

South Australia

Real Property (Registration of Titles) Act 1945

An Act to provide for bringing under the *Real Property Act 1886* all land alienated from the Crown for an estate in fee-simple and not already subject to that Act.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Real Property (Registration of Titles) Act 1945*.

2—Interpretation

- (1) In this Act, unless the context otherwise requires, or some other meaning is clearly intended—

ordinary certificate of title means certificate of title in the form in Schedule 4 to the principal Act;

the principal Act means the *Real Property Act 1886* and any Acts amending that Act or substituted therefor;

the Registrar-General means the person for the time being holding or acting in the office of Registrar-General under the principal Act;

the Registrar-General's minutes means the minutes of the Registrar-General referred to in section 11 of this Act.

- (2) This Act shall apply notwithstanding the provisions of the *Real Property Act 1886*.

3—Duty of Registrar-General to bring land under the principal Act

- (1) The Registrar-General shall with all convenient speed bring under the principal Act all land which has been alienated from the Crown for an estate in fee simple and is not subject to the principal Act, so that all such land shall be brought under the principal Act within five years after the commencement of this Act, or as soon thereafter as may be.
- (2) An act or proceeding under this Act shall not be invalid only on the ground that it is done or taken after the expiration of five years from the commencement of this Act.

4—Procedure for bringing land under principal Act

- (1) Before taking action to bring any land under the principal Act pursuant to this Act, the Registrar-General shall post a notice of his intention to do so in a conspicuous place in a part of his office to which the public has access, and in such other places as he deems proper.
- (2) Thereafter the Registrar-General shall as far as possible proceed as if an application to bring that land under the principal Act had been made by a person competent to make such an application; and the principal Act shall, except where inconsistent with this Act, apply to the proceedings to bring land under that Act pursuant to this Act.
- (3) Every provision of the principal Act which requires the Registrar-General to publish or serve or cause to be published or served notice of an application to bring land under the principal Act shall, in relation to any land specified in a notice under subsection (1) of this section, be read as if it required the Registrar-General to publish, serve or cause to be published or served a notice of his intention to bring the land under the principal Act.

5—Special provisions as to bringing land under the principal Act

For the purpose of bringing land under the principal Act pursuant to this Act it shall not be necessary that any person shall—

- (a) make any application; or
- (b) surrender any documents of title unless required to do so under this Act; or

- (c) furnish any schedule or abstract, or make any declaration, referred to in the principal Act.

6—Surrender of documents of title

- (1) The Registrar-General may at any time by written notice require any person having possession or control of any documents of title relating to or in any manner affecting any land which the Registrar-General has brought or proposes to bring under the principal Act pursuant to this Act, to surrender those documents to the Registrar-General within a reasonable time to be specified in the notice.
- (2) Every person having possession or control of any such document who refuses or neglects to surrender it in accordance with a notice under this section duly served upon him personally or by registered letter shall be guilty of an offence, and liable on summary conviction to a fine not exceeding ten dollars for every day during which such refusal or neglect is continued.
- (3) The Registrar-General shall not be obliged to deliver any certificate of title issued pursuant to this Act to the person entitled to that certificate, until the documents of title which relate to or in any manner affect the land comprised in the certificate and are in the possession or under the control of that person, have been surrendered to the Registrar-General.

7—Issue of ordinary or limited certificate of title

- (1) The Registrar-General shall issue a certificate of title for any land which he brings under the principal Act pursuant to this Act, in the name of the person appearing to be entitled thereto.
- (2) If in respect of any land, the Registrar-General is satisfied that—
 - (a) he ought to have issued a certificate of title if application to bring that land under the provisions of the principal Act had been made by a person competent to make the application; and
 - (b) no person is in occupation of the land adversely to the title of the person to whom the Registrar-General proposes to issue the certificate of title,the certificate of title shall be an ordinary certificate of title.
- (3) Save as provided in the last preceding subsection, the certificate of title to be issued under this Act shall be a limited certificate of title as hereinafter defined.
- (4) The Registrar-General may for any cause which he deems sufficient delay the issue of the certificate of title relating to any land intended to be brought under the principal Act pursuant to this Act.

8—Effect of ordinary certificate of title

An ordinary certificate of title issued under any of the provisions of this Act shall have the same effect as a certificate of title issued under the principal Act upon the bringing of land under that Act pursuant to that Act; and the principal Act shall apply to every such ordinary certificate of title as if it had been issued under that Act.

9—Definition and form of limited certificate

- (1) A limited certificate of title may be a certificate of title limited as to description of land or as to title, or as to both description of land and title.

10—Notice of issue of certificate of title

The Registrar-General shall by registered letter give notice of the issue of a certificate of title under this Act to every person having any estate or interest evidenced by such certificate of title or by any memorial underwritten or endorsed thereon.

11—Registrar-General's minutes of defects found in titles

- (1) Before issuing a limited certificate of title the Registrar-General shall file with his records a minute signed by him clearly setting forth the acts or matters that ought to be done or proved, and the requisitions that ought to be complied with, in order to justify him in issuing an ordinary certificate of title. Such requisitions shall, if necessary, include a requisition for the surrender of the documents of title relating to constituting or in any way affecting the land, and may include a requisition for the production or deposit of a plan of survey of the land.
- (2) The Registrar-General shall thereupon send a copy of his minutes through the post by registered letter to the proprietor of every estate or interest in the land as evidenced by the documents of title or by any instruments registered deposited or enrolled in the General Registry Office.
- (3) The Registrar-General may from time to time revise and amend the minutes so as to indicate which of the acts or matters or requisitions therein referred to have been done or proved or complied with, and may alter or add to the minutes, but not so as to prejudice the limited title of, or throw any onus upon, a registered proprietor taking *bona fide* for valuable consideration from the registered proprietor of the limited certificate of title, or of any person *bona fide* claiming through or under such first-mentioned registered proprietor. All such revisions and additions shall be authenticated by the signature of the Registrar-General.

12—Search of Registrar-General's minutes

- (1) The Registrar-General's minutes shall not form part of the register book for the purposes of section 65 of the principal Act.
- (2) A person shall be entitled to be informed of the contents of the Registrar-General's minutes relating to any land in the following cases, but no others:
 - (a) if he is the registered proprietor of the land or of an estate or interest therein;
or
 - (b) if he is authorised in writing by any such registered proprietor to obtain the information; or
 - (c) if he is authorised by an order of the Supreme Court to obtain the information.

13—Limited certificate of title may be made ordinary

- (1) When the Registrar-General is satisfied that the acts, matters, and requisitions set forth in the Registrar-General's minutes relating to any land comprised in a limited certificate of title have been done, proved, and complied with, he shall call in and cancel the limited certificate of title and issue an ordinary certificate of title in lieu thereof.

- (2) If at any time it appears to the Registrar-General that by reason of lapse of time or for any other reason compliance with the acts, matters, and requisitions set forth in the Registrar-General's minutes has become unnecessary, he shall call in and cancel the limited certificate of title and issue an ordinary certificate of title in lieu thereof.

14—Restriction on issue of ordinary certificate for land in limited certificate

Except as otherwise provided in this Act, no new certificate of title other than a limited certificate of title shall be issued in substitution for a limited certificate of title, or for any part of the land comprised therein, unless in the latter case the matters in respect of which the certificate of title is limited do not affect the part of the land for which the new certificate of title is issued.

15—Application of principal Act to limited certificate of title

- (1) Except as otherwise provided in this Act, all the provisions of the principal Act shall, so far as the circumstances of the case will admit, apply with respect to a limited certificate of title and to the land comprised in a limited certificate of title, and to the registration of instruments and other matters affecting a limited certificate of title, save that the title of the proprietor of an estate or interest in any land comprised in a limited certificate of title shall be indefeasible to the extent prescribed by the principal Act only against the person named in the original limited certificate of title for such land, and all persons claiming through, under, or in trust for him.
- (2) A limited certificate of title, and the memorials endorsed thereon of outstanding interests in the land comprised therein, shall be evidence or conclusive evidence, as the case may be, of the matters referred to in section 80 of the principal Act, subject only to—
 - (a) the doing of the acts, and proof of the matters, and compliance with the requisitions set forth in the Registrar-General's minutes;
 - (b) the title to the land, or to any estate or interest in the land, of any person, the existence of which title, or the probable or possible existence of which, is set forth or indicated in the Registrar-General's minutes;
 - (c) the title (if any) of any person in actual occupation of, and rightfully entitled to, any such land or any part thereof.
- (3) Sections 69, 71, 80, 186 and 207 of the principal Act shall, in their application to a limited certificate of title, be deemed to be modified accordingly.
- (4) Notwithstanding the provisions of section 251 of the principal Act, the issue of a limited certificate of title for any land shall not stop the running of time under the *Limitation of Actions Act 1936* in favour of any person in adverse possession of such land at the time of the issue of that certificate, or in favour of any person claiming through or under him.

16—Applications by persons claiming title adverse to that of proprietor under a limited certificate

- (1) So long as any certificate of title remains limited any person claiming an estate of freehold in the whole or any part of the land comprised in that certificate—
 - (a) by virtue of possession adverse to the title of the proprietor in whose name such certificate of title was issued; or

- (b) under any title the existence of which, or the probable or possible existence of which, is set forth in the Registrar-General's minutes,

may apply to have the land in which he claims the estate of freehold brought under the principal Act as if this Act had not been passed and the limited certificate of title had not been issued.

- (2) The Registrar-General shall deal with any such application in the manner prescribed by the principal Act, and if satisfied as to the grounds of the applicant's claim the Registrar-General shall call in and cancel or correct the limited certificate of title and issue an ordinary certificate of title to the applicant.

17—Dealings with interests mentioned in Registrar-General's minutes

Where by the Registrar-General's minutes the existence, or the probable or possible existence, of a title to any estate or interest in land is indicated, no dealing with that estate or interest shall be capable of being registered until that estate or interest, if capable of registration, is registered.

18—Titles evidenced by limited certificate to be limited

The registered title to any estate or interest less than freehold evidenced by a limited certificate of title or by a memorial underwritten or endorsed thereon shall be deemed to be limited to the same extent as that certificate.

19—Issue of ordinary certificate and cancellation of certificate limited as to title

Where the certificate of title as to any land is limited as to title but not as to description of land the Registrar-General shall forthwith upon the expiration of twelve years from the date of the first limited certificate of title for that land call in and cancel the certificate and issue an ordinary certificate for the land comprised therein: Provided that—

- (a) before so calling in a limited certificate of title the Registrar-General shall enquire whether any person is in possession of the land adversely to the title of the registered proprietor named in the limited certificate of title; and
- (b) if the Registrar-General has reason to believe that any person is so in possession, he may refrain from or delay the calling in and cancellation of the limited certificate of title and the issue of an ordinary certificate of title.

20—As to trustees without power to sell

When a certificate of title is issued under this Act to trustees who have no express power to sell the land comprised in that certificate, the Registrar-General shall endorse upon that certificate a memorial of that fact, and shall enter a caveat under paragraph (5) of section 220 of the principal Act for the protection of the interests of persons beneficially interested under the trust.

21—Restrictions on issue of ordinary certificate of title

- (1) The Registrar-General shall not be bound on an application in that behalf to issue an ordinary certificate of title, or to issue an ordinary certificate of title in lieu of a certificate of title limited as to description of land—
 - (a) until he is satisfied by the deposit of a survey plan, together with such other evidence as he may deem necessary, or by some other means, that no part of the land to be comprised in the ordinary certificate of title is held in occupation adverse to the title of the proprietor named or to be named in that certificate;
 - (b) until he has given to the persons appearing to him to be occupiers or proprietors of adjoining land such notices as he deems necessary of his intention to issue an ordinary certificate of title, and until the expiration of the time limited in any such notice.
- (2) The Registrar-General shall give notices as mentioned in subsection (1) of this section in any case in which it appears to him that the land, or part of the land, in respect of which an ordinary certificate of title is proposed to be issued is included in the title of an adjoining occupier or proprietor as evidenced by any instrument registered deposited or enrolled in the General Registry Office or by any certificate of title limited as to description of land.
- (3) The Registrar-General may from time to time, upon such evidence as he deems sufficient, amend the description of land in, or the plan upon, a certificate of title limited as to description of land, but not so as to exclude from such description any land of which the proprietor named in that certificate is in possession and to which he is rightfully entitled for the estate or interest evidenced by that certificate.

22—Protection of Registrar-General

No action for the recovery of damages shall lie against the Registrar-General by the registered proprietor of land comprised in any certificate of title limited as to description of land, or by any other person by reason of any error or omission in the description of the land comprised in that certificate of title.

23—Registration of deeds affecting land subject to this Act

Any instrument which affects any land brought under the principal Act in pursuance of this Act and which might have been registered enrolled or deposited under the *Registration of Deeds Act 1935* if this Act had not been passed may, if such instrument bears date prior to, or within six months after, the date of the first certificate of title for such land, be registered under the principal Act, notwithstanding that it is not an instrument in one of the forms prescribed by the principal Act.

24—Fees

- (1) Save as otherwise provided in this section, no fee and no contribution to the Assurance Fund shall be payable in respect of the bringing of land under the principal Act—
 - (a) by virtue of the provisions of the principal Act pursuant to an application made after the passing of this Act; or
 - (b) by virtue of this Act.

- (2) Upon an application to bring land under the provisions of the principal Act by virtue of the provisions of that Act the cost of the advertisements shall continue to be payable.

25—Regulations

The Governor may by regulations prescribe any matters necessary or convenient to be prescribed for carrying this Act into effect, or for the administration of this Act or carrying out the objects of this Act, and may by any such regulation prescribe penalties recoverable summarily and not exceeding one hundred dollars for breach of any regulation.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|------|-----|--|-----------|--|
| 1945 | 6 | <i>Real Property (Registration of Titles) Act 1945</i> | 8.11.1945 | 8.11.1945 |
| 1975 | 118 | <i>Statute Law Revision Act (No. 2) 1975</i> | 4.12.1975 | 4.12.1975 |
| 1990 | 9 | <i>Real Property Act Amendment Act 1990</i> | 12.4.1990 | Sch—21.5.1990 (<i>Gazette 17.5.1990 p1358</i>) |

Provisions amended since 3 February 1976

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 9 of The Public General Acts of South Australia 1837-1975 at page 318.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|-----------------------|-------------------------------------|------------------|
| s 9 | | |
| <i>s 9(2) and (3)</i> | <i>deleted by 9/1990 s 42 (Sch)</i> | <i>21.5.1990</i> |