent of the lessor, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land;

- (d) in a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent which has been or is by the conveyance apportioned (but in either case without the consent of the lessor) in respect of the land conveyed—
- (i) a covenant by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part X of the Fourth Schedule to this Act;
 - (ii) a covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land comprised in the lease is retained, with the assignees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part X of the Fourth Schedule to this Act.
- (2) Where in a conveyance for valuable consideration, other than a mortgage, part of land affected by a rentcharge, or part of land comprised in a lease is, without the consent of the owner of the rentcharge or of the lessor, as the case may be, expressed to be conveyed—
- (i) subject to or charged with the entire rent—
then paragraph (b)(i) or (d)(i) of the last subsection, as the case may require, shall have effect as if the entire rent were the apportioned rent; or

(ii) discharged or exonerated from the entire rent—

then paragraph (b)(ii) or (d)(ii) of the last subsection, as the case may require, shall have effect as if the entire rent were the balance of the rent, and the words "other than the covenant to pay the entire rent" had been omitted.

- (3) In this section *conveyance* shall not include a demise by way of lease or rent.
- (4) Any covenant which would be implied under this section by reason of a person conveying or being expressed to convey as beneficial owner may, by express reference to this section, be implied, with or without variation, in a conveyance, whether or not for valuable consideration, by a person who conveys or is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or under an order of the Court.
- (5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.
- (6) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

(7) In particular any covenant implied under this section may be extended by providing that—

- (a) the land conveyed; or
- (b) the part of the land affected by the rentcharge which remains vested in the covenantor; or
- (c) the part of the land demised which remains vested in the covenantor—

shall, as the case may require, stand charged with the payment of all money which may become payable under the implied covenant.

(8) This section shall apply only to conveyances made after the commencement of this Act.

78 Benefits of covenants relating to land

No. 3754 s. 78.

(1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed.

For the purposes of this subsection in connexion with covenants restrictive of the user of land *successors in title* shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

(2) This section shall apply to covenants made after the commencement of this Act but the repeal of section sixty-four of the **Conveyancing Act 1915** shall not affect the operation of covenants to which that section or any corresponding previous enactment applied.

79 Burden of covenants relating to land

No. 3754 s. 79.

(1) A covenant relating to any land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed, be deemed to be

made by the covenantor on behalf of himself, his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed.

This subsection shall extend to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

- (2) For the purposes of this section in connexion with covenants restrictive of the user of land *successors in title* shall be deemed to include the owners and occupiers for the time being of such land.
- (3) This section shall apply only to covenants made after the commencement of this Act.

S. 79A
inserted by
No. 7130 s. 3.

79A Construction of covenants affecting land

It is hereby declared that when the benefit of a restriction as to the user of or the building on any land is or has been annexed or purports to be annexed by any instrument to other land the benefit shall unless it is expressly provided to the contrary be deemed to be and always to have been annexed to the whole and to each and every part of such other land capable of benefiting from such restriction.

No. 3754 s. 80.

80 Covenants binding land

- (1) A covenant and a bond and an obligation or contract under seal made after the thirty-first day of January One thousand nine hundred and five shall operate to bind the real estate as well as the personal estate of the person making the same if and so far as a contrary intention is not expressed in the covenant, bond, obligation or contract.

This subsection shall extend to a covenant implied by virtue of this Part²².

- (2) Every covenant running with the land, whether entered into before or after the commencement of this Act, shall take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of every such covenant shall vest in or bind the persons who by virtue of any such enactment or otherwise succeed to the title of the covenantee or the covenantor, as the case may be.
- (3) The benefit of a covenant relating to land entered into after the commencement of this Act may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Act.
- (4) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

81 Effect of covenant with two or more jointly

No. 3754 s. 81.

- (1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Part, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond or obligation devolves, and where made after the commencement of this Act shall be construed as being also made with each of them.
- (2) This section shall extend to a covenant implied by virtue of this Part²³.

- (3) This section shall apply only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and shall have effect subject to the covenant, contract, bond or obligation, and to the provisions therein contained.
- (4) Except as otherwise expressly provided, this section shall apply to a covenant, contract, bond or obligation made or implied after the thirty-first day of January One thousand nine hundred and five.

No. 3754 s. 82.

82 Where one or more persons enter into covenants etc.

- (1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.
- (2) This section shall apply to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the Court made before such commencement.

No. 3754 s. 83.

83 Construction of implied covenants

In the construction of a covenant or proviso, or other provision, implied in a deed or assent by virtue of this Part, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

84 Power for Court to modify etc. restrictive covenants affecting land No. 3754 s. 84.

- (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 wholly or partially to discharge or modify any such restriction (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order) 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
 - (c) that the proposed discharge or modification will not substantially injure the persons entitled to the benefit of the restriction:

Provided that no compensation shall be payable in respect of the discharge or modification of a restriction by reason of any advantage thereby accruing to the owner of the land affected by the

restriction unless the person entitled to the benefit of the restriction also suffers loss in consequence of the discharge or modification nor shall any compensation be payable in excess of such loss; but this provision shall not affect any right to compensation where the person claiming the compensation proves that by reason of the imposition of the restriction the amount of consideration paid for the acquisition of the land was reduced.

- (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 ascertained or of full age or capacity or not then entitled or thereafter capable of becoming 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 has not been produced to the Court, and the Court may act on any evidence of such instrument as it thinks fit.
- (6) This section shall apply to restrictions whether subsisting on the thirty-first day of December One thousand nine hundred and eighteen, 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 made²⁴.

85 Defendant may apply for order

No. 3754 s. 85.

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 the last preceding section.

Division 3—Mortgages and rentcharges

Mortgages

86 Mortgages under Transfer of Land Act 1958 generally excepted

No. 3754 s. 86.

Except sections eighty-seven, one hundred and two, one hundred and nine, one hundred and ten, one hundred and eleven and one hundred and twelve, the provisions of this Division shall not apply to mortgages under the **Transfer of Land Act 1958** effected by instruments of mortgage under that Act.

No. 3754 s. 87.

87 Foreclosure extinguishes right of action for mortgage debt etc.

- (1) On a decree judgment or order absolute for foreclosure the mortgagee shall be deemed to have taken the property mentioned in such decree, judgment or order in full satisfaction of the mortgage debt and his right or equity to bring any action or to take other proceedings for the recovery of the mortgage money from the debtor, surety or other person shall be extinguished and the right or equity of the mortgagor to redeem the said property shall also be extinguished.
- (2) In the case of mortgages of land under the **Transfer of Land Act 1958** *order absolute* includes an order for foreclosure under the hand of the registrar when recorded on the Register.
- (3) Nothing in this section shall be deemed to disentitle the mortgagee (on such terms and conditions as to the Court seems just) from obtaining foreclosure of any other property over which he holds security by way of mortgage for the said money or part thereof or from enforcing all or any rights, powers and remedies expressed or implied in such mortgage except the right to sue the mortgagor or any surety for the mortgage money or on any bill or note given as security for the mortgage money as if this section had not been passed.
- (4) This section shall have effect notwithstanding any stipulation to the contrary.

S. 87(2)
amended by
No. 18/1989
s. 13(Sch. 2
item 68(a)).

No. 3754 s. 88.

88 Effect of conveyance on sale by mortgagee by sub-demise

If under a mortgage deed by sub-demise 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 thirty-first day of December One thousand nine hundred and eighteen) 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.

89 When section 88 takes effect

No. 3754 s. 89.

The last preceding section shall take effect without prejudice to any prior incumbrance or trust affecting the nominal reversion and shall apply whether the mortgage deed was or is executed before or after the date aforesaid, 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 the said section *mortgagee* shall include any person entitled to exercise the statutory or other power of sale.

90 Realization of equitable charges by the Court

No. 3754 s. 90.

- (1) Where an order for sale is made by the Court in reference to an equitable mortgage on land the Court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land, or may create and vest in the mortgagee a legal estate in the land to enable him to carry out the sale as the case requires, in like manner as if the mortgage had

been made by deed by way of legal mortgage, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

- (2) This section shall apply to equitable mortgages made or arising before or after the commencement of this Act, but not to a mortgage which has been overreached under the powers conferred by this Part or otherwise.

No. 3754 s. 91.

91 Sale of mortgaged property in action for redemption or foreclosure

- (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.
- (2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding that—
- (a) any other person dissents; or
 - (b) the mortgagee or any person so interested does not appear in the action—

and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including the deposit in court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.

- (3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant,

direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

- (4) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.
- (5) This section shall apply to actions brought either before or after the commencement of this Act.
- (6) In this section *mortgaged property* shall include the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.
- (7) For the purposes of this section the Court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any incumbrance, as the Court thinks fit; or, in the case of an equitable mortgage, may create and vest in the mortgagee a legal estate to enable him to carry out the sale in like manner as if the mortgage had been made by deed by way of legal mortgage.

92 Power to authorize land and minerals to be dealt with separately

No. 3754 s. 92.

Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the Court may, on his application, authorize him and the persons deriving title under him to dispose—

- (a) of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting or carrying away of minerals; or

(b) of all or any mines and minerals, with or without the said rights or powers separately from the land—

and thenceforth the powers so conferred shall have effect as if the same were contained in the mortgage.

No. 3754 s. 93.

93 Restriction on consolidation of mortgages

- (1) A mortgagor seeking to redeem any one mortgage shall be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.
- (2) This section shall have effect notwithstanding any stipulation to the contrary.
- (3) This section shall apply only where the mortgages or one of them are or is made after the thirty-first day of January One thousand nine hundred and five.

No. 3754 s. 94.

94 Tacking and further advances

- (1) After the commencement of this Act, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—
 - (a) if an arrangement has been made to that effect with the subsequent mortgagees; or
 - (b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or
 - (c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.

This subsection shall apply whether or not the prior mortgage was made expressly for securing further advances.

- (2) In relation to the making of further advances after the commencement of this Act a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered under Part I of this Act or any corresponding previous enactment, if it was not so registered at the time when the original mortgage was created or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

This subsection shall apply only where the prior mortgage was made expressly for securing a current account or other further advances.

- (3) The right to tack, save in regard to the making of further advances as aforesaid, is hereby declared to have been abolished by the **Property Law Act 1928**, section 94(3):

Provided that nothing in this Part shall affect any priority acquired before the commencement of that Act by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangements with the subsequent incumbrancer.

- (4) This section shall apply to mortgages of land made before or after the commencement of this Act.

95 Obligation to transfer instead of re-conveying

No. 3754 s. 95.

- (1) Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a re-conveyance or surrender, he shall be entitled to require the mortgagee, instead of re-conveying or surrendering, to assign the mortgage debt and convey the mortgaged property

to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.

- (2) The rights conferred by this section shall belong to and shall be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.
- (3) This section shall not apply in the case of a mortgagee being or having been in possession.
- (4) This section shall apply to mortgages made either before or after the commencement of this Act, and shall take effect notwithstanding any stipulation to the contrary.

No. 3754 s. 96.
S. 96
amended by
No. 35/1996
s. 453(Sch. 1
item 68.2).

96 Mortgagor entitled to inspection and copies of documents relating to mortgaged property

A mortgagor, as long as his right to redeem subsists, shall be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, by himself or his legal practitioner to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

This section shall have effect notwithstanding any stipulations to the contrary.

No. 3754 s. 97.

97 Delivery of documents on extinguishment of mortgage

A mortgagee, whose mortgage is surrendered or otherwise extinguished, shall not be liable on account of delivering documents of title in his

possession to the person not having the best right thereto, unless he has notice of the right or claim of a person having a better right, whether by virtue of a right to require a surrender or re-conveyance or otherwise.

98 Actions for possession by mortgagors

No. 3754 s. 98.

- (1) A mortgagor for the time being entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to take possession or to enter into the receipt of the rents and profits thereof, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person²⁵.
- (2) This section shall not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of any legal estate vested in him or otherwise.
- (3) This section shall apply whether the mortgage was made before or after the commencement of this Act.

99 Leasing powers of mortgagor and mortgagee in possession

No. 3754 s. 99.

- (1) A mortgagor of land while in possession shall, as against every incumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorized.
- (2) A mortgagee of land while in possession shall, as against all prior incumbrancers (if any) and as against the mortgagor, have power to make from time to time any such lease as aforesaid.

- (3) The lease which this section authorizes is a lease for a term not exceeding seven years.
- (4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.
- (5) Every such lease shall be made to take effect in possession not later than three months after its date.
- (6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken or rent made payable in advance.
- (7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.
- (8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.
- (9) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.
- (10) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.
- (11) This section shall apply only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed,

or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

- (12) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Part, and with all the like incidents, effects and consequences:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

- (13) Nothing in this Part shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Part and the corresponding previous enactments had not been passed:

Provided that, in the case of a mortgage of leasehold land, a lease granted under this section shall reserve a reversion of not less than one day.

- (14) Subject as aforesaid, this section shall apply to any mortgage made after the thirty-first day of January One thousand nine hundred and five, but the provisions of this section, or any of them, may, by agreement in writing made after that date between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially

affect any right or interest of any mortgagee not joining in or adopting the agreement.

- (15) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.
- (16) For the purposes of this section *mortgagor* shall not include an incumbrancer deriving title under the original mortgagor.
- (17) The powers of leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under this Part, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the receiver.

No. 3754
s. 100.

100 Powers of mortgagor and mortgagee in possession to accept surrenders of leases

- (1) For the purpose only of enabling a lease authorized under the last preceding section, or under any agreement made pursuant to that section, or by the mortgage deed (in this section referred to as an authorized lease) to be granted, a mortgagor of land while in possession shall, in like manner as if the legal estate was vested in him and as against every incumbrancer, have, by virtue of this Part, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines and minerals therein, and, on a surrender of the lease so far as it comprises part

only of the land or mines and minerals leased, the rent may be apportioned.

- (2) For the same purpose, a mortgagee of land while in possession shall, in like manner as against all prior or other incumbrancers (if any) and as against the mortgagor, have, by virtue of this Part power to accept from time to time any such surrender as aforesaid.
- (3) On a surrender of part only of the land or mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorized lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease.
- (4) Where any consideration for the surrender, other than an agreement to accept an authorized lease, is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section shall authorize a surrender to a mortgagor without the consent of the incumbrancers, or shall authorize a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.
- (5) No surrender shall, by virtue of this section, be rendered valid unless—
 - (a) an authorized lease is granted of the whole of the land or mines or minerals comprised in the surrender to take effect in possession

immediately or within one month after the date of the surrender; and

- (b) the term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and
 - (c) where the whole of the land, mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.
- (6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.
 - (7) This section shall apply only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.
 - (8) This section shall apply to a mortgage made after the twenty-seventh day of September One thousand nine hundred and fourteen, but the provisions of this section, or any of them, may, by agreement in writing made after that date, between the mortgagor and mortgagee, be applied

to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

- (9) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.
- (10) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Part, and with all the like incidents, effects and consequences:
- Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.
- (11) Nothing in this section shall operate to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor with the concurrence of all the incumbrancers if this Part and any corresponding previous enactment had not been passed.
- (12) For the purposes of this section *mortgagor* shall not include an incumbrancer deriving title under the original mortgagor.

- (13) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under this Part, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee was in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

Nos 3754
s. 101, 4265
s. 3.

101 Powers incident to estate or interest of mortgagee

- (1) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Part, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further, namely—
- (a) a power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, and for a sum payable either in one amount or by instalments, subject to such conditions respecting title, or evidence of title, or other matter, as he, the mortgagee, thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby, with power to make such roads, streets and passages and grant such easements of right of way or drainage over the same as the circumstances may require and he thinks fit; and

- (b) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
 - (c) where the mortgage deed is executed after the thirty-first day of December One thousand nine hundred and twelve, a power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged property consists of an interest in income, or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof.
- (2) Where the mortgage deed is executed after the thirty-first day of December One thousand nine hundred and twelve, the power of sale aforesaid shall include the following powers as incident thereto, namely—
- (a) a power to impose or reserve or make binding, as far as the law permits, by covenant, condition or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial

working thereof, or with respect to any other thing;

- (b) a power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface—
 - (i) with or without a grant or reservation of rights of way, rights of water, easements, rights and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof or to any property sold; and
 - (ii) with or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold; and
 - (iii) with or without covenants by the purchaser to expend money on the land sold.
- (3) The provisions of this Part relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects and consequences as if such variations or extensions were contained in this Part.

(4) This section shall apply only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(5) Save as otherwise provided, this section shall apply where the mortgage deed is executed after the thirty-first day of January One thousand nine hundred and five.

102 Power to appoint receiver in the case of mortgage under the Transfer of Land Act 1958

No. 3754
s. 102.

The provisions of subsection (1) of the last preceding section so far as they relate to the power to appoint a receiver shall apply to a mortgage under the **Transfer of Land Act 1958** and in applying such provisions the expression *mortgage deed* shall be construed as including an instrument of mortgage under the said Act.

103 Regulation of exercise of power of sale

No. 3754
s. 103.

A mortgagee shall not exercise the power of sale conferred by this Part unless and until—

- (a) notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for one month after such service; or
- (b) some interest under the mortgage is in arrear and unpaid for one month after becoming due; or
- (c) there has been a breach of some provision contained in the mortgage deed or in this Part, or in any corresponding previous enactment, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other

than and besides a covenant for payment of the mortgage money or interest thereon.

No. 3754
s. 104.

104 Conveyance on sale

- (1) A mortgagee exercising the power of sale conferred by this Part shall have power, by deed, to convey the property sold, for such estate and interest therein as he is by this Part authorized to sell or convey or may be the subject of the mortgage, freed from all estates, interests and rights to which the mortgage has priority, but subject to all estates, interests and rights which have priority to the mortgage.
- (2) Where a conveyance is made in exercise of the power of sale conferred by this Part, or any corresponding previous enactment, the title of the purchaser shall not be impeachable on the ground—
 - (a) that no case had arisen to authorize the sale; or
 - (b) that due notice was not given; or
 - (c) where the mortgage is made after the commencement of this Act, that leave of the Court, when so required, was not obtained; or
 - (d) whether the mortgage was made before or after such commencement, that the power was otherwise improperly or irregularly exercised—

and a purchaser shall not, either before or on conveyance, be concerned to see or inquire whether a case has arisen to authorize the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorized, or improper, or irregular exercise of the power shall

have his remedy in damages against the person exercising the power.

- (3) A conveyance on sale by a mortgagee, made after the commencement of this Act, shall be deemed to have been made in exercise of the power of sale conferred by this Part unless a contrary intention appears.

105 Application of proceeds of sale

Nos 3754
s. 105, 4265
s. 4.

The money which is in fact received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject (if any) or after payment into court under this Part²⁶ of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest and costs, and other money (if any) due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

106 Provisions as to exercise of power of sale

- (1) The power of sale conferred by this Part may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.
- (2) The power of sale conferred by this Part shall not affect the right of foreclosure.
- (3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Part, or of any trust connected therewith, or, where the mortgage is executed

after the thirty-first day of December One thousand nine hundred and twelve, of any power or provision contained in the mortgage deed.

- (4) At any time after the power of sale conferred by this Part has become exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an estate, interest or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

No. 3754
s. 107.

107 Mortgagee's receipts, discharges etc.

- (1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Part, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage or as to the application of the money or securities so paid or transferred.
- (2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Part directed respecting money received by him arising from a sale under the power of sale conferred by this Part, but with this variation, that the costs, charges and expenses payable shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

108 Amount and application of insurance money

No. 3754
s. 108.

- (1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Part shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, the full insurable value of the buildings upon the mortgaged land or the amount owing to the mortgagee in respect of the mortgage.
- (2) An insurance shall not, under the power conferred by this Part, be effected by a mortgagee in any of the following cases, namely—
 - (a) where there is a declaration in the mortgage deed that no insurance is required;
 - (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
 - (c) where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Part authorized to insure.
- (3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Part, or any corresponding previous enactment or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.
- (4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or

damage by fire or otherwise effected under this Part, or any corresponding previous enactment, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money.

No. 3754
s. 109.

109 Appointments, powers, remuneration and duties of receiver

- (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Part shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Part, or by the **Transfer of Land Act 1958**, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.
- (2) A receiver appointed under the powers conferred by this Part, or any corresponding previous enactment, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.
- (3) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action, distress or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Part.
- (4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.
- (5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

- (6) The receiver shall for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, be entitled to retain out of any money received by him, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.
- (7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent (if any) to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any building, effects or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

110 Application of insurance money by receiver

No. 3754
s. 110.

Subject to the provisions of this Part as to the application of insurance money, the receiver shall apply all money received by him as follows, namely—

- (a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property; and
- (b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
- (c) in payment of his commission, and of the premiums on fire, life or other insurances (if any) properly payable under the mortgage deed or under this Part, and the cost of

- executing necessary or proper repairs directed in writing by the mortgagee; and
- (d) in payment of the interest accruing due in respect of any principal sum due under the mortgage; and
- (e) in or towards discharge of the principal money if so directed in writing by the mortgagee—

and shall pay the residue (if any) of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

No. 3754
s. 111.

111 Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver

- (1) Where the statutory or express power for a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor committing an act of insolvency or an act of bankruptcy or being adjudged an insolvent or bankrupt, such power shall not be exercised only on account of the adjudication or the act of insolvency or bankruptcy, without the leave of the Supreme Court.
- (2) This section shall apply only where the mortgage deed is executed after the commencement of this Act; and in this section *act of insolvency* has the same meaning as *act of bankruptcy* has in the Bankruptcy Act 1966 of the Commonwealth.

S. 111(2)
amended by
No. 9427
s. 6(1)(Sch. 5
item 146).

No. 3754
s. 112.

112 Effect of advance on joint account

- (1) Where—
- (a) in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of

the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account; or

- (b) a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly and not in shares—

the mortgage money, or other money or money's worth, for the time being due to those persons on the mortgage or obligation, shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

- (2) This section shall apply if and so far as a contrary intention is not expressed in the mortgage, obligation or transfer, and shall have effect subject to the terms of the mortgage, obligation, or transfer, and to the provisions therein contained.
- (3) This section shall apply to any mortgage, obligation or transfer made after the thirty-first day of January One thousand nine hundred and five.
- (4) In the case of mortgages under the **Transfer of Land Act 1958** or any corresponding previous enactment this section shall apply subject to the provisions of that Act or enactment relating to the registration of a discharge.

No. 3754
s. 113.

113 Notice of trusts affecting mortgage debts

- (1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged, released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume unless the contrary is expressly stated in the instruments relating to the mortgage—
 - (a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and
 - (b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof—without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.
- (2) This section shall apply to mortgages made before or after the commencement of this Act, but only as respects dealings effected after such commencement.
- (3) This section shall not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

114 Transfers of mortgages

No. 3754
s. 114.

- (1) A deed executed by a mortgagee purporting to transfer his 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—
 - (a) 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
 - (b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and
 - (c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.
- (2) In this section *transferee* includes his personal representatives and assigns.
- (3) A transfer of mortgage may be made in the form contained in the Fifth Schedule of this Act with such variations and additions (if any) as the circumstances may require.
- (4) This section shall apply, whether the mortgage transferred was made before or after the commencement of this Act, and whether by way of statutory mortgage or not but shall apply only to transfers made after the thirty-first day of December One thousand nine hundred and eighteen.
- (5) This section shall not extend to a transfer of a bill of sale of chattels by way of security.

No. 3754
s. 115.

115 Re-conveyances of mortgages by indorsed receipts under seal²⁷

- (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 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 but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

(1A) An instrument of discharge lodged in accordance with section 84(4) of the **Transfer of Land Act 1958** operates as provided in section 84(5) of that Act without any re-conveyance, and operates as a discharge of the mortgaged or charged property from all principal moneys and interest secured by, and all claims under, the mortgage or charge.

S. 115(1A)
inserted by
No. 128/1986
s. 16.

(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 Sixth Schedule to this Act with such variations and additions (if any) as are deemed expedient.
- (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 subject to any interest which is paramount to the mortgage.
- (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 for the time being owing and is indorsed on, written at the foot of or annexed to one of the mortgage deeds.
- (8) This section shall apply 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 the thirty-first day of December One thousand nine hundred and eighteen.
- (9) 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, provident or industrial and 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 any Act relating to the society or trust.

116 Cesser of mortgage terms

No. 3754
s. 116.

Where a mortgage is by demise or sub-demise then without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require the mortgage to be kept alive by transfer or otherwise, the mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease²⁸.

117 Forms of statutory legal charges

No. 3754
s. 117.

- (1) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage being in the form given in Part I of the Seventh Schedule to this Act with such variations and additions (if any) as circumstances may require, and if so made the provisions of this section shall apply thereto.
- (2) There shall be deemed to be included, and there shall by virtue of this Part be implied, in such a mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following, namely:

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee (as well after as before any judgment is obtained under the mortgage) interest thereon, or on the unpaid part thereof, at the stated rate, by equal quarterly payments the first thereof to be made at the end of three months from the day stated for payment of the mortgage money;

Secondly, a provision to the following effect, namely:

That if the mortgagor on the stated day pays to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property or transfer the benefit of the mortgage as the mortgagor directs.

No. 3754
s. 118.

118 Forms of statutory transfers of mortgages

A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A) and (B) and (C) set out in Part II of the Seventh Schedule to this Act as may be appropriate to the case with such variations and additions (if any) as circumstances may require, and if so made the provisions of the next three succeeding sections shall apply thereto.

No. 3754
s. 119.

119 Effect of statutory transfer

In whichever of the three forms referred to in the last preceding section the deed of transfer is made, it shall have effect as follows, namely—

- (a) there shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred (who, with his personal representatives and assigns, is in this section designated 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 covenants with the mortgagee, and

the right to exercise all powers of the mortgagee;

- (b) all the term and interest (if any) subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

120 Effect of covenant joining in deed of transfer

No. 3754
s. 120.

If the deed of transfer is made in the Form (B), there shall also be deemed to be included, and there shall by virtue of this Part be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following, namely:

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

121 Statutory transfer and mortgage combined

No. 3754
s. 121.

If the deed of transfer is made in the Form (C) it shall, by virtue of this Part, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of the last three preceding sections shall have effect in relation thereto accordingly.

No. 3754
s. 122.

122 Application to statutory transfers under former Acts

The last four preceding sections shall apply to the transfer of a statutory mortgage created under the **Conveyancing Act 1915** or any corresponding previous enactment.

No. 3754
s. 123.

123 Implied covenants, joint and several

In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

No. 3754
s. 124.

124 Form of discharge of statutory mortgage or charge

A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage in the form given in Part III of the Seventh Schedule to this Act with such variations and additions (if any) as circumstances may require²⁹.

Rentcharges

Nos 3754
s. 125, 5291
s. 18(3).

125 Remedies for the recovery of annual sums charged on land

- (1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land,

and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests and rights having priority to the annual sum, the person entitled to receive the annual sum shall have such remedies for recovering and compelling payment thereof as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

- (2) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.
- (3) In the like case the person entitled to the annual sum, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage or sale or demise for all or any part of the term of the land charged or of any part thereof or by receipt of the income thereof or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or

obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed.

The surplus (if any) of the money raised, or of the income received, under the trusts of the deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

- (4) This section shall apply only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.
- (5) The powers and remedies conferred by this section shall apply where the instrument creating the annual sum comes into operation after the thirty-first day of January One thousand nine hundred and five, and whether the instrument conferring the power under which the annual sum was authorized to be created came into operation before or after that date, unless the instrument creating the power or under which the annual sum is created otherwise directs.
- (6) This section shall not apply to annuities charged on land under the **Transfer of Land Act 1958** or any corresponding previous enactment by instruments thereunder.

No. 3754
s. 126.

126 Rule against perpetuities not to apply to powers etc. under section 125

The rule of law relating to perpetuities does not apply to any powers or remedies conferred by the last preceding section, nor to the same or like powers or remedies conferred by any instrument

for recovering or compelling the payment of any annual sum within the meaning of the said section.

127 Creation of rentcharges charged on another rentcharge

No. 3754
s. 127.

- (1) A rentcharge or other annual sum (not being rent incident to a reversion) payable half-yearly or otherwise may be granted, reserved, charged or created out of or on another rentcharge or annual sum (not being rent incident to a reversion) charged on or payable out of land or on or out of the income of land, in like manner as the same could have been made to issue out of land.
- (2) If at any time the annual sum so created or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum shall (without prejudice to any prior interest or charge) have power to appoint a receiver of the annual sum charged or any part thereof, and the provisions of this Part relating to the appointment, powers, remuneration and duties of a receiver shall apply in like manner as if such person were a mortgagee entitled to exercise the power of sale conferred by this Part, and the annual sum charged were the mortgaged property and the person entitled thereto were the mortgagor.

128 Power in section 127 to be substituted for remedies in section 125

No. 3754
s. 128.

The power to appoint a receiver conferred by the last preceding section shall (where the annual sum is charged on a rentcharge) take effect in substitution for the remedies conferred, in the case of annual sums charged on land, by section one hundred and twenty-five, and section one hundred and twenty-six shall apply and have effect as if

re-enacted in and in terms made applicable to the last preceding section.

No. 3754
s. 129.

129 Application of sections 127 and 128

The last two preceding sections shall apply to annual sums expressed to be created before as well as after the commencement of this Act, and, but without prejudice to any order of the Court made before the commencement of the **Property Law Act 1928**, shall operate to confirm any annual sum which would have been validly created if this section had been in force.

Division 4—Effect of certain limitations³⁰

Legal Assignments of Things in Action etc.

No. 3754
s. 130.

130 Abolition of the Rule in Shelley's case

Where by any instrument coming into operation after the commencement of this Act an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person in words which, but for this section would, under the rule of law known as the Rule in Shelley's case, and independently of section two hundred and forty-nine of this Act, have operated to give to that person an interest in fee-simple or an entailed interest, such words shall operate as words of purchase and not of limitation, and shall be construed and have effect accordingly, and in the case of an interest in any property expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person or persons shall take as would in the case of freehold land have answered that description under the general law formerly in force.

* * * * *

S. 131
repealed by
No. 73/2006
s. 8.

132 Restriction on executory limitations

No. 3754
s. 132.

- (1) Where there is a person entitled to—
 - (a) land for an estate in fee-simple or for any less interest; or
 - (b) any interest in other property—

with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation over was to take effect.
- (2) This section shall apply where the executory limitation is contained in an instrument coming into operation after the thirty-first day of January One thousand nine hundred and five.

132A Voluntary waste

Cf. [1267] 52
Henry III.
(Statute of
Marleberge)
c. XXIII.
S. 132A
inserted by
No. 9407
s. 6(c).

- (1) Subject to subsection (2), a tenant for life or lives term of years at will or otherwise shall not commit voluntary waste.
- (2) Nothing in subsection (1) shall apply to any estate or tenancy without impeachment of waste, or affect any licence or other right to commit waste.
- (3) A tenant who infringes subsection (1) shall be liable in damages to his remainderman or reversioner but this section imposes no criminal liability.
- (4) This section does not affect the operation of any event which may determine a tenancy at will.

- (5) No tenant shall be liable in damages for permissive waste for which he would not have been liable if this section had not been enacted.

No. 3754
s. 133.

133 Equitable waste

An estate for life without impeachment of waste shall not confer upon the tenant for life any right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such estate.

No. 3754
s. 134.

134 Legal assignments of things in action

Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, shall be and shall be deemed to have been effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

- (a) the legal right to such debt or thing in action;
- (b) all legal and other remedies for the same;
and
- (c) the power to give a good discharge for the same without the concurrence of the assignor:

Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice—

- (a) that the assignment is disputed by the assignor or any person claiming under him;
or

(b) of any other opposing or conflicting claims to such debt or thing in action—

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the **Trustee Act 1958**.

135 Limitation in the case of certain assignments

The last preceding section shall not affect the provisions of section 124 of the **Friendly Societies (Victoria) Code**.

Nos 3754
s. 135, 4602
s. 2(7).
S. 135
amended by
Nos 6455 s. 2,
7231 s. 4, 9427
s. 6(1)(Sch. 5
item 147),
119/1986
s. 142(Sch. 2
item 10),
57/1989
s. 3(Sch.
item 166.6),
81/1989
s. 3(Sch.
item 43),
83/1996 s. 40.

Division 5—Leases and tenancies

136 Division to apply to leases under Transfer of Land Act 1958

No. 3754
s. 136.

The provisions of this Division shall apply to leases and sub-leases of land under the **Transfer of Land Act 1958** notwithstanding anything in that Act contained, and for the purposes of this Division *lease* includes so far as circumstances will admit any instrument of letting whether under seal or not³¹.

No. 3754
s. 137.

S. 137
amended by
No. 110/1986
s. 140(2).

137 Lessor or lessee may obtain decision of Court as to claims for damages etc.

A lessor or lessee or his representatives respectively may at any time or times and from time to time apply to the Court in respect of any claim for damages or any question arising out of or under or connected with the lease (not being a question affecting the existence or validity of the lease), and upon such application any party shall have the right to call evidence either orally or by affidavit on giving notice to the other parties to the summons of intention so to do, and the Court shall make such order upon the application as to it appears just and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

No. 3754
s. 138.

S. 138
amended by
No. 71/1994
s. 4(a).

138 Tenant not to be prejudiced without notice

No lessee shall be prejudiced or damaged by payment of any rent to any grantor transferor or assignor of any reversion or by breach of any condition for non-payment of rent before notice shall be given to him of such grant transfer or assignment by the grantee, transferee or assignee.

No. 3754
s. 139.

139 Effect of extinguishment or reversion

- (1) Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.
- (2) This section shall apply to surrenders or mergers effected after the first day of June One thousand eight hundred and sixty-four.

140 Apportionment of conditions on severance

No. 3754
s. 140.

- (1) Notwithstanding the severance by conveyance, surrender or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.
- (2) In this section *right of re-entry* includes a right to determine the lease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.
- (3) This section shall apply to leases made before or after the commencement of this Act and whether the severance of the reversionary estate or the partial avoidance or cesser of the term was effected before or after such commencement:

Provided that, where the lease was made before the thirty-first day of January One thousand nine hundred and five, nothing in this section shall

affect the operation of a severance of the reversionary estate or partial avoidance or cesser of the term which was effected before the commencement of the **Property Law Act 1928**.

No. 3754
s. 141.

141 Rent and benefit of lessee's covenants to run with the reversion

- (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.
- (2) Any such rent, covenant or provision shall be capable of being recovered, received, enforced and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or of any part as the case may require, of the land leased.
- (3) Where that person becomes entitled by conveyance or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection shall not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.
- (4) This section shall apply to leases made before or after the commencement of this Act, but shall not affect the operation of—

- (a) any severance of the reversionary estate; or
- (b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision—

effected before the commencement of the
Property Law Act 1928.

142 Obligation of lessor's covenants to run with reversion

No. 3754
s. 142.

- (1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.
- (2) This section shall apply to leases made before or after the commencement of this Act, whether the severance of the reversionary estate was effected before or after such commencement:

Provided that, where the lease was made before the thirty-first day of January One thousand nine hundred and five nothing in this section shall affect the operation of any severance of the reversionary estate effected before the commencement of the **Property Law Act 1928.**

This section shall take effect without prejudice to any liability affecting a covenantor or his estate.

No. 3754
s. 143.

143 Effect of licences granted to lessees

- (1) Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only—
 - (a) to the permission actually given; or
 - (b) to the specific breach of any provision or covenant referred to; or
 - (c) to any other matter thereby specifically authorized to be done—and the licence does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.
- (2) Notwithstanding any such licence—
 - (a) all rights under covenants and powers of re-entry contained in the lease shall remain in full force and be available as against any subsequent breach of covenant, condition or other matter not specifically authorized or waived, in the same manner as if no licence had been granted; and
 - (b) the condition or right of entry shall remain in force in all respects as if the licence had not been granted, save in respect of the particular matter authorized to be done.
- (3) Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting or doing any other specified act without a licence, and a licence is granted—
 - (a) to any one of two or more lessees to do any act, or to deal with his share or interest; or

- (b) to any lessee, or to any one of two or more lessees, to assign or underlet part only of the property, or to do any act in respect of part only of the property—

the licence shall not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the lessee or lessees of the rest of the property (as the case may be) in respect of such shares or interests or remaining property, but the right of entry shall remain in force in respect of the shares, interests or property not the subject of the licence.

- (4) This section shall apply to licences granted after the nineteenth day of April One thousand eight hundred and sixty-four.

144 No fine to be exacted for licence to assign

No. 3754
s. 144.

- (1) In all leases containing a covenant, condition or agreement against assigning, underletting or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that such consent shall not be unreasonably withheld and that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

S. 144(2)
amended by
Nos 97/1987
s. 181(11)(a),
74/2000
s. 3(Sch. 1
item 104).

- (2) In the case of a lease relating to licensed premises within the meaning of the **Liquor Control Reform Act 1998**, the last preceding subsection shall be read and construed as if for the words "unless the lease contains an express provision to the contrary" there were substituted the words "notwithstanding any provision to the contrary", but nothing in this subsection shall affect any liability to pay any such fine or sum of money which by reason of section two of the **Conveyancing Act 1917** was existing at the commencement of the **Property Law Act 1928**.

No. 3754
s. 145.

145 Lessee to give notice of ejection to lessor

Every lessee to whom there is delivered any writ for the recovery of premises demised to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his lessor or his bailiff or receiver, and, if he fails so to do, he shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years' improved or rack rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

No. 3754
s. 146.

146 Restrictions and relief against forfeiture of leases and under-leases

S. 146(1)
amended by
Nos 97/1987
s. 181(11)(b),
74/2000
s. 3(Sch. 1
item 104),
82/2005
s. 51(a)(b).

- (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease or otherwise arising by operation of law for a breach of any covenant or condition in the lease, including a breach amounting to repudiation, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice—
- (a) specifying the particular breach complained of; and

- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
- (c) in any case, requiring the lessee to make compensation in money for the breach—

and the lessee fails, within a reasonable time thereafter, or the time not being less than fourteen days fixed by the lease to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

This subsection shall not extend to a breach of any covenant or condition whereby or by means whereof either alone or with other circumstances any licence or permit under the **Liquor Control Reform Act 1998** is or may be endangered or is or may be liable to expire or be forfeited, surrendered, taken away or refused.

- (1A) A notice served under subsection (1) in respect of a breach amounting to repudiation—

S. 146(1A)
inserted by
No. 82/2005
s. 51(c).

- (a) does not constitute, and must not be taken to constitute, an affirmation of the lease by the lessor; and
- (b) does not affect any right that the lessor may have by reason of the repudiation.

- (2) Where a lessor is proceeding, by action or otherwise, to enforce or has enforced without the aid of the Court or the County Court such a right of re-entry or forfeiture, the lessee may apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances thinks fit; and in case of relief may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction

S. 146(2)
amended by
No. 110/1986
s. 140(2).

to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

S. 146(3)
amended by
Nos 110/1986
s. 140(2),
35/1996
s. 453(Sch. 1
item 68.2),
82/2005
s. 51(d).

- (3) A lessor shall be entitled to recover as a debt due to him from a lessee, or from the assignee or transferee of a lessee (where the assignment or transfer has been with the express consent of the lessor and the breach of covenant or condition, including any breach amounting to repudiation, has occurred since the assignment or transfer) or partly from the lessee and partly from the assignee or transferee and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a legal practitioner and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Part either by the Court or by the operation of subsection (1) of this section. And the lessor shall be so entitled to recover whether the lessee has or has not rendered forfeiture unenforceable against him under that subsection.

S. 146(4)
amended by
Nos 110/1986
s. 140(2),
82/2005
s. 51(e).

- (4) Where a lessor is proceeding by action or otherwise to enforce or has enforced a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, or otherwise arising by operation of law, or for non-payment of rent, or for any breach amounting to repudiation which the lessor has accepted as such, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as

under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the Court in the circumstances of each case may think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

- (5) For the purposes of this section except so far as is otherwise provided—
- (a) *lease* includes an original or derivative under-lease; also an agreement for a lease where the lessee has become entitled to have his lease granted; also a grant securing a rent by condition;
 - (b) *lessee* includes an original or derivative under-lessee, and the persons deriving title under a lessee; also a grantee under any such grant as aforesaid and the persons deriving title under him;
 - (c) *lessor* includes an original or derivative under-lessor, and the persons deriving title under a lessor; also a person making such grant as aforesaid and the persons deriving title under him;
 - (d) *under-lease* includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;
 - (e) *under-lessee* includes any person deriving title under an under-lessee.

Property Law Act 1958

No. 6344 of 1958

Part II—The general law of property and conveyancing

S. 146(6)
amended by
No. 82/2005
s. 51(f).

(6) This section shall apply although the proviso or stipulation under which the right of re-entry or forfeiture accrues or in respect of which any breach amounting to repudiation occurs is inserted in the lease in pursuance of the directions of any Act of Parliament but shall not apply to leases by the Crown.

S. 146(7)
amended by
No. 82/2005
s. 51(g).

(7) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant, including a breach amounting to repudiation, shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(8) This section shall not extend—

(a) to a covenant or condition against assigning, underletting parting with the possession or disposing of the land leased where the breach occurred before the commencement of the **Property Law Act 1928**; or

(b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(9) This section shall not apply to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest if contained in a lease of—

(a) agricultural or pastoral land;

(b) mines or minerals;

- (c) a house used or intended to be used as licensed premises under the **Liquor Control Reform Act 1998**;
- (d) a house let as a dwelling-house, with the use of any furniture, books, works of art or other chattels not being in the nature of fixtures;
- (e) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.
- (10) Where a condition of forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest is contained in any lease, other than a lease of any of the classes mentioned in the last subsection, then—
- (a) if the lessee's interest is sold within one year from the bankruptcy or taking in execution, this section shall apply to the forfeiture condition aforesaid;
- (b) if the lessee's interest is not sold before the expiration of that year, this section shall apply only to the forfeiture condition aforesaid during the first year from the date of the bankruptcy or taking in execution.
- (11) When a lessee has assigned or transferred the lease with the consent of the lessor the bankruptcy of the lessee after such assignment or transfer shall not work a forfeiture or determine the lease unless the condition for forfeiture on bankruptcy contained in the lease is therein expressly extended to the bankruptcy of the lessee after the date of such assignment or transfer.

S. 146(9)(c)
amended by
Nos 97/1987
s. 181(11)(c),
74/2000
s. 3(Sch. 1
item 104).

S. 146(12)
amended by
No. 82/2005
s. 51(h).

(12) This section shall not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of nonpayment of rent whether or not such a breach amounts to repudiation.

S. 146(13)
amended by
No. 82/2005
s. 51(i).

(13) This section shall have effect notwithstanding any stipulation to the contrary but subsections (3) and (4) are to be read subject to the provisions of Part 10 of the **Retail Leases Act 2003**.

No. 3754
s. 147.

147 Relief against notice to effect decorative repairs

- (1) After a notice is served on a lessee relating to the internal decorative repairs to a house or other building, he may apply to the Court for relief, and if, having regard to all the circumstances of the case (including in particular the length of the lessee's term or interest remaining unexpired), the Court is satisfied that the notice is unreasonable, it may, by order, wholly or partially relieve the lessee from liability for such repairs.
- (2) This section shall not apply—
- (a) where the liability arises under an express covenant or agreement to put the property in a decorative state of repair and the covenant or agreement has never been performed;
 - (b) to any matter necessary or proper—
 - (i) for putting or keeping the property in a sanitary condition; or
 - (ii) for the maintenance or preservation of the structure;
 - (c) to any statutory liability to keep a house in all respects reasonably fit for human habitation;
 - (d) to any covenant or stipulation to yield up the house or other building in a specified state of repair at the end of the term.

- (3) In this section *lease* includes an under-lease and an agreement for a lease, and *lessee* has a corresponding meaning and includes any person liable to effect the repairs.
- (4) This section shall apply whether the notice is served before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

148 Waiver of a covenant in a lease

No. 3754
s. 148.

- (1) Where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit of any such covenant or condition.
- (2) This section shall apply unless a contrary intention appears and shall extend to waivers effected after the nineteenth day of April One thousand eight hundred and sixty-four.

149 Abolition of *interesse termini*, and as to reversionary leases and leases for lives

No. 3754
s. 149.

- (1) The doctrine of *interesse termini* is hereby declared to have been abolished by the **Property Law Act 1928**, s. 149(1).
- (2) As from the commencement of the **Property Law Act 1928** all terms of years absolute shall, whether the interest is created before or after such commencement, be capable of taking effect at law or in equity, according to the estate, interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

- (3) A term, at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void; but this subsection shall not apply to any term taking effect under a settlement, or created out of an interest under a settlement, or under a power for mortgage, indemnity or other like purposes.
- (4) Nothing in subsections (1) and (2) of this section shall prejudicially affect the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or, as respects terms or interests created before the commencement of the **Property Law Act 1928**, shall operate to vary any statutory or other obligations imposed in respect of such terms or interests.
- (5) Nothing in this Part shall affect the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

No. 3754
s. 150.

150 Surrender of a lease without prejudice to under-leases with a view to the grant of a new lease

- (1) A lease may be surrendered with a view to the acceptance of a new lease in place thereof, without a surrender of any under-lease derived thereout.
- (2) A new lease may be granted and accepted, in place of any lease so surrendered, without any such surrender of an under-lease as aforesaid, and the new lease shall operate as if all under-leases derived out of the surrendered lease had been surrendered before the surrender of that lease was effected.

- (3) The lessee under the new lease and any person deriving title under him shall be entitled to the same rights and remedies in respect of the rent reserved by and the covenants, agreements and conditions contained in any under-lease as if the original lease had not been surrendered but was or remained vested in him.
- (4) Each under-lessee and any person deriving title under him shall be entitled to hold and enjoy the land comprised in his under-lease (subject to the payment of any rent reserved by and to the observance of the covenants, agreements and conditions contained in the under-lease) as if the lease out of which the under-lease was derived had not been surrendered.
- (5) The lessor granting the new lease and any person deriving title under him shall be entitled to the same remedies, by distress³² or entry in and upon the land comprised in any such under-lease for rent reserved by or for breach of any covenant, agreement or condition contained in the new lease (so far only as the rents reserved by or the covenants, agreements or conditions contained in the new lease do not exceed or impose greater burdens than those reserved by or contained in the original lease out of which the under-lease is derived) as he would have had—
- (a) if the original lease had remained on foot; or
 - (b) if a new under-lease derived out of the new lease had been granted to the under-lessee or a person deriving title under him—
- as the case may require.
- (6) This section shall not affect the powers of the Court to give relief against forfeiture.

No. 3754
s. 151.

151 Attornments by tenants

(1) Where land is subject to a lease—

- (a) the conveyance of a reversion in the land expectant on the determination of the lease; or
- (b) the creation or conveyance of a rentcharge to issue or issuing out of the land—

shall be valid without any attornment of the lessee.

Nothing in this subsection—

- (i) shall affect the validity of any payment of rent by the lessee to the person making the conveyance or grant before notice of the conveyance or grant is given to him by the person entitled thereunder; or
 - (ii) shall render the lessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the lessee.
- (2) An attornment by the lessee in respect of any land to a person claiming to be entitled to the interest in the land of the lessor, if made without the consent of the lessor, shall be void.

This subsection shall not apply to an attornment—

- (a) made pursuant to a judgment of a court of competent jurisdiction; or
- (b) to a mortgagee, by a lessee holding under a lease from the mortgagor where the right of redemption is barred; or
- (c) to any other person rightfully deriving title under the lessor.

**152 Leases invalidated by reason of non-compliance
with terms of powers under which they are granted**

No. 3754
s. 152.

(1) Where in the intended exercise of any power of leasing, whether conferred by an Act of Parliament or any other instrument, a lease (in this section referred to as an invalid lease) is granted, which by reason of any failure to comply with the terms of the power is invalid, then—

S. 152(1)
amended by
No. 71/1994
s. 4(b).

- (a) as against the person entitled after the determination of the interest of the grantor to the reversion; or
- (b) as against any other person who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease—

the lease, if it was made in good faith, and the lessee has entered thereunder, shall take effect in equity as a contract for the grant, at the request of the lessee, of a valid lease under the power, of like effect as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the power:

Provided that a lessee under an invalid lease shall not, by virtue of any such implied contract, be entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

(2) Where a lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the lease at the date thereof, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a lease in the like terms, the lease

shall take effect as a valid lease in like manner as if it had been granted at that time.

- (3) Where during the continuance of the possession taken under an invalid lease the person for the time being entitled, subject to such possession, to the land comprised therein or to the rents and profits thereof, is able to confirm the lease without variation, the lessee, or other person who would have been bound by the lease had it been valid, shall, at the request of the person so able to confirm the lease, be bound to accept a confirmation thereof, and thereupon the lease shall have effect and be deemed to have had effect as a valid lease from the grant thereof.

Confirmation under this subsection may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the lease.

- (4) Where a receipt or memorandum in writing confirming an invalid lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance shall, as against that person, be deemed to be a confirmation of the lease.
- (5) The foregoing provisions of this section shall not affect prejudicially—
- (a) any right of action or other right or remedy to which, but for those provisions the lessee named in an invalid lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or

- (b) any right of re-entry or other right or remedy to which, but for those provisions the grantor or other person for the time being entitled to the reversion expectant on the determination of the lease, would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the lease and binding on the lessee.
- (6) Where a valid power of leasing is vested in or may be exercised by a person who grants a lease which, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the lease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the lease.
- (7) This section shall not apply to a lease of land held on charitable, religious or public trusts.

153 Enlargement of residue of long terms into fee-simple estates No. 3754
s. 153.

- (1) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof—
 - (a) without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term; and

(b) without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released or has become barred by lapse of time, or has in any other way ceased to be payable—

the term may be enlarged into a fee-simple in the manner and subject to the restrictions in this section provided.

- (2) This section shall apply to and include every such term as aforesaid whenever created, whether or not having the freehold as the immediate reversion thereon; but shall not apply to—
- (a) any term liable to be determined by re-entry for condition broken; or
 - (b) any term created by sub-demise out of a superior term, itself incapable of being enlarged into fee-simple.
- (3) This section shall extend to mortgage terms, where the right of redemption is barred.
- (4) A rent not exceeding the yearly sum of \$2 which has not been collected or paid for a continuous period of twenty years or upwards shall, for the purposes of this section, be deemed to have ceased to be payable:

Provided that, of the said period, at least five years must have elapsed after the commencement of this Act.

- (5) Where a rent incident to a reversion expectant on a term to which this section applies is deemed to have ceased to be payable for the purposes aforesaid, no claim for such rent or for any arrears thereof shall be capable of being enforced.
- (6) Each of the following persons, namely—
- (a) any person beneficially entitled in right of the term whether subject to any incumbrance or not, to possession of any land comprised in the term, and, in the case of a married woman without the concurrence of her husband, whether or not she is entitled for her separate use or as her separate property, or is subject to a restraint on anticipation³³;
 - (b) any person being in receipt of income as trustee, in right of the term, or having the term, vested in him in trust for sale, whether subject to any incumbrance or not;
 - (c) any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not—

shall, so far as regards the land to which he is entitled, or in which he is interested in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee-simple.

- (7) Such deed shall be duly registered in the office of the Registrar-General and thereupon by virtue of the deed and of this Part, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee-simple instead of the term.

(8) The estate in fee-simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(9) But where—

(a) any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land, or, in the case of settlements coming into operation before the commencement of the **Property Law Act 1928**, so as to go along with that other land as far as the law permits; and

(b) at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, free from charges or powers of charging created by a settlement—

the estate in fee-simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land being freehold land, aforesaid, and until so conveyed and settled, shall devolve beneficially as if it had been so conveyed and settled.

154 Application of this Division to existing leases

No. 3754
s. 154.

This Division, except where otherwise expressly provided, shall apply to leases created before or after the commencement of this Act, and *lease* shall include an under-lease or other tenancy³⁴.

Division 5A—Removal of buildings and fixtures

Pt 2 Div. 5A
(Heading and
s. 154A)
inserted by
No. 1/2010
s. 41.

154A Tenant may remove buildings and fixtures

S. 154A
inserted by
No. 1/2010
s. 41.

- (1) A tenant who at his or her own cost or expense has installed fixtures on, or renovated, altered or added to, a rented premises owns those fixtures, renovations, alterations or additions and may remove them before the relevant agreement terminates or during any extended period of possession of the premises, but not afterwards.
- (2) A tenant who removes any fixtures, renovations, alterations or additions under subsection (1) must—
 - (a) restore the premises to the condition they were in immediately before the installation, renovation, alteration or addition, fair wear and tear excepted; or
 - (b) pay the landlord an amount equal to the reasonable cost of restoring the premises to that condition.
- (3) This section does not apply to the extent that—
 - (a) the lease otherwise provides; or
 - (b) the landlord and the tenant otherwise agree.

Division 6—Powers

No. 3754
s. 155.

155 Disclaimer of powers

A person (including a married woman) to whom any power, whether coupled with an interest or not, is given may by deed disclaim, release or contract not to exercise the power, and after such disclaimer, release or contract shall not be capable of exercising or joining in the exercise of the power.

No. 3754
s. 156.

156 Effect of disclaimer etc.

On such disclaimer, release or contract the power may be exercised by the other person or persons or the survivor or survivors of the other persons to whom the power is given unless the contrary is expressed in the instrument creating the power.

No. 3754
s. 157.

157 Protection of purchasers claiming under certain void appointments

- (1) An instrument purporting to exercise a power of appointment over property, which, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, shall not (save as hereinafter provided) be void on the ground of fraud on the power as against a purchaser in good faith:

Provided that, if the interest appointed exceeds, in amount or value, the interest in such property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any hotchpot provision, the protection afforded by this section to a purchaser shall not extend to such excess.

- (2) In this section *a purchaser in good faith* means a person dealing with an appointee of the age of not less than twenty-five years for valuable consideration in money or money's worth, and without notice of the fraud, or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.
- (3) Persons deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.
- (4) This section shall apply only to dealings effected after the commencement of this Act.

158 Validation of appointments where objects are excluded or take illusory shares

No. 3754
s. 158.

- (1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that—
 - (a) an unsubstantial, illusory or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or
 - (b) any object of the power is thereby altogether excluded—

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

- (2) This section shall not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.
- (3) This section shall apply to appointments made before or after the commencement of this Act.

No. 3754
s. 159.

159 Execution of powers not testamentary

- (1) A deed executed in the presence of and attested by two or more witnesses (in the manner in which deeds are ordinarily executed and attested) shall so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or instrument in writing, made in exercise of the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.
- (2) This section shall not operate to defeat any direction in the instrument creating the power that—
 - (a) the consent of any particular person is to be necessary to a valid execution;
 - (b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.
- (3) This section shall not prevent the donee of a power from executing it in accordance with the power by writing, or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section shall not apply.
- (4) This section shall apply to appointments by deed made after the first day of June One thousand eight hundred and sixty-four.

No. 3754
s. 160.

160 Application of this Division to existing powers

This Division shall apply to powers created or arising either before or after the commencement of this Act.

Property Law Act 1958
No. 6344 of 1958
Part II—The general law of property and conveyancing

*	*	*	*	*	
					Pt 2 Div. 7 (Heading) repealed by No. 23/1998 s. 8(3).
*	*	*	*	*	
					Heading following s. 160 repealed by No. 70/2013 s. 3(Sch. 1 item 42.1).
*	*	*	*	*	
					S. 161 repealed by No. 7750 s. 20(2).
*	*	*	*	*	
					S. 162 repealed by No. 7750 s. 20(3). ³⁵

Charitable Dispositions by Will

163 Construction of certain dispositions by will to charities No. 4222 s. 2.

Where the will of any person who dies after the commencement of the **Property Law (Charitable Bequests) Act 1934** contains a bequest to or a trust for the benefit of a charity or a number of charities or a class of charities and directs or purports to direct that the time of payment of the corpus bequeathed to or to be held in trust for the benefit of such charity charities or class of charities be postponed and that in the meantime the income arising from such corpus be paid to or distributed among such charity or charities or class of charities, such bequest trust and direction shall notwithstanding any rule of law or equity or any rule of construction be construed and take effect according to the tenor thereof.

Heading following s. 163 repealed by No. 70/2013 s. 3(Sch. 1 item 42.2).

* * * * *

Ss 164–166 repealed by No. 7750 s. 20(3).^{36,37,38}

* * * * *

Pt 2 Div. 8 (Heading) amended by No. 59/1986 s. 143(2).

Division 8—Married women

*Married Women*³⁹

No. 3754 s. 167.

167 Abolition of separate examination of, acknowledgment by married women, and of concurrence of husband

Every disposition (including a disclaimer) of real or personal property or any interest therein which under the enactments in force prior to the commencement of this Act might have been made by a married woman after a separate examination or after acknowledgment or with the concurrence of her husband may (except in the case of an acknowledgment under Part VI of this Act) after the commencement of this Act be made by her without any such examination, acknowledgment or concurrence or some or all of them.

No. 3754 s. 168.

168 Disclaimer by married woman

A married woman shall have power by deed to disclaim any estate or interest in land without the concurrence of her husband.

169 Power for Court to bind interest of married woman

No. 3754
s. 169.

Where a married woman is restrained from anticipation or from alienation in respect of any property or any interest in property belonging to her, or is by law unable to dispose of or bind such property or her interest therein, including a reversionary interest arising under her marriage settlement, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in such property.

170 Acquisitions and dispositions of trust estates by married women

No. 3754
s. 170.

- (1) A married woman may acquire as well from her husband as from any other person, and hold, any interest in property real or personal either solely or jointly with any other person (whether or not including her husband) as a trustee or personal representative, in like manner as if she were a feme sole; and no interest in such property shall vest or be deemed to have vested in the husband by reason only of the acquisition by his wife.
- (2) A married woman may, without her husband, dispose of, or join in disposing of, any interest in real or personal property held by her solely or jointly with any other person (whether or not including her husband) as trustee or personal representative, in like manner as if she were a feme sole.
- (3) This section shall apply to a woman married after the twelfth day of December One thousand eight hundred and eighty-four, and to a woman married before the thirteenth day of December One thousand eight hundred and eighty-four, who became a trustee or personal representative on or after that date.

- (4) This section shall operate to render valid and confirm all such acquisitions and dispositions made after the twelfth day of December One thousand eight hundred and eighty-four, and whether before or after the commencement of this Act, but where any title or right has been acquired through or with the concurrence of the husband before the commencement of this Act, that title or right shall prevail over any title or right which would otherwise be rendered valid by this section or any corresponding previous enactment.
- (5) This section shall not prejudicially affect any beneficial interest of the husband of any such woman.

Pt 2 Div. 8A
(Heading)
substituted by
No. 59/1986
s. 143(2).

Division 8A—Persons who are mentally ill

No. 3754
s. 171.

171 Power for Court to settle the beneficial interests of a represented patient

S. 171(1)
amended by
No. 59/1986
s. 143(2).

- (1) The Court may direct a settlement to be made of the property of a represented patient or any part thereof or any interest therein, on such trusts and subject to such powers and provisions as the Court deems expedient, and in particular may give such directions—
- (a) where the property has been acquired under a settlement, a will or an intestacy, or represents property so acquired; or
- (b) where by reason of any change in the law of intestacy or of any change in circumstances since the execution by the represented patient of a testamentary disposition, or of any absence of information at the time of such execution, or on account of the former

S. 171(1)(b)
amended by
No. 59/1986
s. 143(2).

management of the property or the expenditure of money in improving or maintaining the same or for any other special reason the Court is satisfied that any person might suffer an injustice if the property were allowed to devolve as undisposed of on the death intestate of the represented patient or under any testamentary disposition executed by him.

- (2) The Court may direct the guardian or administrator of the represented patient, or any trustee for him, to execute any trust instrument, conveyance (including a disentailing assurance) or other instrument, and to do any other act or thing which may be required for giving effect to the settlement, in the name and on behalf of the represented patient and, for that purpose, may make a vesting order or appoint a person to convey; and any settlement approved by the Court shall be as effectual and binding on all persons interested as if the same had been made by the represented patient while of full capacity.
- (3) This section shall apply whether or not the represented patient has executed a testamentary disposition and notwithstanding that it is not known whether he has executed such a disposition or not, but shall not apply when he is an infant.
- (4) Any person who under the **Administration and Probate Act 1958** has, or if that Act, or any corresponding previous enactment, had not been passed would have had, a spes successionis (whether under any testamentary disposition which is known to exist or in the event of the intestacy of the represented patient) or an interest in the property of the represented patient or in any part thereof, as well as the guardian or administrator and any other person who may be authorized by rules made under this section, shall

S. 171(2)
amended by
No. 59/1986
s. 143(2).

S. 171(3)
amended by
No. 59/1986
s. 143(2).

S. 171(4)
amended by
No. 59/1986
s. 143(2).

have power to apply to the Court for an order under this section.

S. 171(5)
amended by
No. 59/1986
s. 143(2).

- (5) Subject to making due provision for the maintenance of the represented patient in accordance with his station in life, whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing, by means of a power of appointment or revocation, or otherwise, for the possibility of the represented patient recovering full capacity, the Court may, in making any order under this section, have regard to—
- (a) the manner in which the property has been settled or dealt with on former occasions;
 - (b) in the case of land, the welfare of the labourers and other persons employed thereon, and the expediency of settling personal estate to devolve therewith;
 - (c) the continuation or provision of any pensions, and the application of any part of the income for charitable purposes;
 - (d) the provisions of any testamentary disposition of the represented patient;
 - (e) the expediency of providing for—
 - (i) jointures, portions and other annual or capital charges and powers to create the same;
 - (ii) discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good loss by fire (in lieu of, or in addition to, insurance) or for any other purpose;

S. 171(5)(d)
amended by
No. 59/1986
s. 143(2).

- (iii) the extension of any statutory powers of investment, management or otherwise;
- (iv) the manner in which any costs are to be raised and paid, whether out of the settled property or otherwise;
- (v) any other matter or thing which, having regard to the nature of the settlement, or the property to be settled, and the management development, and enjoyment thereof, and to the persons who are to take, either successively or otherwise, the Court may consider material.

- (6) In this section, *testamentary disposition* means an instrument executed by the represented patient while of full testamentary capacity, which, if unrevoked, might, on his death, be proved as a will or codicil; and the Court may act on such evidence as to the existence or absence of a testamentary disposition as it thinks fit. **S. 171(6) amended by No. 59/1986 s. 143(2).**
- (7) At any time before the death of the represented patient the Court may, as respects any property remaining subject to the trusts of a settlement made under this section, on being satisfied that any material fact was not disclosed to the Court when the settlement was made, or on account of any substantial change in circumstances, by order vary the settlement in such manner as it thinks fit, and give any consequential directions. **S. 171(7) amended by No. 59/1986 s. 143(2).**
- (8) Rules of Court may be made for giving effect to the provisions of this section, and in particular for compelling information to be furnished respecting, and production of, testamentary dispositions, and the lodgment thereof in court, for prescribing what notices (if any) of the proceedings are to be served, for dispensing

with such notices and, when necessary, for making representation orders.

S. 171(9)
inserted by
No. 59/1986
s. 143(2),
amended by
Nos 52/1998
s. 311(Sch. 1
item 78),
26/2014
s. 455(Sch.
item 23.2).

- (9) In this section *represented patient* means a patient within the meaning of the **Mental Health Act 2014** who is a represented person within the meaning of the **Guardianship and Administration Act 1986**.

Division 9—Voidable dispositions

No. 3754
s. 172.

172 Voluntary conveyances to defraud creditors

S. 172(1)
amended by
No. 6491
s. 2(a).

- (1) Save as provided in this section, every alienation of property made, whether before or after the commencement of this Act, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.
- (2) This section shall not affect the operation of a disentailing assurance, or the law of bankruptcy or insolvency for the time being in force.

S. 172(3)
amended by
No. 6491
s. 2(b).

- (3) This section shall not extend to any estate or interest in property alienated for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the alienation, notice of the intent to defraud creditors.

No. 3754
s. 173.

173 Voluntary disposition with intent to defraud

Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

174 Subsequent conveyance not to be evidence of intent to defraud

No. 3754
s. 174.

For the purposes of the last preceding section, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made, if such subsequent conveyance was made after the ninth day of February One thousand eight hundred and ninety-six. In this and the last preceding section *disposition* includes every mode of disposition mentioned or referred to in the **Transfer of Land Act 1958**.

175 Acquisitions of reversions at an under value

No. 3754
s. 175.

- (1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of under value.

In this subsection *reversionary interest* includes an expectancy or possibility.

- (2) This section shall not affect the jurisdiction of the Court to set aside or modify unconscionable bargains.

Division 10—Miscellaneous

Corporations

176 Corporations sole

No. 3754
s. 176.

Where either after or before the commencement of this Act any property or any interest therein is or has been vested in a corporation sole (including the Crown), the same shall, unless and until otherwise disposed of by the corporation, pass and devolve to and vest in and be deemed always to have passed and devolved to or vested

in the successors from time to time of such corporation.

No. 3754
s. 177.

177 Provision for vacancy

Where either after or before the commencement of this Act there is or has been a vacancy in the office of a corporation sole or in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at the time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, such interest shall notwithstanding such vacancy vest and be deemed to have vested in the successor to such office on his appointment as a corporation sole, or in the corporation aggregate (as the case may be), but without prejudice to the right of such successor, or of the corporation aggregate after the appointment of its head officer, to disclaim that interest or charge.

No. 3754
s. 178.

178 Transactions

Any contract or other transaction expressed or purported to be made with a corporation sole, or any appointment of a corporation sole as a custodian or other trustee or as a personal representative, at a time (either after or before the commencement of this Act) when there was a vacancy in the office, shall on the vacancy being filled take effect and be deemed to have taken effect as if the vacancy had been filled before the contract, transaction or appointment was expressed to be made or was capable of taking effect, and on the appointment of a successor shall be capable of being enforced, accepted, disclaimed or renounced by him.

179 Dissolution of a corporation

- (1) Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the Court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate⁴⁰.
- (2) Nothing in this section shall affect the operation of any provisions of the Corporations Act relating to the powers and duties of the Australian Securities and Investments Commission in relation to the dissolution and property of defunct companies, and in the cases to which such provisions apply they shall be given effect to as if subsection (1) of this section had not been passed.

Nos 3754
s. 179, 4602
s. 2(7).

S. 179(2)
substituted by
No. 6455 s 2,
amended by
Nos 6839
s. 4(Sch. 1),
6867
s. 2(Sch. 1),
9427
s. 6(1)(Sch. 5
item 148),
9699 s. 23,
44/2001
s 3(Sch.
item 93).

General

180 Protection of legal practitioner and trustees adopting this Part

The powers given by this Part to any person, and the covenants, provisions, stipulations and words which under this Part are to be deemed to be included or implied in any instrument, or are by this Part made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction, and a legal practitioner shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or

No. 3754
s. 180.

S. 180
amended by
No. 23/1998
s. 8(2).

in connexion with any such contract or transaction, to negative the giving, inclusion, implication or application of any of those powers, covenants, provisions, stipulations or words, or to insert or apply any others in place thereof, in any case where the provisions of this Part would allow of his doing so.

No. 3754
s. 181.

181 Further powers etc. admissible

Save as expressly provided by this Part, nothing in this Part shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations or words is improper.

No. 3754
s. 182.

182 Protection of trustees etc.

S. 182(1)
amended by
No. 23/1998
s. 8(2).

(1) Where a legal practitioner is acting for trustees, executors or other persons in a fiduciary position, those persons shall also be protected in like manner as a legal practitioner is protected under the last two preceding sections.

S. 182(2)
amended by
No. 23/1998
s. 8(2).

(2) Where such persons are acting without a legal practitioner, they shall also be protected in like manner as aforesaid.

No. 3754
s. 183.

183 Fraudulent concealment of documents and falsification of pedigrees

S. 183(1)
amended by
No. 23/1998
s. 8(2).

(1) Every person disposing of property or any interest therein for money or money's worth to a purchaser,⁴¹ or the legal practitioner or other agent of such person, who—

(a) conceals from the purchaser any instrument or incumbrance material to the title; or

(b) falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept the title offered or produced—

with intent in any of such cases to defraud, shall be guilty of a misdemeanour punishable by fine, or by imprisonment for a term of not more than two years, or by both.

(2) Every such person or his legal practitioner or agent shall also be liable to an action for damages by the purchaser or the persons deriving title under him for any loss sustained by reason of—

S. 183(2)
amended by
No. 23/1998
s. 8(2).

(a) the concealment of the instrument or incumbrance; or

(b) any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.

(3) In estimating damages, where the property or any interest therein is recovered from the purchaser or the persons deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

(4) No prosecution for any offence under this section shall be commenced without the leave of a law officer.

(5) Before leave to prosecute is granted there shall be given to the person intended to be prosecuted such notice of the application for leave to prosecute as a law officer directs.

184 Presumption of survivorship in regard to claims to property

No. 3754
s. 184.

In all cases where, after the second day of December One thousand nine hundred and twenty-five, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths

shall (subject to any order of the Court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

No. 3754
s. 185.

185 Merger

There shall be no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

No. 3754
s. 186.

186 Rights of pre-emption capable of release

All statutory and other rights of pre-emption affecting a legal estate shall be and be deemed always to have been capable of release.

No. 3754
s. 187.

187 Power to direct division of chattels

S. 187
amended by
No. 71/2005
s. 3 (ILA
s. 39B(1)).

(1) Where any chattels belong to persons in undivided shares, the persons interested in a moiety or upwards may apply to the Court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the Court may make such order and give any consequential directions as it thinks fit.

S. 187(2)
inserted by
No. 71/2005
s. 3.

(2) Despite subsection (1), if the chattels in relation to which the application could be made are goods within the meaning of Part IV, a person must make an application under Division 2 of Part IV, not an application under subsection (1).

S. 187(3)
inserted by
No. 71/2005
s. 3.

(3) It is the intention of subsection (2) to alter or vary section 85 of the **Constitution Act 1975**.

187A Transitional provision—Property (Co-ownership) Act 2005

S. 187A
inserted by
No. 71/2005
s. 4.

Section 187 as in force immediately before the commencement of section 3 of the **Property (Co-ownership) Act 2005** continues to apply in respect of any proceeding commenced in the Supreme Court or the County Court under that section before that commencement as if section 187 had not been amended by that Act.

188 Indemnities against rents

No. 3754
s. 188.

A power of distress given by way of indemnity against a rent or any part thereof payable, in respect of any land, or against the breach of any covenant or condition in relation to land, shall not be and shall not be deemed ever to have been a bill of sale within the meaning of Part VI of the **Instruments Act 1958** or any corresponding previous enactment.

189 Enforcement of covenants etc. relating to indemnity against rent

No. 3754
s. 189.

The benefit of all covenants and powers given by way of indemnity against a rent or any part thereof payable in respect of land, or against the breach of any covenant or condition in relation to land, shall be and shall be deemed always to have been annexed to the land to which the indemnity is intended to relate, and may be enforced by the owner of the legal estate for the time being of the whole or any part of that land, notwithstanding that the benefit has not been expressly apportioned or assigned to him or to any of his predecessors in title.

Nos 3754
s. 190, 5753
s. 2.

Redemption and Apportionment of Rents &c.

190 Equitable apportionment of rents and remedies for non-payment or breach of covenant

- (1) Where in a conveyance for valuable consideration other than a mortgage, of part of land which is affected by a rentcharge, such rentcharge or a part thereof, is without the consent of the owner thereof, expressed to be—
- (a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained or other land; or
 - (b) charged exclusively on the land retained or any part thereof in exoneration of the land conveyed or other land; or
 - (c) apportioned between the land conveyed or any part thereof, and the land retained by the grantor or any part thereof—

then, without prejudice to the rights of the owner of the rentcharge, such charge or apportionment shall be binding as between the grantor and the grantee under the conveyance and their respective successors in title.

- (2) Where—
- (a) any default is made in payment of the whole or part of a rentcharge by the person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or
 - (b) any breach occurs of any of the covenants (other than in the case of an apportionment the covenant to pay the entire rentcharge) or conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land retained or conveyed, as the case may be—

the owner for the time being of any other land affected by the entire rentcharge who—

- (i) pays or is required to pay the whole or part of the rentcharge which ought to have been paid by the defaulter aforesaid; or
- (ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid—

may take possession of the income of the land in respect of which the default or breach is made or occurs or of any part of that land until, by means of such receipt of income or otherwise the whole or part of the rentcharge (charged or apportioned as aforesaid) so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or of the breach of the said covenants and conditions, are fully paid or satisfied.

- (3) Where in a conveyance for valuable consideration, other than a mortgage, of part of land comprised in a lease, for the residue of the term or interest created by the lease, the rent reserved by such lease or part thereof is, without the consent of the lessor, expressed to be—
 - (a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained by the assignor or other land; or
 - (b) charged exclusively on the land retained by the assignor or any part thereof in exoneration of the land conveyed or other land; or
 - (c) apportioned between the land conveyed or any part thereof and the land retained by the assignor or any part thereof—

then, without prejudice to the rights of the lessor, such charge or apportionment shall be binding as between the assignor and the assignee under the

conveyance and their respective successors in title.

(4) Where—

- (a) any default is made in payment of the whole or part of a rent by the person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or
- (b) any breach occurs of any of the lessee's covenants (other than in the case of an apportionment the covenant to pay the entire rent) or conditions contained in the lease, so far as the same relate to the land retained or conveyed, as the case may be—

the lessee for the time being of any other land comprised in the lease, in whom, as respects that land, the residue of the term or interest created by the lease is vested, who—

- (i) pays or is required to pay the whole or part of the rent which ought to have been paid by the defaulter aforesaid; or
- (ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid—

may take possession of the income of the land comprised in the lease in respect of which the default or breach is made or occurs or of any part of that land until (so long as the term or interest created by the lease is subsisting) by means of such receipt of income or otherwise, the whole or part of the rent (charged or apportioned as aforesaid) so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or of the breach of the said covenants and conditions are fully paid or satisfied.

- (5) The remedies conferred by this section shall take effect so far only as they might have been conferred by the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned as aforesaid, but a trustee, personal representative, mortgagee or other person in a fiduciary position shall have and shall be deemed always to have had power to confer the same or like remedies.
- (6) This section shall apply only if and so far as a contrary intention is not expressed in the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned as aforesaid, and shall take effect subject to the terms of that conveyance and to the provisions therein contained.
- (7) The remedies conferred by this section shall apply only where the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned is made after the commencement of this Act, and do not apply where the rent is charged exclusively as aforesaid or legally apportioned with the consent of the owner or lessor.
- (8) The rule of law relating to perpetuities shall not affect the powers or remedies conferred by this section or any like powers or remedies expressly conferred, before or after the commencement of this Act, by an instrument.

Contingent Remainders and Uses

191 Contingent remainders protected against the premature failure of a preceding estate

**No. 3754
s. 191.**

A contingent remainder existing at any time after the second day of June One thousand eight hundred and sixty-four shall be and if the same was created before the said day shall be deemed to

have been capable of taking effect, notwithstanding the determination by forfeiture, surrender or merger of any preceding estate of freehold in the same manner and in all respects as if such determination had not happened.

No. 3754
s. 192.

192 Cases in which contingent remainders capable of taking effect

- (1) Every contingent remainder (created by any instrument executed after the thirty-first day of January One thousand nine hundred and five or by any will or codicil revived or republished by any will or codicil executed after that date) in tenements or hereditaments of any tenure which would have been valid as a springing or shifting use or executory devise or other limitation had it not had a sufficient estate to support it as a contingent remainder shall in the event of the particular estate determining before the contingent remainder vests be capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other executory limitation.

The provisions of this subsection shall with any necessary modifications apply where a contingent remainder is granted by deed without any use.

- (2) A contingent remainder to a son, daughter or child of any person shall in the case of a son, daughter or child born after the death of such person being the father of such son, daughter or child be valid notwithstanding that there are no trustees to preserve contingent remainders after the death of the father and before the birth of such child. This subsection shall apply to instruments made before or after the commencement of this Act.

193 Provision for cases of future and contingent uses

No. 3754
s. 193.

When by any instrument any hereditaments have been or shall be limited to uses, all uses thereunder (whether expressed or implied by law and whether immediate or future or contingent or executory or to be declared under any power therein contained) shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised to the uses; and the continued existence in him or elsewhere of any seisin to uses or scintilla juris shall not be deemed necessary for the support of or to give effect to future or contingent or executory uses; nor shall any such seisin to uses or scintilla juris be deemed to be suspended or to remain or to subsist in him or elsewhere.

Easements

194 Grants of easements etc. by way of use

No. 3754
s. 194.

- (1) A conveyance of freehold land to the use that any person may have for an estate or interest not exceeding in duration the estate conveyed in the land any easement, right, liberty or privilege in or over or with respect to that land or any part thereof shall operate to vest in possession in that person that easement, right, liberty or privilege for the estate or interest expressed to be limited to him, and he and the persons deriving title under him shall have use and enjoy the same accordingly.
- (2) This section shall apply to conveyances made after the thirty-first day of January One thousand nine hundred and five.

No. 3754
s. 195.

195 Right not deemed to exist by reason only of enjoyment or presumption of lost grant

After the seventh day of October One thousand nine hundred and seven no right to the access or use of light to or for any building shall be capable of coming into existence by reason only of the enjoyment of such access or use for any period or of any presumption of a lost grant based upon such enjoyment.

No. 3754
s. 196.

196 Grant of easement not to be presumed from evidence only of user etc.

- (1) For removing doubts it is declared that after the thirtieth day of October One thousand nine hundred and twenty-four no grant of an easement shall be presumed from evidence only of user or enjoyment of the access of air to a defined aperture on the dominant tenement.
- (2) Nothing in this section shall prejudice or affect the question of the validity of the title to an easement of access of air to a defined aperture on the dominant tenement which rests only on evidence of user or enjoyment before the thirtieth day of October One thousand nine hundred and twenty-four.

No. 3754
s. 197.

197 Certain rights of road made appurtenant

Whenever in any conveyance of land or in any deed of grant a right to use any road or way has been granted to the purchaser or to the grantee his heirs and assigns, such right, although it be not granted into out of and from the land conveyed to the purchaser or described in the deed as owned by the grantee, shall nevertheless be deemed to be a right appurtenant to the land conveyed or owned as the case may be and every part thereof and not a right in gross⁴².

Notices

198 Regulations respecting notices

No. 3754
s. 198.

- (1) Any notice required or authorized to be served or given by this Part shall be in writing.
- (2) Any notice required or authorized by this Part to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn or unascertained.
- (3) Any notice required or authorized by this Part to be served shall be sufficiently served if it is left at the last-known place of abode or business in Victoria of the lessee, lessor, mortgagee, mortgagor or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.
- (4) Any notice required or authorized by this Part to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business, office or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

- (5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears.
- (6) This section shall not apply to notices served in proceedings in the Court or under the provisions of the **Transfer of Land Act 1958**.

No. 3754
s. 199.

199 Restrictions on constructive notice

- (1) A purchaser shall not be prejudicially affected by notice of any instrument, fact or thing unless—
 - (a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or
 - (b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his legal practitioner or other agent, as such, or would have come to the knowledge of his legal practitioner or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the legal practitioner or other agent.
- (2) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant condition, provision or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been passed.
- (3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been passed.

S. 199(1)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 68.3
(a)(b)).

- (4) This section shall apply to purchases made either before or after the commencement of this Act.

200 Notice of restrictive covenants and easements

No. 3754
s. 200.

- (1) Where land having a common title with other land is disposed of to a purchaser (other than a lessee or a mortgagee) who does not hold or obtain possession of the documents forming the common title, such purchaser, notwithstanding any stipulation to the contrary, may require that a memorandum giving notice of any provision contained in the disposition to him restrictive of user of, or giving rights over, any other land comprised in the common title, shall, where practicable, be written or indorsed on, or, where that is impracticable, be permanently annexed to some one document selected by the purchaser but retained in the possession or power of the person who makes the disposition, and being or forming part of the common title.
- (2) The title of any person omitting to require a memorandum to be written indorsed or annexed shall not, by reason only of this section, be prejudiced or affected by the omission.
- (3) This section shall not apply to dispositions of registered land.

Division 11—Jurisdiction and general provisions

201 Provisions of Act to apply to incorporeal hereditaments

No. 3754
s. 201.

The provisions of this Act relating to freehold land shall apply to incorporeal hereditaments subject only to the qualifications necessarily arising by reason of the inherent nature of the hereditament affected.

No. 3754
s. 202.

202 Payment into Court

Payment of money into Court effectually exonerates therefrom the person making the payment.

S. 203
repealed by
No. 110/1986
s. 140(2).

* * * * *

S. 204
amended by
No. 16/1986
s. 19(b),
repealed by
No. 110/1986
s. 140(2).

* * * * *

No. 3754
s. 205.

205 Orders of Court conclusive

- (1) An order of the Court under or purporting to be under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not.
- (2) This section shall have effect with respect to any lease, sale or other act under the authority of the Court, and purporting to be in pursuance of any statutory power notwithstanding any exception in such statute.
- (3) This section shall apply to all orders made before or after the commencement of this Act.

No. 3754
s. 206.

206 Forms of deeds

Deeds in the form of, and using the expressions in the forms given in the Eighth Schedule to this Act, or in the like form or using expressions to the like effect, shall, in regard to form and expression, be sufficient.

207 Application to the Crown

**No. 3754
s. 207.**

- (1) Nothing in this Part shall be construed as rendering any property of the Crown subject to distress, or liable to be taken or disposed of by means of any distress.
- (2) Subject as aforesaid and subject to any enactment to the contrary the provisions of this Part shall bind the Crown.

**Part III—Real estates liable for debts.
Effect of judgments. Lis pendens and
execution. Protection of purchasers etc.
against judgments etc. Lands etc. of
accountants to Crown**

No. 3754
s. 208.

208 Lands etc. liable to satisfy debts

- (1) The houses lands and other hereditaments and real estates situate or being within Victoria belonging to any person indebted including an equity of redemption and all interest to which such person is entitled in any houses lands and other hereditaments corporeal or incorporeal and real estates in Victoria and which he might according to the laws of Victoria dispose of, and all powers vested in any such person which such person might legally execute for his own benefit, shall be liable to and chargeable with all just debts duties and demands of what nature or kind soever owing by any such person to Her Majesty or any of Her subjects or other persons entitled in like manner as subjects; and shall and may be assets for the satisfaction thereof in like manner as real estates were by the law of England liable to the satisfaction of debts due by bond or other specialty; and subject to the provisions of this Part shall be subject to the like remedies proceedings and process in any court of law or equity in Victoria for seizing extending selling or disposing of any such houses lands and other hereditaments and real estates towards the satisfaction of such debts duties and demands, and in like manner as personal estates in Victoria are seized extended sold or disposed of for the satisfaction of debts.

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No. 6344 of 1958

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(2) It shall be lawful for every sheriff or other officer to whom any process of execution is directed at the suit of any person or persons of for and upon any judgment made or had to do make and deliver execution unto the party in that behalf suing of all such lands tenements rents and hereditaments as any other person or persons may be in any manner seised or possessed in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done if the said party against whom execution is so sued had been seised of such lands tenements rents or other hereditaments of such estate as such other person or persons may be seised or possessed of in trust for him at the time of the said execution sued; which lands tenements rents and other hereditaments by force and virtue of such execution shall accordingly be held and enjoyed freed and discharged from all incumbrances of such person or persons as are so seised or possessed in trust for the person against whom such execution is sued.

**S. 208(2)
amended by
No. 110/1986
s. 140(2).**

(3) It shall not be necessary for the sheriff or other officer having the execution of any process of execution to make any seizure of land or of the right title and interest of any person of to or in any land or real estate under any process of execution before the sale of such land right title and interest, any law to the contrary hereof notwithstanding: Provided always that no houses lands and other hereditaments and real estates shall be sold under any such writ until one month next after notice of the time and place of such sale has been published in the Government Gazette and in some newspaper circulating in the neighbourhood of such houses lands and other hereditaments and real estates.

**S. 208(3)
amended by
No. 110/1986
s. 140(2).**

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No. 6344 of 1958

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S. 208(4)
amended by
No. 110/1986
s. 140(2).

- (4) In case of any sale of the right title and interest of any person of to or in any lands under any process the sheriff or his deputy or such other person as is lawfully appointed to execute such process shall execute a proper deed conveyance or transfer of the right title and interest of such first-mentioned person to the purchaser thereof and every such deed conveyance or transfer executed by such deputy or other person shall be as valid and effectual as if such right title and interest had been sold by the sheriff under any process addressed to him before the commencement of the **Supreme Court Act 1986** and the deed conveyance or transfer had been executed by him.

Nos 3754
s. 209, 6012
s. 8(1)(b).
S. 209
amended by
No. 110/1986
s. 140(2).

209 Executions in order to bind land to be registered

No judgment rule decree or order of the Court or of any other court already recovered obtained or made or to be recovered obtained or made shall bind or affect or be deemed to have bound or affected any freehold land or chattel real, until and unless a process of execution is issued thereon. And no process of execution issued on any such judgment rule decree or order shall affect at law or in equity any such land or chattel real as to purchasers mortgagees or execution creditors (any notice of any such execution to any such purchaser mortgagee or creditor in any wise notwithstanding) unless and until the same is delivered to the sheriff or other officer for execution, and a memorandum containing the name and the usual or last-known place of abode and the trade or profession of the person whose estate is intended to be affected thereby and the Court and title of the cause or matter in which such judgment rule decree or order has been recovered obtained or made and the date of such judgment rule decree or order together with the date of the delivery to the sheriff or other officer

for execution of the process upon such judgment rule decree or order and the amount of the moneys thereby ordered to be made is left with the Registrar-General, who shall forthwith enter the same particulars in a book in alphabetical order by the name of the person whose estate is intended to be affected by such execution; and the Registrar-General shall insert in such book the year and the day of the month when every such memorandum is so left with him; and there shall be paid for every such entry such fee as is prescribed by regulations under this Act; and all persons shall be at liberty to search the same book on payment of such fee as is prescribed by regulations under this Act⁴³.

210 Executions after five years to be re-registered

Nos 3754
s. 210, 6012
s. 8(1)(c).

All such registered executions as aforesaid shall after the expiration of five years from the date of the entry thereof be null and void against freehold land and chattels real, as to purchasers mortgagees and execution creditors, unless a like memorandum as is required in the first instance be again left with the Registrar-General within five years before the execution of the conveyance settlement mortgage lease transfer or other instrument vesting or transferring the legal or equitable right title estate or interest in or to any such purchaser or mortgagee for valuable consideration; or as to creditors within five years before the right of such creditors accrued; and so toties quoties at the expiration of every succeeding five years; and the Registrar-General shall forthwith re-enter the same in like manner as the same was originally entered; and there shall be paid for every such re-entry such fee as is prescribed by regulations under this Act;⁴⁴ and notice of any execution not duly re-registered shall not avail against purchasers mortgagees or

execution creditors as to any freehold land or chattel real.

No. 3754
s. 211.

211 Provision for re-registration explained

Where by this Act re-registration of executions is required within five years in order to bind purchasers mortgagees and creditors, it shall be deemed sufficient to bind such purchasers mortgagees and creditors if such a memorandum as is required in the first instance is again left with the Registrar-General within five years before the execution of the conveyance settlement mortgage lease transfer or other instrument vesting or transferring the legal or equitable right title estate or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors within five years before the right of such creditors accrued; although more than five years have expired by effluxion of time since the last previous registration before such last-mentioned memorandum was left; and so toties quoties upon every re-registration.

No. 3754
s. 212.

212 Executions as between parties not to be affected

Nothing in this Part contained shall extend to affect or prejudice any execution or any rule decree or order as between the parties thereto or their representatives or those deriving as volunteers under them.

Nos 3754
s. 213, 6012
s. 8(1)(d).

213 Purchasers not to be affected by any lis pendens unless suit duly registered

No lis pendens shall bind a purchaser or mortgagee without express notice thereof in writing, unless and until a memorandum containing the name and the usual or last-known place of abode and the trade or profession of the person whose estate is intended to be affected thereby and the title of the cause or information

and the day when the bill or information or claim and summons was filed is left with the Registrar-General, who shall forthwith enter the same particulars in a book as aforesaid in alphabetical order by the name of the person whose estate is intended to be affected by such lis pendens; and there shall be paid for every such entry such fee as is prescribed by regulations under this Act;⁴⁵ and the provisions hereinbefore contained in regard to the re-entering of executions every five years and the fee payable thereon shall extend to every case of lis pendens which is registered under the provisions of this Act.

214 Recognisances entered into not to affect purchasers unless duly registered as directed by this Act

Nos 3754
s. 214, 6012
s. 8(1)(e).

No judgment statute or recognisance which is obtained or entered into in the name or upon the proper account of Her Majesty, or inquisition by which any debt is found due to Her Majesty, or obligation or specialty which is made to Her Majesty or any acceptance of office which is accepted by officers whose lands thereby become liable for the payment and satisfaction of arrearages, shall affect any freehold land or chattel real as to purchasers mortgagees or execution creditors, unless and until a memorandum, containing the name and the usual or last-known place of abode and the trade or profession of the person whose estate is intended to be affected thereby and also in the case of any judgment the Court and the title of the cause in which such judgment has been obtained and the date of such judgment and the amount of the debt damages and costs thereby recovered and also in the case of a statute or recognisance the sum for which the same was acknowledged and before whom the same was acknowledged and the date of the same and also in the case of an inquisition the sum

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thereby found to be due and the date of the same and also in the case of an obligation or specialty the sum in which the obligor is bound or for which the obligation or specialty is made and the date of the same and also in the case of acceptance of office the name of the office and the time of the officer accepting the same, is left with the Registrar-General, who shall forthwith enter the said particulars in a book to be entitled "The Index to Debtors and Accountants to the Crown" in alphabetical order by the name of the person whose estate is intended to be affected by such judgment statute or recognisance inquisition obligation or specialty or the acceptance of any office; and there shall be paid for every such entry such fee as is prescribed by regulations under this Act; and all persons shall be at liberty to search the same book and also the other book to be kept as aforesaid or either of the said books on payment of such fee as is prescribed by regulations under this Act, whether one only or both of the said books is or are searched, and no multiplication of books is to increase the fee⁴⁶.

No. 3754
s. 215.

215 Crown to re-register

The provisions hereinbefore contained for re-registration of executions shall extend and apply to every such judgment statute recognisance inquisition obligation specialty or acceptance of office as is hereby required to be registered; so that it shall be obligatory on the Crown, in order to bind the freehold land or chattels real of its debtors or accountants as against purchasers mortgagees or execution creditors hereafter becoming such to re-register in like manner as it is obligatory on a private person as regards an execution; and so that notice of any such judgment statute recognisance inquisition obligation specialty or acceptance of office not

duly re-registered shall not avail against purchasers mortgagees or execution creditors as to freehold lands or chattels real.

216 Quietus to debtors or accountants to the Crown to be registered

Nos 3754
s. 216, 6012
s. 8(1)(f).

S. 216
amended by
No. 46/1998
s. 7(Sch. 1).

Whenever a quietus is obtained by a debtor or accountant to the Crown and an office copy thereof is left with the Registrar-General together with a certificate signed by the Minister administering Part 7 of the **Financial Management Act 1994** that the same may be registered, the Registrar-General shall forthwith enter the same in the said book of debtors and accountants to the Crown in alphabetical order by the name of the person whose estate is intended to be discharged by such quietus with the date; and there shall be paid for such entry such fee as is prescribed by regulations under this Act⁴⁷.

217 Discharge of the estates of debtors or accountants to the Crown

No. 3754
s. 217.

S. 217
amended by
No. 46/1998
s. 7(Sch. 1).

It shall be lawful for the Minister administering Part 7 of the **Financial Management Act 1994** with the consent of the Governor, by writing under their hands upon payment of such sum of money as they think fit to require to be applied in liquidation of the debt or liability of any debtor or accountant to the Crown or upon such other terms as they think proper, to certify that any freehold land or chattel real of any such Crown debtor or accountant shall be held by the purchaser or mortgagee or intended purchaser or mortgagee thereof his heirs executors administrators and assigns wholly exonerated and discharged from all further claims of Her Majesty for or in respect of any debt claim or liability present or future of the debtor or accountant to whom such land or chattel real belonged; and thereupon the same land or

chattel real shall be held accordingly wholly exonerated and discharged as aforesaid.

No. 3754
s. 218.

218 Discharge of part of the estate of a debtor or accountant to the Crown not to affect claim of the Crown on other lands liable

Any such certificate or the discharge of any such land or chattel real by virtue of this Act shall in nowise impeach lessen or affect the right or power of Her Majesty to levy the whole of any debt or demand which at any time is due from any such debtor or accountant to the Crown, out of or from any other property which would have been liable thereto in case no such certificate had been granted and no such discharge had been obtained.

No. 3754
s. 219.
S. 219
amended by
No. 110/1986
s. 140(2).

219 Execution by fieri facias etc.

By virtue of any writ of fieri facias, warrant of seizure and sale or other like process to be sued out of the Court the sheriff or other officer having the execution thereof may and shall seize and take any money or bank notes and any cheques bills of exchange promissory notes bonds specialties or other securities for money belonging to the person against whose lands and effects such process is sued out and may and shall pay and deliver to the party suing out such execution any money or bank notes which are so seized or a sufficient part thereof; and may and shall hold any such cheques bills of exchange promissory notes bonds specialties or other securities for money as a security or securities for the amount by such process directed to be levied or so much thereof as has not been otherwise levied and raised; and may sue in the name of such sheriff or other officer for the recovery of the sum or sums secured thereby if and when the time of payment thereof has arrived.

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The payment to such sheriff or other officer by the party liable on any such cheque bill of exchange promissory note bond specialty or other security with or without suit or the recovery and levying execution against the party so liable shall discharge him to the extent of such payment or of such recovery and levy in execution as the case may be from his liability on any such cheque bill of exchange promissory note bond specialty or other security.

Such sheriff or other officer may and shall pay over to the party suing out such process the money so to be recovered or such part thereof as is sufficient to discharge the amount by such process directed to be levied; and if after satisfaction of the amount so to be levied together with sheriff's poundage fees and expenses any surplus remains in the hands of such sheriff or other officer, the same shall be paid to the party against whom such process is so issued:

Provided that no such sheriff or other officer shall be bound to sue any party liable upon any such cheque bill of exchange promissory note bond specialty or other security unless the party suing out such execution enters into a bond with two sufficient sureties for indemnifying him from all costs and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof the expenses of such bond to be deducted out of any money to be recovered in such action.

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No. 3754
s. 220.

220 Sheriff may execute debtor's powers

All powers vested in any debtor which such debtor might legally execute for his own benefit shall be and are hereby vested in the sheriff or other officer as aforesaid to be by such sheriff or other officer executed for the benefit of the party suing out the execution.

Part IV—Co-owned land and goods

Pt 4
(Heading and
ss 221–234)
amended by
Nos 9075
s. 5(1), 9427
s. 5(Sch. 4
item 9),
16/1986
s. 19(c)(d),
59/1986
s. 143(2),
110/1986
s. 140(2),
52/1998
s. 311(Sch. 1
item 78),
substituted as
Pt 4
(Headings
and ss 221–
234) by
No. 71/2005
s. 5.

Division 1—Preliminary

221 Application of Part to land

This Part applies to all land in Victoria, whether or not the land is registered under the **Transfer of Land Act 1958**.

S. 221
substituted by
No. 71/2005
s. 5.

222 Definitions

In this Part—

co-owner means a person who has an interest in land or goods with one or more other persons as—

- (a) joint tenants; or
- (b) tenants in common;

goods means—

- (a) chattels personal; or

S. 222
substituted by
No. 71/2005
s. 5.

- (b) fixtures severable from land—
but does not include—
(c) things in action; or
(d) money;

land has the same meaning as it has in the
Interpretation of Legislation Act 1984;

property means—

- (a) real and personal property, including
any estate or interest in real or personal
property; or
(b) money; or
(c) a debt; or
(d) a thing in action; or
(e) a right with respect to property;

security interest means an interest in or power
over property by way of security for the
payment of a debt or other pecuniary
obligation and includes, in relation to land,
a mortgage, charge or lien, whether or not
registered under the **Transfer of Land
Act 1958.**

S. 223
substituted by
No. 71/2005
s. 5.

223 Other forms of severance not affected

Nothing in this Part affects or prevents the
severing of a joint tenancy by any other means
that exist under this Act or any other Act or law.

S. 224
substituted by
No. 71/2005
s. 5.

224 Security interests not affected

Despite anything to the contrary in any instrument
creating a security interest, the severing of a joint
tenancy in accordance with this Part—

- (a) does not constitute a breach of the covenants
or terms of that instrument; and

- (b) does not affect any existing powers, rights or interests of the holder of a security interest over the property to which that severance relates.

Division 2—Sale and division

225 Application for order for sale or division of co-owned land or goods

S. 225
substituted by
No. 71/2005
s. 5.

- (1) A co-owner of land or goods may apply to VCAT for an order or orders under this Division to be made in respect of that land or those goods.
- (2) An application under this section may request—
- (a) the sale of the land or goods and the division of the proceeds among the co-owners; or
 - (b) the physical division of the land or goods among the co-owners; or
 - (c) a combination of the matters specified in paragraphs (a) and (b).
- (3) A person who makes an application under subsection (1) must give notice of the application to the holder of a security interest over the land or goods to which the application relates.

226 Who are parties to a proceeding?

S. 226
substituted by
No. 71/2005
s. 5.

In addition to any other parties, all co-owners of the land or goods to which the proceeding relates are parties to a proceeding in VCAT under this Division.

Note

Sections 59 and 60 of the **Victorian Civil and Administrative Tribunal Act 1998** also deal with parties to a proceeding.

S. 227
substituted by
No. 71/2005
s. 5.

227 Adjournment of hearings—spouses or domestic partners

- (1) VCAT may adjourn its hearing at any time before it has made a final order under this Division or Division 3 if proceedings in relation to property of a co-owner who has made an application under this Division or Division 3 are commenced—
 - (a) under the Family Law Act 1975 of the Commonwealth; or
 - (b) under Part IX of this Act.
- (2) VCAT may adjourn its hearing at any time before it has made a final order under this Division or Division 3 to permit a co-owner of property to commence proceedings in relation to property of the co-owner—
 - (a) under the Family Law Act 1975 of the Commonwealth; or
 - (b) under Part IX of this Act.
- (3) Nothing in this section limits the power of VCAT to grant or refuse an adjournment in relation to any proceeding before it.

S. 228
substituted by
No. 71/2005
s. 5.

228 What can VCAT order?

- (1) In any proceeding under this Division, VCAT may make any order it thinks fit to ensure that a just and fair sale or division of land or goods occurs.
- (2) Without limiting VCAT's powers, it may order—
 - (a) the sale of the land or goods and the division of the proceeds of sale among the co-owners; or
 - (b) the physical division of the land or goods among the co-owners; or

(c) that a combination of the matters specified in paragraphs (a) and (b) occurs.

229 Sale and division of proceeds to be preferred

S. 229
substituted by
No. 71/2005
s. 5.

- (1) If VCAT determines that an order should be made for the sale and division of land which is, or goods which are, the subject of an application under this Division, VCAT must make an order under section 228(2)(a) unless VCAT considers that it would be more just and fair to make an order under section 228(2)(b) or (c).
- (2) Without limiting any matter which VCAT may consider, in determining whether an order under section 228(2)(b) or (c) would be more just and fair, VCAT must take into account the following—
 - (a) the use being made of the land or goods, including any use of the land or goods for residential or business purposes;
 - (b) whether the land is, or goods are, able to be divided and the practicality of dividing the land or goods;
 - (c) any particular links with or attachment to the land or goods, including whether the land or the goods are unique or have a special value to one or more of the co-owners.

230 Order varying entitlements to land or goods

S. 230
substituted by
No. 71/2005
s. 5.

When making an order under section 228, VCAT, if it considers it just and fair, may order—

- (a) that the land or goods be physically divided into parcels or shares that differ from the entitlements of each of the co-owners; and
- (b) that compensation be paid by specified co-owners to compensate for any differences in the value of the parcels or shares when the

land or the goods are divided in accordance with an order under paragraph (a).

S. 231
substituted by
No. 71/2005
s. 5.

231 VCAT may order appointment of trustees

- (1) In any proceeding under this Division, if VCAT thinks that the appointment or removal of trustees is necessary or desirable, it may order—
 - (a) the appointment of trustees; or
 - (b) the removal of trustees.
- (2) In an order appointing trustees for the purposes of the sale of land or goods, VCAT may—
 - (a) direct the trustees as to the terms and conditions on which any sale is to be carried out;
 - (b) direct the distribution of any proceeds of the sale in any manner specified by VCAT.
- (3) In an order appointing trustees for the purposes of a physical division of land or goods, VCAT may direct the trustees as to the manner in which the division is to be carried out.
- (4) An order under this section may provide for the remuneration of the trustees appointed under the order and—
 - (a) if trustees are appointed for the purposes referred to in subsection (2), the order may provide that the remuneration of the trustees be paid from the proceeds of sale; and
 - (b) if the trustees are appointed for the purposes referred to in subsection (3), the order may provide that the remuneration of the trustees be paid by such parties to the proceeding as VCAT considers just and fair in the circumstances.

Note

See also the **Trustee Act 1958**.

232 Other matters in VCAT orders

S. 232
substituted by
No. 71/2005
s. 5.

In any proceeding under this Division, VCAT may order—

- (a) that the land or goods be sold by private sale or at auction;
- (b) that the co-owners may purchase the land or goods at that sale or auction;
- (c) in the case of a private sale, that the sale be at fair market price as determined by an independent valuer;
- (d) in the case of an auction, that the reserve price is the reserve price set by VCAT;
- (e) that an independent valuation of the land or goods take place;
- (f) that a sale is to be completed within a specified time;
- (g) that the costs of the sale be met—
 - (i) by one or more of the co-owners; or
 - (ii) from the proceeds of the sale;
- (h) that the sale and division of the proceeds of sale or the physical division of the land or goods is subject to any terms and conditions which VCAT considers necessary or desirable in any particular case;
- (i) in the case of land, that any necessary deed or instrument be executed and documents of title be produced or other things be done that are necessary to enable an order to be carried out effectively;
- (j) in the case of land to which the **Transfer of Land Act 1958** applies, directing the Registrar of Titles to make amendments to the Register within the meaning of that Act

or do any act or make any recordings necessary to give effect to an order under this Division.

New s. 233
inserted by
No. 71/2005
s. 5.

233 Orders as to compensation and accounting

- (1) In any proceeding under this Division, VCAT may order—
 - (a) that compensation or reimbursement be paid or made by a co-owner to another co-owner or other co-owners;
 - (b) that one or more co-owners account to the other co-owners in accordance with section 28A;
 - (c) that an adjustment be made to a co-owner's interest in the land or goods to take account of amounts payable by co-owners to each other during the period of the co-ownership.
- (2) In determining whether to make an order under subsection (1), VCAT must take into account the following—
 - (a) any amount that a co-owner has reasonably spent in improving the land or goods;
 - (b) any costs reasonably incurred by a co-owner in the maintenance or insurance of the land or goods;
 - (c) the payment by a co-owner of more than that co-owner's proportionate share of rates (in the case of land), mortgage repayments, purchase money, instalments or other outgoings in respect of that land or goods for which all the co-owners are liable;
 - (d) damage caused by the unreasonable use of the land or goods by a co-owner;

- (e) in the case of land, whether or not a co-owner who has occupied the land should pay an amount equivalent to rent to a co-owner who did not occupy the land;
 - (f) in the case of goods, whether or not a co-owner who has used the goods should pay an amount equivalent to rent to a co-owner who did not use the goods.
- (3) VCAT must not make an order requiring a co-owner who has occupied the land to pay an amount equivalent to rent to a co-owner who did not occupy the land unless—
- (a) the co-owner who has occupied the land is seeking compensation, reimbursement or an accounting for money expended by the co-owner who has occupied the land in relation to the land; or
 - (b) the co-owner claiming an amount equivalent to rent has been excluded from occupation of the land; or
 - (c) the co-owner claiming an amount equivalent to rent has suffered a detriment because it was not practicable for that co-owner to occupy the land with the other co-owner.
- (4) VCAT must not make an order requiring a co-owner who has used goods to pay an amount equivalent to rent to a co-owner who did not use the goods unless—
- (a) the co-owner who has used the goods is seeking compensation, reimbursement or an accounting for money expended by the co-owner who has used the goods in relation to the goods; or
 - (b) the co-owner claiming an amount equivalent to rent has been excluded from using the goods; or

- (c) the co-owner claiming an amount equivalent to rent has suffered a detriment because it was not practicable for that co-owner to use the goods with the other co-owner.
- (5) This section applies despite any law or rule to the contrary.

Division 3—Accounting

New s. 234
inserted by
No. 71/2005
s. 5.

234 Application for order for accounting

- (1) A co-owner of land or goods may apply to VCAT for an order under this Division to be made for an accounting in accordance with section 28A.
- (2) An application under this section may be made whether or not an application is made under Division 2.

S. 234A
inserted by
No. 71/2005
s. 5.

234A Who are parties to a proceeding?

In addition to any other parties, all co-owners of the land or goods to which the proceeding relates are parties to a proceeding in VCAT under this Division.

Note

Sections 59 and 60 of the **Victorian Civil and Administrative Tribunal Act 1998** also deal with parties to a proceeding.

S. 234B
inserted by
No. 71/2005
s. 5.

234B What can VCAT order?

- (1) In any proceeding under this Division, VCAT may make any order it thinks fit to ensure that a just and fair accounting of amounts received by co-owners in respect of the land or goods occurs.
- (2) Without limiting VCAT's powers, it may—
- (a) order a co-owner who has received more than the share of rent or other payments from a third party in respect of the land or goods to which that co-owner is entitled to account

for that rent or other payments to the other co-owners; and

- (b) make any order it considers just and fair for the purposes of an accounting by a co-owner who has received more than that co-owner's just and proportionate share to the other co-owners of the land or goods.

Division 4—Jurisdiction

234C Jurisdiction

S. 234C
inserted by
No. 71/2005
s. 5.

- (1) Subject to this section, the Supreme Court and the County Court do not have jurisdiction to hear an application under this Part.
- (2) The Supreme Court and the County Court have jurisdiction to hear an application under this Part if the matter which is the subject of the application relates to a proceeding under—
- (a) Part IX of this Act; or
- (b) Part IV of the **Administration and Probate Act 1958**; or
- (c) the **Partnership Act 1958**.
- (3) VCAT does not have jurisdiction to hear an application of a kind referred to in subsection (2).
- (4) The Supreme Court and the County Court have jurisdiction to hear an application under this Part if—
- (a) in any proceeding which has commenced in the Supreme Court or the County Court (as the case requires), the issue of co-ownership of land or goods arises in the course of that proceeding; or

- (b) in the opinion of the Supreme Court or the County Court (as the case requires), special circumstances exist which justify the Supreme Court or the County Court hearing the application.
- (5) For the purposes of subsection (4), *special circumstances* means circumstances in which—
- (a) the matter which is the subject of the application is complex; or
- (b) the matter which is the subject of the application, or a substantial part of that matter, does not fall within the jurisdiction of VCAT.

S. 234D
inserted by
No. 71/2005
s. 5.

234D Powers of courts

Without limiting any powers of a court to make any order, in any proceeding in relation to the co-ownership of land or goods, a court may make any order which VCAT could make under this Part.

S. 234E
inserted by
No. 71/2005
s. 5.

234E More appropriate forum

Nothing in this Division prevents VCAT from referring a matter to the Supreme Court or the County Court under section 77 of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 234F
inserted by
No. 71/2005
s. 5.

234F Appeals on questions of law not affected

Nothing in this Division affects the operation of Part 5 of the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 234G
inserted by
No. 71/2005
s. 5.

234G Supreme Court—limitation of jurisdiction

It is the intention of section 234C to alter or vary section 85 of the **Constitution Act 1975**.

Division 5—General

234H Regulations

The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted by this Part to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

S. 234H
inserted by
No. 71/2005
s. 5.

234I Transitional provision—Property (Co-ownership) Act 2005

Part IV as in force immediately before the commencement of section 5 of the **Property (Co-ownership) Act 2005** continues to apply in respect of any proceeding commenced in the Supreme Court or the County Court under that Part before that commencement as if Part IV had not been substituted by that Act.

S. 234I
inserted by
No. 71/2005
s. 5.

Part V—Inheritance⁴⁸

No. 3754
s. 235.

235 Definitions

In this Part unless inconsistent with the context or subject-matter—

assurance means any deed or instrument (other than a will) by which any land is conveyed or transferred at law or in equity;

descent means the title to inherit land by reason of consanguinity as well where the heir is an ancestor or collateral relation as where he is a child or other issue;

descendants of any ancestor includes all persons who must trace their descent through such ancestor;

land includes messuages and all other hereditaments whether corporeal or incorporeal and whether freehold or of any other tenure and money to be laid out in the purchase of land and chattels and other personal property transmissible to heirs and also any share of the same hereditaments and properties or any of them and any estate of inheritance or estate for any life or lives or other estate transmissible to heirs and any possibility right or title of entry or action and any other interest capable of being inherited and whether the same estates possibilities rights titles and interest or any of them are in possession reversion remainder or contingency;

the person last entitled to land includes the last person who had a right thereto whether he did or did not obtain the possession or the receipt of the rents and profits thereof;

the purchaser means the person who last acquired the land otherwise than by descent or than by any escheat partition or enclosure by the effect of which the land became part of or descendible in the same manner as other land acquired by descent.

236 Last owner to be considered purchaser

No. 3754
s. 236.

In every case descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title requires, the person last entitled to the land shall for the purposes of this Part be considered to have been the purchaser thereof, unless it is proved that he inherited the same; in which case the person from whom he inherited the same shall be considered to have been the purchaser unless it is proved that he inherited the same; and in like manner the last person from whom the land is proved to have been inherited shall in every case be considered to have been the purchaser, unless it is proved that he inherited the same.

Where there is a total failure of heirs of the purchaser, or where any land is descendible as if an ancestor had been the purchaser thereof and there is a total failure of the heirs of such ancestors, then and in every such case the land shall descend and the descent shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof.

No. 3754
s. 237.

237 Heir entitled under will acquires land by devise and assurance creates estate by purchase

When any land has been devised by any testator who dies or has died on or after the second day of June One thousand eight hundred and sixty-four to the heir or to the person who is the heir of such testator, such heir shall be considered to have acquired the land as a devisee and not by descent. And when any land has been limited by any assurance executed on or after the second day of June One thousand eight hundred and sixty-four to the person or to the heirs of the person who thereby has conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

No. 3754
s. 238.

238 When heirs take by purchase under limitations to the heirs or their ancestor

When any person has acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors contained in an assurance executed on or after the second day of June One thousand eight hundred and sixty-four, or under a limitation to the heirs or to the heirs of the body of any of his ancestors, or under any limitation having the same effect contained in a will of any testator who has departed or departs this life on or after the second day of June One thousand eight hundred and sixty-four, then and in any of such cases such land shall descend and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land.

239 Brothers or sisters shall trace descent through parent

No. 3754
s. 239.

No brother or sister shall be considered to inherit immediately from his or her brother or sister; but every descent from a brother or sister shall be traced through the parent.

240 Lineal ancestor may be heir in preference to collateral persons claiming through him

No. 3754
s. 240.

Every lineal ancestor shall be capable of being heir to any of his issue; and in every case where there is no issue of the purchaser his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit either by tracing his descent through such lineal ancestor or in consequence of there being no descendant of such lineal ancestor; so that the father shall be preferred to a brother or sister and a more remote lineal ancestor to any of his issue other than a nearer lineal ancestor or his issue.

241 The male line to be preferred

No. 3754
s. 241.

None of the maternal ancestors of the person from whom the descent is to be traced nor any of their descendants shall be capable of inheriting until all his paternal ancestors and their descendants have failed; and no female paternal ancestor of such person nor any of her descendants shall be capable of inheriting until all his male paternal ancestors and their descendants have failed; and no female maternal ancestor of such person nor any of her descendants shall be capable of inheriting until all his male maternal ancestors and their descendants have failed.

No. 3754
s. 242.

242 The mother of more remote male ancestor to be preferred to the mother of the less remote male ancestor

Where there is a failure of male paternal ancestors of the person from whom the descent is to be traced and their descendants, the mother of his more remote male paternal ancestor or her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male paternal ancestor or her descendants.

No. 3754
s. 242.

243 Failure of male maternal ancestor

Where there is a failure of male maternal ancestors of such person and their descendants, the mother of his more remote male maternal ancestor and her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor and her descendants.

No. 3754
s. 243.

244 Half blood if on the part of a male ancestor to inherit after the whole blood of the same degree if on the part of a female ancestor after her

Any person related to the person from whom the descent is to be traced by the half blood shall be capable of being his heir; and the place in which any such relation by the half blood shall stand in the order of inheritance so as to be entitled to inherit shall be next after any relation in the same degree of the whole blood and his issue where the common ancestor is a male, and next after the common ancestor where such common ancestor is a female; so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

245 After the death of a person attainted his descendants may inherit **No. 3754 s. 244.**

When the person from whom the descent of any land is to be traced has had any relation who having been attainted has died before such descent has taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land has escheated in consequence of such attainder before the second day of June One thousand eight hundred and sixty-four.

246 Extent of Part **No. 3754 s. 245.**

This Part shall not extend to any descent which takes place on the death of any person who died before the second day of June One thousand eight hundred and sixty-four.

247 Limitations made before the passing of the Real Property Statute 1864 **No. 3754 s. 246.**

Where any assurance executed before the first day of June One thousand eight hundred and sixty-four or the will of any person who has died before the second day of June One thousand eight hundred and sixty-four contains any limitations or gift to the heir or heirs of any person under which the person or persons answering the description of heir is entitled to an estate by purchase, then the person or persons who would have answered such description of heir if the "Real Property Statute 1864" had not been made shall become entitled by virtue of such limitation or gift, whether the person named as ancestor was or was not living on or after the second day of June One thousand eight hundred and sixty-four.

Part VI—Estates tail⁴⁹

No. 3754
s. 247.

248 Definitions

In this Part unless inconsistent with the context or subject-matter—

bankrupt includes *insolvent*; *bankruptcy* includes *insolvency* and *trustee* includes an assignee official receiver or other person having in the bankruptcy the powers of trustee;

estate includes an estate in equity as well as at law and any interest charge right title lien or incumbrance either at law or in equity and whether present or vested or future or contingent in upon or affecting land and any interest charge lien or incumbrance in upon or affecting money subject to be invested in the purchase of land;

estate tail includes a base fee into which an estate tail has been converted;

land includes messuages lands tenements rents and hereditaments whether corporeal or incorporeal and any undivided share thereof;

money subject to be invested in the purchase of land includes money whether raised or to be raised and whether the amount thereof is or is not ascertained; and extends to Government and real and other securities the produce of which is directed to be invested in the purchase of land;

tenant in tail includes a person who where an estate tail has been barred and converted into a base fee would have been tenant of such estate tail if the same had not been barred.

And every assurance already made or hereafter to be made whether by deed will settlement or otherwise by which land is entailed or agreed or directed to be entailed shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement or of any other power arising out of the power contained in any settlement shall be considered as part of such settlement; and the estate created by such appointment shall be considered as having been created by such settlement; and where any such settlement is made by will the time of the death of the testator shall be considered the time when such settlement was made.

249 Tenancies in tail to pass the fee-simple

No. 3754
s. 248.

Subject to the provisions of section one hundred and thirty of this Act in respect of instruments coming into operation after the commencement of this Act where any limitation which would previous to the passing⁵⁰ of the Act No. 872 have limited to any person an estate tail whether legal or equitable in any land is made after the passing of the said Act, such limitation shall be deemed to give to such person an estate in fee-simple (legal or equitable as the case may be) in such land.

250 Where successive life estates are given to parent and child with estate tail to grandchild parent and child may bar the entail as if the estate tail were given to the child

No. 3754
s. 249.

Where under any will or settlement executed before the passing of the Act No. 872⁵¹ an estate for life in any land is given to any person, followed by an estate for life in remainder to any child of such person and ultimately or immediately by an estate tail in remainder to any grandchild of such person, when such child attains the age of twenty-one years, such person and the

child of such person may together bar the entail and dispose of the estate as fully and effectually as if the estate given to the child had been instead of an estate for life an estate tail similar to the estate tail given to the grandchild; and this provision shall extend to equitable as well as to legal estates.

No. 3754
s. 250.

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

- (1) A tenant in tail of full age 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, after barring the entail, 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 section or any corresponding previous enactment had not been passed.

- (2) This section shall 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) This section shall apply only to wills executed after the thirty-first day of December One thousand nine hundred and eighteen, or confirmed or republished after such date.

252 Power to dispose of lands entailed saving the rights of certain persons

No. 3754
s. 251.

After the first day of June One thousand eight hundred and sixty-four, every tenant in tail (including a married woman) whether in possession remainder contingency or otherwise shall have full power to dispose of for an estate in fee-simple absolute or for any less estate land entailed, as against all persons claiming the land entailed by force of any estate tail which is vested in or might be claimed by or which but for some previous Act would have been vested in or might have been claimed by the person making the disposition at the time of his or her making the same; and also as against all persons whose estates are to take effect after the determination or in defeasance of any such estate tail. Saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition is made: Provided always that such power of disposition shall not extend to tenants in tail after possibility of issue extinct; and that nothing in this section contained shall enable any person to dispose of any land entailed in respect of any expectant interest which he or she may have as issue inheritable to any estate tail herein.

No. 3574
s. 252.

S. 253
amended by
Nos 16/1986
s. 19(e),
24/2008
s. 85(1).

253 Acknowledgments of deeds

Every deed to be executed by any person for any of the purposes of this Part shall, upon the execution thereof or afterwards, be acknowledged as the act and deed of such person before a judge of the Court or an Associate Judge of the Supreme Court or an associate judge of the County Court, or before a special commissioner appointed by the Court. And such judge, associate judge or commissioner taking such acknowledgment shall sign a certificate to be indorsed on or written at the foot or in the margin of such deed; which certificate (subject to any alteration which may from time to time be directed by the Court) shall be to the effect mentioned in the Ninth Schedule to this Act.

No. 3754
s. 253.

S. 254
amended by
Nos 16/1986
s. 19(e),
110/1986
s. 140(2),
24/2008
s. 85(2).

254 Certificate to be evidence of acknowledgment

Such certificate shall be deemed and received as sufficient evidence of the due acknowledgment of such deed and shall be filed in the office of the Supreme Court or associate judge of the County Court.

No. 3754
s. 254.

255 Extent of the estate created by a tenant in tail by way of mortgage or for any other limited purpose

If a tenant in tail of land makes a disposition of the same under this Part by way of mortgage or for any other limited purpose, then and in such case such disposition shall to the extent of the estate thereby created be an absolute bar in equity as well as at law to all persons as against whom such disposition is by this Part authorized to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition is effected: Provided always that if the estate created by such

disposition is only an estate pur autre vie or for years absolute or determinable, or if by a disposition under this Part by a tenant in tail of land an interest charge lien or incumbrance is created without a term of years absolute or determinable or any greater estate for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage or to such other limited purpose or to such interest lien charge or incumbrance, notwithstanding any intention to the contrary is expressed or implied in the deed by which the disposition may be effected.

256 A voidable estate by a tenant in tail in favour of a purchaser

No. 3754
s. 255.

When a tenant in tail of land under a settlement has already created or hereafter creates in such land or any part thereof a voidable estate in favour of a purchaser for valuable consideration, and afterwards under this Part by any assurance other than a lease not requiring acknowledgment makes a disposition of the land in which such voidable estate is created or any part thereof, such disposition (whatever its object may be and whatever may be the extent of the estate intended to be thereby created) shall have the effect of confirming such voidable estate in the land thereby disposed of to its full extent as against all persons except those whose rights are saved by this Part: Provided always that if such disposition is made to a purchaser for valuable consideration who has not express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him.

No. 3754
s. 256.

257 Tenant in tail to make a disposition by deed as if seised in fee but not by contract

Every disposition of land by a tenant in tail thereof under this Part shall be effected by some one of the assurances by which such tenant in tail could have made the disposition if his estate were an estate at law in fee-simple absolute: Provided nevertheless that apart from a disposition by will no disposition by a tenant in tail shall be of any force either at law or in equity under this Part unless made or evidenced by deed; and that no disposition by a tenant in tail resting only in contract, either express or implied or otherwise and whether supported by a valuable or meritorious consideration or not, shall be of any force at law or in equity under this Part, notwithstanding such disposition is made or evidenced by deed.

No. 3754
s. 257.

258 Assurance by a tenant in tail to be inoperative unless acknowledged

No assurance by which any disposition of land is effected under this Part (except a lease for any term not exceeding twenty-one years to commence from the date of such lease or from any time not exceeding twelve calendar months from the date of such lease, where a rent is thereby reserved which at the time of granting such lease is a rack rent or not less than five-sixth parts of a rack rent) shall have any operation under this Part, unless it be acknowledged as in this Part directed within six months after the execution thereof.

259 Equity excluded from giving any effect to dispositions by tenants in tail which in courts of law would not be effectual

No. 3754
s. 258.

In cases of dispositions of lands under this Part by tenants in tail thereof, the jurisdiction of equity shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration or not, in regard to the specific performance of contracts and the supplying of defects in the execution of the powers of disposition given by this Part to tenants in tail and the supplying under any circumstances of the want of execution of such powers of disposition; and in regard to giving effect in any other manner to any act or deed by a tenant in tail which in a court of law would not be an effectual disposition under this Part; and no disposition of land under this Part by a tenant in tail thereof in equity shall be of any force unless such disposition would in case of an estate tail at law be an effectual disposition under this Part in a court of law.

260 Trustee in bankruptcy in the case of the bankruptcy of a tenant in tail by deed to dispose of the land of the bankrupt to a purchaser

No. 3754
s. 259.

Whenever an order is made placing the estate of any bankrupt under sequestration for the benefit of his creditors, it shall be lawful for the trustee in bankruptcy by deed to dispose of any land of which the bankrupt (either at the time of making such order or at any time afterwards before he has obtained his discharge or certificate) is a tenant in tail, to a purchaser for valuable consideration for the benefit of the creditors of such bankrupt tenant in tail, and such disposition shall create as large an estate in the land disposed of as the tenant in tail, if he had not become bankrupt could have created or done under this Part by a deed duly acknowledged; and no deed by which such trustee

shall under this Part dispose of land shall require acknowledgment by any person.

No. 3754
s. 260.

261 A voidable estate created in favour of a purchaser by a tenant in tail becoming bankrupt confirmed by the disposition of the trustee

Where a tenant in tail of land has already created or hereafter creates in such land a voidable estate in favour of a purchaser for valuable consideration and such tenant in tail has his estate sequestrated under any such order as aforesaid and the trustee makes any disposition under this Part of the land in which such voidable estate is created, then and in such case the disposition by such trustee shall have the effect of confirming such voidable estate in the land thereby disposed of to its full extent as against all persons except those whose rights are saved by this Part: Provided always that if the disposition by the trustee is made to a purchaser for valuable consideration who has not express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him.

No. 3754
s. 261.

262 Acts of a bankrupt tenant in tail void against any disposition under this Act by the trustee

All acts and deeds done and executed by a tenant in tail of land whose estate is sequestrated under any such order as aforesaid, and which affect such land, and which if he had been seised of or entitled to such land in fee-simple absolute would have been void against the trustee in bankruptcy and all persons claiming under him shall be void against any disposition which is made of such land under this Part by the trustee aforesaid.

263 The disposition by the trustee of the land of a bankrupt tenant in tail to have operation in the event of his death

No. 3754
s. 262.

Any disposition under this Part by the trustee aforesaid of land of which the bankrupt is or becomes as aforesaid an actual tenant in tail shall, although the bankrupt is dead at the time of the disposition, be as valid and effectual as the same would have been, and have the same operation under this Part as the same would have had, if the bankrupt was alive.

264 A bankrupt tenant in tail to retain his powers of disposition

No. 3754
s. 263.

Subject and without prejudice to the powers of disposition given by this Part to the trustee aforesaid over the estate tail of a bankrupt being or before obtaining his certificate becoming a tenant in tail of land, and also subject and without prejudice to the estate in such land, vested in the trustee of the bankrupt's estate, and also subject and without prejudice to the rights of all persons claiming under the said trustee in respect of such land, such tenant in tail as aforesaid shall have the same powers of disposition under this Part in regard to such land as he would have had if he had not become bankrupt.

265 Trustee to recover rents of the lands of a bankrupt of which the trustee has power to make disposition

No. 3754
s. 264.
S. 265
amended by
No. 8181
s. 2(1)(Sch.
item 158).

The rents and profits of any land of which a trustee aforesaid after any such order as aforesaid has power to make disposition under this Part shall, in the meantime and until such disposition is made or until it is ascertained that such disposition is not required for the benefit of the creditors of the bankrupt be received by the trustee for the benefit of his creditors. And the trustee may proceed by action for the recovery of such rents

and profits. And such trustee and his bailiffs agents and servants shall also have all such and the same remedies powers privileges and advantages of pleading avowing and making cognisance, and be entitled to the same costs and damages and the same remedies for the recovery thereof, as a landlord his bailiffs agents and servants is or are now or hereafter may be by law entitled to have when rent is in arrear; and such trustee shall also have the same power and authority of enforcing the observance of all covenants conditions and agreements in respect of the land of which the trustee aforesaid has the power of disposition under this Part and in respect of the rents and profits thereof, and of entry into and upon the same land for the non-observance of any such covenant condition and agreement, and of expelling and removing therefrom the tenants or other occupiers thereof and thereby determining and putting an end to the estate of the persons who have not observed such covenants conditions and agreements, as the bankrupt would have had in case he had not become bankrupt.

No. 3754
s. 265.

266 Application of previous clauses to lands to be sold where the purchase money is subject to be invested in the purchase of lands to be entailed

Lands to be sold whether freehold or leasehold, where the money arising from the sale thereof is subject to be invested in the purchase of lands to be settled so that any person if the lands were purchased would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled so that any person if the lands were purchased would have an estate tail therein, shall for all the purposes of this Act be treated as the lands to be purchased; and be considered subject to the same estates as the land to be purchased would if purchased have been

actually subject to. And this Part so far as circumstances will admit shall apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of land to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands and such lands were actually purchased and settled. Save and except that in every case where under this section a disposition is to be made of leasehold lands for years absolute or determinable so circumstanced as aforesaid or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favour or for whose benefit the disposition is to be made, be treated as personal estate; and (except in case of bankruptcy) the assurance by which the disposition of such leasehold lands or money is effected shall be an assignment by deed, which shall have no operation under this Part unless acknowledged within six months after the execution thereof; and in case of bankruptcy the disposition of such leasehold lands or money shall be made by the trustee aforesaid as the case may be.

Nothing in this section shall be construed as limiting the effect of section two hundred and forty-nine of this Act.

Part VII—Survey boundaries

No. 3754
s. 266.

S. 267
amended by
No. 18/1989
s. 13(Sch. 2
item 68(b)).

267 Definition

In this Part *document of title* includes any Crown grant or Crown lease or any folio of the Register deed of conveyance partition release or assurance or other deed will lease written contract or writing.

No. 3754
s. 267.

268 Crown survey boundaries as marked on the ground to be deemed the true boundaries

The survey boundaries of any Crown section portion allotment or other parcel of land marked on the ground at the time of the Crown survey thereof, and shown by survey posts pegs trenches or other survey marks shall, as to any such parcel of land heretofore or hereafter granted or demised by the Crown, be and be deemed to have been the true boundaries of such parcel of land whether such boundaries upon admeasurement are or are not found to be of the same dimensions or to include the same area as the boundaries or description of such parcel given in the Crown grant or Crown lease thereof.

No. 3754
s. 268.

269 Crown grant or lease to be deemed to convey the land within the survey boundaries

Every Crown grant and Crown lease purporting to convey a section allotment or other parcel of land, whether describing it by a distinguishing number or letter or by metes and bounds or otherwise, shall be deemed to convey the land included within the survey boundaries of such parcel of land marked on the ground in the Crown survey thereof, notwithstanding any discrepancy between the dimensions of such survey boundaries or the area they include and the dimensions or area expressed in such grant or lease or shown in any

plan used in connexion with the alienation by the Crown of such parcel of land.

270 As to aliquot parts of Crown sections having excess of area

No. 3754
s. 269.

Where a Crown section has been subdivided by the Crown into allotments or portions of equal area, and by reason of excessive measurements in the original Crown survey the area of the section as marked on the ground by the survey boundaries exceeds the sum of the areas of all the allotments or portions as shown by any plan or description used at the Crown sale or as deducible from any Crown grant of any such allotment or portion, the total excess of area of the section shall be deemed originally distributable amongst the allotments or portions equally; and every Crown grant purporting to be a grant of one of such allotments or portions shall where the original subdivisional survey boundaries thereof do not exist, or if not inconsistent with such boundaries where they do exist, be construed to be a grant of such aliquot part of the total area included within the survey boundaries of such section as is obtained by dividing such area by the number of original allotments or portions.

271 How Crown survey boundaries may be proved in the absence of survey marks

No. 3754
s. 270.

When the survey marks of any line constituting one of the original boundary lines of any Crown section allotment or other Crown parcel of land have been removed or obliterated but it is proved in some court of competent jurisdiction or (where the land is under or is proposed to be brought under the **Transfer of Land Act 1958**) to the satisfaction of the Registrar of Titles that certain buildings fences walls or other

improvements of a permanent nature or a succession of such improvements—

- (a) have ever since the removal or obliteration of such survey marks agreed in position with such original boundary line or with the particular portion thereof required to be established; or
- (b) have for the period of fifteen consecutive years been accepted and regarded by the vendors purchasers owners and occupiers for the time being of such parcel of land as agreeing in position with such original boundary line; or
- (c) have for the period of fifteen consecutive years been accepted and regarded by the vendors purchasers owners and occupiers for the time being of any portion of such parcel of land bounded by such Crown boundary line or by a portion thereof as agreeing in position with such original boundary line or such particular portion thereof—

such proof as aforesaid shall for all purposes be deemed and received as sufficient prima facie evidence of the true position of such original Crown survey boundary line or of such particular portion thereof as the case may be.

No. 3754
s. 271.
S. 272
amended by
S.R. No.
151/1974
reg. 2.

272 Margin of error allowed in description of boundaries

From and after the first day of August One thousand eight hundred and ninety the dimensions of the boundaries of any parcel of land as stated in any document of title now made or hereafter to be made relating to such land, or as represented on any plan drawn on and referred to in any such document of title, shall unless such construction is expressly negated or modified by such

document of title or contract be construed as though the phrase "a little more or less" immediately followed and referred to the dimensions so stated or represented; and such phrase shall in all cases whether so implied or expressed be deemed to cover any difference between the dimensions so stated or represented as aforesaid and the actual dimensions of such boundaries as found by admeasurement on the ground, when such difference does not exceed the following limits, that is to say, a limit of 50 millimetres for any one boundary line irrespective of its length where the length does not exceed 40·30 metres, but where it exceeds 40·30 metres a limit equivalent to one in five hundred computed upon the total length of such boundary line. No action shall be brought by reason or in respect of such difference (whether of excess or deficit) where it does not exceed the aforesaid limits; and in any case where such difference does exceed such limits an action for damages or compensation in respect thereof shall lie in respect of such excess only.

273 Provisions of Part to apply to land under general law and Transfer of Land Act 1958

The provisions of this Part shall apply to land whether under the general law or under the operation of the **Transfer of Land Act 1958**, and shall where applicable be acted upon by the Registrar of Titles in dealing with any application to bring land under the **Transfer of Land Act 1958**, or to have any folio of the Register amended as to boundaries, and also in any investigation in the Office of Titles as to boundaries.

No. 3754
s. 272.
S. 273
amended by
No. 18/1989
s. 13(Sch. 2
item 68(c)).

Part VIII—Recovery of property etc. on determination of a life or lives

No. 3754
s. 273.

274 Person wrongfully holding over after the determination of a life to be liable in damages

- (1) Every person having any estate or interest in any real or personal property determinable upon a life or lives who after the determination of such life or lives without the express consent of the person or persons next immediately entitled upon or after such determination holds over or continues in possession of such real or personal property estate or interest or of the rents profits or income thereof shall be liable in damages or to an account for such rents and profits or both to the person or persons entitled to such property estate interest rents profits or income after the determination of such life or lives.
- (2) Where a reversion remainder or other estate or interest in real or personal property is expectant upon the determination of a life or lives the reversioner remainderman or other person entitled to such reversion remainder or other estate or interest may in an action claiming relief on the basis that such life or lives has or have determined give evidence by himself or some other credible witness or witnesses of belief that such life or lives has or have been determined and of the grounds of such belief and thereupon the Court may in its discretion order that unless the person or persons on whose life or lives such reversion remainder or other estate or interest is expectant is or are produced in court or is or are otherwise shown to be living such person or persons shall for the purposes of such action be accounted as dead and relief may be given accordingly.

- (3) If in such action the last-mentioned person or persons is or are shown to have remained beyond Australia, or otherwise absented himself or themselves from the place or places in which if in Australia he or they might be expected to be found, for the space of seven years or upwards such person or persons if not proved to be living shall for the purposes of such action be accounted as dead and relief may be given accordingly.
- (4) If in any such action judgment has been given against the plaintiff and afterwards such plaintiff brings a subsequent action upon the basis that such life or lives has or have determined the Court may make an order staying such action either permanently or until further order or for such specified time as it thinks fit.
- (5) If in consequence of the judgment given in any such action any person having any estate or interest in any real or personal property determinable on such life or lives has been evicted from or deprived of any real or personal property or any estate or interest therein and afterwards it appears (in an action brought for the recovery of such property or any part thereof or of any estate or interest therein or for damages for being evicted therefrom or deprived thereof or for an account of rents profits and income or for the reimbursement of the whole or part of the costs of the former action or for interest at such rate as the Court thinks fit or for all or some or any of these matters which action so far as it is appropriate in the circumstances it is hereby declared may notwithstanding anything hereinbefore contained or in the judgment in the former action contained be brought) that such person or persons on whose life or lives such estate or interest depends is or are living or was or were living at the time of such

**S. 274(4)
amended by
No. 110/1986
s. 140(2).**

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Part VIII—Recovery of property etc. on determination of a life or lives

eviction or deprivation the Court may give such relief as is appropriate in the circumstances.

Pt 9
(Heading and
ss 275–302)
inserted by
No. 91/1987
s. 3,
amended by
Nos 57/1989
s. 3(Sch.
items 166.7,
166.8),
23/1998
ss 5–7, 8(4),
27/2001
s. 3(Sch. 1
item 9) (as
amended by
No. 72/2001
s. 4(a)),
repealed by
No. 12/2008
s. 72.

* * * * *

Property Law Act 1958
No. 6344 of 1958
Schedules

Schedules

First Schedule

Section 2.

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
3754	Property Law Act 1928	So much as is not already repealed.
4222	Property Law (Charitable Bequests) Act 1934	The whole.
4265	Mortgagees (Powers of Sale) Act 1934	So much as is not already repealed.
4602	Companies Act 1938	Item in Part II of First Schedule referring to Property Law Act 1928 .
4654	Public Trustees Act 1939	Clause 10 of First Schedule.
5753	Statute Law Revision Act 1953	Item in Schedule referring to Property Law Act 1928 .
5757	Statutes Amendment Act 1953	Section 9.
5914	Limitation of Actions Act 1955	Clause 33 of Schedule.
5934	Property Law and Transfer of Land Act 1955	So much as is not otherwise repealed.
6012	Registrar-General's Fees Act 1956	Section 8.
6123	Property Law (Amendment) Act 1957	The whole.

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**Sch. 2
repealed by
No. 9043
s. 2(c).**

Third Schedule—General conditions of sale of land

Section 46.
No. 5934 s. 3.
Sch. 3
amended by
Nos 6433 s. 2
(as amended
by No. 6489
s. 4), 6961 s. 2,
9427
s. 6(1)(Sch. 5
item 149),
9633 s. 9,
substituted by
No. 9858
s. 7(b).

Sch. 3 cl. 1
amended by
No. 35/1996
s. 453(Sch. 1
item 68.4(a)).

Sch. 3 cl. 2
amended by
No. 35/1996
s. 453(Sch. 1
item 68.4(a)).

1. The muniments of title in respect of the land sold shall be produced on demand to the purchaser or his legal practitioner who shall within twenty-one days from the day of sale deliver to the vendor or his legal practitioner in writing all requisitions or objections (if any) on or to the title or concerning any matter appearing in the particulars or conditions. If the vendor fails to produce such muniments of title on demand such twenty-one days shall not commence to run until production thereof. All requisitions or objections not included in any such writing so delivered shall be deemed waived by the purchaser and in default of such requisitions (if none) and subject to such (if any) as are so delivered the purchaser shall be deemed to have accepted title.
2. If the purchaser within the said twenty-one days makes any such requisition or objection as aforesaid which the vendor is unable or unwilling to remove or comply with the vendor or his legal practitioner (whether or not he has attempted to remove or comply with the same and notwithstanding any negotiation or litigation in respect thereof) may give to the purchaser or his legal practitioner notice in writing of the vendor's intention to rescind the contract at the expiration of seven days unless such requisition or objection is withdrawn and if such notice is so given and the requisition or objection is not withdrawn within such seven days the contract shall thereupon be rescinded and the vendor shall repay to the purchaser all

deposit and other moneys received by him or his agent on account of the purchase money but without interest costs or damages and the same shall be accepted by the purchaser in full satisfaction of all claims.

3. No omission from the particulars or mistake in the description measurements or area of the land hereby sold shall invalidate the sale unless the vendor rescinds pursuant to the last preceding Condition but if notified to the other party not less than three days before the day fixed for completion or within twenty-one days of the day of sale (whichever is the earlier) the same shall be the subject of compensation to be paid or received by the vendor as the case may require and to be assessed in case the parties differ by an arbitral tribunal consisting of a panel of 2 arbitrators in accordance with the provisions of the **Commercial Arbitration Act 2011** and this Condition shall in that event be deemed to be a submission to arbitration within that Act.

Sch. 3 cl. 3
amended by
Nos 10167
s. 3(1),
50/2011
s. 46(Sch.
item 13).

4. If either party defaults in payment of any money under this contract then interest at a rate two per cent higher than the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** in lieu of any rate named in the contract and computed upon the money overdue during the period of default shall be paid on demand made by the offended party without prejudice to any other rights of the offended party.

Sch. 3 cl. 4
amended by
No. 9967 s. 11.

5. Time shall be of the essence of this contract. However if either party defaults under this contract the offended party shall not be entitled to exercise any of his rights arising out of the default other than his right to sue for money then owing until he has served the offender with a written notice specifying the default and his intention to exercise his rights unless the default is remedied and the proper legal costs occasioned by the default and any interest demanded are all paid within fourteen days of service of the notice and the offender fails to comply with the notice.

6. (1) Where the default has been made by the purchaser and is not remedied all monies unpaid under this contract shall become immediately payable and recoverable at the option of the vendor.
- (2) If the notice also states that unless the default is so remedied the contract will be rescinded pursuant to this condition then if the default is not so remedied the contract shall thereupon be rescinded.
- (3) Where the contract is rescinded and the notice is given by—
 - (a) the purchaser, he shall be repaid any money together with any interest and costs payable under this contract and these shall be a charge on the land until payment.
 - (b) the vendor, then an amount equal to one tenth of the price ("the security") shall be forfeited to the vendor as his absolute property and he may recover possession of the land and at his option may within one year of the date of rescission either—
 - (i) retain the land and sue for damages for breach of contract; or
 - (ii) resell the land in such manner as he sees fit and recover any deficiency in the price on the re-sale and any resulting expenses by way of liquidated damages.

In addition to the security the vendor may retain any part of the price paid to him pending the determination of damages and may apply that money in satisfaction or part satisfaction of those damages.

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7. If either party rescinds this contract pursuant to the last preceding Condition then that party or his legal practitioner may notify the stakeholder accordingly whereupon the stakeholder shall pay the moneys so held to the person giving the notice. The parties hereby each appoint the other as their lawful attorney for this purpose and absolve the stakeholder from any liability for complying with such notice.
- Sch. 3 cl. 7
amended by
No. 35/1996
s. 453(Sch. 1
item 68.4(a)).
8. The land sold is purchased subject to the reservations exceptions and conditions (if any) contained in the Crown grant.
9. All rates, taxes, assessments, fire insurance premiums and other outgoings in respect of the said land shall be paid by the vendor and borne by the purchaser as from the date on which he becomes entitled to possession and the same shall if necessary be apportioned between the vendor and purchaser and the rent (if any) shall be also apportioned on the same day and the balance paid or received as the case may require. In the case of land tax any such apportionment shall be computed on the basis that the land sold is the only land of which the vendor is the owner within the meaning of the **Land Tax Act 2005**. In calculating the apportionment any personal statutory benefit available to any party shall be disregarded.
- Sch. 3 cl. 9
amended by
No. 88/2005
s. 117(Sch. 2
item 4).
10. Subject to the purchaser obtaining the consent of the fire insurance company, paying such apportioned premium as aforesaid, and accepting title in fact or by implication, the vendor shall hold the existing policy of insurance for himself and in trust for the purchaser and all other persons having an insurable interest and to the extent of such respective interests.

Sch. 3 cl. 11
amended by
Nos 10087
s. 3(1)(Sch. 1
item 192),
52/1994
s. 97(Sch. 3
item 24).

11. After the settlement date, so long as any purchase or other moneys remain owing by the purchaser to the vendor—
- (a) the purchaser shall at his own cost insure and keep insured in the names of the vendor and the purchaser and every other person having an insurable interest in some insurance office to be approved by the vendor all buildings now erected or hereafter to be erected on the said land and shall deliver the policy and annual premium receipt to the vendor. Such policy shall be for the full insurable value inclusive of the policy in the last preceding Condition mentioned. Upon default herein by the purchaser the vendor may pay any renewal premium or (as the case may be) may effect such insurance and pay any premium and any money so paid by him shall be payable to him by the purchaser on demand;
 - (b) the purchaser shall keep all such buildings and all fencing in tenantable repair;
 - (c) neither the purchaser nor any transferee or sub-purchaser of the said land shall alter the construction of such buildings or in any way pull down or remove the same or any part thereof without the consent in writing of the vendor first obtained;
 - (d) the purchaser shall in relation to the said land comply with and observe all statutory provisions and all regulations and by-laws thereunder from time to time in force which are binding upon owners or occupiers of land and which relate to the prevention or destruction of pest animals noxious weeds or diseases of vegetation or vines;
 - (e) the vendor may enter upon the said land twice in every year at a reasonable time of the day and view the condition thereof and of any buildings thereon.

12. Upon payment of all purchase and other moneys payable by the purchaser under the contract the vendor shall execute a proper assurance to the purchaser of the land sold and deliver to the purchaser the muniments of title unless the land sold is under mortgage. If other land or interest are then comprised therein such muniments of title in the possession of the vendor as relate to other land property or interests may be retained by the vendor but he shall by the conveyance or other assurance give an acknowledgement and undertaking pursuant to section 64 of the **Property Law Act 1958**. Such assurance shall be prepared by or on behalf and at the expense of the purchaser. The delivery of such document shall not by itself be deemed acceptance of title.
13. Any demand, notice or document by any party to this contract may be made or given by the legal practitioner for that party and shall be sufficiently served or delivered if served or delivered personally or if posted by prepaid post addressed either to the party to be served or his legal practitioner at their respective addresses as named in the contract or if served in any other manner authorized by the Supreme Court Rules for service of documents upon parties or their legal practitioners.
14. (a) Where the consent or licence of any person or body is required to the sale, the vendor shall at his own expense apply for and use his best endeavours to obtain such consent or licence. If such consent or licence is not obtained by the date upon which the purchaser becomes entitled to possession of the land sold or to the receipt of the rents and profits thereof as the case may be (in these Conditions called "the settlement date") the contract shall be null and void and all moneys paid hereunder by the purchaser shall be refunded to him.

Sch. 3 cl. 13
amended by
No. 35/1996
s. 453(Sch. 1
item 68.4(b)
(i)(ii).

- (b) If the land sold is leasehold, the rent and other monetary obligations payable by the vendor (except capital payments payable under any Crown lease) shall be adjusted between the parties in the same manner as is provided by these Conditions for the adjustment of rates. The purchaser shall indemnify the vendor against all claims in respect of all the obligations under the said lease which are to be performed after the settlement date.
15. The purchaser shall assume liability for compliance with any notices or orders relating to the property sold (other than those referring to apportionable outgoings) which are made or issued on or after the day of sale but the purchaser shall be entitled to enter on the property sold (without thereby being deemed to have accepted title) at any time prior to the settlement date for the purpose of complying with any such notice or order which requires to be complied with before the settlement date. The purchaser may also inspect the condition of the property and the chattels at any reasonable time during the period of seven days preceding the settlement date.
16. Any payment due under this contract may be made or tendered either in cash or by a draft or cheque drawn on account of an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth.
17. (1) If the purchaser is not in default in any respect under the contract, at any time after acceptance of title and before payment in full of the purchase money the vendor shall on the request of the purchaser convey the land to the purchaser by a proper assurance prepared by and at the expense of the purchaser, the purchaser simultaneously with such conveyance re-conveying the land to the vendor by way of mortgage to secure payment of all moneys thereafter to become payable by the purchaser pursuant to the contract.

Sch. 3 cl. 16
amended by
No. 11/2001
s. 3(Sch.
item 59.2).

- (2) Such mortgage shall contain power of sale and re-entry and all such other powers in favour of the mortgagee and all such covenants on the part of the mortgagor as are usual in mortgages and fully accord with and provide for the observance of all obligations of the purchaser pursuant to the contract and shall at the cost of the purchaser be prepared and registered in the office of the Registrar-General and until the mortgagor becomes entitled to a re-conveyance the mortgagee may retain all muniments of title of the land.

Fourth Schedule—Implied covenants

PART I

Covenant implied in a Conveyance for Valuable Consideration, other than a Mortgage, by a Person who Conveys and is expressed to Convey as Beneficial Owner

That, notwithstanding anything by the person who so conveys or any one through whom he derives title otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person (if any) conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made), through whom the person who so conveys derives title, otherwise than by purchase for value:

And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims and demands, other than those subject to which the conveyance is expressly made, as, either before or after the date of the conveyance, have been or shall be made, occasioned or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under or in trust for the person who so conveys, or by, through or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value:

And further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more

perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

PART II

Further Covenant implied in a Conveyance of Leasehold Property for Valuable Consideration, other than a Mortgage, by a Person who Conveys and is expressed to Convey as Beneficial Owner

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and has nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

PART III

Covenant implied in a Conveyance by way of Mortgage by a Person who Conveys and is expressed to Convey as Beneficial Owner

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed:

And also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made):

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And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims and demands whatever other than those subject whereto the conveyance is expressly made:

And further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

PART IV

Covenant implied in a Conveyance by way of Mortgage of Leasehold Property by a Person who Conveys and is expressed to Convey as Beneficial Owner

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed and is in full force, unforfeited and unsurrendered and has in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance:

And also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains owing on the security of the conveyance, pay observe and perform, or cause to be paid, observed and performed all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions proceedings, costs, charges, damages, claims and demands (if any) to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions and agreements, or any of them.

PART V

Covenant implied in a Conveyance by way of Settlement, by a Person who Conveys and is expressed to Convey as Settlor

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, as by them or any of them shall be reasonably required, subject as if so expressed, and in the manner in which the conveyance is expressed to be made.

PART VI

Covenant implied in any Conveyance, by every Person who Conveys and is expressed to Convey as Trustee or Mortgagee, or as Personal Representative of a Deceased Person, or as Committee of the Estate of a Lunatic or under an Order of the Court

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to any deed or thing, whereby or by means whereof the subject-matter of the conveyance or any part thereof, is or may be impeached, charged, affected or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

The foregoing covenant may be implied in an assent in like manner as in a conveyance by deed.

PART VII

Covenant implied in a Conveyance for Valuable Consideration other than a Mortgage, of the Entirety of Land affected by a Rentcharge

That the grantees or the persons deriving title under them will at all times, from the date of the conveyance or other date therein stated, duly pay the said rentcharge and observe and perform all the covenants, agreements and conditions contained in the deed or other document creating the rentcharge, and thenceforth on the part of the owner of the land to be observed and performed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rentcharge or any part thereof, or any breach of any of the said covenants, agreements and conditions.

PART VIII

Covenants implied in a Conveyance for Valuable Consideration, other than a Mortgage, of Part of Land affected by a Rentcharge, subject to a Part (not legally apportioned) of that Rentcharge

Sch. 4 Pt 8
cl. (i)
amended by
No. 71/1994
s. 4(c)(i).

- (i) That the grantees or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants (other than the covenant to pay the entire rent) and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land conveyed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent, or any breach of any of the said covenants and conditions, so far as the same relate as aforesaid.

Sch. 4 Pt 8
cl. (ii)
amended by
No. 71/1994
s. 4(c)(ii).

- (ii) That the conveying parties or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the balance of the rentcharge (after deducting the apportioned rent aforesaid, and any other rents similarly apportioned in respect of land not retained), and observe and perform all the covenants other than the covenant to pay the entire rent, and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land not included in the conveyance and remaining vested in the covenantors:

And also will at all times from the date aforesaid, save harmless and keep indemnified the grantees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rentcharge, or any breach of any of the said covenants and conditions so far as they relate as aforesaid.

PART IX

Covenant in a Conveyance for Valuable Consideration, other than a Mortgage, of the Entirety of the Land comprised in a Lease for the Residue of the Term or Interest created by the Lease

Sch. 4 Pt 9
amended by
No. 71/1994
s. 4(d).

That the assignees or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, duly pay all rent becoming due under the lease creating the term or interest for which the land is conveyed, and observe and perform all the covenants, agreements and conditions therein contained and thenceforth on the part of the lessees to be observed and performed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants, agreements and conditions.

PART X

Covenants implied in a Conveyance for Valuable Consideration, other than a Mortgage, of Part of the Land comprised in a Lease, for the Residue of the Term or Interest created by the Lease subject to a Part (not legally apportioned) of that Rent

- (i) That the assignees or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease creating the term or interest for which the land is conveyed, and thenceforth on the part of the lessees to be observed and performed, so far as the same relate to the land conveyed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent or any breach of any of the said covenants, agreements and conditions so far as the same relate as aforesaid.

- (ii) That the conveying parties or the persons deriving title under them, will at all times, from the date of the conveyance, or other date therein stated, pay the balance of the rent (after deducting the apportioned rent aforesaid and any other rents similarly apportioned in respect of land not retained) and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease and on the part of the lessees to be observed and performed so far as the same

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relate to the land demised (other than the land comprised in the conveyance) and remaining vested in the covenantors:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the assignees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rent or any breach of any of the said covenants, agreements and conditions so far as they relate as aforesaid.

Fifth Schedule—Form of transfer of mortgage

Section 114.

Sch. 5
amended by
No. 70/2013
s. 3(Sch. 1
item 42.3).

THIS INDENTURE made the day of 20 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.

Property Law Act 1958
No. 6344 of 1958
Sixth Schedule—Form of receipt under seal on discharge of a mortgage

Section 115.

Sch. 6
amended by
No. 70/2013
s. 3(Sch. 1
item 42.4).

**Sixth Schedule—Form of receipt under
seal on discharge of a mortgage**

I, A.B. of [&c.] hereby acknowledge that I have this day of
20 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.].

In witness, &c.

NOTE—If the persons paying are not entitled to the equity of redemption
state that they are paying the money out of a fund applicable to the discharge
of the mortgage [*or otherwise as required*].

Seventh Schedule—Statutory mortgage

Section 117.

PART I

THIS INDENTURE made by way of statutory mortgage the day
of 20 , between A. of [&c.] of the one part and M. of [&c.] of the
other part.

Sch. 7 Pt 1
amended by
No. 70/2013
s. 3(Sch. 1
item 42.5).

WITNESSETH that in consideration of the sum of \$ now paid to A.
by M. of which sum A. hereby acknowledges the receipt A. as mortgagor and
as beneficial owner hereby conveys to M. All that [&c.]

To hold to and to the use of M. in fee-simple for securing payment on the
 day of 20 of the principal sum of \$ as the
mortgage money with interest thereon at the rate of [*four*] per centum per
annum.

In witness, &c.

*** Variations in this and subsequent forms to be made, if required, for
leasehold land or for giving effect to special arrangements.*

PART II

(A)

Deed of Statutory Transfer, Mortgagor not joining

THIS INDENTURE made by way of statutory transfer of mortgage the
 day of 20 between M. of [&c.] of the one part and T. of [&c.]
of the other part supplemental to an indenture made by way of statutory
mortgage dated the day of 20 , and made between
[&c.]

Section 118.
Sch. 7 Pt 2(A)
amended by
No. 70/2013
s. 3(Sch. 1
item 42.5).

WITNESSETH that in consideration of the sum of \$ now paid to
M. by T. being the aggregate amount of \$ mortgage money and
\$ interest due in respect of the said mortgage of which sum M.
hereby acknowledges the receipt M. as mortgagee hereby conveys and
transfers to T. the benefit of the said mortgage.

In witness, &c.

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Section 120.
Sch. 7 Pt 2(B)
amended by
Nos 71/1994
s. 4(e),
70/2013
s. 3(Sch. 1
item 42.5).

(B)

Deed of Statutory Transfer, a Covenantor joining

THIS INDENTURE made by way of statutory transfer of mortgage the day of 20 , between A. of [&c.] of the first part B. of [&c.] of the second part and C. of [&c.] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 20 , and made between [&c.]

WITNESSETH that in consideration of the sum of \$ now paid to A. by C. being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum A. hereby acknowledges the receipt A. as mortgagee with the concurrence of B. who joins herein as covenantor hereby conveys and transfers to C. the benefit of the said mortgage.

In witness, &c.

Section 121.
Sch. 7 Pt 2(C)
amended by
No. 70/2013
s. 3(Sch. 1
item 42.5).

(C)

Statutory Transfer and Statutory Mortgage combined

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 20 , between A. of [&c.] of the first part B. of [&c.] of the second part and C. of [&c.] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 20 , and made between [&c.]

WHEREAS the principal sum of \$ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS B. is seised in fee-simple of the land comprised in the said mortgage subject to that mortgage.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of \$ now paid to A. by C. of which sum A. hereby acknowledges the receipt and B. hereby acknowledges the payment and receipt as aforesaid* A. as mortgagee hereby conveys and transfers to C. the benefit of the said mortgage. AND HIS INDENTURE ALSO WITNESSETH that for the same consideration A. as mortgagee and according to his estate and by direction of B. hereby conveys and B. as beneficial owner hereby conveys and confirms to C. All that [&c.] To hold to and to the use of C. in fee-simple for securing payment on the day of 20 , of† the sum of \$ as the mortgage money with interest at the rate of [four] per cent. per annum.

In witness, &c.

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Or, *in case of further advance, after "aforesaid" at* insert* and also in consideration of the further sum of \$ now paid by C. to B. of which sum B. hereby acknowledges the receipt, *and after "of" at† insert* the sums of \$ and \$ making together.

***Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.*

PART III

Deed of Statutory Re-conveyance of Mortgage

THIS INDENTURE made by way of statutory re-conveyance of mortgage the day of 20 between C. of [&c.] of the one part B. of [&c.] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 20 and made between [&c.]

WITNESSETH that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest C. hereby acknowledges the receipt C. as mortgagee hereby conveys to B. all the lands and hereditaments now vested in C. under the said indenture To hold to and to the use of B. in fee-simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, &c.

*** Variations as noted above.*

**Section 124.
Sch. 7 Pt 3
amended by
No. 70/2013
s. 3(Sch. 1
item 42.5).**

Section 206.
Sch. 8
amended by
No. 70/2013
s. 3(Sch. 1
item 42.6).

Eighth Schedule—Short forms of deeds

I—Mortgage

THIS INDENTURE OF MORTGAGE made the day of 20
between A. of [&c.] of the one part and B. of [&c.] and C. of [&c.] of the
other part.

WITNESSETH that in consideration of the sum of \$ paid to A. by B.
and C. out of money belonging to them on a joint account of which sum A.
hereby acknowledges the receipt A. hereby covenants with B. and C. to pay
to them on the day of 20 the sum of \$ with interest
thereon in the meantime at the rate of [*four*] per centum per annum and also
as long after that day as any principal money remains due under this
mortgage to pay to B. and C. interest thereon at the same rate by equal
half-yearly payments on the day of and the day of

AND THIS INDENTURE ALSO WITNESSETH that for the same
consideration A. as beneficial owner hereby conveys to B. and C. All that
[&c.]

To hold to and to the use of B. and C. in fee-simple subject to the proviso for
redemption following (namely) that if A. or any person claiming under him
shall on the day of 20 pay to B. and C. the sum of \$ and
interest thereon at the rate aforesaid then B. and C. or the persons claiming
under them will at the request and cost of A. or the persons claiming under
him re-convey the premises to A. or the persons claiming under him.

AND A. hereby covenants with B. as follows—[*here add covenant as to fire
insurance or other special covenant required*].

In witness, &c.

II—Further Charge

THIS INDENTURE made the day of 20 between
[*the same parties as the foregoing mortgage*] and supplemental to an
indenture of mortgage dated the day of 20 and made
between the same parties for securing the sum of \$ and interest at
[*four*] per centum per annum on property at [&c.]

WITNESSETH that in consideration of the further sum of \$ paid to
A. by B. and C. out of money belonging to them on a joint account
[*add receipt and covenant as in the foregoing mortgage*] and further that
all the property comprised in the before-mentioned indenture of mortgage
shall stand charged with the payment to B. and C. of the sum of \$
and the interest thereon hereinbefore covenanted to be paid as well as the
sum of \$ and interest secured by the same indenture.

In witness, &c.

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III—*Conveyance on Sale*

THIS INDENTURE made the day of 20 between A. of
[&c.] of the first part B. of [&c.] and C. of [&c.] of the second part and M. of
[&c.] of the third part.

WHEREAS by an indenture dated [&c.] and made between [&c.] the lands
hereinafter mentioned were conveyed by A. to B. and C. in fee-simple by
way of mortgage for securing \$ and interest and by a supplemental
indenture dated [&c.] and made between the same parties those lands were
charged by A. with the payment to B. and C. of the further sum of \$ and
interest thereon.

AND WHEREAS a principal sum of \$ remains due under the two
before-mentioned indentures but all interest thereon has been paid as B. and
C. hereby acknowledge NOW THIS INDENTURE WITNESSETH that in
consideration of the sum of \$ paid by the direction of A. to B. and C.
and of the sum of \$ paid to A. those two sums making together the total
sum of \$ paid by M. for the purchase of the fee-simple of the lands
hereinafter mentioned of which sum of \$ B. and C. hereby acknowledge
the receipt and of which total sum of \$ A. hereby acknowledges the
payment and receipt in manner before mentioned B. and C. as mortgagees
and by the direction of A. as beneficial owner hereby convey and A. as
beneficial owner hereby conveys and confirms to M. All that [&c.] To hold
to and to the use of M. in fee-simple discharged from all money secured by
and from all claims under the before-mentioned indentures [*Add, if required,*
and A. hereby acknowledges the right of M. to production of the documents
of title mentioned in the Schedule hereto and to delivery of copies thereof and
hereby undertakes for the safe custody thereof].

In witness, &c.

[The Schedule above referred to.

To contain list of documents retained by A.]

Section 253.

Sch. 9
amended by
Nos 24/2008
s. 85(3),
70/2013
s. 3(Sch. 1
item 42.7).

Ninth Schedule

This is to certify that the within-named A.B. came this day before me the undersigned _____ one of the judges of the Court [or before me the undersigned Associate Judge of the Supreme Court or associate judge of the County Court or before me the undersigned G.H. a commissioner specially appointed pursuant to the **Property Law Act 1958** for taking the acknowledgment of any deed by A.B. not being employed to prepare the within deed or being a party thereto] and acknowledge the within deed to be his [or her] act and deed and he [or she] was acquainted with and understood the nature and effect thereof.

Dated the _____ day of _____ 20 .

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The **Property Law Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 893.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Property Law Act 1958** by Acts and subordinate instruments.

Contracts of Sale (Payments) Act 1958, No. 6433/1958 (as amended by No. 6489)

Assent Date: 28.10.58
Commencement Date: 2.2.59: Government Gazette 21.1.59 p. 116
Current State: All of Act in operation

Companies Act 1958, No. 6455/1958

Assent Date: 2.12.58
Commencement Date: 1.4.59: Government Gazette 4.3.59 p. 496
Current State: All of Act in operation

Property Law (Amendment) Act 1959, No. 6491/1959

Assent Date: 7.4.59
Commencement Date: 7.4.59
Current State: All of Act in operation

Property Law (Loans to Minors) Act 1961, No. 6814/1961

Assent Date: 12.12.61
Commencement Date: 12.12.61
Current State: All of Act in operation

Companies Act 1961, No. 6839/1961

Assent Date: 19.12.61
Commencement Date: 1.7.62: Government Gazette 21.2.62 p. 392
Current State: All of Act in operation

Statute Law Revision Act 1962, No. 6867/1962

Assent Date: 16.4.62
Commencement Date: 16.4.62
Current State: All of Act in operation

Statute Law (Further Revision) Act 1962, No. 6961/1962

Assent Date: 18.12.62
Commencement Date: 18.12.62: subject to s. 3
Current State: All of Act in operation

Transfer of Land (Restrictive Covenants) Act 1964, No. 7130/1964

Assent Date: 5.5.64
Commencement Date: 5.5.64
Current State: All of Act in operation

Friendly Societies (Assignment of Contracts) Act 1964, No. 7231/1964

Assent Date: 22.12.64
Commencement Date: 5.5.65: Government Gazette 5.5.65 p. 1551
Current State: All of Act in operation

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Property Law (Loans to Minors) Act 1965, No. 7264/1965

Assent Date: 18.5.65
Commencement Date: 18.5.65
Current State: All of Act in operation

Property Law (Loans to Minors) Act 1966, No. 7376/1966

Assent Date: 14.4.66
Commencement Date: 14.4.66
Current State: All of Act in operation

Property Law (Amendment) Act 1968, No. 7716/1968

Assent Date: 14.11.68
Commencement Date: 14.11.68
Current State: All of Act in operation

Perpetuities and Accumulations Act 1968, No. 7750/1968

Assent Date: 10.12.68
Commencement Date: 10.12.68
Current State: All of Act in operation

Statute Law Revision Act 1971, No. 8181/1971

Assent Date: 23.11.71
Commencement Date: 23.11.71
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9019/1977

Assent Date: 17.5.77
Commencement Date: 17.5.77: subject to s. 2
Current State: All of Act in operation

Property Law (Deeds) Act 1977, No. 9043/1977

Assent Date: 22.11.77
Commencement Date: 1.9.78: Government Gazette 26.7.78 p. 2429
Current State: All of Act in operation

Age of Majority Act 1977, No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Imperial Law Re-enactment Act 1980, No. 9407/1980

Assent Date: 20.5.80
Commencement Date: 2.7.80: Government Gazette 2.7.80 p. 2257
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80: subject to s. 6(2)
Current State: All of Act in operation

Property Law (Delivery by Agent) Act 1981, No. 9630/1981

Assent Date: 8.12.81
Commencement Date: 8.12.81
Current State: All of Act in operation

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Penalty Interest Rates Act 1981, No. 9633/1981

Assent Date: 8.12.81
Commencement Date: 1.4.82: Government Gazette 17.2.82 p. 456
Current State: All of Act in operation

Companies (Consequential Amendments) Act 1981, No. 9699/1981

Assent Date: 5.1.82
Commencement Date: Ss 9, 14, 18 on same day as No. 9572—1.7.81: s. 2(2);
s. 19 on 1.10.81: s. 2(3); s. 22 on 5.1.82: s. 2(4); rest of
Act on same day as No. 9712—1.7.82: s. 2(1)
Current State: All of Act in operation

Sale of Land (Amendment) Act 1982, No. 9858/1982

Assent Date: 5.1.83
Commencement Date: 2.5.83: Government Gazette 8.4.83 p. 753
Current State: All of Act in operation

Penalty Interest Rates Act 1983, No. 9967/1983

Assent Date: 22.11.83
Commencement Date: 1.7.83: s. 1(3)
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

Interpretation of Legislation Act 1984, No. 10096/1984

Assent Date: 22.5.84
Commencement Date: 1.7.84: s. 2
Current State: All of Act in operation

Commercial Arbitration Act 1984, No. 10167/1984

Assent Date: 20.11.84
Commencement Date: 1.4.85: Government Gazette 20.2.85 p. 372
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: Ss 1–11, 13–27, 29–34 on 1.7.86: Government
Gazette 25.6.86 p. 2180; s. 28 on 1.9.86: Government
Gazette 27.8.86 p. 3201; s. 12 on 1.1.88: Government
Gazette 7.10.87 p. 2701
Current State: All of Act in operation

Mental Health Act 1986, No. 59/1986

Assent Date: 3.6.86
Commencement Date: Ss 1–3, 21, 23, Sch. 1 on 19.6.87: Government Gazette
17.6.87 p. 1538; rest of Act on 1.10.87: Government
Gazette 30.9.87 p. 2585
Current State: All of Act in operation

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Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Friendly Societies Act 1986, No. 119/1986

Assent Date: 23.12.86
Commencement Date: 1.9.87: Government Gazette 26.8.87 p. 2257
Current State: All of Act in operation

Transfer of Land (Conversion) Act 1986, No. 128/1986

Assent Date: 23.12.86
Commencement Date: 1.3.88: Government Gazette 16.12.87 p. 3392
Current State: All of Act in operation

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

Property Law (Amendment) Act 1987, No. 91/1987

Assent Date: 1.12.87
Commencement Date: 1.6.88: Government Gazette 1.6.88 p. 1487
Current State: All of Act in operation

Liquor Control Act 1987, No. 97/1987

Assent Date: 1.12.87
Commencement Date: S. 181(11) on 3.5.88: Government Gazette 27.4.88 p. 1044
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Libraries Act 1988, No. 80/1988

Assent Date: 20.12.88
Commencement Date: 24.5.89: Government Gazette 24.5.89 p. 1222
Current State: All of Act in operation

Transfer of Land (Computer Register) Act 1989, No. 18/1989

Assent Date: 16.5.89
Commencement Date: 3.2.92: Government Gazette 18.12.91 p. 3488
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Water (Consequential Amendments) Act 1989, No. 81/1989

Assent Date: 5.12.89
Commencement Date: 1.11.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

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Administration and Probate (Amendment) Act 1994, No. 10/1994

Assent Date: 3.5.94
Commencement Date: Ss 1, 2 on 3.5.94: s. 2(1); ss 3, 4, 7–15 on 27.4.95:
Government Gazette 27.4.95 p. 973; rest of Act on
1.7.95: s. 2(3)
Current State: All of Act in operation

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3), s. 27 on 7.6.94: s. 2(1); rest of Act on
1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State: All of Act in operation

Catchment and Land Protection Act 1994, No. 52/1994

Assent Date: 15.6.94
Commencement Date: Ss 1, 2 on 15.6.94: s. 2(1); ss 3–5, Pt 2 (ss 6–19),
Sch. 1 on 30.9.94: Government Gazette 29.9.94
p. 2306; rest of Act on 15.12.94: s. 2(3)
Current State: All of Act in operation

Property Law (Amendment) Act 1994, No. 71/1994

Assent Date: 25.10.94
Commencement Date: 25.10.94: s. 2
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 68.1–68.4) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Property Law Act 1958**

Friendly Societies (Victoria) Act 1996, No. 83/1996

Assent Date: 23.12.96
Commencement Date: S. 40 on 1.10.97: Special Gazette (No. 122) 1.10.97
p. 1
Current State: This information relates only to the provision/s
amending the **Property Law Act 1958**

Co-operatives Act 1996, No. 84/1996

Assent Date: 23.12.96
Commencement Date: S. 467(Sch. 6 item 11.1) on 1.10.97: Special Gazette
(No. 122) 1.10.97 p. 1
Current State: This information relates only to the provision/s
amending the **Property Law Act 1958**

Property Law (Amendment) Act 1998, No. 23/1998

Assent Date: 5.5.98
Commencement Date: Pt 1 (ss 1–3) on 5.5.98: s. 2(1); rest of Act on 29.6.98:
Government Gazette 25.6.98 p. 1561
Current State: All of Act in operation

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Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 78) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: Ss 21–23 on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 104) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 59) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001 (as amended by No. 72/2001)

Assent Date: 12.6.01
Commencement Date: S. 3(Sch. 1 items 9.2(a), 9.3) on 28.6.01: Government Gazette 28.6.01 p. 1428; s. 3(Sch. 1 items 9.1, 9.2(b)–(d), 9.4–9.6) on 8.11.01: Government Gazette 8.11.01 p. 2797
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 93) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

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Transfer of Land (Electronic Transactions) Act 2004, No. 23/2004

Assent Date: 18.5.04
Commencement Date: S. 10 on 19.5.04: s. 2
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 164) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 87) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Property (Co-ownership) Act 2005, No. 71/2005

Assent Date: 25.10.05
Commencement Date: Ss 3–5 on 1.2.06: Government Gazette 19.1.06 p. 70
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Retail Leases (Amendment) Act 2005, No. 82/2005

Assent Date: 22.11.05
Commencement Date: S. 51 on 23.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Land Tax Act 2005, No. 88/2005

Assent Date: 29.11.05
Commencement Date: S. 117(Sch. 2 item 4) on 1.1.06: s.2
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Charities (Amendment) Act 2006, No. 73/2006

Assent Date: 10.10.06
Commencement Date: S. 8 on 10.10.06: s. 2
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Conveyancers Act 2006, No. 75/2006

Assent Date: 10.10.06
Commencement Date: S. 192(Sch. 2 item 4) on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

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Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 72 on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Courts Legislation Amendment (Associate Judges) Act 2008, No. 24/2008

Assent Date: 3.6.08
Commencement Date: S. 85 on 17.12.08: Special Gazette (No. 377) 16.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010

Assent Date: 9.2.10
Commencement Date: S. 41 on 1.8.10: Government Gazette 22.7.10 p. 1628
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 74) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Commercial Arbitration Act 2011, No. 50/2011

Assent Date: 18.10.11
Commencement Date: S. 46(Sch. item 13) on 17.11.11: Special Gazette (No. 369) 15.11.11 p. 1
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Electronic Conveyancing (Adoption of National Law) Act 2013, No. 7/2013

Assent Date: 26.2.13
Commencement Date: S. 14 on 14.3.13: Special Gazette (No. 86) 13.3.13 p. 1
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Co-operatives National Law Application Act 2013, No. 9/2013

Assent Date: 13.3.13
Commencement Date: S. 42(Sch. 2 item 15) on 3.3.14: Special Gazette (No. 46) 18.2.14 p. 1
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 3(Sch. 1 item 42) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

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Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 76) on 1.7.15: Special Gazette
(No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s
amending the **Property Law Act 1958**

Mental Health Act 2014, No. 26/2014

Assent Date: 8.4.14
Commencement Date: S. 455(Sch. item 23) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Property Law Act 1958**

Consumer Acts and Other Acts Amendment Act 2016, No. 23/2016

Assent Date: 10.5.16
Commencement Date: S. 36 on 1.6.16: Special Gazette (No. 162) 24.5.16 p. 1
Current State: This information relates only to the provision/s
amending the **Property Law Act 1958**

Metric Conversion (Property Law Act) Regulations 1974, S.R. No. 151/1974

Date of Making: 7.5.74
Date of Commencement: 1.6.74: reg. 2

3 Amendments Not in Operation

This publication does not include amendments made to the **Property Law Act 1958** by the following Act/s.

Electronic Conveyancing (Adoption of National Law) Act 2013, No. 7/2013

Assent Date: 26.2.13

Commencement Date: S. 22 not yet proclaimed

Current State: This information relates only to the provision/s amending the **Property Law Act 1958**

At the date of this publication, the following provisions amending the **Property Law Act 1958** were Not in Operation:

Amending Act/s:

Electronic Conveyancing (Adoption of National Law) Act 2013, No. 7/2013

22 Rights to purchaser as to execution

In section 75(3) of the **Property Law Act 1958** omit "or an electronic instrument".

4 Explanatory details

¹ S. 2(3): **The Property Law Act 1928** came into operation on 18 December 1929.

² Pt 1 (Heading): See section 3(2) of the **Transfer of Land Act 1958**.

³ S. 16: As to successory trusts, see section 19 of the **Religious and Successory Trusts Act 1958**.

⁴ S. 18(1) definition of *bankruptcy*: These words have been held to extend to the liquidation of a company.

⁵ S. 18(1) definition of *conveyance*: See **Trustee Act 1958**, section 45.

⁶ S. 18(1) definition of *land*: See section 201.

⁷ S. 29: See section 37(2) of the **Trustee Act 1958**.

⁸ S. 32(1): See section 13(5)–(7) of the **Trustee Act 1958**.

⁹ S. 32(3): See sections 38 and 39 for instances of trusts for sale created by this Part of the Act.

¹⁰ S. 33(3): See note 9.

¹¹ S. 35(1): See section 102 of the **Settled Land Act 1958**.

¹² S. 35(1): See section 73 of the **Settled Land Act 1958**.

¹³ S. 35(2): See section 47 of the **Settled Land Act 1958**.

¹⁴ S. 35(5): See sections 38 and 39.

¹⁵ S. 36: Compare section 30 of the **Trustee Act 1958**.

¹⁶ S. 38(1): Compare sections 87 and 88.

¹⁷ S. 52(2)(a): See section 41 of the **Administration and Probate Act 1958**.

¹⁸ S. 52(2)(b): See section 133 of the Commonwealth Bankruptcy Act 1966.

¹⁹ S. 60(6) (Proviso): See section 249.

²⁰ S. 62: See section 197.

²¹ S. 69: See section 28 of the **Trustee Act 1958**.

²² S. 80(1): See sections 141 and 142.

²³ S. 81(2): See note 22.

²⁴ S. 84(6): See section 88 of the **Transfer of Land Act 1958**.

²⁵ S. 98(1): As to the right of a mortgagor to sue in cases of mortgages under the **Transfer of Land Act 1958**, see section 81(3) of that Act.

²⁶ S. 105: See section 50.

- ²⁷ S. 115: Compare section 124 as to the conveyance by deed of re-conveyance.
- ²⁸ S. 116: See section 20.
- ²⁹ S. 124: Compare section 115 as to the effect of a receipt as a re-conveyance.
- ³⁰ Pt 2 Div. 4: These provisions deal with the abolition of the Rule in Shelley's case, with certain restrictions on executory limitations, and with equitable waste.
- ³¹ S. 136: See also section 154.
- ³² S. 150(5): Distress for rent was abolished by section 18 of the **Landlord and Tenant (Amendment) Act 1948**, No. 5291.
- ³³ S. 153(6)(a): See section 157 of the **Marriage Act 1958**.
- ³⁴ S. 154: See also section 136.
- ³⁵ S. 162 (*repealed*): The repeal of sections 162, 164, 165 and 166 does not affect instruments or dispositions to which the **Perpetuities and Accumulations Act 1968**, No. 7750 does not apply.
- ³⁶ S. 164 (*repealed*): See note 35.
- ³⁷ S. 165 (*repealed*): See note 35.
- ³⁸ S. 166 (*repealed*): See note 35.
- ³⁹ Pt 2 Div. 8: See also **Marriage Act 1958**.
- ⁴⁰ S. 179(1): Compare section 52(6) of the **Trustee Act 1958**.
- ⁴¹ S. 183(1): For definition of *purchaser* see section 18.
- ⁴² S. 197: See also section 62.
- ⁴³ S. 209: As to power of Governor in Council to make regulations prescribing fees, see section 13.
- ⁴⁴ S. 210: See note 43.
- ⁴⁵ S. 213: See note 43.
- ⁴⁶ S. 214: See note 43.
- ⁴⁷ S. 216: See note 43.
- ⁴⁸ Pt 5 (Heading): This Part may still have to be resorted to in case of estates tail or when there is a limitation to a person under the designation of "heir" that is to an heir by purchase. See for example section 130.
- ⁴⁹ Pt 6 (Heading): Estates tail have now almost disappeared in Victoria and no new estates tail can be created—see section 249.

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⁵⁰ S. 249: The **Transfer of Land Statute Amendment Act 1885** was passed on 18 December 1885, and came into operation on 1 January 1886.

⁵¹ S. 250: See note 50.