

REAL PROPERTY ACT, 1886-1975

SUMMARY OF PROVISIONS

Section

- 1 Short title.
- 2 Division of Act into Parts.

PART I

INTRODUCTORY

- 3 Interpretation.
- 4 Repeal.
- 5 Savings.
- 6 Laws inconsistent not to apply.
- 7 Lands under previous Acts to be under this Act.
- 8 Land not to be withdrawn.
- 9 Commencement of Act.

PART II

OBJECTS OF THIS ACT

- 10 Objects.
- 11 Construction.

PART III

THE LANDS TITLES REGISTRATION OFFICE

- 12 Lands Titles Registration Office to be at Adelaide.
- 13 Present Registrar-General and officers to perform duties under this Act.
- 14 Removal of officers.
- 15 Governor may appoint acting solicitor.
- 16 Appointment of and duties of Acting Registrar-General.
- 17 Time from which Acting Registrar-General shall act or cease to act.
- 18 Functions of Deputy Registrar-General.
- 18a Delegation by Registrar-General.
- 19 Solicitor not to engage in private practice.
- 20 (Repealed).
- 21 Seal of office to be received in evidence.
- 22 Fees, etc.
- 23 Accounts of Registrar-General and payment of moneys.
- 23a Payment of moneys received in trust.
- 24 Registrar-General not to be liable for acts done *bona fide*.

PART IV

THE BRINGING OF LAND UNDER THE ACT

- 25 Land in two classes.
- 26 Land on alienation from Crown to be under Act.
- 27 Lands granted prior to the day on which this Act comes into operation may be brought under the operation of this Act.
- 28 Undivided shares and mortgaged land may not be brought under Act except upon conditions.
- 29 Provisions as to surrender of documents, abstract of title, statements in application, and personal notice of application.
- 30 Statements to be verified by declaration.
- 31 Application, how to be dealt with.
- 32 Titles of applicants to bring land under this Act divided into three classes, and bringing of Class I titles under Act.
- 33 Procedure for bringing Class II titles under Act.
- 34 Procedure for bringing Class III titles under Act.
- 35 Notice of application to be published.
- 36 When Class II and Class III titles brought under Act.
- 37 Land brought under Act by issue of certificate.
- 38 Action to be taken on return of notices or failure of personal service.
- 39 Caveat against bringing land under Act.
- 40 If caveat be received within time limited, proceedings stayed.
- 41 Applicant may withdraw application.

SUMMARY OF PROVISIONS—*continued*

Section

- 42 Documents of title, if they include other property, to be returned to applicant.
- 43 Certificate to issue in name of deceased applicant proprietor or his nominee.
- 44 Proceedings under caveat.
- 45 Lapse of caveat.
- 46 Reversion expectant on lease not to be extinguished.

PART V

THE REGISTER BOOK

- 47 Registrar-General to keep Register Book.
- 48 Certificates to be in duplicate.
- 49 Folios in Register Book.
- 50 Time when registration of certificates and instruments takes effect.
- 51 Requirements of memorial.
- 52 Endorsement of memorandum of registration and evidentiary effect thereof.
- 53 Memorial to be recorded on duplicate instrument.
- 54 Instruments to be according to Act.
- 55 Instruments.
- 56 Instruments entitled to priority according to date of registration.
- 57 Effect of registration of instruments.
- 58 Where two or more instruments presented at same time.
- 59 Provision for registration in case of death of party executing instrument.
- 60 Person to whom certificate or other instrument of title has been issued in error, or who wrongfully retains such instrument, may be summoned.
- 61 Arrest of person refusing to deliver up instrument for cancellation or correction.
- 62 Order for delivery of instrument.
- 63 Orders for cancellation of instrument and alteration of Register Book.
- 64 Powers of court to direct cancellation of certificate or entry.
- 65 Search allowed.
- 66 In case of conflict between certificate and Register Book the latter to prevail.

PART VI

THE TITLE OF REGISTERED PROPRIETORS

- 67 Instruments not effectual until registration.
- 68 Person named in certificate to be the registered proprietor.
- 69 Title of registered proprietor indefeasible except in specified cases.
- 70 In other cases title of registered proprietor prevails.
- 71 Saving of certain rights and powers.
- 72 Knowledge of trust not evidence of want of *bona fides*.

PART VII

CERTIFICATES OF TITLE

- 73 Certificates of title.
- 74 Joint proprietors and certificates for tenants in common.
- 75 Certificates for remainder and reversions.
- 76 Mode of inheritance or succession shall be implied.
- 77 Memorials on certificates.
- 78 Certificates in lieu of surrendered certificates.
- 79 Substituted certificate.
- 80 Certificate to be conclusive evidence of title except as herein provided.

PART VIIA

TITLE BY POSSESSION TO LAND UNDER THIS ACT

- 80a Application for certificate based on possession.
- 80b Signature, attestation and operation of application.
- 80c Application, how dealt with.
- 80d Requisitions.
- 80e Notice of application.
- 80f Caveats.
- 80g Power to issue certificates.
- 80h Cancellation of instruments.
- 80i Fees.

SUMMARY OF PROVISIONS—*continued*

PART VIII

EASEMENTS

Section	
81	Certificates may contain statement of right-of-way or other easement.
82	Description of easement and plan.
83	Registered proprietor not to be subject to rights-of-way not mentioned in certificate.
84	Easement not binding on registered proprietor subsequently acquiring land <i>bona fide</i> for value unless entered on certificate of title.
85	Land to be held free of rights-of-way.
86	Public rights-of-way, etc., not within this Act.
87	Certificates heretofore issued conclusive evidence right-of-way therein described.
88	Rights-of-way created hereafter to be entered upon certificates of owners of both dominant and servient land.
89	Short form of describing right-of-way.
90	Deposit of plan showing rights-of-way, and effect thereof.
90a	(Repealed).

PART IX

CROWN LEASES

91	Interpretation of Crown lease.
92	Person now holding under lease or agreement may surrender.
93	Registration of Crown lease and effect thereof.
94	Registrar-General to enter forfeiture.
95	Not to give any greater effect than if this Act had not been passed.
	Minister of Lands may make regulations.

PART X

TRANSFERS

96	Transfers.
96a	Acceptance of transfer.
97	Transferee of land subject to mortgage or encumbrance to indemnify transferor.
98	On registration of transfer, grant or certificate to be cancelled.
99	Unless whole of land transferred.
100	Fresh certificate to purchaser and balance certificate to registered proprietor.
101	Deposit of plans by persons subdividing land.
102	Memorial of order for sale of land for non-payment of rates.
103	Registration of transfer hereunder.
104	Discharge of memorial.
105	Sale under writ of <i>fi. fa.</i> , or decree, warrant or order of Court.
106	Transfer not to be valid against purchaser until entry of writ.
107	Transfer on sale, under writ, warrant, decree, or order.
108	Production of duplicate instrument not required on transfer under decree or order, writ or warrant.
109	Satisfaction of writ, warrant, decree, or order.
110	Lapse of writ, decree, warrant, or order.
111	Proprietor may vest estate jointly in himself and others, without limiting any use, or executing any assignment.
112	Dealings may be registered prior to the issue of grant from the Crown.
113	Deed-poll by promoters of undertakings under Lands Clauses Acts.
114	Mode of registration of such deed-poll.
115	This Act not to lessen effect of deed-poll heretofore or hereafter executed.
115a	Issue of certificate where land is vested in acquiring authority by operation of law or compulsorily acquired.

PART XI

LEASES AND SURRENDERS

116	Lands, how leased.
117	Contents of lease.
118	Leases not to bind non-consenting mortgagees or encumbrancees.
119	Lease for one year need not be registered.
120	Leases may be surrendered by endorsement by lessee with concurrence of lessor.
121	Registrar-General may enter surrender.
122	Effect of entry of surrender.
123	Surrender where lease subject to mortgage or under-lease.
124	Covenants to be implied in every lease against the lessee.
125	Powers to be implied in lessor.
126	Registrar-General to note particulars of re-entry in Register Book.
127	(Repealed).

SUMMARY OF PROVISIONS—*continued*

PART XII

MORTGAGES, ENCUMBRANCES, AND DISCHARGES

Section	
128	Lands, how mortgaged or encumbered.
129	Contents of mortgage or encumbrance.
130	Covenant to be implied in every mortgage.
130a	Implied covenant in encumbrance.
131	Subsequent mortgagees or encumbrancees may redeem prior mortgages, etc.
132	Nature of mortgage and encumbrance, and procedure in case of default.
133	Power of sale.
134	Mortgagees receipt to discharge purchaser.
135	Appropriation of proceeds.
135a	Mode of payment of encumbrance.
136	Registrar-General to give effect to sale by mortgagee or encumbrancee.
137	Power of mortgagee to enter, take possession, distrain, let, or bring action for recovery of land.
138	Power of mortgagee to distrain on tenant or occupier for arrears not exceeding the amount of rent due.
139	Duty of mortgagee of leasehold entering into possession of rent and profits to account.
140	Application by mortgagee to Registrar-General for foreclosure.
141	Procedure on foreclosure application.
142	Effect of order for foreclosure.
142a	Provision for case where mortgagee or encumbrancee refuses to join in proceedings on default.
143	Discharge of mortgages and encumbrances.
144	Discharge subsequent to partial discharge.
145	Entry of satisfaction of annuity.
146	Mortgage money may be paid to Treasurer if mortgagee absent from the State.
147	And the mortgagee shall in such case be discharged.
148	Registrar-General may enter discharge of mortgage in certain cases.
148a	Entry in Register Book where rights of mortgagee barred by Statute.
149	Equitable mortgage may be created.
150	Transfer of mortgage, lease and encumbrance.
151	Effect of such transfer.
152	Covenants implied in transfer of lease.

PART XIII

EXTENSIONS

153	Extension of mortgages, etc.
154	Effect and registration of extension.

PART XIV

POWERS OF ATTORNEY

155	Power of attorney.
156	Deposit of duplicate or attested copy.
157	Revocation of power of attorney.
158	Power of attorney heretofore given.
159	Entry of death of grantor.
160	Instruments executed before entry of revocation or death to be valid.

PART XV

TRUSTS AND TRANSMISSIONS

161	Trusts contained in grant from the Crown to be inserted in certificate as in original grant.
162	No particulars of trust to be entered in Register Book but trust instrument may be deposited.
163	Insertion of the words "no survivorship" in instruments.
164	Trustees may authorize insertion of those words.
165	Effect of such insertions.
166	Court may direct notice to be published before order is made.
167	Court may protect persons interested.
168	Survivors may nevertheless perform duties or transfer to new trustees.
169	Disclaimers.
170	Transmission by bankruptcy or statutory assignment.
171	Transmission to be entered in Register Book.
172	Proceedings in case assignment declared void.
173	When registered proprietor of lease becomes bankrupt or makes statutory assignment.

SUMMARY OF PROVISIONS—*continued*

Section	
174	Entry of surrender or foreclosure not to prejudice cause of action.
175	Transmission of estate of deceased persons.
176	Application to be made in such case.
177	Particulars of entry to be made in such case by Registrar-General.
178	Effect of such entry.
179	Where two or more executors or administrators, all to concur.
180	Persons registered in place of deceased, bankrupt, or assigning proprietor, to be proprietor of land for purpose of dealing.
181	Proceedings when executor, etc. refuse to transfer.
182	Court may order transfer to person entitled.
183	Court may decide question of title, etc.
184	Registrar-General to carry out order of Court vesting trust estate.
185	Action may be brought by person claiming beneficial interest in name of trustee.
186	Purchases from registered proprietor not to be affected by notice.
187	Except in case of fraud.
188	Registration of survivor of joint proprietors, and of remainderman entitled to estate in possession.
189	Marriage of female proprietor to be entered in the Register Book and upon duplicate instrument of title.
190	Husband may be registered as co-proprietor.

PART XVI

CAVEATS

191	Form, lodging, removal, discharge, &c. of caveats.
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PART XVII

EJECTMENT

192	Summons to give up possession.
193	Summons to contain description of land.
194	Orders on non-appearance to summons.
195	Orders on appearance to summons.
196	Dismissal of summons not to prejudice other rights.
197	Effect of order for possession.
198	Writ of <i>habere facias</i> unnecessary where no one is in possession, or the land is surrendered voluntarily.
199	Existing rights preserved.
200	Local Courts Act, 1926 to apply to this Act.

PART XVIII

THE ASSURANCE FUND

201, 202	(Repealed).
203	Party deprived of land may sue for compensation.
204	Exoneration of proprietor after transfer for value, except in certain cases.
205	Proceedings against Registrar-General, as nominal defendant.
206	When compensation awarded in an action cannot be recovered, Assurance Fund liable.
207	Purchasers, etc., protected.
208	Proceedings against the Registrar-General as nominal defendant, and notice thereof.
209	Value of buildings to be excluded.
210	Persons claiming may, before taking proceedings, apply to the Registrar-General in writing for compensation.
211	Assurance Fund not liable for breach of trust or improper exercise of power of sale.
212	Nor for misdescription of boundaries or parcels except in certain cases.
213	Procedure upon, and enforcement of, claims against the Assurance Fund.
214	Proceedings where same land is included in two or more grants from the Crown. Assurance Fund not liable in such case.
215	Limitation of actions.
216	If person damaged guilty of <i>laches</i> , judgment to go against him.
217	Payments out of Assurance Fund to be deemed made on account of certain persons.
218	Moneys paid out of the Assurance Fund may be recovered.
219	Judgment may be entered by Registrar-General for amount paid on account of absent persons.

PART XIX

SPECIAL POWERS AND DUTIES OF REGISTRAR-GENERAL

220	Powers of Registrar-General.
221	Proprietor may summon Registrar-General to show cause, if dissatisfied.
222	Hearing of summons and position as to costs.
223	Power of Registrar-General to state case for Court.

SUMMARY OF PROVISIONS—*continued*

PART XIXA

RECTIFICATION OF CERTIFICATES

Section

- 223a Applications for amendment.
- 223b Notices to be given.
- 223c Power of Registrar-General to reject.
- 223d Caveats.
- 223e Grant of application.
- 223f Alterations of certificate in bringing land under this Act.
- 223g Amendments of title.
- 223h Notice of amendment of title.
- 223j Rectification by consent.
- 223k Saving of other powers.
- 223l Operation of corrections.

PART XIXB

DIVISION OF LAND BY STRATA PLAN AND TITLES
TO UNITS CREATED THEREBY

- 223m Interpretation.
- 223ma Division of land into units.
- 223mb Strata plan.
- 223mc Strata plans for new and existing building unit schemes.
- 223md Certificate on behalf of council and by the Director.
- 223me Appeal against refusal of application.
- 223mf Unit entitlement of units.
- 223mg Procedure prior to deposit of strata plan.
- 223mh Deposit of strata plan in Lands Titles Registration Office.
- 223n The keeping of registers, records, etc., by Registrar-General.
- 223na Certificates to be issued on deposit of strata plan.
- 223nb Unit subsidiary not to be dealt with independently of unit to which it is appurtenant.
- 223nc Incorporation of registered proprietors of units.
- 223nd Restricted powers of corporation.
- 223ne Committee of corporation.
- 223nf General meetings.
- 223ng Voting at meetings of corporation.
- 223nh The common property.
- 223ni Easements.
- 223nj Constitution of the corporation.
- 223nk Insurance.
- 223nl Cancellation of deposited strata plan.
- 223nm Administrator.
- 223nn Effect of deposit of strata plan on roads, streets and reserves shown thereon.
- 223no Service of documents.
- 223np Breaches of provisions of this Part.
- 223nq Powers of entry.
- 223nr Regulations.

PART XX

PROCEDURE AND PENALTIES

- 224 Practice, procedure, appeals, and rules of Court.
- 225 Fees of Court.
- 226 Forms of summons by Registrar-General.
- 227 On refusal or neglect of person summoned, Registrar-General may apply to Judge.
- 228 Declarations, before whom to be made.
- 229 Felonies under this Act.
- 230 Perjury.
- 231 Punishment of felony or perjury.
- 232 Penalty for certifying incorrect instruments.
- 233 Certain fraudulent acts to be misdemeanours.
- 234 Certificate, etc., procured by fraud to be void.
- 235 Penalties, how recovered.
- 236 Proceedings before justices.
- 237-239 (Repealed).
- 240 Conviction not to affect civil remedy.

SUMMARY OF PROVISIONS—*continued*

PART XXI

MISCELLANEOUS

Section	
241	Scale of maps or plans.
242	Every certificate of title shall have a diagram showing measurements.
242a	Cases where measurements not required.
243	(Repealed).
244	Provision for person under disability of infancy, idiocy, or lunacy.
245	When no guardian or committee, Court or Judge may appoint one.
246	Unregistered instruments to confer claim to registration.
247	Informal documents may be registered.
248	Memorial to be entered.
249	Equities not abolished.
250	<i>Lis pendens</i> not to be registered.
251	No title by adverse possession.
252	Corporations and district councils to furnish Registrar-General with plans of new streets, etc.
253	Surveyor-General to furnish Registrar-General with particulars of orders confirming opening of new roads, etc.
254	Power of Registrar-General to make necessary alterations on plans in his office.
255, 256	(Repealed).
257	Registration of woman as entitled to land for her separate use or as her separate property.
258	Reference to Real Property Acts.
259	General powers of Court not affected.
260	Valuable consideration may be proved by prior instruments.
261	General covenants to be implied in instruments.
262	Implied powers and covenants may be modified or negated.
263	In action for breach, party may be proceeded against as if he had covenanted in express words.
264	Implied covenants to be joint and several.
265	Short forms of covenants in mortgages and leases.
266	Short form for expressing exception of mines and minerals.
267	Before whom instruments may be executed.
268	Attestation how proved in other cases.
269	Registrar-General may dispense with proof.
270	Execution of instrument by corporation.
271, 272	(Repealed).
273	Authority to register.
274	No person except solicitors and land brokers entitled to recover fees for work done under this Act.
275	Forms in schedules.
276	Notices, how to be given.
277	Regulations.

SCHEDULES

REAL PROPERTY ACT, 1886-1975

being

The Real Property Act, 1886, No. 380 of 1886 [Assented to 17th November, 1886];

as amended by

The Real Property Amendment Act, 1887, No. 403 of 1887 [Assented to 16th November, 1887];
 The Real Property Amendment Act, 1893, No. 569 of 1893 [Assented to 23rd December, 1893];
 The Licensed Surveyors Act, 1896, No. 657 of 1896 [Assented to 19th December, 1896];
 Real Property Act Amendment Act, 1919, No. 1415 of 1919 [Assented to 4th December, 1919];
 Real Property Act Amendment Act, 1927, No. 1806 of 1927 [Assented to 30th November, 1927];
 Town Planning Act, 1929, No. 1945 of 1929 [Assented to 15th January, 1930]¹;
 Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19th December, 1935];
 Statute Law Revision Act, 1936, No. 2293 of 1936 [Assented to 8th October, 1936];
 Real Property Act Amendment Act, 1939, No. 36 of 1939 [Assented to 14th December, 1939]²;
 Real Property Act Amendment Act, 1945, No. 39 of 1945 [Assented to 17th January, 1946];
 Real Property Act Amendment Act, 1960, No. 44 of 1960 [Assented to 10th November, 1960];
 Real Property Act Amendment Act, 1961, No. 37 of 1961 [Assented to 9th November, 1961];
 Real Property Act Amendment Act, 1963, No. 46 of 1963 [Assented to 28th November, 1963];
 Real Property Act Amendment (Strata Titles) Act, 1967, No. 37 of 1967 [Assented to 14th September, 1967]³;
 Real Property Act Amendment Act, 1969, No. 30 of 1969 [Assented to 2nd October, 1969]⁴;
 Real Property Act Amendment Act, 1972, No. 116 of 1972 [Assented to 23rd November, 1972]⁵;
 Real Property Act Amendment Act (No. 2), 1972, No. 130 of 1972 [Assented to 30th November, 1972]⁶;
 Statute Law Revision Act, 1974, No. 42 of 1974 [Assented to 11th April, 1974];

and

Real Property Act Amendment Act, 1975, No. 12 of 1975 [Assented to 20th March, 1975]⁷.

An Act to consolidate and amend the “Real Property Act, 1861”, the “Real Property Act Amendment Act, 1878”, and the “Rights-of-Way Act, 1881”, and for other purposes.

WHEREAS it is expedient to consolidate and amend the “Real Property Act of 1861”, the “Real Property Act Amendment Act of 1878”, and the “Rights-of-Way Act, 1881”: Be it therefore enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

1. This Act may be cited for all purposes as the “Real Property Act, 1886-1975”.

Preamble.
 Short title.
 Citation
 amended by 12,
 1975, s. 1 (3).

2. This Act is divided into Parts, as follows:—

PART I—Introductory, sections 3 to 9.

PART II—Objects of the Act, sections 10 and 11.

PART III—The Lands Titles Registration Office, sections 12 to 24.

Division of Act
 into Parts.
 S. 2 amended by
 46, 1963,
 s. 3 (a)-(d); 37,
 1967, s. 3; 116,
 1972, s. 3; 42,
 1974, s. 3 (1)
 (2nd Sched.).

¹ Came into operation 15th January, 1930: *Gaz.* 16th January, 1930, p. 69.

² Came into operation 1st February, 1940: *Gaz.* 11th January, 1940, p. 33. (Republished 18th January, 1940, p. 70.)

³ Came into operation 22nd February, 1968: *Gaz.* 22nd February, 1968, p. 515.

⁴ Came into operation 29th January, 1970: *Gaz.* 24th December, 1969, p. 2098.

⁵ Came into operation 15th January, 1973: *Gaz.* 21st December, 1972, p. 2722. For commencement of provisions the operation of which was suspended by this proclamation, see *Gaz.* 30th May, 1974, p. 2096.

⁶ Came into operation 7th December, 1972: *Gaz.* 7th December, 1972, p. 2538.

⁷ Came into operation 24th April, 1975: *Gaz.* 24th April, 1975, p. 1626.

- PART IV—The bringing of land under the Act, sections 25 to 46.
- PART V—The Register Book, sections 47 to 66.
- PART VI—The title of registered proprietors, sections 67 to 72.
- PART VII—Certificates of title, sections 73 to 80.
- PART VIIA—Title by possession to land under this Act, sections 80a to 80i.
- PART VIII—Easements, sections 81 to 90.
- PART IX—Crown leases, sections 91 to 95.
- PART X—Transfers, sections 96 to 115a.
- PART XI—Leases and surrenders, sections 116 to 126.
- PART XII—Mortgages, encumbrances, and discharges, sections 128 to 152.
- PART XIII—Extensions, sections 153 and 154.
- PART XIV—Powers of attorney, sections 155 to 160.
- PART XV—Trusts and transmissions, sections 161 to 190.
- PART XVI—Caveats, section 191.
- PART XVII—Ejectment, sections 192 to 200.
- PART XVIII—The Assurance Fund, sections 201 to 219.
- PART XIX—Special powers and duties of Registrar-General, sections 220 to 223.
- PART XIXA—Rectification of certificates, sections 223a to 223i.
- PART XIXB—Division of land by strata plan and titles to units created thereby, ss. 223m to 223nr.
- PART XX—Procedure and penalties, sections 224 to 240.
- PART XXI—Miscellaneous, sections 241 to 277.

PART I

PART I

INTRODUCTORY

Interpretation.

3. In the construction and for the purposes of this Act, and in all instruments made or purporting to be made thereunder, the following terms shall, so far as not inconsistent with the context or subject, and except when such context or subject or the other provisions hereof require a different construction, have the respective meanings hereinafter assigned to them, that is to say—

Def. amended
by 2246, 1935,
s. 4 (2nd
Sched.); 37,
1967,
s. 4 (a), (b).

“Assurance Fund” shall mean the public revenue of the State to the extent of the balance for the time being constituted by the present amount of the Assurance Fund formed under the Real Property Acts, or any of them, and by the amount of all sums received under section 201 of this Act as in force prior to the repeal thereof and sections 218 and 219 of this Act, after deducting all payments hereafter made by the Treasurer under Part XVIII hereof together with interest on the said balance after the rate of four per centum per annum:

“caveatee” shall mean any person against whose application for any purpose a caveat has been lodged, and shall include the registered proprietor of any land in respect of which a caveat has been lodged:

“caveator” shall mean any person lodging a caveat:

“certificate” shall mean a certificate of title issued under any of the Real Property Acts, or any grant from the Crown issued after the passing of the “Real Property Act” No. 15 of 1857-58, and shall extend to and include all plans and entries thereon:

“Chief Secretary” shall mean the Chief Secretary of the State:

Def. amended by 2246, 1935, s. 4 (2nd Sched.).

“Court” shall mean the Supreme Court of the State, or any Judge thereof, and includes the Master or a Deputy Master of the Supreme Court when exercising the powers or jurisdiction or performing the functions of the Supreme Court or any Judge thereof in pursuance of any provision of this Act or of the rules of court made under the Supreme Court Act, 1935-1967¹:

Def. amended by 2246, 1935, s. 4 (2nd Sched.); 37, 1967, s. 4 (c).

“dealing” shall mean any instrument or matter, whereby any land or the title to any land can be affected, or dealt with:

“document of title” shall mean and include every document evidencing or relating to the title of any land not under the provisions of any of the Real Property Acts:

“dominant land” shall mean any land having a right-of-way or other easement appurtenant thereto or annexed to the ownership thereof:

“encumbrancee” shall mean the registered proprietor of an encumbrance:

“encumbrancer” shall mean the registered proprietor of land subject to an encumbrance:

“instrument” shall mean and include every document capable of registration under the provisions of any of the Real Property Acts, or in respect of which any entry is by any of the Real Property Acts directed, required, or permitted to be made in the Register Book:

“instrument of title” shall mean and include every instrument evidencing or relating to the title to any land under the provisions of any of the Real Property Acts:

“land” shall extend to and include all tenements and hereditaments corporeal and incorporeal of every kind and description, and every estate and interest in land:

“lessee” shall mean the registered proprietor of a lease:

“lessor” shall mean the registered proprietor of land subject to a lease:

“lunatic” shall mean any person who shall have been found to be a lunatic upon inquiry by the Court, or upon a commission of inquiry or an inquisition issuing out of the Court in the nature of a writ *de lunatico inquirendo*:

“mortgagee” shall mean the registered proprietor of a mortgage:

“mortgagor” shall mean the registered proprietor of land subject to a mortgage:

“person of unsound mind” shall mean any person not an infant, who, not having been found to be a lunatic, shall be incapable, from infirmity of mind, of managing his own affairs:

¹ Now Supreme Court Act, 1935-1975.

“proprietor” shall mean any person seized or possessed of, or entitled to land:

“registered proprietor” shall mean any person appearing by the Register Book, or by any registered instrument of title to be the proprietor of any land:

“servient land” shall mean land subject to any easement:

“statutory assignment” shall mean any deed assigning a debtor’s estate for the benefit of his creditors, executed under or in pursuance of Division VI of “The Insolvent Act, 1860”, or any other Act:

“the Real Property Acts” shall mean the “Real Property Act” (No. 15 of 1857-8), “The Real Property Law Amendment Act” (No. 16 of 1858), the “Real Property Act of 1860” (No. 11 of 1860), the “Real Property Act of 1861” (No. 22 of 1861), the “Real Property Act Amendment Act of 1878” (No. 128 of 1878), the “Rights-of-Way Act, 1881” (No. 223 of 1881), and this Act:

“transmission” shall mean the passing of title to land in any manner other than by transfer:

The description of any person as proprietor, transferor, transferee, mortgagor, mortgagee, caveator, caveatee, encumbrancer, encumbrancee, lessor, lessee, or trustee, or as seized of, having, or taking any estate or interest in land shall be deemed to extend to and include the heirs, executors, administrators, and assigns of such person.

Repeal.

4. The following Acts or parts of Acts are hereby repealed:—

Number	Title	Extent of Repeal
22 of 1861	“Real Property Act of 1861.”	The whole.
128 of 1878	“Real Property Act Amendment Act of 1878.”	The whole.
223 of 1881	“Rights-of-Way Act, 1881.”	The whole.
225 of 1881	Act to amend “The Probate and Succession Duty Act, 1876.”	The following words at the end of section 3, sub-sections 2 and 3: “The estate being exempt under clause 2 of this Act.”

Savings.

5. Such repeal shall not affect any appointment, regulation, instrument, fund, act, matter, or thing lawfully made, done, executed, or in existence under the authority of the said Acts or any or either of them; nor prevent prosecution or punishment for any offence committed or act done in violation of the provisions of the said Acts or any or either of them; or interfere with the recovery of any penalty or of any forfeiture incurred under the said Acts or any or either of them; or with the enforcement, vindication, or recovery, of any estate, right, title, trust, covenant, contract, or interest preserved, acquired, accruing, existing or entered into under the provisions of the said Acts or any or either of them; nor shall such repeal affect or in any way interfere with any act or thing, prosecution or punishment, enforcement, vindication, or recovery saved or protection given by the said repealed Acts; and all applications, actions, suits, proceedings, instruments, registrations, and other acts, matters, and things made, commenced, pending, signed, entered, or done under the said repealed Acts or any or either of them before the passing of this Act, may be proceeded with, prosecuted, completed, and acted on in the same manner and shall be as valid and effectual as if this Act had not been passed.

6. No law, so far as inconsistent with this Act, shall apply to land subject to the provisions of this Act, nor shall any future law, so far as inconsistent with this Act, so apply unless it shall be expressly enacted that it shall so apply "notwithstanding the provisions of 'The Real Property Act, 1886'".

Laws inconsistent not to apply.

7. All lands subject to the provisions of any of the Real Property Acts shall, on and from the day upon which this Act shall come into operation, and all land hereafter brought under the provisions of any of the Real Property Acts, pursuant to any application commenced at the time of this Act coming into operation, shall, from the time of the issuing of the certificate for such land, be held subject to the provisions of this Act.

Lands under previous Acts to be under this Act.

8. No land once subject to the provisions of this Act shall ever be withdrawn therefrom.

Land not to be withdrawn.

9. This Act shall come into operation on the first of January, 1887¹.

Commencement of Act.

PART II

PART II

OBJECTS OF THIS ACT

10. The objects of this Act are to simplify the title to land, to authorize and facilitate, to the extent to which this Act allows, the division and ownership of land in units approved for separate occupation in accordance with this Act, and to facilitate dealing therewith, and to secure indefeasibility of title to all registered proprietors, except in certain cases specified in this Act.

Objects.
S. 10 amended by 37, 1967, s. 5.

11. This Act shall always be construed in such manner as shall best give effect to the objects hereinbefore declared.

Construction.

PART III

PART III

THE LANDS TITLES REGISTRATION OFFICE

12. The Lands Titles Registration Office shall be continued at Adelaide for the purposes of this Act.

Lands Titles Registration Office to be at Adelaide.

13. The department of the Registrar-General shall carry out the provisions of this Act, and shall consist of a Registrar-General and such solicitor and deputy registrars and other officers and clerks as may be found necessary. The present Registrar-General, solicitor, deputy registrars, and other officers and clerks of the said department shall perform all the duties of their respective offices under this Act.

Present Registrar-General and officers to perform duties under this Act.

14. Every Registrar-General, deputy registrar, and solicitor may be removed by the Governor for neglect of duty, want of skill, untrustworthiness, or incapacity; and it shall be lawful for the Governor to remove any other officer or any clerk of the said department at pleasure, and to fill up any vacancy occurring in the department.

Removal of officers.

¹ Reference to the year one thousand eight hundred and eighty-seven altered to 1887 pursuant to s. 7 (1) of the Acts Republication Act, 1967, as amended.

Governor may
appoint acting
solicitor.

15. The Governor may appoint and at pleasure remove an acting solicitor who shall while holding such appointment perform all the duties of a solicitor of the department.

Appointment of
and duties of
Acting
Registrar-
General.

S. 16 amended
by 30, 1969,
s. 3 (a), (b), (c).

16. The Governor, as occasion may require, may appoint an Acting Registrar-General, and in the event of the suspension, absence, or incapacity of the Registrar-General, the Acting Registrar-General shall, in his stead, exercise and execute all the powers and duties of the Registrar-General, and the Registrar-General shall not have power to act during such time as the Acting Registrar-General shall be lawfully acting. Unless or until an Acting Registrar-General be appointed, the senior Deputy Registrar-General for the time being shall *ex officio* be Acting Registrar-General.

Time from
which Acting
Registrar-
General shall
act or cease to
act.

17. The Acting Registrar-General shall act from such time as he shall receive from the Attorney-General a notice that the Registrar-General has been suspended, or that the Registrar-General is about to absent himself or has absented himself, or is incapacitated from performing his duties; and such Acting Registrar-General shall cease to act from such time as he shall receive from the Attorney-General a certificate under his hand to the effect that the Registrar-General resumes his duties.

Functions of
Deputy
Registrar-
General.

S. 18 amended
by 30, 1969,
s. 4; 12, 1975,
s. 3.

18. Whenever, by any law for the time being in force in the State, anything is appointed or authorized to be done by the Registrar-General, the same may be lawfully done by any Deputy Registrar-General or by any delegate acting under and in accordance with a delegation pursuant to section 18a of this Act.

Delegation by
Registrar-
General.

S. 18a enacted
by 12, 1975,
s. 4.

18a. (1) The Registrar-General may by writing under his hand delegate to any officer or clerk any of the powers or functions of the Registrar-General under this Act or any other Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matter or matters of a class specified or the place or locality defined in the instrument of delegation.

(2) A delegation under subsection (1) of this section shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function of the Registrar-General.

Solicitor not to
engage in
private practice.

19. It shall not be lawful for any person whilst holding the office of solicitor under this Act to engage in private practice as a barrister, attorney, solicitor, or licensed land broker, but this prohibition shall not apply to any acting solicitor.

S. 20 repealed
by 37, 1961,
s. 3.

* * * * *

Seal of office to
be received in
evidence.
S. 21 amended
by 12, 1975,
s. 5.

21. The Registrar-General shall have and use a seal of office bearing the impression of the Royal Arms of England, and having inscribed in the margin thereof the words "Registrar-General South Australia"; and every instrument bearing the imprint of such seal, and purporting to be signed or issued by the Registrar-General, or by one of his deputies or by a delegate referred to in section 18a of this Act or by the Acting Registrar-General, shall be received in evidence, and shall be deemed to be signed or issued by or under the direction of the Registrar-General, or Acting Registrar-General, without further proof, unless the contrary be shown.

Fees, etc.
S. 22 substituted
by 116, 1972,
s. 4.

22. (1) The Registrar-General may demand and receive such fees, in respect of the several matters provided for in this Act, as are prescribed.

(2) Until regulations under this Act are made prescribing fees in respect of the matters referred to in subsection (1) of this section the Registrar-General may demand and receive such fees as were payable in respect of those matters immediately before the commencement of the Real Property Act Amendment Act, 1972.

23. (1) The Registrar-General shall keep a correct account of all sums of money received by him in accordance with the provisions of this Act, and shall pay the same to the Treasurer.

Accounts of Registrar-General and payment of moneys.

S. 23 amended by 30, 1969, s. 5; substituted by 12, 1975, s. 6.

(2) All fines and fees received under the provisions of this Act shall (subject to the provisions of Part XVIII of this Act) be carried into account by the Treasurer as General Revenue.

23a. (1) Where the Treasurer has received moneys in trust or otherwise on account of absent mortgagees or other persons, and the Treasurer is satisfied that the moneys may be properly paid to any person the Treasurer may upon the application of that person and upon provision by that person of such an indemnity or indemnities, if any, as the Treasurer thinks fit, make payment of the moneys to that person.

Payment of moneys received in trust.

S. 23a enacted by 12, 1975, s. 6.

(2) Any payment made by the Treasurer before the commencement of the Real Property Act Amendment Act, 1975, of moneys of a kind referred to in subsection (1) of this section shall be for all purposes as lawful, valid and effectual as it would have been if—

(a) that subsection was enacted and in force at the time at which that payment was made;

and

(b) the payment of those moneys complied in all respects with the provisions of that subsection.

24. The Registrar-General shall not individually, nor shall any person acting under his authority, be liable to any action, suit, or proceeding for or in respect of any act or matter *bona fide* done, or omitted to be done, in the exercise or supposed exercise of the powers of this Act.

Registrar-General not to be liable for acts done *bona fide*.

PART IV

PART IV

THE BRINGING OF LAND UNDER THE ACT

25. For the purpose of bringing land under the provisions of this Act, it shall be regarded as divided into two classes, as follows:—

Land in two classes.

I. land hereafter alienated in fee from the Crown;

II. land heretofore alienated in fee from the Crown.

26. As to land hereafter alienated in fee from the Crown, the same shall, immediately on alienation, be subject to the provisions of this Act.

Land on alienation from Crown to be under Act.

27. As to land heretofore alienated from the Crown in fee but not under the provisions of any of the Real Property Acts (whether such land shall constitute the entire or only part of the land included in any land grant), the same may be brought under the provisions of this Act in the following manner, that is to say—The Registrar-General shall receive applications in the form of

Lands granted prior to the day on which this Act comes into operation may be brought under the operation of this Act.

the second schedule hereto, or in a form to the like effect, if made by any of the following persons, that is to say—

by any person claiming to be the person in whom the fee simple is vested either at law or in equity: Provided that wherever trustees, seized in fee simple, have no power to sell the land which they may seek to bring under the provisions of this Act, the persons claiming or appearing to be beneficially entitled to the said land shall consent to such application:

by any person having power to appoint or dispose of the fee simple, at law or in equity, in cases where the Registrar-General shall be satisfied that the application is made for the purpose of carrying such power into effect:

by any person claiming a life estate, not being a leasehold for a life or lives: Provided that all persons claiming or appearing to be beneficially entitled in reversion or remainder shall join in or consent to such application:

the father, or if the father be dead, the mother or other guardian of any infant, or the committee or guardian of any lunatic or person of unsound mind, may make or consent to such application in the name or on behalf of such infant, lunatic, or person of unsound mind; and any person holding a power of attorney authorizing the sale of a freehold estate in any land may make the application in respect of such land in the name or on behalf of the proprietor, unless such power shall expressly prohibit his so doing.

Undivided shares and mortgaged land may not be brought under Act except upon conditions.
S. 28 amended by 30, 1969, s. 6.

28. No such application shall be received from any person claiming to be entitled to an undivided share of any land unless the persons who shall appear to be entitled to the other undivided shares shall join in the application with a view to bringing the entirety under the provisions of this Act; nor from the mortgagor of any land unless the mortgagee shall consent to such application; nor from the mortgagee of any land except in the exercise of or for the purpose of giving effect to a sale under a power of sale contained in the mortgage deed.

Provisions as to surrender of documents, abstract of title, statements in application, and personal notice of application.

29. Every applicant shall, when making his application, surrender to the Registrar-General all documents of title in his possession or under his control relating to or in any way affecting the land, and shall furnish a schedule of such documents, and also, if required, an abstract of his title, and shall, in his application, state the nature of his estate or interest in the land, and of every estate or interest therein held by any other person, whether at law or in equity, in possession, reversion, remainder, or expectancy, and give full particulars of every right-of-way or other easement affecting the land of which he is aware, or has had notice, or which he knows to be claimed by any other person, and shall state whether the land be occupied or unoccupied, and if occupied, the name and description of the occupant, and the nature of his occupancy, and whether such occupancy be adverse or otherwise; and shall, when practicable, state the names and addresses of the occupants and proprietors of all lands contiguous to the land in respect of which application is made so far as known to him, and that the schedule so furnished includes all documents of title relating to such land in his possession or under his control, and may, in his application, require the Registrar-General, at the expense of the applicant, to cause personal notice of the application to be served upon any person whose name and address shall for that purpose be therein stated, and shall give an address within the city of Adelaide to which notices in respect of such application may be sent.

30. The statements made in the application shall be verified by the declaration of the applicant or the person acting in his name or on his behalf. Statements to be verified by declaration.
31. Upon receipt of the application the Registrar-General shall cause the title of the applicant to be examined and reported upon by the solicitor of the department. Application, how to be dealt with.
32. For the purposes of all applications, the titles of applicants shall be divided into three classes as follows:—
- Class I. When the applicant is the original grantee from the Crown, and the land has been granted on or subsequently to the first day of March, 1842¹, and no transaction affecting the title has at any time been registered, and the applicant has not required notice of his application to be served personally upon any person: Titles in three classes.
- Class II. When, although the title does not belong to the first class, the land is held by the applicant for the estate or interest described in the application free from mortgage, encumbrance, or other beneficial interest affecting the title thereto, or if any such mortgage, encumbrance, or interest exists the parties interested therein join in or consent to the application, and the applicant has not required notice of his application to be served personally upon any person: When applicant is original grantee, and no transactions have been registered.
- Class III. When any person beneficially interested in the land otherwise than as lessee, or any person interested in any mortgage or encumbrance affecting the title, is not a party joining in or consenting to the application, or the title or evidence of title set forth by the applicant is imperfect, or the applicant has required notice of his application to be served personally upon any person. When applicant is not original grantee, or any transactions have been registered.
- If it shall appear to the Registrar-General that the title of the applicant belongs to the first class he shall bring such land under the provisions of this Act forthwith. When evidence of title imperfect.
33. If it shall appear to the satisfaction of the Registrar-General that the title of the applicant belongs to the second class, he shall cause notice of the application to be published four times in the *Government Gazette*; and shall further limit and appoint a time, not less than one month nor more than twelve months from the date of the first publication in the *Government Gazette*, upon or after the expiration of which he shall, unless he shall in the interval have received a caveat forbidding him so to do, bring the land under the provisions of this Act. First class to be brought under this Act forthwith.
34. If it shall appear to the satisfaction of the Registrar-General that the title of the applicant belongs to the third class, it shall be lawful for him to reject such application altogether, or in his discretion to cause notice of the application to be served upon all persons other than the applicant, who shall appear to have any interest in the land which is the subject of the application and to be published in the *Government Gazette*, and in such manner as he may direct; and to limit and appoint a time in his discretion, or as the Court may prescribe, not less than two months nor more than twelve months from the date of the first of such publications in the *Government Gazette*, upon or after the expiration of which it shall be lawful for the Registrar-General to bring the

¹ Reference to the year one thousand eight hundred and forty-two altered to 1842 pursuant to s. 7 (1) of the Acts Republication Act, 1967, as amended.

land under the provisions of this Act, unless he shall in the interval have received a caveat forbidding him so to do.

Notice of application to be published.

35. The Registrar-General shall cause notice to be published in such manner as aforesaid, or in such other manner as may be prescribed by any order of the Court, that application has been made for bringing the land therein referred to under the provisions of this Act, and shall also cause a copy of such notice to be posted in a conspicuous place in his office, and in such other places as he may deem necessary, and shall forward, by registered letter marked outside "Lands Titles Office", through the post office, a copy of such notice addressed to each of the persons, if any, stated in the application to be in occupation of the land, or to be occupiers or proprietors of land contiguous thereto, so far as his knowledge of the addresses of such persons shall enable him, and to such other persons as he may think fit, and in case the applicant shall have required any notice to be personally served upon any person named in his application, then and in such case the Registrar-General shall cause a copy of such notice to be so served upon such person.

Second and third classes brought under this Act.

36. If within the time limited and appointed as aforesaid by the Registrar-General, or under any order of the Court, any notice forwarded by registered letter as aforesaid, shall not be returned to him by the Postmaster-General, and if within the time so limited he shall not have received a caveat, as hereinafter described, forbidding him so to do—and in any case in which personal notice may be required as aforesaid, if he shall have received proof to his satisfaction that such notice has been served, the Registrar-General shall bring the land described in the application under the provisions of this Act.

How land to be brought under Act.

37. The Registrar-General shall bring land under the provisions of this Act by issuing a certificate for the same to the applicant, or to such person as he or the person applying in his name or on his behalf may by any writing under his hand direct.

Action to be taken on return of notices or failure of personal service.

38. The Registrar-General, whenever he shall be made aware that any notice required by any applicant to be served personally has failed to be, or cannot be, so served, shall notify the same to such applicant, who, if he think fit, may by writing under his hand, withdraw such requirement, and the Registrar-General thereupon or in case any notice shall be returned to him by the Postmaster-General, may reject the application altogether, or bring the land therein described under the provisions of this Act forthwith, or after such further interval, notification, or advertisement as he may think fit.

Caveat against bringing land under Act. S. 39 amended by 30, 1969, s. 7.

39. Any person having or claiming an estate or interest in any land sought to be brought under the provisions of this Act, or the attorney or agent of any such person, may, within the time by the Registrar-General or under any order of the Court for that purpose limited, lodge a caveat with the Registrar-General, in the form of the third schedule hereto, forbidding the bringing of such land under the provisions of this Act. Every such caveat shall state the nature of the estate or interest claimed by the person lodging the same and the grounds on which such claim is founded, and no caveat shall be received unless some address within South Australia shall be given therein at which notices and proceedings relating to the caveat may be served.

If caveat be received within time limited, proceedings stayed.

40. The Registrar-General shall, upon receipt of any such caveat, within the time limited as aforesaid give notice thereof to the applicant proprietor, and shall suspend further action in the matter, and the land in respect of which such caveat shall have been lodged shall not be brought under the provisions of this Act until such caveat shall have been withdrawn or shall have lapsed

from any of the causes hereinafter provided, or until a decision therein shall have been obtained from the Court having jurisdiction in the matter.

41. Any applicant may withdraw his application at any time prior to the issuing of the certificate, and the Registrar-General shall in such case, upon request in writing signed by the applicant, return to him, or to the person, if any, notified in the application as having a lien thereon, all documents of title deposited in support of the application.

Applicant may withdraw his application.

42. Upon issuing a certificate bringing land under the provisions of this Act the Registrar-General shall endorse a memorandum on every document of title deposited by the applicant in support of his application, stating that the lands described in such certificate have been brought under the Real Property Act. If any such document of title shall relate to or include any property, whether personal or real, other than the land included in the certificate, the Registrar-General shall return such document to the applicant, but otherwise shall retain the same in his office; and no person shall be entitled to the production of any document so retained, except upon the written order of the applicant or of some person claiming through or under him, or upon the order of the Court.

Documents of title, if they include other property, to be returned to applicant.

43. In case an applicant, or the person to whom he or the person applying in his name or on his behalf, may have directed a certificate to be issued, shall die in the interval between the date of the application and the date on which the certificate shall be issued, the certificate shall be issued in the name of the applicant, or in the name of the person to whom it shall have been so directed to be issued as the case may require, and the land shall devolve in like manner as if the certificate had been issued prior to the death of the applicant or of such person.

Certificate to issue in name of deceased applicant proprietor or his nominee.

44. Whenever a caveat shall have been lodged with the Registrar-General forbidding land to be brought under the provisions of this Act, the like proceedings as are hereinafter provided for the removal of caveats, in the case of land already under the provisions of this Act, shall be open to the caveatee for removal of the caveat, and for the recovery of costs and damages from the caveator, in case the caveat shall have been lodged by the caveator wrongfully and without reasonable cause.

Proceedings under caveat.

45. Every such caveat shall be deemed to have lapsed after the expiration of one month from the receipt thereof by the Registrar-General, unless the person by whom or on whose behalf the same was lodged shall, within that time, have taken proceedings in the Court to establish his title to the estate or interest claimed by him, and give written notice thereof to the Registrar-General, or shall have obtained from the Court an order or injunction restraining the Registrar-General from bringing the land under the provisions of this Act. No such lapsed caveat shall, except by leave of the Court, be renewed by or on behalf of the same person in respect of the same estate or interest.

Lapse of caveat.

46. The reversion expectant upon a lease shall not be deemed to have been extinguished in consequence of the land comprised in such lease having been brought under the provisions of this Act, and the registered proprietor of any land which is subject to a lease granted prior to the first certificate being issued in respect of such land, shall be held in all Courts to be seized of the reversion expectant upon such lease, and to have all the powers, rights and remedies to which a reversioner is by law entitled and shall be subject to all

Reversion expectant on lease not to be extinguished.

PART IV

covenants and conditions in such lease expressed or implied to be performed on the part of the lessor.

PART V

PART V

THE REGISTER BOOK

Registrar-General to keep Register Book.

47. The Registrar-General shall continue to keep the book called the Register Book, containing the records of the title to all land under this Act.

Certificates to be in duplicate. S. 48 amended by 12, 1975, s. 7.

48. Every certificate shall be in duplicate, and the Registrar-General shall file in the Register Book one part of every certificate, hereinafter called the original, and shall deliver the other, hereinafter called the duplicate, to the registered proprietor of the land.

Folios in Register Book.

49. Each original certificate shall constitute a separate folium of the Register Book, and the Registrar-General shall record thereon distinctly and separately all memorials affecting the land included in each certificate.

Time when registration of certificates and instruments takes effect.

50. Every certificate shall be deemed to be registered so soon as the same shall have been marked by the Registrar-General with its volume and folium in the Register Book; and every other instrument shall be deemed to be so registered, so soon as a memorial thereof shall have been entered upon the original existing certificate.

Requirements of memorial. S. 51 amended by 44, 1960, s. 3; 12, 1975, s. 8.

51. Every memorial entered in the Register Book shall be sealed with the seal of the Registrar-General, and shall state the nature of the instrument to which it relates, the day and hour of the production of the instrument for registration, and such other particulars as the Registrar-General directs, and shall refer by number or symbol to such instrument.

Endorsement of memorandum of registration and evidentiary effect thereof.

52. Whenever a memorial of any instrument has been entered in the Register Book, the Registrar-General shall endorse on the instrument registered a memorandum of the date and hour on which the memorial was entered in the Register Book, and shall authenticate such memorandum by signing his name and affixing his seal thereto; and such memorandum shall be received in all Courts as conclusive evidence that the instrument has been duly registered.

Memorial to be recorded on duplicate instrument.

53. The Registrar-General, on entering any memorial in the Register Book, shall, except in case of a transfer or other dealing endorsed upon a lease, mortgage, or encumbrance, as hereinafter provided, record the like memorial on the duplicate certificate, or other instrument evidencing title to the land intended to be dealt with or in any way affected, unless he shall, as hereinafter provided, dispense with the production of the same, or unless such production is rendered unnecessary by the provisions of this Act.

Instruments to be according to Act. S. 54 redesignated s. 54 (1) by 12, 1975, s. 9.

54. (1) The Registrar-General shall not, except as herein otherwise provided, register any instrument purporting to transfer or otherwise deal with or affect any estate or interest in land under the provisions of this Act except in the manner herein provided, nor unless such instrument be in accordance with the provisions hereof.

Subsec. (2) inserted by 12, 1975, s. 9.

(2) Notwithstanding anything in subsection (1) of this section, the Registrar-General may, in his discretion, register any instrument notwithstanding any error in or omission from its memorandum or endorsement of prior

encumbrances and, in such case, the error or omission shall not invalidate or otherwise affect the registration of the instrument.

(3) Notwithstanding anything in subsection (1) of this section, where an instrument contains a patent error, the Registrar-General may of his own motion correct the error by marginal notation on the instrument, and the instrument so corrected shall have the like validity and effect as if the error had not been made.

Subsec. (3)
inserted by 12,
1975, s. 9.

55. Any instrument presented for registration may be single or in duplicate, or if a lease may be in duplicate or triplicate.

Instruments.

56. Every instrument presented for registration shall be attested by a witness, and shall be registered in the order of time in which the same is produced for that purpose; and instruments registered in respect of or affecting the same estate or interest shall, notwithstanding any express, implied, or constructive notice, be entitled to priority, the one over the other, according to the date of registration, and not according to the date of the instrument itself; and the Registrar-General, upon registration thereof, shall file such instrument (if single) in his office, and if in duplicate or triplicate, shall file one original in his office, and shall deliver the other or others to the person or persons entitled thereto.

Instruments
entitled to
priority
according to
date of
registration.

57. Every instrument shall, when registered, be deemed part of the Register Book, and shall have the effect of and be deemed and taken to be a deed duly executed by the parties who have signed the same.

Effect of
registration of
instruments.

58. Should two or more instruments executed by the same proprietor, and purporting to affect the same estate or interest, be at the same time presented to the Registrar-General for registration, he shall register and endorse that instrument which shall be presented by the person producing to him the duplicate certificate or other instrument evidencing title to such estate or interest.

Where two or
more
instruments
presented at
same time.

59. In case any person, who either before or after his death shall be registered as proprietor of any land shall die after signing any instrument affecting such land, and before registration thereof, the registration of such instrument may nevertheless be proceeded with in accordance with this Act, and shall be valid notwithstanding such death.

Provision for
registration in
case of death of
party executing
instrument.

60. In case it shall appear to the satisfaction of the Registrar-General that any certificate or other instrument has been issued in error or contains any misdescription of land or of boundaries, or that any entry or endorsement has been made in error on any certificate or other instrument, or that any certificate, instrument, entry, or endorsement has been fraudulently or wrongfully obtained, or that any certificate or instrument is fraudulently or wrongfully retained, he may summon the person to whom such certificate or instrument has been so issued, or by whom it has been so obtained or is retained, to deliver up the same for the purpose of being cancelled or corrected, as the case may require.

Person to whom
certificate or
other
instrument of
title has been
issued in error,
or who
wrongfully
retains such
instrument, may
be summoned.

61. In case such person shall refuse or neglect to comply with such summons, the Registrar-General may apply to the Court to issue a summons for such person to appear before the Court and show cause why such certificate or other instrument should not be delivered up to be cancelled or corrected; and if such person, when served with such summons, shall neglect or refuse to attend before such Court at the time therein appointed, it shall be lawful for such Court to issue a warrant authorizing and directing the person

Arrest of
person refusing
to deliver up
instrument for
cancellation or
correction.

so summoned to be apprehended and brought before the Court for examination.

Order for
delivery of
instrument.

62. Upon the appearance before the Court of any person summoned or brought up by virtue of a warrant as aforesaid, it shall be lawful for the Court to examine such person upon oath, and to order him to deliver up such certificate or other instrument, and, upon refusal or neglect by such person to deliver up the same pursuant to such order, to commit him to gaol for any period not exceeding six months, unless such certificate or instrument shall be sooner delivered up.

Orders for
cancellation of
instrument and
alteration of
Register Book.

63. In such case, or in case a summons by the Registrar-General or a Judge cannot be served upon such person as hereinbefore directed, the Court may direct the Registrar-General to cancel or correct any certificate or other instrument, or any entry or memorial in the Register Book relating to such land, and to substitute and issue such certificate or other instrument, or make such entry as the circumstances of the case may require, and the Registrar-General shall give effect to such order.

Powers of court
to direct
cancellation of
certificate or
entry.
S. 64 amended
by 30, 1969,
s. 8.

64. In any proceeding in the Court respecting any land, or any transaction, contract, or application relating thereto, or any instrument, caveat, memorial, or other entry affecting any such land, it shall be lawful for the Court to direct the Registrar-General to cancel, correct, record, substitute, issue, or make any certificate, or any memorial or entry in the Register Book, notwithstanding that the relevant duplicate certificate has not been produced to him, or otherwise to do such acts and make such entries as may be necessary to give effect to any judgment, decree, or order of such Court given or made in such proceeding, and the Registrar-General shall obey every such direction.

Search allowed.
S. 65 amended
by 116, 1972,
s. 5.

65. Any person shall have access to the Register Book, and to all instruments filed and deposited in the Lands Titles Office for the purpose of inspection during the hours and upon the days appointed for search.

In case of
conflict between
certificate and
Register Book
latter to prevail.

66. Whenever there shall be any conflict, difference, or variation between the contents of or the entries or memorials on any original certificate, and the contents of or the entries or memorials on the duplicate of such certificate, or whenever any entries or memorials shall appear on such first-mentioned certificate, which shall not appear on such duplicate, the original certificate shall prevail.

PART VI

PART VI

THE TITLE OF REGISTERED PROPRIETORS

Instruments not
effectual until
registration.

67. No instrument shall be effectual to pass any land or to render any land liable as security for the payment of money, but upon the registration of any instrument in manner herein prescribed, the estate or interest specified in such instrument shall pass, or, as the case may be, the land shall become liable as security in manner and subject to the covenants, conditions, and contingencies set forth and specified in such instrument or by this Act declared to be implied in instruments of a like nature.

Person named
in certificate to
be the
registered
proprietor.

68. The person named in or appearing by any certificate or other registered instrument as seized of or taking any estate or interest in land shall be the registered proprietor thereof.

69. The title of every registered proprietor of land shall, subject to such encumbrances, liens, estates, or interests as may be notified on the original certificate of such land, be absolute and indefeasible, subject only to the following qualifications:—

Title of registered proprietor indefeasible, except in cases of—

- I. In the case of fraud, in which case any person defrauded shall have all rights and remedies that he would have had if the land were not under the provisions of this Act: Provided that nothing included in this subsection shall affect the title of a registered proprietor who has taken *bona fide* for valuable consideration, or any person *bona fide* claiming through or under him: Fraud.
- II. In the case of a certificate or other instrument of title obtained by forgery or by means of an insufficient power of attorney or from a person under some legal disability, in which case the certificate or other instrument of title shall be void: Provided that the title of a registered proprietor who has taken *bona fide* for valuable consideration shall not be affected by reason that a certificate or other instrument of title was obtained by any person through whom he claims title from a person under disability, or by any of the means aforesaid: Forgery or disability.
- III. Where any portion of land has been erroneously included, by wrong description of parcels or boundaries, in the certificate or other instrument evidencing the title of the registered proprietor: In which case the rights of the person who but for such error would be entitled to such land shall prevail, except as against a registered proprietor taking such land *bona fide* for valuable consideration, or any person *bona fide* claiming through or under him: Erroneous inclusion of land.
- IV. Where a right-of-way or other easement not barred or avoided by the provisions of the "Rights-of-Way Act, 1881", or of this Act, has been omitted or mis-described in any certificate, or other instrument of title: In which case such right-of-way or other easement shall prevail, but subject to the provisions of the said "Rights-of-Way Act, 1881" and of this Act: Omission of easement.
- V. Where two or more certificates shall be registered under any of the Real Property Acts in respect of the same land: In which case the title originally first in date of registration shall prevail but without prejudice to the effect of anything done under Part XIXA of this Act: Several certificates for the same land.
Para. V amended by 39, 1945, s. 3.
- VI. Any certificate issued upon the first bringing of land under the provisions of any of the Real Property Acts, and every certificate issued in respect of the said land, or any part thereof, to any person claiming or deriving title under or through the first registered proprietor, shall be void, as against the title of any person adversely in actual occupation of, and rightfully entitled to, such land, or any part thereof at the time when such land was so brought under the provisions of the said Acts, and continuing in such occupation at the time of any subsequent certificate being issued in respect of the said land: Certificate to be void if any person is in possession and rightfully entitled adversely to the first registered proprietor.
- VII. Where a husband shall have been wrongly registered as co-proprietor of land belonging to his wife for her separate use or as her separate property, in which case the title of the wife shall prevail except as against a registered proprietor taking such land *bona fide* Wife's title to prevail.

for valuable consideration, or any person *bona fide* claiming through or under him:

A lease or letting for not more than a year.

VIII. Where at the time when the proprietor becomes registered a tenant shall be in actual possession of the land under an unregistered lease or an agreement for a lease or for letting for a term not exceeding one year: In which case the title of the tenant under such lease or agreement shall prevail:

Non-payment of succession duty.

Para. IX amended by 2246, 1935, s. 4 (2nd Sched.).

IX. Where the succession duty payable in respect of the land has not been paid, and the certificate required by section 63 of the Succession Duties Act, 1929¹, has not been obtained: In which case any charge by law imposed on the land in respect of such duty shall remain in force.

In other cases title of registered proprietor shall prevail.

70. In all other cases the title of the registered proprietor of land shall prevail, notwithstanding the existence in Her Majesty, Her heirs, or successors, or in any person of any estate or interest whatever whether derived by grant from the Crown or otherwise, which but for this Act might be held paramount or to have priority; and notwithstanding any want of notice, or insufficient notice of any application, or any error, omission or informality in any application or proceedings.

Saving of certain rights and powers, viz.:—

71. Nothing in the two preceding sections contained shall be construed so as to affect any of the following rights or powers, that is to say—

Sales by Sheriff.

I. the power of the Sheriff to sell the land of a judgment debtor under writ of *fieri facias* or other writ of execution:

Sales under order of the Court.

II. the power of the Court to order the sale of land:

Transmissions on bankruptcy or assignment.

Para. III amended by 2246, 1935, s. 4 (2nd Sched.).

III. the right of the Official Receiver or of any trustee to land transmitted on the bankruptcy or statutory assignment of the registered proprietor:

Contracts.

IV. the rights of a person with whom the registered proprietor shall have made a contract for the sale of land or for any other dealing therewith:

Trusts.

V. the rights of a *cestui que trust* where the registered proprietor is a trustee, whether the trust shall be express, implied, or constructive:

Deed-poll by promoters of an undertaking.

Para. VI amended by 2246, 1935, s. 4 (2nd Sched.).

VI. the right of promoters of an undertaking to vest land in themselves by deed-poll pursuant to the Compulsory Acquisition of Land Act, 1925², or any Act amending the same:

Protection to subsequent purchasers.

Provided that no unregistered estate, interest, power, right, contract, or trust shall prevail against the title of a registered proprietor taking *bona fide* for valuable consideration, or of any person *bona fide* claiming through or under him.

¹ Now Succession Duties Act, 1929-1975.

² The Compulsory Acquisition of Land Act, 1925, and its amendments have been repealed by the Land Acquisition Act, 1969 (now Land Acquisition Act, 1969-1972).

72. Knowledge of the existence of any unregistered estate, interest, contract, or trust shall not of itself be evidence of want of *bona fides* so as to affect the title of any registered proprietor.

Knowledge of trust not evidence of want of *bona fides*.

PART VII

PART VII

CERTIFICATES OF TITLE

73. The registered proprietor of an estate of freehold in land, other than a leasehold for a life or lives, shall be entitled to receive a certificate for the same, which certificate shall be in the form in the fourth schedule hereto, or, where the land is a unit defined on a deposited strata plan within the meaning of Part XIXB of this Act or is common property within the meaning of that Part, shall be in the appropriate form prescribed in the twenty-fourth schedule hereto, or in a form to the like effect and shall set forth the nature of the estate in respect of which it is issued.

Certificates of title.
S. 73 amended by 37, 1967, s. 6.

74. Two or more persons registered as joint proprietors of an estate or interest in land shall be deemed to be entitled to the same as joint tenants; and in all cases where two or more persons are entitled as tenants in common to an estate of freehold in any land, such persons may receive one certificate for the entirety, describing them as tenants in common, or each may receive a separate certificate for his undivided share.

Joint proprietors and certificates for tenants in common.

75. The proprietor of an estate of freehold in remainder or reversion in land, for a life estate in which a certificate has already been issued, may have his estate registered on the certificate issued for the life estate, or may receive a separate certificate for his estate, which shall refer to the certificate of the particular estate.

Certificates for remainder and reversions.

76. Every certificate, or other instrument of title issued to or made in favour of a corporation, aggregate or sole, shall be deemed to extend to and include the successors of such corporation, and every such certificate or instrument of title issued to or made in favour of any person shall be deemed to extend to and include the legal representatives of such person.

Mode of inheritance or succession shall be implied.

77. The Registrar-General shall record on every certificate issued by him, and in such manner as to preserve their respective priorities, memorials of all subsisting mortgages, leases, and encumbrances, and of any dower or rent-charge to which the land may be subject; and if such certificate be issued to a minor or to a person otherwise under disability, he shall record thereon the age of such minor or the nature of the disability so far as known to him.

Memorials on certificates.

78. Upon the application of any registered proprietor holding land under one or more certificates, and the delivering up of such instruments of title, it shall be lawful for the Registrar-General to issue to such proprietor one certificate for the whole of such land, or several certificates each comprising portion of such land, in accordance with such application; and upon issuing any such new certificate the Registrar-General shall cancel the duplicates delivered up, and the originals, and shall endorse thereon a memorandum, setting forth the occasion of such cancellation, and referring to the new certificate issued in lieu thereof.

Certificates in lieu of surrendered certificates.

PART VII

Substituted
certificate.
S. 79 substituted
by 12, 1975,
s. 10.

79. (1) The Registrar-General, on application in that behalf and on proof to his satisfaction that any duplicate certificate or any tenant's copy of a Crown lease has been lost, mislaid or destroyed, may issue a substituted certificate or tenant's copy of Crown lease (as the case may be).

(2) Before issuing a substituted certificate or tenant's copy of Crown lease the Registrar-General shall give at least fourteen days' notice in the *Government Gazette* of his intention so to do.

(3) Every substituted certificate so issued shall be a facsimile of the original certificate filed in the Register Book and every substituted tenant's copy of Crown lease so issued shall be a facsimile of the copy thereof bound in the Register of Crown leases.

(4) Upon issuing a substituted certificate or tenant's copy of Crown lease the Registrar-General shall make an endorsement thereon stating the reason for the issue thereof and shall at the same time enter in the Register Book or the Register of Crown Leases (as the case may be) notice of the issue of such substituted certificate or tenant's copy of Crown lease, and the date thereof, and the reason for the issue thereof.

(5) Every such substituted certificate or tenant's copy of Crown lease shall be available for all purposes and uses for which the certificate or tenant's copy of Crown lease so lost, mislaid or destroyed would have been available, and shall supersede the duplicate certificate or tenant's copy of Crown lease for which it is substituted.

(6) Instead of issuing a substituted certificate the Registrar-General, after giving notice similar to that provided in subsection (2) hereof, may cancel the relevant folio of the Register Book, recording thereon that the folio was cancelled pursuant to this section, and may issue a new certificate in lieu thereof.

(7) For the purposes of this section every lease or agreement for sale of Crown lands granted or made by or on behalf of the Crown, shall be deemed a Crown lease.

Certificate to be
conclusive
evidence of title
except as herein
provided.

80. Every certificate shall be issued under the hand and seal of the Registrar-General, and the original or the duplicate thereof shall be received in all Courts as evidence of the particulars therein set forth and of their being entered in the Register Book, and shall (except in any of the cases herein otherwise provided) be conclusive evidence that the person named in such certificate, or in any entry thereon, as seized of or as taking an estate or interest in the land therein described, is seized of or entitled to such estate or interest, and that the land described in such certificate is under the provisions of this Act.

PART VIIA

PART VIIA

Part VIIA and
heading enacted
by 39, 1945,
s. 4.

TITLE BY POSSESSION TO LAND UNDER THIS ACT

Application for
certificate based
on possession.
S. 80a enacted
by 39, 1945,
s. 4.

80a. A person who would have obtained a title by possession to any land which is subject to this Act, if that land had not been subject to this Act, may apply to the Registrar-General for the issue to him of a certificate of title to that land.

80b. (1) Every such application shall—

- (a) be in writing in a form fixed by the Registrar-General;
- (b) be signed by the applicant;
- (c) contain a declaration by the person signing it, declaring that all the statements in it are true.

Signature
attestation and
operation of
application.
S. 80b enacted
by 39, 1945,
s. 4.

(2) The applicant shall, if required by the Registrar-General, furnish him with a plan of survey of the land.

80c. (1) The Registrar-General shall refer each application to the solicitor to his department, who shall examine it and report upon it to the Registrar-General.

Application,
how dealt with.
S. 80c enacted
by 39, 1945,
s. 4.

(2) The Registrar-General may thereupon in his discretion reject the application as regards the whole or any part of the land to which it relates, or proceed as hereinafter provided.

80d. The Registrar-General may—

- (a) require an applicant to furnish him with any information or documents relating to his application;
- (b) notwithstanding any direction previously given by him as to the application, reject it altogether or in part if the applicant fails to comply within a reasonable time with any requisition made under this section.

Requisitions.
S. 80d enacted
by 39, 1945,
s. 4.

80e. (1) If an application is not wholly rejected by the Registrar-General he shall cause a notice of the application in a form fixed by him—

Notice of
application.
S. 80e enacted
by 39, 1945,
s. 4.

- (a) to be published once at least in a newspaper circulating in the neighbourhood of the land, and, if he thinks necessary, in any other newspaper; and
- (b) to be given to any person who in the Registrar-General's opinion has or may have any estate or interest in the land; and
- (c) to be published in any other way or given to any other persons.

(2) The notice shall fix a time, not less than twenty-one days nor more than twelve months from the first publication of the notice in a newspaper under subsection (1) of this section, at or after the expiration of which the Registrar-General may, unless a caveat is lodged, grant the application altogether or in part.

80f. (1) A person claiming an estate or interest in the land to which an application under this Part relates, may at any time before the application is granted, lodge a caveat with the Registrar-General forbidding the granting of the application.

Caveats.
S. 80f enacted
by 39, 1945,
s. 4.

(2) A caveat under this section—

- (a) shall state the nature of the estate or interest claimed by the person lodging it and shall give an address at which notices and proceedings relating to the caveat may be served;
- (b) need not be in any particular form but shall be accepted by the Registrar-General if it gives reasonable notice of the claim of the caveator.

(3) If the Registrar-General is satisfied that the caveator is the registered proprietor of the land to which the application relates, or has an estate or

interest in that land derived under or through the registered proprietor, he shall refuse the application:

Provided that the Registrar-General shall not refuse an application solely on the ground that a person is entitled to an easement in or over the said land, but if a person is so entitled the Registrar-General may include in any certificate of title issued to the applicant a statement that the land is subject to the easement.

(4) If the Registrar-General is not satisfied that the caveator is the registered proprietor of the land or has an estate or interest therein derived under or through the registered proprietor, he shall give notice to the caveator that the caveator is required to take proceedings in the Court to establish his title to the estate or interest claimed by him, within a time specified in the notice being not less than six months after the giving thereof.

(5) If a caveator who has received such notice from the Registrar-General does not within the time mentioned in the notice bring an action in the Court to obtain a declaration that he is entitled to the estate or interest claimed by him and give written notice thereof to the Registrar-General, or obtain from the Court an order or injunction restraining the Registrar-General from issuing a certificate to the applicant under this Part, the caveat shall lapse.

(6) A lapsed caveat shall not except by leave of the Court be renewed by or on behalf of the same person in respect of the same estate or interest.

(7) In any proceedings to establish the title of the caveator the issue for the Court to decide shall be whether the caveator is the registered proprietor of the land or is entitled to an estate or interest derived under or through the registered proprietor.

Power to issue
certificates.
S. 80g enacted
by 39, 1945,
s. 4.

80g. Upon or after the expiration of the time fixed by the notice under section 80e of this Act, if the Registrar-General is satisfied that the possession on which the applicant relies would, if the land had not been subject to this Act, have conferred on the applicant a title by possession, he may issue to the applicant a certificate for an estate in fee simple or for any other estate acquired by the applicant, free from all encumbrances appearing by the Register Book to affect the existing title: Provided that where a caveat has been lodged against the granting of an application the Registrar-General shall not grant that application unless—

- (a) the caveat has lapsed; or
- (b) proceedings taken by the caveator to establish his title have been finally disposed of, and in those proceedings the caveator has failed to establish his title, or to obtain from the Court an injunction restraining the Registrar-General from issuing a certificate to the applicant.

Cancellation of
instruments.
S. 80h enacted
by 39, 1945,
s. 4.

80h. (1) Where a certificate for any land is issued under this Part the Registrar-General—

- (a) shall cancel the existing certificate for that land and any instrument, entry or memorial in the Register Book altogether or to such extent as is necessary to give effect to the certificate issued;
- (b) shall endorse on every certificate and instrument so cancelled a memorandum stating the circumstances and authority under which the cancellation is made.

(2) Upon the cancellation of a certificate, instrument, entry or memorial pursuant to this section, the estate and interest evidenced thereby shall cease and determine.

80i. The fees payable upon an application under this Part and in respect of the issue of a certificate under this Part shall be the same as if the application were an application to bring land under the provisions of this Act.

Fees.
S. 80i enacted by
39, 1945, s. 4.

PART VIII

PART VIII

EASEMENTS

81. Any certificate hereafter issued may contain a statement therein or entry thereon to the effect that the land therein described has appurtenant thereto any easement, or that the person therein named is entitled to any easement in gross, or that the land therein described is subject to any right or rights-of-way or other easement.

Certificates may
contain
statement of
right-of-way or
other easement.

82. Every such statement or entry shall fully set forth a true and accurate description of the easement, or, if the instrument creating the same be enrolled or deposited in the General Registry Office, or deposited in the Lands Titles Registration Office, shall refer to such instrument: Provided that, in the case of any easement, the certificate shall also contain a plan of the land over which such easement extends, or, if a plan showing the extent of such easement shall have been deposited in the General Registry Office, or the Lands Titles Registration Office, shall refer to such plan.

Description of
easement and
plan.

83. The registered proprietor of land brought under the provisions of the "Real Property Act of 1861" after the passing of the "Rights-of-Way Act, 1881", or of land hereafter brought under the provisions of this Act shall be deemed to hold the land comprised in the certificate of such land subject to such rights-of-way only as are mentioned and set forth in such certificate.

Registered
proprietor not
to be subject to
rights-of-way
not mentioned
in certificate.

84. No easement hereafter created by express grant or transfer over or in respect of any servient land under the provisions of this Act shall be binding on any registered proprietor subsequently taking the land *bona fide* for valuable consideration, unless such easement shall be entered on the original certificate of such land, and also upon the duplicate certificate.

Easement not
binding on
registered
proprietor
subsequently
acquiring land
bona fide for
value unless
entered on
certificate of
title.

85. The registered proprietor of any land shall, as from the eighteenth day of November, 1886¹, hold the same freed and discharged from all rights-of-way existing on or before that date and not entered upon the original certificate of such land in pursuance of an application made on or before such date under the "Rights-of-Way Act, 1881".

Land to be held
free of
rights-of-way.

86. Rights-of-way or other easements now or hereafter acquired or enjoyed by the public in, over, along, or across any servient land shall not be deemed to be rights-of-way or easements within the meaning of this Part of this Act, or in respect of which applications may be made or caveats entered, and nothing herein contained shall derogate from any such rights or easements, or be deemed to confer on the registered proprietor of any such servient land a right to interfere with or obstruct the public use of any way or other easement so acquired or enjoyed as aforesaid.

Public
rights-of-way,
etc., not within
this Act.

¹ Reference to the year one thousand eight hundred and eighty-six altered to 1886 pursuant to s. 7 (1) of the Acts Republication Act, 1967, as amended.

PART VIII

Certificates
heretofore
issued
conclusive
evidence of
right-of-way
therein
described.

87. Every certificate issued before the eighteenth day of November, 1881¹, containing therein a statement to the effect that the registered proprietor is seized of the land therein described, subject to or together with any right-of-way therein described or delineated, or together with any easement therein described, shall be deemed to operate as a grant or reservation, as the case may be, of such right-of-way or other easement, and such certificate shall, except in the case of fraud, be received in all Courts as conclusive evidence of the existence of such right-of-way or other easement:

Provided that this section shall not apply to any right-of-way or other easement, the title to which is now the subject of pending litigation in any Court of Law, or to any right-of-way or other easement, the right to which has been concluded in any Court adversely to such right-of-way or easement.

Rights-of-way
created
hereafter to be
entered upon
certificates of
owners of both
dominant and
servient land.

88. Whenever any right-of-way or other easement appurtenant to land under the provisions of this Act over land also under its provisions shall hereafter be granted or created, the Registrar-General shall enter the memorial of the instrument granting or creating such right-of-way or easement upon the original certificates of the dominant and servient lands respectively, and also upon the duplicates of such certificates.

Short form of
describing
right-of-way.

89. The words "together with a free and unrestricted right-of-way" in any instrument shall be deemed to imply the words set forth in the fifth schedule hereto so far as they shall be applicable as fully and effectually as if set out at length in such instrument.

Deposit of plan
showing
rights-of-way,
and effect
thereof.

90. Any registered proprietor of any land may deposit with the Registrar-General a plan of subdivision of the said land, showing the rights-of-way intended to be created by such proprietor over such land, and every subsequent registered proprietor of the said land, or any part thereof, shall be entitled to a right-of-way over all the rights-of-way shown in such plan, unless otherwise declared in his certificate.

S. 90a enacted
by 37, 1961,
s. 4; repealed by
37, 1967, s. 7.

* * * * *

PART IX

PART IX

CROWN LEASES

Interpretation
of Crown lease.

91. For the purpose of this Part of this Act, every lease or agreement for sale of Crown lands hereafter granted, or made by or on behalf of the Crown, shall be deemed a Crown lease.

Person now
holding under
lease or
agreement may
surrender.

92. Every person now holding any Crown lands under any lease or agreement for sale granted or made by or on behalf of the Crown may, subject to the approval of the Minister of Lands², surrender his lease or agreement for a Crown lease of the land remaining subject to such lease or agreement, upon all the same terms as shall have been applicable to such land prior to the surrender, but so that every person having any estate or interest in the surrendered land shall concur in the surrender.

¹ Reference to the year one thousand eight hundred and eighty-one altered to 1881 pursuant to s. 7 (1) of the Acts Republiation Act, 1967, as amended.

² In a previous reprint of this Act pursuant to the Acts Republiation Act, 1967, reference to Commissioner of Crown Lands altered to Minister of Lands pursuant to s. 7 (1) of Act No. 61 of 1967. See also s. 2 (1) of Act No. 28 of 1944.

PART IX

93. Every Crown lease shall be in triplicate, and after being duly executed shall be forwarded to the Registrar-General, who shall bind one copy in a book to be called the Register of Crown Leases, and shall return one copy to the Minister of Lands¹ and forward the other to the tenant entitled thereto.

Registration of
Crown lease
and effect
thereof.

The Registrar-General shall mark on each part of every Crown lease, a copy whereof shall be bound in the Register of Crown Leases, the volume and folio as appearing in the Register Book of Crown Leases, and such Crown lease shall thereupon be deemed to be registered, and may be transferred, mortgaged, and dealt with for all the purposes of this Act in like manner as if it had been granted by a registered proprietor and registered in the Register Book in the ordinary way, excepting only that any entries which ordinarily would require to be made in the Register Book shall be made in the Register of Crown Leases, and on the folio constituted by the Crown lease.

94. The Registrar-General, upon receipt of notice from the Minister of Lands¹ that any Crown lease has been lawfully forfeited or determined in whole or in part, shall make an entry to that effect in the Register of Crown Leases, and such forfeiture or determination shall thereupon have effect.

Registrar-
General to enter
forfeiture.

95. Nothing herein contained or hereby implied shall be construed to give any greater effect or different construction to any Crown lease registered pursuant to this Part of this Act than would have been given to it if this Act had not been passed, nor shall any right or remedy, which the Crown would otherwise have possessed, be in any way prejudiced or altered. The Minister of Lands¹ may, from time to time make any regulations which may be considered expedient for giving effect to this Part of this Act, and all such regulations, when published in the *Government Gazette*, shall have the force of law.

Not to give any
greater effect
than if this Act
had not been
passed.

The Minister of
Lands may
make
regulations.

PART X

PART X

TRANSFERS

96. When any land is intended to be transferred, or any right-of-way or other easement is intended to be created or transferred, the registered proprietor shall execute a transfer in the form of the sixth schedule hereto, which transfer shall, for the description of the land intended to be dealt with, refer to the certificate of such land, or shall give such description as may be sufficient to identify the same, and shall contain or have endorsed thereon a memorandum of all leases, mortgages, and encumbrances to which the land shall be subject, and an accurate statement of the estate or interest intended to be transferred or created.

Transfers.

96a. Every transfer shall contain a statement signed by the transferee indicating that he accepts the transfer or grant of the land, right-of-way or easement: Provided that—

Acceptance of
transfer.
S. 96a enacted
by 36, 1939,
s. 6.

- (a) the Registrar-General may accept and register a transfer without such a statement if he is satisfied that it is difficult or impossible to procure the signature of the transferee;
- (b) where the transferee is an infant or mentally defective person, the said statement shall be signed by his guardian or the committee of his estate or by a person appointed as such guardian or committee

¹ In a previous reprint of this Act pursuant to the Acts Republication Act, 1967, reference to Commissioner of Crown Lands altered to Minister of Lands pursuant to s. 7 (1) of Act No. 61 of 1967. See also s. 2 (1) of Act No. 28 of 1944.

under section 245 of this Act; and the acceptance under this section of a transfer on behalf of an infant shall not affect any right of that infant or of any person on his behalf to avoid or disclaim the transfer.

Transferee of land subject to mortgage or encumbrance to indemnify transferor.

97. In every instrument purporting to transfer land mortgaged or encumbered there shall be implied the following covenant by the transferee with the transferor, and so long as such transferee shall remain the registered proprietor, with the mortgagee or encumbrancee, that is to say—That the transferee will pay the principal, interest, and other moneys secured by such mortgage or encumbrance, after the rate and at the time or times specified therein, and will indemnify and keep harmless the transferor from and against such principal, interest, and other moneys and from and against all liability in respect of any of the covenants contained in such mortgage or encumbrance or by this Act implied on the part of the transferor.

On registration of transfer, grant or certificate to be cancelled.

98. When a transfer purporting to transfer any estate of freehold is presented for registration, the duplicate certificate shall (except as herein otherwise provided) be delivered to the Registrar-General; and the Registrar-General shall, upon registering the transfer, enter on the original certificate and also on the duplicate certificate (if delivered to him) a memorandum cancelling the same, either wholly or partially, according as the transfer purports to transfer the whole or part only of the land comprised in such certificate.

Unless whole of land transferred.

99. In case the whole of the land comprised in any certificate is transferred, such certificate need not be cancelled, but upon the transfer being registered and a memorial thereof entered on the duplicate certificate, the Registrar-General may deliver such duplicate to the transferee or other person entitled thereto.

Fresh certificate to purchaser and balance certificate to registered proprietor.
S. 100 amended by 44, 1960, s. 4.

100. The Registrar-General shall, upon cancelling any certificate, either wholly or partially, pursuant to any transfer, issue to the transferee a certificate of the land mentioned in the transfer, and every such certificate shall refer to the transfer; and the Registrar-General shall retain every such cancelled or partially cancelled certificate, and shall, whenever required by the proprietor of any portion or balance of land included in any such partially cancelled certificate, issue to such proprietor a certificate for the portion or balance of which he is proprietor: Provided that the Registrar-General may in his discretion at any time without being so required by the said proprietor, issue to the said proprietor a certificate or certificates for the said portion or balance or any part or parts thereof.

Deposit of plans by persons subdividing land.

101. (1) Any registered proprietor subdividing land for the purpose of selling the same in allotments shall deposit with the Registrar-General a map or plan, in duplicate, of such subdivision. Such map or plan shall exhibit, distinctly delineated, all roads, streets, passages, thoroughfares, squares, or reserves appropriated or set apart for public use; and also all allotments into which the said land may be divided, marked with distinct numbers or symbols; and every such map or plan shall be signed by the registered proprietor, or his attorney, and shall be accompanied by a declaration by a licensed surveyor that he has personally surveyed such land, and that such map or plan is a correct delineation of the subdivision thereof.

Subsec. (2) inserted by 1415, 1919, s. 3; amended by 37, 1967, s. 8 (a).

(2) Any registered proprietor subdividing land for the purpose of selling the same in allotments who—

(a) neglects or fails to deposit a map or plan of such subdivision as required by subsection (1) hereof; or

(b) sells or offers for sale, or conveys or transfers, such land, or any part thereof, in allotments, before such map or plan is deposited; or

(c) after such map or plan is deposited, sets apart, without the consent in writing of the Surveyor-General, or of some other person to be authorized by the Minister in that behalf, any reserve or allotment on such land other than a reserve or allotment shown on the deposited plan,

shall be liable to a penalty of not more than two hundred dollars.

(3) Any licensed land broker or other person acting as the agent of any registered proprietor who as such agent sells or offers for sale any land contrary to subdivision (b) of subsection (2) hereof shall be liable to a penalty not exceeding two hundred dollars.

Subsec. (3)
inserted by
1415, 1919, s. 3;
amended by 37,
1967, s. 8 (a).

(4) This section shall apply to any person, whether the registered proprietor or not, who subdivides any land which is subject to the provisions of this Act, for the purpose of selling the same in allotments, and to any licensed land broker or other person acting as the agent of such person.

Subsec. (4)
inserted by
1945, 1929, s. 9.

(5) This section does not apply to the division of land into units in accordance with a strata plan, within the meaning of Part XIXB of this Act, deposited by the Registrar-General in the Lands Titles Registration Office under that Part.

Subsec. (5)
inserted by 37,
1967, s. 8 (b).

102. Whenever the Court or a Judge under the powers conferred by the Local Government Act, 1934¹, or any Act or Acts amending the same, or any other Act, shall have made an order for the sale of any land under the provisions of this Act, the Registrar-General shall, upon being served with a copy of the order, mark thereon the time of such service, and shall enter a memorial thereof in the Register Book, which shall operate as a caveat against alienation other than in pursuance of such order while the same remains in force.

Memorial of
order for sale of
land for
non-payment of
rates.
S. 102 amended
by 2246, 1935,
s. 4 (2nd
Sched.).

103. Upon the production to him of a transfer of the land duly executed in pursuance of any such order, the Registrar-General shall (without requiring the production of the duplicate certificate) register such transfer, and enter on the original certificate a memorandum cancelling the same either wholly or partially, as the case may require, and shall issue to the transferee a certificate of the land comprised in such transfer, free from all encumbrances, charges, exceptions, qualifications, and conditions whatsoever other than those mentioned in the transfer.

Registration of
transfer
hereunder.

104. In any such case, if only a portion of the land comprised in any certificate has been sold, and the whole of the arrears of rates, interest, and costs appear to be satisfied by the sale of the land transferred, a statement to that effect shall be appended to the transfer, signed by the Master or other officer of the Court acting in that behalf; and thereupon the Registrar-General shall make an entry on the partially cancelled certificate in the Register Book, discharging the memorial of the order entered thereon.

Discharge of
memorial.

105. No execution issued prior to or after the passing of this Act shall bind, charge, or affect any land, but the Registrar-General shall, on being served with a copy of any writ of *fi. facias* or other writ or warrant of execution against land, or of any decree or order (other than an order for sale for non-payment of rates) affecting land issued out of or made by the Court,

Sale under writ
of *fi. fa.*, or
decree, warrant,
or order of
Court.

¹ Now Local Government Act, 1934-1975.

or any Court of Insolvency or other Court of competent jurisdiction, accompanied by a statement signed by any party interested, or by his attorney, solicitor, or agent, specifying the land sought to be affected thereby, mark upon such copy the time of such service, and shall enter a memorial of such writ, warrant, decree, or order on the original certificate, which shall operate as a caveat against alienation other than in pursuance of such writ, warrant, decree, or order, while the same remains in force.

Transfer not to be valid against purchaser until entry of writ.

106. Until such service and entry no sale or transfer under any such decree, order, writ, or warrant shall be valid as against a purchaser for valuable consideration, notwithstanding the purchaser had actual or constructive notice of such decree, order, writ or warrant.

Transfer on sale under writ, warrant, decree or order.

107. After any land so specified as aforesaid shall have been sold under any writ, warrant, decree, or order, the Registrar-General, on receiving a transfer thereof in such one of the forms of the seventh schedule hereto as shall be applicable, shall, subject to the provisions hereinafter contained, register such transfer by making an entry thereof in the Register Book, and on such entry being made the purchaser shall be deemed the transferee and registered proprietor of the land so sold; and every sale under any such writ, warrant, decree, or order shall take priority over and be effectual as against any other dealing affecting such land, entered into or transacted after the service of the writ, warrant, decree, or order, and the entry thereof on the original certificate.

Production of duplicate instrument not required on transfer under decree or order, writ, or warrant.

108. The Registrar-General may register a transfer under any decree or order, or under any writ or warrant of execution of a Court, as hereinbefore mentioned, without requiring the production of the duplicate certificate, or other instrument of title.

Satisfaction of writ, warrant, decree, or order.

109. The Registrar-General shall, upon production to him of sufficient evidence of the satisfaction of any such decree, order, writ, or warrant as aforesaid, cause an entry of such satisfaction to be made in the Register Book, and on such entry such writ, warrant, decree, or order shall be deemed to be satisfied.

Lapse of writ, decree, warrant, or order.

110. Every decree, order, writ, or warrant of execution shall cease to bind, charge, or affect any land, unless a transfer upon a sale under such writ, warrant, decree, or order shall be presented for registration within six months from the day on which the copy was served, or within such extended time as the Court shall order.

Proprietor may vest estate jointly in himself and others, without limiting any use, or executing any assignment.

111. The registered proprietor of any estate or interest in land may, by any of the forms of transfer provided by this Act, modified as may be necessary, transfer such estate or interest, or any part thereof, to the wife or husband of such registered proprietor, or to such registered proprietor, and any other person or persons as joint tenants or tenants in common, and may limit any estates by remainder or otherwise, without limiting any use, or executing any re-assignment; and upon the registration of any such transfer the estate or interest thereby dealt with or transferred shall vest in the transferee or transferees, according to the intent and meaning appearing in and expressed by such instrument.

Dealings may be registered prior to the issue of grant from the Crown.

112. Upon the production of the receipt of the Treasurer in full satisfaction of the purchase-money of any land alienated in fee from the Crown, together with a transfer, mortgage, lease, or other instrument, duly executed by the purchaser from the Crown of such land, the Registrar-General shall

endorse upon such receipt and sign and stamp with his seal such memorial as he is required to enter in the Register Book upon the registration of any dealing of a like nature with land in respect of which a certificate has been registered, and so on from time to time with respect to any other dealing before the registration of the grant of the said land, and every such instrument shall thereupon be held to be duly registered, and the Registrar-General shall file such receipt and such instrument in his office; and, upon the registration of the grant of such land, the Registrar-General shall enter thereon a memorial of such dealing, and shall endorse such instrument with the memorandum of registration as prescribed on the registration of instruments generally.

113. Every deed-poll by virtue of which any land under the provisions of this Act or of any of the Real Property Acts, shall have been, or shall hereafter be, vested in the promoters of an undertaking as provided by the Lands Clauses Consolidation Act¹, or any amendment thereof, or the Compulsory Acquisition of Land Act, 1925², or any Act substituted for or amending that Act, shall have the same effect as a transfer executed by the registered proprietor of the land comprised in such deed-poll.

Deed-poll by promoters of undertakings under Lands Clauses Acts. S. 113 amended by 2246, 1935, s. 4 (2nd Sched.).

114. The Registrar-General shall, upon any such deed-poll being lodged with him by the promoters of the undertaking, register the same upon the original certificate in like manner as transfers are registered, and shall require the registered proprietor, or any deposit, mortgagee, encumbrancee, or other person having the custody or control of the same, to deliver up the duplicate certificate for the purpose of having an entry of the deed-poll made thereon; and the Registrar-General shall, after such registration, cancel the original certificate, and when produced to him, the duplicate thereof, and shall issue a certificate of the land comprised in the deed-poll to the promoters of the undertaking, and a new certificate for the balance of the land comprised in the certificate to the proprietor thereof: Provided that all expenses of and incidental to obtaining such certificates shall be borne by the promoters of the undertaking.

Mode of registration of such deed-poll.

115. Nothing herein contained shall lessen, or, except as expressly hereinbefore provided, alter the effect of any deed-poll heretofore or hereafter executed, and no transferee from a registered proprietor under a transfer subsequent in date to such deed-poll shall be entitled to any estate or interest in the lands mentioned in such deed-poll, nor to any priority over the promoters executing the same.

This Act not to lessen effect of deed-poll heretofore or hereafter executed.

115a. (1) In this section—

“acquiring authority” means the Crown in right of the Commonwealth or the State, and includes a body corporate or other person in which or in whom land is vested by operation of law or which or who is empowered or authorized by or under any law of South Australia or of the Commonwealth to acquire or take land compulsorily.

Issue of certificate where land is vested in acquiring authority by operation of law or compulsorily acquired. S. 115a enacted by 30, 1969, s. 9.

(2) Notwithstanding anything in this Act or any other law, where—

(a) the Registrar-General is satisfied that by operation of law or without the execution of any transfer, conveyance or other instrument or document, any land has become vested, either for an estate in fee simple or for a lesser estate, in any acquiring authority;

and

¹ See Act No. 1724 of 1925, s.4 and the schedule thereto.

² The Compulsory Acquisition of Land Act, 1925, and its amendments have been repealed by the Land Acquisition Act, 1969 (now Land Acquisition Act, 1969-1972).

- (b) an appropriate application has been made in writing by the acquiring authority to the Registrar-General,

then,

- (c) if the land is under the provisions of this Act, the acquiring authority shall, without the execution of any transfer, conveyance, or other instrument or document, or the production of any duplicate certificate or other instrument or document, be registered as the proprietor of such estate in the land by the registration and issue of a new certificate of title in the name of the acquiring authority as the registered proprietor of that estate in the land;

and

- (d) if the land is not under the provisions of this Act, the land shall, without any further or other application being made or the execution of any conveyance, transfer or other instrument or document or the publication of any notice or the production or examination of any documents of title whatsoever, be brought under the provisions of this Act, and a certificate of title for such estate in the land shall be registered and issued in the name of the acquiring authority as the registered proprietor.

PART XI

PART XI

LEASES AND SURRENDERS

Lands, how
leased.

116. When any land is intended to be leased for a life or lives, or for any term of years exceeding one year, the registered proprietor shall, or for any less term may, execute a lease in the form of the eighth schedule hereto.

Contents of
lease.

117. Every such lease shall, for description of the land intended to be dealt with, refer to the certificate of the land, or shall give such other description as may be necessary to identify the land, and a right for or covenant by the lessee to purchase the land therein described may be stipulated in such lease, and shall be binding.

Leases not to
bind
non-consenting
mortgagees or
encum-
brancees.

118. No lease of mortgaged or encumbered land shall be valid and binding against any mortgagee or encumbrancee of the land unless such mortgagee or encumbrancee shall have consented in writing to such lease prior to the same being registered.

Lease for one
year need not
be registered.

119. Every registered dealing with land shall be subject to any prior unregistered lease or any agreement for lease or for letting for a term not exceeding one year to a tenant in actual possession thereunder: Provided that no right or covenant to purchase the freehold contained in any such unregistered lease or agreement, nor any right or covenant for renewal of such lease or agreement shall be valid as against any subsequent purchaser of the reversion, lessee, mortgagee, or encumbrancee, unless such lease or agreement be registered or protected by caveat.

Leases may be
surrendered by
endorsement by
lessee with
concurrence of
lessor.

120. Whenever any registered lease is intended to be surrendered, and the surrender thereof is effected otherwise than by operation of law, or as hereinafter provided on insolvency or statutory assignment, there shall be endorsed upon such lease, or on the duplicate thereof, the word "Surrendered", with the date of such surrender, and such endorsement shall be signed

by the lessee and by the lessor, and shall be attested by a witness, and the Registrar-General shall thereupon enter in the Register Book a memorial recording the date of such surrender, and shall likewise endorse upon the lease a memorandum recording the fact of such entry having been so made in the Register Book.

121. Where a lessee shall have delivered to the lessor, or his agent, the duplicate of the lease, accompanied by some writing signed by the lessee evidencing his intention to give up possession of the land comprised in such lease, the Registrar-General may, upon application by the lessor, and production of such evidence as he may require that the lessee has abandoned the occupation of the land comprised in the lease, make an entry in the Register Book of the surrender of such lease, and also endorse on the lease a memorandum recording the fact of such entry having been so made in the Register Book.

Registrar-General may enter surrender.

122. Upon every entry made in the Register Book, in pursuance of either of the two preceding sections, the estate or interest of the lessee in the land shall revert in the lessor, and production of the lease or duplicate bearing such endorsement or memorandum shall be sufficient evidence that the lease has been so surrendered.

Effect of entry of surrender.

123. No lease mortgaged or encumbered, or of land mortgaged or encumbered, prior or subsequently to the registration of such lease, shall be so surrendered without the consent thereto in writing of the mortgagee or encumbrancee, and every surrender of a lease, whether by operation of law, by act of parties, or pursuant to the provisions hereinafter contained on bankruptcy or statutory assignment, shall be subject to any registered under-lease, or to any unregistered under-lease, or agreement for under-lease or under-letting for a term not exceeding one year to a tenant in actual possession thereunder.

Surrender where lease subject to mortgage or under-lease.
S. 123 amended by 2246, 1935, s. 4 (2nd Sched.).

124. In every lease there shall be implied the following covenants by the lessee with the lessor, that is to say:—

Covenants to be implied in every lease against the lessee.

- (1) That he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property, during the continuance of the lease:
- (2) That he will keep and yield up the demised property in good and tenantable repair, reasonable wear and tear excepted.

125. In every lease there shall also be implied the following powers in the lessor, that is to say:—

Powers to be implied in lessor.

- (1) Power to distrain according to law:
- (2) That he may, by himself or his agents, at all reasonable times, enter upon the demised property, and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode in the State¹, or upon the demised property, a notice in writing of any defect, requiring him within a reasonable time, to be therein prescribed, to repair the same:
- (3) That in case the rent, or any part thereof, shall be in arrear for the space of three months, although no demand shall have been made thereof, or in case default shall be made in the fulfilment of any

¹ In a previous reprint of this Act pursuant to the Acts Republication Act, 1934, the word "State" had been substituted for "province".

covenant, whether expressed or implied in such lease, on the part of the lessee, and shall be continued for the space of three months, or in case the repairs required by such notice as aforesaid shall not have been completed within the time therein specified, it shall be lawful for the lessor to re-enter upon and take possession of the leased premises.

Registrar-General to note particulars of re-entry in Register Book.

126. The Registrar-General, upon proof to his satisfaction of re-entry by the lessor, in manner prescribed by the lease, or under the power in the third subsection of the last preceding section provided for, or of recovery of possession by a lessor, by any proceeding in law, shall note the same by entry in the Register Book, and the estate of the lessee in such land shall thereupon determine, but without releasing him from his liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar-General shall cancel such lease if delivered up to him for that purpose.

S. 127 repealed by 2246, 1935, s. 4 (2nd Sched.).

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PART XII

PART XII

MORTGAGES, ENCUMBRANCES, AND DISCHARGES

Lands, how mortgaged or encumbered.

128. Whenever any land is intended to be charged or made security in favour of any person the registered proprietor shall execute a mortgage in the form of the ninth schedule hereto; and whenever any land is intended to be charged with, or made security for, the payment of an annuity, rent-charge, or sum of money, in favour of any person, the registered proprietor shall execute an encumbrance in the form of the tenth schedule hereto.

Contents of mortgage or encumbrance. S. 129 redesignated s. 129 (1) by 46, 1963, s. 4.

129. (1) Every such instrument shall, for description of the land intended to be dealt with, refer to the certificate of the land, or shall give such other description as may be necessary to identify the same, and shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and shall also contain or have endorsed thereon a memorandum of all leases, mortgages, and encumbrances (if any) affecting such land.

Subsec. (2) inserted by 46, 1963, s. 4.

(2) Where, in any such mortgage or encumbrance—

(a) the rate of interest, the manner of repayment of the principal sum and interest or any other term that, in the opinion of the Registrar-General, relates to the substance of the transaction is determined by reference to some other document; or

(b) the mortgagor or encumbrancer is required to—

(i) build in accordance with any plans and specifications which are in existence at the date of the mortgage or encumbrance; or

(ii) do or refrain from doing any other act or thing by reference to some other document and the requirement is not, in the opinion of the Registrar-General, adequately set forth in the instrument lodged for registration,

the other document, the plans and specifications or a copy thereof shall be attached to the instrument, unless it is or they are or will be available for public inspection in some other public registry and the instrument contains a

statement to that effect specifying the registry in which it is or they are so available or will be so available within twenty-eight days of the date of execution of such instrument.

130. In every mortgage and encumbrance there shall be implied a covenant by the mortgagor or encumbrancer with the mortgagee or encumbrancee that he will repair and keep in repair all buildings and other improvements erected and made upon the mortgaged or encumbered land, and that the mortgagee or encumbrancee may, at all convenient times, until the mortgage or encumbrance be redeemed, be at liberty, with or without surveyors or others to enter into and upon such land to view and inspect the state of repair of such buildings and improvements.

Covenant to be implied in every mortgage.

130a. In every encumbrance executed after the twenty-third of December, 1893¹, unless it is therein otherwise provided, there shall be implied a covenant by the encumbrancer with the encumbrancee that he will pay the annuity, rent-charge or other sum of money thereby secured at the times and in the manner therein mentioned.

Implied covenant in encumbrance. S. 130a enacted by 569, 1893, s. 3; amended by 2246, 1935, s. 4 (2nd Sched.).

131. In case the money secured by any mortgage or encumbrance shall be due, and the mortgagee or encumbrancee shall require payment of the same, it shall be lawful for any other mortgagee or encumbrancee of the same land to tender and pay to the mortgagee or encumbrancee requiring such payment, the money due upon his security, and the mortgagee or encumbrancee making such payment shall be entitled to a transfer of the estate and interest of the mortgagee or encumbrancee requiring such payment.

Subsequent mortgagees or encumbrancees, may redeem prior mortgages, etc.

132. Every mortgage and encumbrance under this Act shall have effect as a security, but shall not operate as a transfer of the land thereby charged and in case default be made in the payment of the principal sum, interest, annuity, or rent-charge, or any part thereof thereby secured, or in the observance of any covenant therein expressed or implied, and such default be continued for the space of one month, or for such other period of time as may therein for that purpose be expressly limited the mortgagee or encumbrancee may give to the mortgagor or encumbrancer notice in writing to pay the money then due or owing on such mortgage or encumbrance, or to observe the covenants therein expressed or implied, as the case may be, and that sale will be effected if such default be continued, or may leave such notice on the mortgaged or encumbered land, or at the usual or last known place of abode in South Australia of the mortgagor or encumbrancer.

Nature of mortgage and encumbrance, and procedure in case of default.

133. If such default be continued for the further space of one month from the date of such notice, or for such other period as may in such instrument be for that purpose limited, the mortgagee or encumbrancee is hereby authorized and empowered to sell the land so mortgaged or encumbered, or any part thereof, and all the estate and interest therein of the mortgagor or encumbrancer, and either altogether or in lots, by public auction or by private contract, or by both such modes of sale, and subject to such conditions as he may think fit, and to buy in and resell the same without being liable for any loss occasioned hereby, and to make and execute all such instruments as shall be necessary for carrying the sale thereof into effect.

Power of sale.

134. All sales contracts, matters, and things authorized by the last preceding section shall be as valid and effectual as if the mortgagor or encumbrancer had made, done, or executed the same, and the receipt or

Mortgagee's receipt to discharge purchaser.

¹ Reference to the year eighteen hundred and ninety-three altered to 1893 pursuant to s. 7 (1) of the Acts Reproduction Act, 1967, as amended.

receipts in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of the land, or any portion thereof, for so much of his purchase-money as may be thereby expressed to be received; and no such purchaser shall be answerable for the loss, misapplication, or non-application, or be obliged to see to the application of the purchase-money by him paid, nor shall he be concerned to inquire as to the fact of any default, or notice having been made or given, as aforesaid.

Appropriation
of proceeds.

135. The purchase-money to arise from the sale of any such land shall be applied: First—In payment of the expenses occasioned by such sale: Secondly—In payment of the moneys which may then be due or owing to the mortgagee or encumbrancee: Thirdly—In payment of subsequent mortgages or encumbrances, if any, in the order of priority; and the surplus, if any, shall be paid to the mortgagor or encumbrancer, as the case may be.

Mode of
payment of
encumbrance.
S. 135a enacted
by 569, 1893,
s. 2; amended by
2246, 1935, s. 4
(2nd Sched.).

135a. (1) All moneys which by reason of any sale by an encumbrancee or otherwise shall become applicable to the payment of an encumbrance shall be applied firstly in payment of the moneys then actually due to the encumbrancee, and if the encumbrance shall not then be satisfied the surplus shall be paid to the Public Trustee who shall invest the same upon Government securities or upon loan to the Treasurer and shall hold such surplus and the investments and income thereof upon trust to satisfy the accruing payments of the annuity, rent-charge, or other sum of money secured by the encumbrance and subject thereto for the person entitled to such moneys after payment of the encumbrance.

(2) This section shall take effect as though inserted in this Act on the passing thereof.

Registrar-
General to give
effect to sale by
mortgagee or
encumbrancee.

136. Upon the registration of any transfer executed by a mortgagee or encumbrancee for the purpose of giving effect to any such sale as aforesaid, the estate or interest of the mortgagor or encumbrancer therein described as transferred, shall pass to and vest in the transferee, freed and discharged from all liability on account of such mortgage or encumbrance, or of any mortgage or encumbrance registered subsequent thereto, and the transferee shall be deemed the registered proprietor of the said estate or interest.

Power of
mortgagee to
enter, take
possession,
distrain, let, or
bring action for
recovery of
land.

137. The mortgagee or encumbrancee, upon default in payment of the principal sum, interest, annuity, or rent-charge, secured by any mortgage or encumbrance, or any part thereof, may enter into possession of the mortgaged or encumbered land and receive the rents and profits thereof, or may distrain upon the occupier or tenant of the land under the power hereinafter contained, or may from time to time let the said land for any term not exceeding one year, or may bring an action for recovery of the land either before or after entering into the receipt of the rents and profits, or making any distress as aforesaid, and either before or after any sale of the land shall be effected under the power of sale given or implied in his mortgage or encumbrance.

Power of
mortgagee to
distrain on
tenant or
occupier for
arrears not
exceeding the
amount of rent
due.

138. Besides his remedy against the mortgagor or encumbrancer, every mortgagee or encumbrancee shall be entitled after the principal sum, interest, annuity, or rent-charge shall have been in arrear for twenty-one days, and after seven days shall have elapsed from the date of application for the payment thereof to the occupier or tenant, to enter upon the mortgaged or encumbered land, and distrain upon the goods and chattels of such occupier or tenant for such arrears to an amount not exceeding the rent then due from such occupier or tenant to the mortgagor or encumbrancer, and to dispose of the goods and chattels so distrained upon in like manner as landlords may do in ordinary

distresses for rent, and out of the proceeds to retain the moneys distrained for, and all costs and expenses occasioned by such distress and sale; and any amount paid by the occupier or tenant to the mortgagee or encumbrancee, or realized by distress as aforesaid, shall be deemed *pro tanto* a satisfaction of the said rent.

139. Any mortgagee or encumbrancee of leasehold land, or any person claiming any such land as a purchaser or otherwise, from or under such mortgagee or encumbrancee, shall, after entering into possession of the land, or receiving the rents and profits thereof, during such possession, or receipt, and to the extent of any rents and profits which may be received by him, become and be subject and liable to the lessor of the land, or the person for the time being entitled to the lessor's estate or interest therein, or entitled to receive the rent reserved to such lessor to the same extent as the lessee was subject and liable prior to such mortgagee, encumbrancee, or other person entering into the possession of the land, or the rents or profits thereof.

Duty of mortgagee of leasehold entering into possession of rent and profits to account.

140. When default has been made for six months in the payment of the principal or interest secured by any mortgage, the mortgagee may make application, in writing, to the Registrar-General for an order for foreclosure.

Application by mortgagee to Registrar-General for foreclosure.

Such application shall state that such default has been made as aforesaid, and that the land mortgaged has been offered for sale at public auction by a licensed auctioneer, after notice given to the mortgagor, as in this Act or by the mortgage provided; that the amount of the highest bid at such sale was not sufficient to satisfy the money secured by such mortgage, together with the expenses occasioned by the attempted sale; and that notice in writing of the intention of the mortgagee to make such application has been served on the mortgagor, by being given to him or by being left on the mortgaged land, or by the same being sent through the post office by a registered letter directed to him at his address appearing in the Register Book; and also that a like notice of such intention has been served on every person appearing by the Register Book to have any estate or interest in the mortgaged land, subsequently to such mortgage, by being given to him or sent through the post office by a registered letter directed to him at his address appearing in the Register Book; and such application shall be accompanied by a certificate of the licensed auctioneer by whom such land was put up for sale, and such other proof of the matters stated by the applicant as the Registrar-General may require; and the statements made in such application shall be verified by declaration.

141. The Registrar-General shall cause notice to be published for four consecutive weeks in the *Government Gazette*, offering the land for sale; and shall in such case limit and appoint a time, not less than one month from the date of the first publication in such *Gazette*, upon or after which the Registrar-General may issue to the applicant an order for foreclosure, unless in the interval a sufficient amount has been realized by the sale of the land to satisfy the principal and interest moneys due, and all expenses occasioned by the attempted sale and by the proceedings for foreclosure.

Procedure on foreclosure application.

142. Every such order for foreclosure shall be under the hand of the Registrar-General, and be entered in the Register Book, and shall when so entered have the effect of vesting in the mortgagee all the estate and interest of the mortgagor in the land mentioned in such order, free from all right and equity of redemption on the part of the mortgagor, or of any person claiming through or under him subsequently to the mortgage so foreclosed, and upon such entry the mortgagee shall be deemed the registered proprietor of the said estate and interest.

Effect of order for foreclosure.

Provision for case where mortgagee or encumbrancee refuses to join in proceedings on default.
S. 142a enacted by 36, 1939, s. 5.

142a. (1) Where two or more persons are registered as mortgagees or encumbrancees under the same mortgage or encumbrance, and such default has been made in payment of any money due under the mortgage or encumbrance or in the performance of any covenant in the said mortgage or encumbrance expressed or implied as entitles the mortgagees or encumbrancees to exercise any of their rights or remedies under this Act or under the mortgage or encumbrance, and any such mortgagee or encumbrancee fails or refuses to join in giving any notice, making any application or doing any other act or thing for the purpose of enforcing any of the said rights or remedies, the Court may, on the application by originating summons of any other mortgagee or encumbrancee and on any terms and conditions which it thinks just—

- (a) appoint any one of such mortgagees or encumbrancees or any other person to exercise on behalf of the mortgagees or encumbrancees such of the said rights or remedies as the Court thinks proper;
- (b) give any directions as to the mode of exercising the said rights or remedies and as to any other matters incidental thereto.

(2) Any document executed by any person so appointed shall, for the purposes of this Act, but subject to the terms of the order, have the like effect as if executed by the mortgagees or encumbrancees.

Discharge of mortgages and encumbrances.

143. Upon the production of any duplicate mortgage or encumbrance, together with a receipt or memorandum, signed by the mortgagee or encumbrancee, or by one or more of the mortgagees or encumbrancees where the mortgage or encumbrance shall be held on a joint account, and attested by a witness, discharging the land, or any part thereof, from the whole or part of the moneys or annuity secured, the Registrar-General shall make an entry in the Register Book and on the mortgage or encumbrance, noting that such mortgage or encumbrance is discharged wholly or partially, or that part of the land is wholly or partially discharged as aforesaid, as the case may require, and upon such entry being so made in the Register Book, the land, or the said part thereof, shall cease to be subject to or liable for the said moneys, or annuity, or the part thereof noted in such entry as discharged, as the case may be; and the Registrar-General shall make a similar entry on the duplicate certificate, or other instrument of title when produced to him for that purpose.

Discharge subsequent to partial discharge.

144. After a mortgage or encumbrance shall have been partially discharged pursuant to a receipt or memorandum endorsed thereon, any subsequent partial discharge shall be by a separate instrument.

Entry of satisfaction of annuity.

145. Upon the proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any encumbrance, the annuity or sum of money thereby secured shall cease to be payable, and that all arrears of the said annuity or money have been paid, satisfied, or discharged, the Registrar-General shall make an entry in the Register Book, and on the encumbrance, noting that such annuity or sum of money is satisfied and discharged, and shall cancel the encumbrance; and upon such entry being made in the Register Book, the land comprised in the encumbrance shall cease to be subject to or liable for such annuity or sum of money; and the Registrar-General shall make a similar entry on the duplicate certificate, or other instrument of title of the encumbered land, and also on the duplicate encumbrance, when respectively produced to him for that purpose.

146. In case any mortgagee shall be absent from the State, and there be no person in the State authorized to give a receipt to the mortgagor for the mortgage money at or after the date appointed for the redemption of the mortgage, it shall be lawful for the Treasurer to receive such mortgage money, with all arrears of interest then due thereon, in trust for the mortgagee or other person entitled thereto, and thereupon the interest upon such mortgage shall cease to run or accrue.

Mortgage money may be paid to Treasurer if mortgagee absent from the State.
S. 146 amended by 2246, 1935, s. 4 (2nd Sched.).

147. The Registrar-General shall, upon production of the receipt of the Treasurer for the amount of the said mortgage money and interest, make an entry in the Register Book, and on the mortgage in his office, discharging the mortgage, and stating the day and hour on which such entry is made, and such entry shall be a valid discharge of such mortgage, and shall have the same effect as the registration of a discharge signed by the mortgagee; and the Registrar-General shall make a similar endorsement on the duplicate certificate, or other instrument of title, and also on the duplicate mortgage whenever the same shall be respectively produced to him for that purpose.

And the mortgagee shall in such case be discharged.

148. Where any mortgagor shall deliver to the Registrar-General the duplicate of his mortgage, and shall prove to the satisfaction of the Registrar-General that all principal money and interest due in respect of the mortgage has been paid to the person entitled to receive the same, and that such person is dead, or absent from the State, the Registrar-General may, notwithstanding the duplicate mortgage shall not contain any discharge of the mortgage debt, make an entry in the Register Book and on the duplicate mortgage, discharging the mortgage, which entry shall have the same effect as the registration of a discharge of the mortgage signed by the mortgagee.

Registrar-General may enter discharge of mortgage in certain cases.
S. 148 amended by 2246, 1935, s. 4 (2nd Sched.).

148a. (1) If the Registrar-General is satisfied that the mortgagor of any land is in possession thereof and that the rights of the mortgagee to bring an action for the money secured by the mortgage are barred by the Limitation of Actions Act, 1936¹, the Registrar-General, with the concurrence of the Solicitor of his Department, may make an entry in the Register Book and on the mortgage noting that the rights of the mortgagee are barred by Statute, and shall make a similar entry on the duplicate certificate or other instrument of title and on the duplicate mortgage if produced to him for any purpose.

Entry in Register Book where rights of mortgagee barred by Statute.
S. 148a enacted by 39, 1945, s. 5.

(2) Upon the making of an entry in the Register Book pursuant to this section the mortgage shall be deemed to be discharged.

(3) If the duplicate certificate or instrument of title is not produced to the Registrar-General at or before the time when he makes an entry pursuant to this section, that certificate or instrument shall be deemed to be lost within the meaning of section 79 of this Act.

149. An equitable mortgage of land may be created by deposit of the certificate or other instrument of title, and such deposit shall have the same effect as a deposit by way of equitable mortgage of the title deeds of land not under the provisions of this Act.

Equitable mortgage may be created.

¹ Now Limitation of Actions Act, 1936-1975.

PART XII

Transfer of mortgage, lease and encumbrance. S. 150 amended by 2246, 1935, s. 4 (2nd Sched.). (See also 569, 1893, s. 4, repealed by 2246, 1935, s. 4 (2nd Sched.)).

150. A registered mortgage, lease, or encumbrance may be transferred to any person by a transfer as aforesaid, or by an instrument in the form of the eleventh schedule hereto, which instrument may be endorsed upon the duplicate mortgage, lease, or encumbrance, but only one such transfer shall be made by endorsement:

Provided that every transfer of a Crown lease shall be made by a separate instrument and not by endorsement.

Effect of such transfer.

151. Upon such transfer or other instrument being registered, the estate or interest of the transferor, as set forth in the instrument transferred, with all rights, powers, and privileges thereto belonging or appertaining, including the right to sue upon and recover in his own name any debt, sum of money, annuity, or damages, under such transferred instrument, shall pass to the transferee, and such transferee shall, while he remains the registered proprietor of such estate or interest, be subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in the transferred instrument originally as mortgagee, lessee, or encumbrancee.

Covenants implied in transfer of lease.

152. In every transfer of a lease there shall be implied a covenant by the transferee with the transferor, thenceforth to pay the rent by the lease reserved, and to perform and observe all the covenants in the lease contained or by this Act declared to be implied therein on the part of the lessee to be performed and observed, and to indemnify and keep harmless the transferor against all actions, claims, and expenses in respect of the non-payment of such rent, or the breach or non-observance of such covenants or any of them.

PART XIII

PART XIII

EXTENSIONS

Extension of mortgages, etc.

153. Any mortgage, encumbrance, or lease may be extended at any time by endorsing thereon the word "extended", which endorsement shall be signed by the respective parties to such mortgage, encumbrance, or lease, or their transferees, and attested.

Effect and registration of extension.

154. Such endorsement shall, when registered, have the effect of an extension for one year of the term limited by the mortgage, encumbrance, or lease, or by any previous extension, subject to the same terms and conditions, but words may be added extending the term for any other period and varying or altering the said terms and conditions; and every such extension shall have the same effect as if expressed in the original instrument, and the Registrar-General shall, upon production thereof to him, enter a memorial of such extension on the original certificate and on the original instrument filed in his office: Provided that no extension of a lease of land mortgaged or encumbered shall be binding upon the mortgagee or encumbrancee unless he shall have consented thereto in writing: Provided also that no extension of any mortgage of land subject to subsequent mortgage or mortgages shall be binding upon the other mortgagee or mortgagees, unless such other mortgagee or mortgagees shall have consented thereto in writing.

PART XIV

PART XIV

POWERS OF ATTORNEY

155. Any person may before, as well as after, becoming the registered proprietor of any land under the provisions of this Act, by power of attorney, authorize any person to act for him, in making applications to bring any land under the provisions of this Act, and to execute all or any instruments that may be necessary for giving effect to any dealing with any land, and for that purpose may, if he think fit, use the form in the thirteenth schedule hereto.

Power of attorney.

156. A duplicate or an attested copy of such power of attorney shall be deposited with the Registrar-General, who shall compare the same with the original, and shall file such duplicate or attested copy in his office, and note thereon the date and hour of its deposit with him, and shall, whenever registering any dealing under such power of attorney, enter on the original certificate of the land dealt with a note of the deposit of such duplicate or copy.

Deposit of duplicate or attested copy.

157. The grantor of any such power of attorney may revoke the same by executing an instrument in the form of the fourteenth schedule hereto; and the Registrar-General shall, except in any case where a registration abstract is outstanding, enter a note of such revocation, when produced to him, and the day and hour of its production, on the duplicate or copy of the power of attorney filed in his office; and from and after the date of such entry the Registrar-General shall not give effect to any application or other instrument executed pursuant to such power of attorney.

Revocation of power of attorney.

158. All powers of attorney heretofore given containing powers to make and execute any of the applications and instruments above enumerated, shall be as valid and may be acted upon and revoked in the same manner as if given under this Act.

Power of attorney heretofore given.

159. The Registrar-General shall, upon proof to his satisfaction of the death of any grantor of a power of attorney, make an entry of such death upon the duplicate or copy of the power of attorney filed in his office.

Entry of death of grantor.

160. All instruments executed under any power of attorney before the entry of the revocation thereof, or of the death of the grantor as hereinbefore provided, shall be valid notwithstanding such revocation or death.

Instruments executed before entry of revocation or death to be valid.

PART XV

PART XV

TRUSTS AND TRANSMISSIONS

161. Whenever any grant from the Crown shall contain the particulars of any trust for public purposes, every certificate issued in respect of the same land, or any part thereof, while such trusts subsist and affect such land, shall contain the like particulars of trust as were contained in the original grant.

Trusts contained in grant from the Crown to be inserted in certificate as in original grant.

162. The Registrar-General shall not, except as aforesaid, make any entry in the Register Book of the particulars of any trust, nor shall any instrument be registered under this Act, which declares or contains trusts relating to land under the provisions of this Act, but any such instrument, or a duplicate or attested copy thereof, may be deposited with the Registrar-General for safe custody and reference, and such instrument may be deposited in the General

No particulars of trust to be entered in Register Book but trust instrument may be deposited.

Registry Office pursuant to the Registration of Deeds Act, 1935¹, or any other Act relating to the deposits of deeds in the Registry Office, and may include as well land under the provisions of this Act, as land which is not under the provisions hereof: Provided that nothing herein contained shall prevent the registration of any instrument which would otherwise be valid in which a reference may be made to the instrument so deposited as aforesaid; nor shall such reference operate as notice of the particulars of the trusts declared or contained in the deposited instrument, but in the absence of caveat the registered proprietor shall, for the purpose of sale, mortgage, or contract for valuable consideration be deemed to be the absolute proprietor of such land freed from the said trusts.

Insertion of the words "no survivorship" in instruments.

163. Upon the transfer of any estate or interest in land, to two or more persons, as joint proprietors, intended to be held by them as trustees, it shall be lawful for the transferor or transferees to insert in the transfer the words "no survivorship"; and the Registrar-General shall in such case include such words in the memorial of such instrument to be entered by him in the Register Book; and shall also enter the same words in some conspicuous place upon any certificate issued to such joint proprietors, pursuant to such transfer.

Trustees may authorize insertion of those words.

164. Any two or more persons registered as joint proprietors of any estate or interest in land held by them as trustees, may, by writing under their hands, authorize the Registrar-General to enter the words "no survivorship" upon the original certificate, or other instrument of title, evidencing their title to such estate or interest, in the Register Book, or filed in his office, and also upon the duplicate of such instrument.

Effect of such insertions.

165. After any such entry as in the last two sections mentioned has been made and signed by the Registrar-General in the Register Book, it shall not be lawful for any less number of joint proprietors than the number then registered to transfer or otherwise deal with the said estate, or interest, without obtaining an order of the Court: Provided that, if it be intended not to apply the said restriction until the trustees registered as such proprietors be reduced below a certain specified number, words indicative of such intention may be entered in like manner, and in that case the power of disposition by survivors shall continue until the number be so reduced.

Court may direct notice to be published before order is made.

166. The Court may, before making any such order as aforesaid, direct notice of the intention to apply for such order to be given, either by public advertisement or otherwise, and may appoint a period within which any person interested may show cause why such order should not be made.

Court may protect persons interested.

167. The Court may in such order give directions for the transfer of such estate, or interest, to any new proprietor or proprietors, solely or jointly, with, or in the place of, any existing proprietor or proprietors, or may make such order in the premises as may be just for the protection of the persons beneficially interested in such estate, or interest, or in the proceeds thereof; and upon any such order being deposited with the Registrar-General, he shall make such entries and perform such acts as in accordance with the provisions of this Act may be necessary for the purpose of giving effect to such order.

Survivors may nevertheless perform duties or transfer to new trustees.

168. Nothing hereinbefore contained shall prevent the surviving or remaining trustee or trustees from exercising all the powers and duties of the trust other than in regard to transfers and dealings under this Act, nor from so transferring the land as to give effect to any valid appointment of a new trustee

¹ Now Registration of Deeds Act, 1935-1973. See also footnote to s. 162 of the Real Property Act in the Reprint of 1937 (Vol. 7).

or new trustees. And so far as shall be necessary to ascertain the sufficiency of any such appointment, it shall be lawful for the Registrar-General to refer to the provisions of any instrument relating to the trust, notwithstanding the same be not registered.

169. (1) Any person (in this section called "the disclaimant"), whether a trustee or not, who claims that he has been registered, without his consent, as proprietor of any estate or interest in land, may execute and lodge with the Registrar-General a deed or other instrument of disclaimer of that estate or interest.

Disclaimers.
S. 169
substituted by
36, 1939, s. 7.

(2) If the disclaimant has been registered as proprietor of any estate or interest, the Registrar-General shall give notice by post of the lodging of the instrument of disclaimer, to all other persons whose names appear on the Register Book, and who, in the Registrar-General's opinion, may be affected by the disclaimer.

In the notice the Registrar-General shall specify a day, not earlier than twenty-one days after the day on which the notice would be delivered to the addressee in the ordinary course of post, on or before which the person to whom it is given may lodge with the Registrar-General a notice of objection to the registration of the instrument of disclaimer.

(3) If no notice of objection is so lodged and the Registrar-General is satisfied that the disclaimant was registered without his consent, the Registrar-General shall give effect to the disclaimer by making such entries, alterations and corrections in the Register Book and on any certificate or other instrument of title as are necessary for that purpose, and by cancelling any certificate or other instrument of title which it is necessary to cancel.

(4) If no notice of objection is lodged but the Registrar-General is not satisfied that the disclaimant was registered without his consent—

(a) the Registrar-General shall not take any steps to give effect to the instrument of disclaimer except pursuant to an order of the Supreme Court obtained as hereinafter provided:

(b) the Registrar-General shall give notice by post to the disclaimant of the fact that he does not intend to give effect to the instrument of disclaimer except pursuant to such an order.

(5) If any notice of objection is lodged on or before the day specified by the Registrar-General—

(a) the Registrar-General shall not take any steps to give effect to the instrument of disclaimer except pursuant to an order of the Supreme Court obtained as hereinafter provided:

(b) the Registrar-General shall give notice by post to the disclaimant of the fact that an objection to the disclaimer has been lodged.

(6) A disclaimant who has received a notice under paragraph (b) of subsection (4) of this section, or a notice of objection under subsection (5) of this section, may apply to the Supreme Court by originating summons for an order that the Registrar-General take such action as is necessary to give effect to the instrument of disclaimer and upon such an application the Court may make any order which it deems just.

(7) Nothing done under this section shall release any person from any trust or other liability, if he has acted in the trust or by his own act incurred the liability.

Transmission by bankruptcy or statutory assignment.
S. 170 amended by 2246, 1935, s. 4 (2nd Sched.).

170. Upon the registered proprietor of any estate or interest in land becoming bankrupt or making a statutory assignment, the Official Receiver (if no trustee has been appointed) or the trustee of such bankrupt or assignor shall be entitled to be registered as proprietor of such estate or interest.

Transmission to be entered in Register Book.
S. 171 amended by 2246, 1935, s. 4 (2nd Sched.).

171. The Registrar-General shall in any such case, upon being furnished with evidence of the bankruptcy and the non-appointment of a trustee, or of the appointment of or assignment to the trustee, accompanied by an application in writing, under the hand of the Official Receiver or trustee, to be registered as proprietor of the estate or interest to be therein specified and described, shall enter in the Register Book a memorandum notifying the bankruptcy or the appointment of or assignment to the trustee, as the case may require, and upon such entry being made the Official Receiver or trustee shall be the registered proprietor of the estate or interest of the bankrupt or assignor in such land.

Proceedings in case assignment declared void.
S. 172 amended by 2246, 1935, s. 4 (2nd Sched.).

172. If any such statutory assignment shall afterwards be declared fraudulent and void by any Court having jurisdiction in bankruptcy, and the assignor shall thereupon become bankrupt, the Registrar-General shall, upon being furnished with evidence thereof, and of the appointment or non-appointment of a trustee under such bankruptcy, enter in the Register Book a memorandum notifying the same, and thereupon the Official Receiver, or the trustee under such bankruptcy, as the case may be, shall be the registered proprietor of the estate and interest of the bankrupt and of the trustee under such assignment in the land.

Bankruptcy or assignment of lessee.
S. 173 amended by 2246, 1935, s. 4 (2nd Sched.).

173. In any case where the registered proprietor of a lease has heretofore, or shall hereafter, become bankrupt, or has heretofore made or shall hereafter make, a statutory assignment—

If lease not subject to mortgage or encumbrance.

I. If such lease be not mortgaged or encumbered under the provisions of this Act, the Registrar-General shall, upon the application in writing of the lessor accompanied by a statement in writing, signed by the Official Receiver or the trustee under such bankruptcy or assignment, certifying his refusal to accept such lease, enter in the Register Book a note of such refusal, and such entry shall operate as a surrender of such lease:

Mortgagee or encumbrancee of the leasehold interest of a bankrupt or assignor may be entered as transferee of a lease.

II. If such lease be mortgaged or encumbered, the Registrar-General shall, upon the application in writing of any mortgagee or encumbrancee, accompanied by a statement in writing signed by the Official Receiver, or the trustee under such bankruptcy or assignment, certifying his refusal to accept such lease, or by proof that the Official Receiver or trustee has neglected or refused to certify such refusal or to become registered as proprietor of such lease within one month after being thereunto required by notice in writing given to him by the mortgagee or encumbrancee, enter in the Register Book a note of such refusal or neglect, and such entry shall operate as a foreclosure, and the estate or interest of the bankrupt or assignor in such lease shall thereupon vest in such mortgagee or encumbrancee, free from all other charges subsequent to his mortgage or encumbrance, and such mortgagee or encumbrancee shall thereupon be deemed to be the registered proprietor of such estate or interest, and shall, while he remains such registered proprietor, be subject to and liable for the same requirements and liabilities to which he would have been subject and liable if named in the lease originally as lessee:

III. No such entry shall be made unless it be proved to the satisfaction of the Registrar-General that the applicant mortgagee, or encumbrancee, has given fourteen days' notice in writing of his intended application to every subsequent mortgagee or encumbrancee of the lease, or has obtained his written consent; and any such subsequent mortgagee or encumbrancee shall be entitled to pay to the applicant mortgagee or encumbrancee the amount due to him under his mortgage or encumbrance, with costs, at any time before foreclosure, and shall thereupon be entitled to a transfer from him of such mortgage or encumbrance:

Protection to subsequent mortgagees and encumbrancees.

IV. If the Official Receiver or the trustee under the bankruptcy or assignment shall certify his refusal to accept the lease, or shall neglect or refuse to become registered as proprietor of the lease, within one month after having been thereunto required by notice in writing given to him by the lessor, and the mortgagees or encumbrancees (if any) of the lease shall neglect or refuse to have an entry operating as a foreclosure made in the Register Book under the provision in that behalf hereinbefore contained within the period of two months after having been thereunto required by notice in writing given to them by the lessor, the Registrar-General shall, upon the application in writing of the lessor, and, upon proof of such certificate or such neglect or refusal as aforesaid, enter in the Register Book a note of such neglect or refusal, and every such entry shall operate as a surrender of such lease.

Where Official Receiver, trustee, and mortgagee neglect to become proprietors.

174. Under the preceding provisions as regards a lessee becoming bankrupt or making a statutory assignment, no entry of surrender or foreclosure respectively shall prejudice any cause of action in respect of any breach or non-observance of any covenants in such lease, encumbrance, or mortgage respectively contained or implied which shall have accrued previously to such lessee becoming bankrupt or making a statutory assignment.

Entry of surrender or foreclosure not to prejudice cause of action. S. 174 amended by 2246, 1935, s. 4 (2nd Sched.).

175. On the death of the registered proprietor of any estate or interest in land, his estate or interest shall be transmitted to his executor or administrator, or to the Public Trustee in any case where the Court shall make an order authorizing the Public Trustee to administer the estate of the deceased registered proprietor.

Transmission of estate of deceased persons.

176. The executor, administrator or Public Trustee shall, before dealing with such estate or interest, make application in writing to the Registrar-General to be registered as proprietor, and shall produce to the Registrar-General the duplicate certificate, or other instrument of title, and the probate or letters of administration, or the order of the Court authorizing the Public Trustee to administer the estate of the deceased registered proprietor, or an office copy of the probate, letters of administration, or order, as the case may be.

Application to be made in such case.

177. The Registrar-General shall thereupon enter in the Register Book, and on such duplicate, a memorial of the date of the will and of the probate, letters of administration, or order of the Court, as aforesaid, the date and hour of the production of the same to him, and the date of the death of such registered proprietor, when the same can be ascertained, with such other particulars as he may deem necessary.

Particulars of entry to be made in such case by the Registrar-General.

178. Upon such entry being made in the Register Book, the executor, administrator, or Public Trustee, as the case may be, shall be the registered

Effect of such entry.

proprietor of such estate or interest, and his title shall relate back to and take effect from the date of the death of the deceased registered proprietor.

Where two or more executors or administrators, all to concur.

179. Where probate or letters of administration shall be granted to more persons than one, all of them for the time being shall concur in every instrument relating to the real estate of the deceased registered proprietor.

Persons registered in place of deceased, bankrupt, or assigning proprietor, to be proprietor of land for purpose of dealing.
S. 180 amended by 2246, 1935, s. 4 (2nd Sched.).

180. Any person registered in place of a deceased registered proprietor, or as Official Receiver or as trustee of a registered proprietor becoming bankrupt or making a statutory assignment, shall hold the land in respect of which he is so registered upon the trusts, and for the purposes for which the same is applicable by law; but shall, for the purpose of any dealing with such land, be deemed to be the absolute proprietor thereof.

Proceedings when executor, etc. refuse to transfer.

181. Whenever an executor, or administrator, or the Public Trustee, is registered as proprietor of any land, and shall refuse, or, after tender of a transfer, unnecessarily delay to transfer such land to the devisee, next of kin, heir-at-law, or other person entitled thereto, the person claiming to be entitled to the land may, by motion or summons before the Court, apply for an order that the executor, administrator, or Public Trustee shall transfer the said land to him.

Court may order transfer to person entitled.

182. The Court may either refuse such application, with or without costs, to be paid by the applicant, or may make an order for the transfer, and may direct the transferor personally to pay all the costs of such application and any damages the person aggrieved may have sustained, or may order such costs to be paid out of the estate of the deceased registered proprietor, or in such other manner as the Court may think proper.

Court may decide question of title, etc.

183. The Court may, on any such application, decide on questions relating to the title of any person party to the application or proceeding, and generally may decide any question that it may be necessary or expedient to decide for the purpose of ordering the land to be transferred, or may direct an action to be brought or an issue to be tried in which the rights of the parties may be decided, or any question of law settled.

Registrar-General to carry out order of Court vesting trust estate.
S. 184 amended by 2246, 1935, s. 4 (2nd Sched.); 30, 1969, s. 10.

184. Whenever any registered proprietor of land under the provisions of this Act shall appear to the Court to be a trustee of such land, and any order shall be made by the Court vesting such land in any other person, the Registrar-General shall, on being served with an office copy of such order, enter in the Register Book and on the duplicate certificate, or other instrument of title to the land, the date of the order, the date and hour of its production to him, and the name, residence, and description of the person in whom the order shall purport to vest the said land; and, upon such entry in the Register Book, such person shall be the registered proprietor of the land; and unless and until such entry in the Register Book shall be made, the order shall have no effect or operation in transferring or otherwise vesting the land.

Action may be brought by person claiming beneficial interest in name of trustee.

185. Every trustee who shall be registered as proprietor of any land, shall, on being indemnified, be bound to allow his name to be used by any beneficiary, or person claiming an estate or interest in the land, as plaintiff or defendant in any action for recovery of possession of the land or any part thereof. And, in case there shall be any dispute as to the sufficiency of any indemnity, the same shall be decided by the Master of the Court.

186. No person contracting or dealing with, or taking or proposing to take a transfer or other instrument from the registered proprietor of any estate or interest in land shall be required, or in any manner concerned, to inquire into or ascertain the circumstances under, or the consideration for, which such registered proprietor or any previous registered proprietor of such estate or interest is or was registered, or to see to the application of the purchase-money, nor be affected by notice direct or constructive of any trust or unregistered interest, any law or equity to the contrary notwithstanding.

Purchases from registered proprietor not to be affected by notice.

187. The last preceding section shall not protect any person who has acted fraudulently or been a party to fraud, but the contracting, or dealing, or taking, or proposing to take a transfer or other instrument as aforesaid, with actual knowledge of any trust, charge, or unregistered instrument, shall not of itself be imputed as fraud.

Except in case of fraud.

188. Upon the death of any person registered together with any other person as joint proprietor of any estate or interest in land, or when the life estate in respect of which any certificate has been issued has determined, and the registered estate next in remainder or reversion has become vested in possession, or the person to whom such certificate for a life estate has been issued has become entitled to the land for an estate in fee-simple in possession, the Registrar-General shall, upon the application of the person entitled, and upon proof to his satisfaction of any such occurrence as aforesaid, make an entry thereof in the Register Book, and thereupon such person shall be the registered proprietor of the estate or interest to which he is entitled, as if the same had been transferred to him.

Registration of survivor of joint proprietors, and of remainderman entitled to estate in possession.

189. The Registrar-General, upon the production of an official certificate, or other sufficient proof of the marriage of a female registered proprietor, shall enter on the Register Book and also upon the duplicate certificate or other instrument evidencing her title, when produced to him for that purpose, the name and description of her husband, the date and place of the marriage, and the time of making such entry.

Marriage of female proprietor to be entered in the Register Book and upon duplicate instrument of title.

190. The husband of any female registered proprietor shall, unless she holds the land estate or interest for her separate use, or the same is her separate property, be entitled to be registered as co-proprietor in the right of his wife; and the Registrar-General shall, upon application to that effect, and upon production of the duplicate certificate, or other instrument of title, comply with such application; and upon the husband being so registered, he shall be seized of and entitled to the same estate and interest in the said land as he would have been had such lands not been under the provisions of this Act, and until such registration the wife shall, for the purpose of this Act, be deemed to be the sole proprietor for her separate use.

Husband may be registered as co-proprietor.

PART XVI

PART XVI

CAVEATS

191. Any settlor of land or beneficiary claiming under a will or settlement, or any person claiming to be interested at law or in equity, whether under an agreement, or under an unregistered instrument, or otherwise howsoever in any land, may lodge a caveat with the Registrar-General forbidding the registration of any dealing with such land, either absolutely or unless such dealing shall be

Caveats.

expressed to be subject to the claim of the caveator, or to any conditions conformable to law expressed therein:

Form of caveat.
Para. I amended
by 30, 1969,
s. 11 (a).

- I. A caveat may be in the form or to the effect of the twelfth schedule hereto, and shall be under the hand and verified by the declaration of the caveator or his agent, and shall contain an address within South Australia to which notices may be sent or at which proceedings may be served:

Registrar-General to make memorandum of receipt.

- II. Upon the receipt of a caveat the Registrar-General shall make a memorandum thereon of the date and hour of the receipt thereof, and shall enter a memorandum thereof in the Register Book, and shall forthwith send a notice of such caveat through the post office to the person against whose title such caveat shall have been lodged, directed to his address appearing in the Register Book:

Not to register dealings contrary to caveat.
Para. III amended by 1806, 1927, s. 3.

- III. So long as any caveat shall remain in force the Registrar-General shall not, contrary to the requirements thereof, register any dealing with the land in respect of which such caveat shall have been lodged: Provided that notwithstanding the receipt of a caveat the Registrar-General shall, subject to the other provisions of this Act, proceed with and complete the registration of any instrument affecting the said land, which instrument is produced for registration before the receipt of the caveat by the said Registrar-General:

Persons interested may summon caveator.

- IV. The registered proprietor or any other person claiming estate or interest in the land may, by summons, call upon any caveator, including the Registrar-General, to attend before the Court to show cause why the caveat should not be removed; and the Court may, upon proof that the caveator has been summoned, and upon such evidence as the Court may require, make such order in the premises, either *ex parte* or otherwise, as shall seem just:

Caveatee may apply to have caveat removed.
Para. V amended by 30, 1969, s. 11 (b).

- V. The caveatee may, except when the caveat is lodged by a settlor, or by a beneficiary under a will or settlement, or by the Registrar-General under Part XIX¹ of this Act, make application in writing to the Registrar-General to remove the caveat, and shall in such application give an address in South Australia to which notices or proceedings relating to the caveat may be sent, and the Registrar-General shall thereupon give twenty-one days' notice in writing to the caveator, requiring that the caveat be withdrawn:

Mode of removing or discharging caveat.

- VI. The Registrar-General shall, after the lapse of twenty-one days from the posting of such notice to the address mentioned in the caveat, or of such extended time as may be ordered by the Court, remove the caveat from the Register Book by entering therein a memorandum that the same is discharged:

Caveator may apply to Court for order to extend time.

- VII. The caveator may apply to the Court, by motion or summons, for an order to extend the time beyond the twenty-one days mentioned in such notice, and notice of such motion or such summons may be served at the address given in the application of the caveatee; and the Court may, upon proof of the service of such notice of motion or summons, and upon such evidence as the Court may require, make such order in the premises, either *ex parte* or otherwise, as shall seem just:

¹ In a previous reprint of this Act pursuant to the Acts Republication Act, 1967, the erroneous designation of Part XX had been corrected to read as Part XIX pursuant to s. 7 (1) of Act No. 61 of 1967.

- VIII. Any caveator may, by notice in writing to the Registrar-General, withdraw his caveat at any time; but the Court may, notwithstanding such withdrawal, order payment by the caveator to the caveatee or other person interested of any costs incurred by the caveatee prior to the receipt by him of notice in writing of the withdrawal of the caveat:
- IX. An entry shall be made by the Registrar-General in the Register Book of any order made by the Court relating to any caveat, or of the withdrawal, lapse, or removal of any caveat:
- X. Any caveator other than the Registrar-General who shall have lodged or refused or neglected to withdraw any caveat wrongfully and without reasonable cause, shall be liable to make compensation to any person who may have sustained damage thereby, and such compensation may be recovered by action: Provided that, if proceedings shall have been taken in the Court by the caveatee or other person interested, the amount of such compensation may be assessed by the Court acting in the same proceedings; or the Court may direct an action to be brought to ascertain and recover such amount:
- XI. It shall not be lawful for any caveator other than the Registrar-General, or for anyone acting on behalf of such caveator, to lodge a further caveat relating to the same matter without the leave of the Court:
- XII. Where any caveat lodged by the Registrar-General shall be removed by the Court, such Court may order the costs sustained by the person at whose instance such caveat was removed to be paid out of the estate on behalf of which such caveat was entered.

May withdraw caveat:
But Court may order payment of costs.

Entry to be made.

Caveator, except Registrar-General, liable to make compensation.

Not to lodge further caveat without leave.

Court may order costs if caveat by Registrar-General is removed by Court.

PART XVII

PART XVII

EJECTMENT

192. Any of the following persons, in the following sections called "the claimant", may cause any person in possession of land under the provisions of this Act to be summoned to appear before a Judge in chambers to show cause why the person summoned should not give up possession to the claimant—

Summons to give up possession.

- I. The registered proprietor of a freehold estate in possession:
- II. Any registered mortgagee or encumbrancee where the person in possession is a mortgagor or encumbrancer in default, or a person claiming under such mortgagor or encumbrancer:
- III. Any lessor with power to re-enter where the rent is in arrear for three months, whether there be or be not sufficient distress found on the premises to countervail such rent, and whether or not any previous demand shall have been made for the rent:
- IV. Any lessor where a legal notice to quit has been given, or the lease become forfeited, or the term of the lease has expired.

193. The summons shall contain a description of the land, and shall require the person summoned to appear at the Judge's chambers on a day not earlier than sixteen days after the service of the summons, and thereupon, or so soon thereafter as a Judge shall be in attendance, the same shall come on

Summons to contain description of land.

PART XVII

to be heard. The summons shall be served in the same manner as a writ of summons in an action for the recovery of possession of land in the Supreme Court.

Orders on non-appearance to summons.

194. If, on the hearing of the summons, the person summoned do not appear, then upon proof of the service of the summons and of the claimant's title, or on the production of a consent to an order by the person summoned, the Judge may order immediate possession to be given to the claimant.

Orders on appearance to summons.

195. If the person summoned shall appear, the Judge shall hear the summons, and may make such order thereon and impose such terms as he may think fit: Provided that in the case of a lessor against a lessee, if the lessee before or at the hearing pay or tender all rent due, and all costs incurred by the lessor, the Judge may dismiss the summons.

Dismissal of summons not to prejudice other rights.

196. The dismissal of any such summons shall not prejudice the right of the claimant to take any other proceedings against the person summoned to which he may be entitled.

Effect of order for possession.

197. Every order for possession under this Part of this Act shall have the effect of, and may be enforced in the same manner as, a judgment in the Court for the recovery of possession of land.

Writ of *habere facias* unnecessary where no one is in possession, or the land is surrendered voluntarily.

198. Any claimant having obtained an order for possession under the provisions hereof, shall be entitled to enter and take possession of the land mentioned in the order, without issuing a writ of *habere facias* if there shall be no person in actual possession of the land, or if the person in possession shall voluntarily give up possession to the claimant.

Existing rights preserved.

199. Nothing hereinbefore contained shall repeal, affect, or abridge, any remedies to which a claimant is otherwise entitled.

Local Courts Act, 1926¹, to apply to this Act.
S. 200 amended by 2246, 1935, s. 4 (2nd Sched.).

200. Local Courts of full jurisdiction shall have jurisdiction to try actions of ejectment in respect of land under the provisions of this Act, and other actions in respect of such land in accordance with the Local Courts Act, 1926¹.

PART XVIII

PART XVIII

THE ASSURANCE FUND

S. 201 repealed by 37, 1967, S. 9.

* * * * *

S. 202 repealed by 37, 1967, s. 9.

* * * * *

Party deprived of land may sue for compensation.

203. Any person deprived of land in consequence of fraud, or through the bringing of such land under the provisions of this Act, or of any Act hereby repealed, or by the registration of any other person as proprietor of such land, or in consequence of any error, omission, or misdescription in any certificate, or in any entry or memorial in the Register Book, may bring and prosecute an action at law for the recovery of compensation against the person upon whose application such land was brought under the provisions of this Act, or of any

¹ Now Local and District Criminal Courts Act, 1926-1975.

Act hereby repealed, or such erroneous registration was made, or who acquired title to the land through such fraud, error, omission, or misdescription.

204. Except in the case of fraud, or of error occasioned by any omission, misrepresentation, or misdescription in the application of such person to bring the land under the provisions of this Act, or of any of the Acts hereby repealed, or to be registered as proprietor of such land, or in any instrument executed by him, such person shall, upon a transfer of such land, *bona fide* for value, cease to be liable for the payment of any compensation which but for such transfer might have been recovered from him under the provisions herein contained.

Exoneration of proprietor after transfer for value, except in certain cases.

205. In any such case of cesser of liability, and also in any case where the person against whom such action for compensation is permitted to be brought as aforesaid shall be dead, or shall have become bankrupt or made a statutory assignment, or cannot be found within the jurisdiction of the Court, it shall be lawful to take proceedings against the Registrar-General, as nominal defendant, as hereinafter provided, for the purpose of recovering the amount of compensation and costs from the Assurance Fund.

Proceedings against Registrar-General, as nominal defendant.
S. 205 amended by 2246, 1935, s. 4 (2nd Sched.).

206. In any case where compensation shall be awarded against any person other than the Registrar-General, and the Sheriff or bailiff shall make a return of *nulla bona* or of *no effects*, or shall certify that the full amount awarded with costs, cannot be recovered, the Treasurer, upon receipt of a certificate under the hand of the Master or Clerk of the Court before which the action was tried, of the amount remaining unsatisfied, and of a warrant under the hand of the Governor, countersigned by the Chief Secretary, shall pay the amount of such compensation and costs or the unsatisfied balance thereof, as the case may be, and charge the same to the account of the Assurance Fund.

When compensation awarded in an action cannot be recovered, Assurance Fund liable.

207. Nothing in this Act contained shall leave subject to action for recovery of compensation as aforesaid, or to action for recovery of possession of land, or to deprivation of the estate or interest in respect of which he is registered as proprietor, any transferee, mortgagee, encumbrancee, or lessee, *bona fide* for valuable consideration of land on the ground that the proprietor, through or under whom he claims, or any previous proprietor has been registered as proprietor through fraud or error, whether such fraud or error shall consist in wrong description of boundaries, or parcels, or otherwise howsoever.

Purchasers, etc., protected.

208. Any person sustaining loss or damage through any omission, mistake, or misfeasance of the Registrar-General, or any of his officers or clerks in the execution of their respective duties under the provisions of this Act, or of any Act hereby repealed, and any person deprived of any land through the bringing of the same under the provisions of this Act, or of any Act hereby repealed, or by the registration of any other person as proprietor of such land, or by any error, omission, or misdescription in any certificate, or in any entry or memorial in the Register Book, and who by the provisions of this Act is barred from bringing an action for the recovery of such land, may, in any case in which the remedy by action for recovery of compensation as hereinbefore provided is barred, or inapplicable, institute proceedings against the Registrar-General, as nominal defendant, for recovery of compensation as hereinafter provided, but notice in writing of the intention to institute such proceedings, and of the cause thereof, shall be served upon the Attorney-General and upon the Registrar-General one month at least before the commencement of such proceedings.

Proceedings against the Registrar-General as nominal defendant, and notice thereof.

Value of buildings to be excluded.

209. In estimating the compensation for any deprivation or loss under this Part of this Act, the value of all buildings and other improvements erected or made subsequently to such deprivation or loss, and with notice thereof, shall be excluded.

Persons claiming may, before taking proceedings, apply to the Registrar-General in writing for compensation.

210. Any person sustaining loss or damage in any case in which he shall be entitled to institute proceedings to recover compensation against the Registrar-General as nominal defendant, may, before commencing such proceedings, make application in writing to the Registrar-General, for compensation, and such application shall be supported by affidavit or declaration. If the Registrar-General admits the claim, or any part thereof, and certifies accordingly, the Governor may, if he shall think fit, issue a warrant to the Treasurer for payment of the amount so certified out of the Assurance Fund.

Assurance Fund not liable for breach of trust or improper exercise of power of sale.

211. The Assurance Fund shall not under any circumstances be liable for compensation for loss, damage, or deprivation occasioned by any breach by a registered proprietor of any trust, whether express, implied, or constructive, or by the improper exercise of any power of sale expressed or implied in any mortgage or encumbrance.

Nor for misdescription of boundaries or parcels except in certain cases. S. 212 amended by 2246, 1935, s. 4 (2nd Sched.).

212. The Assurance Fund shall not be liable for compensation for loss, damage, or deprivation occasioned by any land being included in the same certificate with other land, through misdescription of boundaries or parcels, unless it shall appear that no person is liable or that the person liable for compensation is dead, or cannot be found within the jurisdiction of the Court or has become bankrupt, or has made a statutory assignment, or the Sheriff or bailiff shall certify that such person is unable to pay the full amount and costs awarded in any action for recovery of such compensation; and in the last-mentioned case the said fund shall be liable for such amount only as the Sheriff or bailiff shall fail to recover from such person.

Procedure upon, and enforcement of claims against the Assurance Fund.

213. All proceedings against the Registrar-General as nominal defendant, for the purpose of obtaining compensation from the Assurance Fund, shall be instituted and carried on in the following manner:—

Mode of application by claimant.

I. The claimant shall apply to the Court upon affidavit for a rule or summons calling upon the Registrar-General, as nominal defendant, to show cause why compensation should not be paid out of the Assurance Fund to the claimant; and the Court may grant a rule or summons accordingly and such rule or summons shall be returnable not less than seven days after service thereof on the Registrar-General:

Registrar-General may show cause.

II. The Registrar-General may show cause against such rule or summons, and the Court may thereupon, or if no cause be shown, upon proof of service of the rule or summons, make absolute or discharge the same, or make such order as the circumstances shall require, with or without costs; or may, if satisfied that other persons should be represented on the rule or summons, require such persons to be served with notice thereof, and for that purpose adjourn the consideration of the rule or summons:

Court may direct question of fact to be tried.

Para. III amended by 2246, 1935, s. 4 (2nd Sched.).

III. The Court may direct any question of fact to be decided before the said Court, and for that purpose may direct an issue to be tried wherein the claimant shall be plaintiff, and the Registrar-General and such person or persons (if any) as the Court shall direct, shall be defendant or defendants, and the Court shall direct when and where the trial of such issue shall take place; and may adjourn the

further consideration of the rule or summons until after the trial of the issue:

- iv. The Court may also direct the parties to the proceedings or issue to produce on oath all deeds, books, papers, and writings in their custody or power, before the Court or the Master, on a day to be named by the Court, and each party shall have liberty to inspect the same, and take copies thereof, at his own expense; and such of them as either party shall give notice to have produced at the trial shall be produced accordingly.
- v. The issue (if any) may be in the following form, or in such other form as the Court shall approve:—

Court may order production of papers.

Form of issue.
Para. V amended by 2246, 1935, s. 4 (2nd Sched.).

In the Supreme Court.

The day of in the year of Our Lord, 19 .

SOUTH AUSTRALIA } Whereas A.B. affirms, and C.D. denies
to wit } [here state the questions of fact to be tried] and it has been ordered by His Honour Mr. Justice according to "The Real Property Act, 1886", that the said questions shall be tried; Therefore let the same be tried accordingly.

And in case the parties differ upon the questions of fact to be tried, the Court may either settle the same or refer them to the Master:

- vi. After the trial of the issue the Court may, upon further consideration of the rule or summons, make such order either with or without costs, as the circumstances shall require:
- vii. Every order of the Court on such rule or summons shall have the effect of a judgment of the Court in an action:
- viii. The Treasurer shall, on the production of any such order directing payment of compensation with or without costs out of the Assurance Fund, pay the same accordingly.

Court may make order after trial of issue.

Effect of order.

Treasurer to pay compensation.

214. Any person deprived of any land in consequence of any such land having been included in two or more grants from the Crown, may commence and prosecute proceedings for the recovery of damages against such person as the Governor may appoint as nominal defendant, in manner provided for by the Supreme Court Act, 1935¹, or by any other Act for enforcing pecuniary claims against Her Majesty, Her heirs and successors, and in every such case the Assurance Fund shall not be liable for compensation.

Proceedings where same land is included in two or more grants from the Crown.
Assurance Fund not liable in such case.

215. No application to the Registrar-General nor action or proceeding for compensation for or by reason of any deprivation, loss, or damage occasioned or sustained as aforesaid, shall be made, brought, or taken, except within the period of twenty years from the time when the right to make such application or bring or take such action or proceedings first accrued.

Limitation of actions.

216. If it shall appear to the satisfaction of the Court by which or before whom such action or proceeding shall be adjudicated upon that the plaintiff or claimant or the person through or under whom he claims or derives title had actual notice of the fact occasioning the deprivation, loss, or damage complained of, and wilfully or negligently omitted to lodge a caveat, or allowed a

If person damaged guilty of laches, judgment to go against him.

¹ In a previous reprint of this Act pursuant to the Acts Republication Act, 1934, the reference to the Supreme Court Act, 1935 had been substituted for the reference to Act No. 6 of 1853. The citation of the Supreme Court Act, 1935 is now "Supreme Court Act, 1935-1975"

caveat to lapse, or otherwise neglected to protect himself against such deprivation, loss, or damage, judgment shall be given against the plaintiff or claimant in such action or proceedings.

Payments out of Assurance Fund to be deemed made on account of certain persons. S. 217 amended by 2246, 1935, s. 4 (2nd Sched.).

217. Any amount paid out of the Assurance Fund in consequence of any person being dead, or having become bankrupt, or having made a statutory assignment, or in consequence of its not being possible to find any person within the jurisdiction of the Court, shall be deemed to have been paid on account of such person.

Moneys paid out of the Assurance Fund may be recovered. S. 218 amended by 2246, 1935, s. 4 (2nd Sched.).

218. Whenever any amount has been paid out of the Assurance Fund on account of any person who shall be dead, such amount may be recovered from the estate of such person by action against his personal representatives, in the name of the Registrar-General. Whenever any such amount has been so paid on account of a person who shall have become bankrupt, or made a statutory assignment, such amount shall be considered to be a debt provable upon the estate of such bankrupt or assignor; and a certificate, signed by the Treasurer, certifying the fact of such payment out of the Assurance Fund, and delivered to the Official Receiver or trustee, shall be sufficient proof of such debt.

Judgment may be entered by Registrar-General for amount paid on account of absent persons.

219. Whenever any amount has been paid out of the Assurance Fund on account of any person who cannot be found within the jurisdiction of the Court, the Court may, upon the application of the Registrar-General, and upon production of a certificate signed by the Treasurer certifying that the amount has been paid in satisfaction of an order on proceedings taken against the Registrar-General as nominal defendant, allow the Registrar-General to sign judgment against such person forthwith for the amount so paid out of the Assurance Fund, together with the costs of the application; and such judgment shall be final, and shall have the effect of a final judgment in an ordinary action, and execution thereon may issue immediately.

PART XIX

PART XIX

SPECIAL POWERS AND DUTIES OF REGISTRAR-GENERAL

Powers of Registrar-General.

220. The Registrar-General may exercise the following powers, that is to say—

To compel production of documents and examine person interested.

- (1) He may summon the proprietor or other person making application to have any land brought under the provisions of this Act, or the proprietor, or mortgagee, or any other person interested in any land in respect of which any instrument, transmission, or other dealing is about to be registered, issued, or transacted, to produce any document of title, instrument of title, or other instrument in his possession or under his control affecting such land, or the title thereto, and to appear and give any explanation or information respecting such land, and the documents and instruments of title relating thereto, and may examine any such person in respect thereof; and the Registrar-General, if the document, instrument, explanation, or information required by him be withheld, and the same appear to him material, shall not be bound to proceed with the bringing of such land under the provisions of this Act, or with the registration or issuing of such instrument, transmission, or dealing, as the case may be:

(2) He may administer oaths, or, in lieu of administering an oath, may require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination:

To administer oaths.

(3) He shall, whenever the production of any duplicate certificate, or other instrument of title is required, for the purpose of entering or making on the same any memorial or entry by this Act directed to be entered or made thereon, or for the purpose of cancelling or correcting the same under the provisions of this Act, summon any proprietor, mortgagee, encumbrancee, or other person having the possession, custody, or control thereof to produce the same for such purpose, and such proprietor, mortgagee, encumbrancee, or other person shall thereupon produce the same on payment of a sum of two dollars: Provided that he may, at his discretion, before so summoning any person, require evidence that such person has neglected or refused to produce such duplicate instrument on being requested so to do, and on being offered a reasonable sum for his expenses of production:

To summon person having possession of duplicate instrument.
Para. (3) amended by 37, 1967, s. 10.

(3a) If in respect of any instrument or other matter arising under this Act the Registrar-General is of opinion that—

To require production of other instruments, etc.

(a) the production of any other instrument or document;

Para. (3a) inserted by 46, 1963, s. 5.

(b) the giving of any information evidence or notice; or

(c) the doing of any act,

is necessary or desirable, the Registrar-General may—

I. require the person lodging the instrument or some other person concerned in the matter to produce the other instrument or document, give the information evidence or notice or do the act; and

II. until the requirement is complied with, refuse to proceed with the registration of the first-mentioned instrument or with the other matter or to do any act or make any entry in connexion therewith:

(3b) If any such requirement is not complied with within two months after the making of a requisition under paragraph (3a) of this section—

To reject certain instruments.
Para. (3b) inserted by 46, 1963, s. 5.

(a) the Registrar-General shall give notice in writing of his intention to reject the first-mentioned instrument and any other instrument or instruments lodged subsequently thereto and dependent thereon to the person or persons lodging and to each of the parties to such instrument or instruments; and

(b) if any such requirement is not complied with within one month after the giving of the notice under subparagraph (a) of this paragraph, the Registrar-General may reject the first-mentioned instrument and any other instrument or instruments lodged subsequently thereto and dependent thereon and return any instruments or other documents lodged in connection therewith in such manner as he thinks fit; and

(c) any fees paid in respect of any instrument so rejected shall be forfeited:

Provided that the rejection of any instrument in pursuance of the provisions of this paragraph shall not prevent the relodgement of that instrument for registration after compliance with the requisition referred to in paragraph (3a) of this section.

Any instrument rejected or returned in pursuance of this paragraph shall, if the party or parties deriving an estate or interest thereunder lodges a caveat to protect such estate or interest before the expiration of the period mentioned in subparagraph (b) of this paragraph, retain the priority to registration which it would have had if it had not been rejected or returned:

To correct errors.
Para. (4) amended by 30, 1945, s. 6; 44, 1960, s. 5 (a); 116, 1972, s. 6 (a), (b).

(4) He shall, upon such evidence as shall appear to him sufficient in that behalf, correct errors in certificates, or in the Register Book, or in entries made therein respectively, and supply omitted entries: Provided that, in the correction of any such error, he shall not erase or render illegible the original words, and shall affix the date on which such correction was made or entry supplied, and his initials. Every certificate or entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted. In exercising his powers under this paragraph the Registrar-General may disregard any difference between the dimensions of boundaries as stated in any certificate or in the Register Book or in entries made therein respectively 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 5 centimetres for any one boundary line irrespective of its length where the length does not exceed 40 metres but where it exceeds 40 metres a limit equivalent to one in five hundred computed upon the total length of such boundary line:

To enter caveats.

(5) He may, on behalf of His Majesty, His heirs or successors, or for the prevention of any fraud or improper dealing, or in any case in which it shall appear to him that an error has been made by misdescription or otherwise in any instrument, or for the protection of any person absent from the State¹, or under the disability of infancy, coverture, lunacy, or unsoundness of mind, enter caveats forbidding the registration of any instrument, transmission, or dealing affecting any land:

To withdraw caveat on payment of money.

(6) He shall, where a caveat is entered to protect a sum of money, upon payment of such sum to him, withdraw such caveat:

To alter forms of instruments, etc.

(7) He may, with the consent of the Governor, from time to time, make such alterations in the several forms of instruments prescribed in the schedules hereto as he may deem requisite; and every form of instrument so altered shall be published in the *Government Gazette*, and may thereafter be used in lieu of, and shall have the same effect as, the corresponding form prescribed by this Act, and shall be deemed an authorized form:

To require map to be deposited.

(8) He may require any person applying to bring land under the provisions of this Act, or any registered proprietor desiring to transfer or otherwise to deal with the land or any portion of the

¹ In a previous reprint of this Act pursuant to the Acts Republication Act, 1934, the word "State" had been substituted for "province".

land comprised in his certificate, or other instrument of title, to deposit with him a map or plan of such land, verified by the declaration of a Licensed Surveyor; and if such person or proprietor shall neglect or refuse to comply with such requirement, it shall not be incumbent on the Registrar-General to proceed with the bringing of such land under the provisions of this Act, or with the registration of such transfer or dealing:

- (9) He may dispense with the production of any duplicate instrument upon which any memorial of a transfer or other dealing is by this Act required or authorized to be entered or made; and upon the registration in any such case of a transfer or other dealing the Registrar-General shall notify in the memorial in the Register Book that no such entry has been made on the duplicate instrument; and such transfer or other dealing shall thereupon be as valid and effectual as if the duplicate instrument had been produced and such memorial or entry had been entered or made thereon: Provided that, before dispensing with the production of any such duplicate instrument, and before registering such transfer or other dealing, the Registrar-General shall, except in the case of a transmission, require the transferor or other party dealing to make a declaration that the duplicate instrument has not been deposited as security for any loan, and is not subject to any lien other than appears in the Register Book, and shall give at least fourteen days' notice of his intention to register such transfer or dealing in the *Government Gazette* and in at least one newspaper published in the city of Adelaide:

To dispense with the duplicates of instruments in certain cases. But notice to be given before registering any dealing.

- (10) He may, notwithstanding any other provision of this Act, with the approval of the Attorney-General, and subject to section 31 of the Libraries and Institutes Act, 1939-1950¹, destroy any record, document, instrument, plan, diagram, book or paper or any other paper writing, whether of the same kind as those before enumerated or not, that is deposited with or registered at the Lands Titles Registration Office the retention of which in the opinion of the Registrar-General serves no useful purpose.

To destroy certain documents. Para. (10) inserted by 44, 1960, s. 5 (b).

221. If, upon the application of any proprietor to have land brought under the provisions of this Act, or to have any dealing or transmission registered or recorded, or to have any instrument or foreclosure order issued, or to have any act or duty done or performed which by this Act is prescribed to be done or performed by the Registrar-General, the Registrar-General shall refuse so to do, or, if such proprietor shall be dissatisfied with the direction upon his application given by the Registrar-General such proprietor may require the Registrar-General to set forth, in writing under his hand, the grounds of his refusal, or the grounds upon which such direction was given, and such proprietor may, if he think fit, at his own cost, summon the Registrar-General to appear before the Court to substantiate and uphold the grounds of his refusal or of such direction as aforesaid.

Proprietor may summon Registrar-General to show cause, if dissatisfied.

222. Such summons shall be issued under the hand of a Judge, and shall be served upon the Registrar-General six clear days at least before the day appointed for hearing; and upon such hearing, the Registrar-General, or his counsel, shall open and have the right of reply, and the Court may, if any question of fact be involved, direct an issue to be tried to decide such question, and may make such order in the premises as the circumstances of the

Hearing of summons.

¹ Now Libraries and Institutes Act, 1939-1975.

case may require, and the Registrar-General shall obey such order. All expenses of and incidental to any such proceedings shall be borne and paid by the person instituting the same, unless the Court shall certify that there were no reasonable grounds for such refusal or direction as aforesaid.

Power of
Registrar-
General to state
case for Court.

223. The Registrar-General may, whenever any question shall arise with regard to the performance or exercise of any of the duties by this Act conferred or imposed upon him, state a case for the opinion of the Court, and it shall be lawful for the Court to give judgment thereon, and such judgment shall be binding upon the Registrar-General.

PART XIXA

PART XIXA

Part XIXA and
heading enacted
by 39, 1945;
s. 7.

RECTIFICATION OF CERTIFICATES

Applications for
amendment.
S. 223a enacted
by 39, 1945,
s. 7.

223a. (1) A registered proprietor may apply to have his certificate amended if—

- (a) the boundaries, area, or position of the land described in the certificate differ from the boundaries, area, or position of the land actually and *bona fide* occupied by him as being the land included in the certificate; or
- (b) the description of land in the certificate is erroneous or imperfect on the face of it.

(2) A registered proprietor may apply to have the certificate of any other registered proprietor amended if any of the land described in the applicant's certificate, and actually and *bona fide* occupied by him as being the land included in his certificate, is, by reason of any error in survey or any misdescription, included in the certificate of the other registered proprietor.

(3) Every such application shall be made to the Registrar-General in writing in such of the forms in the twenty-third schedule as is applicable or a form to the like effect.

Notices to be
given.
S. 223b enacted
by 39, 1945,
s. 7.

223b. (1) The Registrar-General shall cause notice of any application made under the last preceding section to be given to such persons as he thinks proper and shall by the notice appoint a time not less than fourteen days from the giving of that notice or from the publication of any advertisement mentioned in paragraph (b) of subsection (2) of this section, whichever is later, after which the application may be granted unless a caveat is lodged forbidding the granting thereof.

(2) If the granting of an application to amend any certificate would affect land comprised in any other certificate, the Registrar-General shall—

- (a) in addition to any other notices mentioned in this section cause notice such as mentioned in subsection (1) of this section to be given to every person appearing by the Register Book to have any interest in the land comprised in that other certificate, and such notice shall be accompanied by a plan showing accurately the extent to which the said land will be affected if the application is granted; and
- (b) publish a notice such as mentioned in subsection (1) of this section in the *Government Gazette*.

223c. Notwithstanding any direction given or action taken by the Registrar-General in relation to any application made under this Part the Registrar-General may reject the application if the applicant fails to comply to his satisfaction, within such time as to him seems reasonable, with any requisition which he has made in regard to such application.

Power of Registrar-General to reject.
S. 223c enacted by 39, 1945, s. 7.

223d. (1) Any person claiming any estate or interest in any land in respect of which any application under this Part is made may, at any time before the application is granted, lodge a caveat with the Registrar-General forbidding the granting of the application.

Caveats.
S. 223d enacted by 39, 1945, s. 7.

(2) Every such caveat shall in all other respects be in the same form, shall be subject to the same provisions, and shall have the same effect with respect to the application against which it is lodged, as a caveat against bringing land under the provisions of this Act.

223e. If the applicant satisfies the Registrar-General that proper grounds, as set out in section 223a, exist for altering the applicant's certificate or the certificate of any other person, or both such certificates, he shall grant the application: Provided that—

Grant of application.
S. 223e enacted by 39, 1945, s. 7.

- (a) where an alteration of the applicant's certificate would affect land included in the certificate of any other person, the alteration shall not be made unless that land was included in that other person's certificate by reason of error in survey or misdescription; and
- (b) where the title to the land affected by the alteration has been determined in a contested proceeding in a court of competent jurisdiction, the Registrar-General shall not make any alteration inconsistent with the determination of the court.

223f. On bringing any land under this Act, the Registrar-General, without any specific application for the purpose, may amend the certificate relating to any other land, if by reason of error in survey or misdescription any land is included in that certificate which the Registrar-General is satisfied should be included in the certificate issued for the land so brought under this Act.

Alterations of certificate in bringing land under this Act.
S. 223f enacted by 39, 1945, s. 7.

223g. (1) Every amendment made pursuant to this Part shall be made by making the requisite alterations in the original of any certificate.

Amendments of title.
S. 223g enacted by 39, 1945, s. 7.

(2) The Registrar-General shall also make the requisite alterations in the duplicate certificate when it is produced to him for that purpose, or when it is lodged in or brought to the Lands Titles Office for the purpose of any dealing with the land included therein, and he may detain the duplicate until the amendment thereof has been completed; and the Registrar-General may refuse to register any dealing with the land or any estate or interest therein until the duplicate has been produced for amendment.

223h. Upon amending the original of any certificate pursuant to this Part, the Registrar-General shall give notice in writing to the registered proprietor of, and to all persons appearing by the Register Book to have an interest in, the land included in that certificate informing him of the amendment. On the duplicate of the certificate being produced, the Registrar-General may, in his discretion, issue a new certificate with an amended description.

Notice of amendment of title.
S. 223h enacted by 39, 1945, s. 7.

223j. Where in the opinion of the Registrar-General it is expedient and desirable so to do, he may, with the consent of every person appearing by the Register Book to have any interest, make any correction or amendment to any

Rectification by consent.
S. 223j enacted by 39, 1945, s. 7.

certificate of title for the purpose of reconciling the boundaries shown in the certificate with the boundaries of the land occupied.

Saving of other powers.
S. 223k enacted by 39, 1945, s. 7.

223k. The powers conferred by this Part are in addition to, and shall not be deemed to be substituted for, any powers of correction or amendment conferred by any other provision of this Act.

Operation of corrections.
S. 223l enacted by 39, 1945, s. 7.

223l. Any correction or amendment made under this Part shall be deemed to have been made prior to the registration of any instrument registered on any certificate so corrected or amended and extant at the time of such correction or amendment.

PART XIXB

PART XIXB

Part XIXB and headings enacted by 37, 1967, s. 11.

DIVISION OF LAND BY STRATA PLAN AND TITLES TO UNITS CREATED THEREBY

Interpretation.
S. 223m enacted by 37, 1967, s. 11.

223m. (1) In this Part and in all instruments made or purporting to be made thereunder, unless the contrary intention appears—

“area” means a municipality or district as defined in the Local Government Act, 1934-1967¹, and includes an area in relation to which any body corporate is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal council or district council:

“building” includes part of a building:

“committee” means committee of a corporation:

“common property” means so much of the land for the time being comprised in a deposited strata plan as is not within a unit defined therein:

“corporation” means a body corporate that is incorporated by virtue of section 223nc of this Act:

“council” means a municipal council or a district council and includes any body corporate that is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal council or district council:

“deposited strata plan” means a strata plan deposited in the Lands Titles Registration Office by the Registrar-General under this Part:

“parcel” means the whole of the land comprised in a strata plan:

“registered estate or interest”, in relation to any land, means any estate, interest, easement, right, title, claim, demand, mortgage, charge, lien or encumbrance evidenced by any entry made in any certificate in respect of the land:

“site”, in relation to a strata plan, means the surface of the land comprised in the plan:

“special resolution”, in relation to a corporation, means a resolution passed at a general meeting of the corporation of which at least fourteen days’ notice specifying the proposed resolution has been given and at which not less than two-thirds of the total number of units and not less than one-half of the total unit entitlement of the units shown on the relevant strata plan were represented by the persons who were entitled to vote, and voted, in favour of the resolution:

¹ Now Local Government Act, 1934-1975.

“strata plan” means a plan of land wholly comprised in a certificate or in two or more certificates which plan—

- (a) is described in the title or heading thereto as a strata plan;
- (b) lays out the land comprised therein in a building unit scheme consisting of not less than two units;

and

- (c) complies with the requirements of section 223mb of this Act and the regulations relating to strata plans:

“the Director” means the person for the time being holding or acting in the office of Director of Planning under the Planning and Development Act, 1966-1967¹:

“this Part” means this Part of this Act and includes the regulations made under any provision of this Part of this Act:

“unanimous resolution”, in relation to a corporation, means—

- (a) where only one person is entitled to vote in respect of all the units defined in the relevant strata plan—a resolution made by that person and recorded by him as a unanimous resolution in the minute book of the corporation kept as required by this Part;

and

- (b) where more than one person is entitled to vote in respect of the units defined in the relevant strata plan—a resolution—

- (i) unanimously passed by all persons who voted in accordance with this Part on the relevant resolution personally, by proxy or by absentee vote at a duly convened meeting of the corporation;

and

- (ii) recorded as a unanimous resolution in the minute book referred to in paragraph (a) of this definition:

“unit” means such part of a building represented on a strata plan as is approved for separate occupation by the council of the area in which the building is situated and is shown on the plan as a unit:

“unit entitlement”, in relation to a unit, means such proportion of the total improved value of the parcel comprised in the strata plan in which that unit is shown as is attributable to that unit and is expressed for the time being in the schedule to the strata plan as required by this Part:

“unit subsidiary” means such part of a building represented on a strata plan consisting of a suite of rooms, utility room, laundry, garage, carport or shed, or such part of the site consisting of a garden plot, lawn, yard or parking area for vehicles, or such area set apart for any amenity, as is shown on the plan as a unit subsidiary that is appurtenant to a unit.

Def. amended
by 30, 1969,
s. 12 (a).

(2) Unless otherwise provided in the relevant strata plan—

- (a) the common boundary of a unit and the unit immediately above it lies midway between the under surface of the ceiling of the first-mentioned unit and the upper surface of the floor of the second-mentioned unit;

¹ Now Planning and Development Act, 1966-1975.

(b) the common boundary of a unit and common property immediately above it lies midway between the lower and upper surfaces of the ceiling of that unit;

(c) the common boundary of a unit and common property immediately below it lies midway between the upper and lower surfaces of the floor of that unit;

and

(d) where a wall or fence separates a unit from any other unit or from common property, the common boundary of those units or of the first-mentioned unit and the common property lies midway between the two surfaces of that wall or fence.

(3) Where a schedule or certificate is required by any provision of this Act to be attached to a strata plan as a part thereof, the schedule or certificate, when attached as so required, shall be deemed to be part of that strata plan.

Subsec. (4)
amended by 30,
1969, s. 12 (b).

(4) Where a unit subsidiary is shown on a deposited strata plan as appurtenant to a unit defined thereon, that unit subsidiary shall be deemed to be part of that unit.

(5) A strata plan is deposited in the Lands Titles Registration Office under this Part when the Registrar-General deposits it in the Lands Titles Registration Office and gives it a number as a deposited strata plan.

Division of land
into units.
S. 223ma
enacted by 37,
1967, s. 11.

223ma. Notwithstanding anything contained in any other Act or in any other Part of this Act, but subject to this Part, land wholly comprised in a certificate or in two or more certificates may be divided into units in accordance with a deposited strata plan.

Strata plan.
S. 223mb
enacted by 37,
1967, s. 11.

223mb. (1) Subject to this Part, but without limiting its effect, a strata plan may make provision for—

(a) the division of a building into units;

(b) a unit wholly on one storey or level or partly on one storey or level and partly on another or others;

or

(c) a unit comprising part of a building and one or more unit subsidiaries shown as appurtenant thereto.

(2) A strata plan must—

(a) delineate the external surface boundaries of the site which it comprises and the location of the building or buildings thereon in relation thereto;

(b) contain sufficient particulars to identify the certificate or certificates issued in respect of the parcel;

Para. (c)
amended by 30,
1969, s. 13 (a).

(c) define the units into which the building or buildings shown thereon is or are divided and the unit subsidiary or respective unit subsidiaries (if any) appurtenant to each unit and distinguish the units shown on the plan by numbers;

(d) contain sufficient particulars from which the boundaries of each unit are capable of being ascertained without necessarily specifying any bearings or dimensions of the unit or of any unit subsidiary appurtenant thereto;

Para. (e)
amended by 30,
1969, s. 13 (b).

(e) have attached thereto, as a part thereof, a schedule to the plan in accordance with section 223mf of this Act completed as provided by that section;

- (f) contain such other particulars and comply with such other requirements as may be prescribed;

and

- (g) either have endorsed thereon or have attached thereto as a part thereof—

- (i) a certificate in the prescribed form signed by a licensed surveyor within the meaning of the Surveyors Act, 1935-1961¹;

and

- (ii) the written consent to the plan being deposited in the Lands Titles Registration Office under this Part of every person who has a registered estate or interest in the parcel, if such estate or interest would be affected on the plan being so deposited.

(3) Where a unit shown on a strata plan consists of or is part of a single-storey building the plan must comply with such requirements as are (and may be) prescribed in relation or with respect to—

- (a) the area of the unit subsidiary or the total area of the unit subsidiaries (if any) shown on the plan as appurtenant to that unit where such area or total area comprises any part of the site that is not occupied by any building or by any structure of a kind prescribed;

and

- (b) the area of the common property or of that part of the common property which comprises the part or parts of the site that is not or are not occupied by any building or by any structure of a kind prescribed.

223mc. (1) Subject to this Part, a strata plan (other than a strata plan lodged pursuant to subsection (3) of this section) may be lodged with the Registrar-General for deposit in the Lands Titles Registration Office under this Part by or on behalf of the registered proprietor or registered proprietors of the parcel.

Strata plans for new building unit schemes.
S. 223mc enacted by 37, 1967, s. 11.

(2) The strata plan, when so lodged with the Registrar-General must be accompanied by—

- (a) an application in the prescribed form by the registered proprietor or registered proprietors, signed by the applicant or applicants, and containing such particulars and complying with such requirements as may be prescribed;
- (b) the duplicate of every certificate that would be affected by the deposit by the Registrar-General of the strata plan in the Lands Titles Registration Office under this Part;
- (c) the certificate applying to the strata plan and referred to in subsection (1) of section 223md of this Act signed, on behalf of the council within whose area the parcel lies, by the town clerk or other officer thereof duly authorized by the council in that behalf;

¹ Now Surveyors Act, 1935-1975.

(d) the certificate applying to the strata plan and referred to in subsection (2) of section 223md of this Act signed by the Director;

and

(e) the appropriate fees as prescribed.

Strata plan for existing building unit schemes.

(3) Where—

(a) in accordance with plans and specifications approved under the provisions of the Building Act, 1923-1965¹, and the regulations thereunder by a council on or after the first day of January, 1940, but before the commencement of the Real Property Act Amendment (Strata Titles) Act, 1967, any land wholly comprised within a certificate or within two or more certificates has been laid out in a building unit scheme consisting of two or more building units each of which has been designed for separate occupation;

(b) the building or buildings on the land have been erected in accordance with those plans and specifications;

and

Para. (c) amended by 30, 1969, s. 14 (a), (b).

(c) under or by virtue of leases, underleases or tenancy or other agreements or ownership of shares in a company or rights of ownership in the whole or any part of the land, the predominant rights to the exclusive use and occupation of the building units are vested in persons who, in consequence or in pursuance of such leases, underleases, or agreements or ownership of shares or rights of ownership, are either in possession of those units or entitled to the rents and profits thereof, whether or not those persons are the registered proprietors in fee simple of the land,

a strata plan comprising that land may be lodged with the Registrar-General for deposit in the Lands Titles Registration Office under this Part by all the persons who have any registered estates or interests in the land.

(4) A strata plan to which subsection (3) of this section applies, when so lodged with the Registrar-General, must be accompanied by—

Para. (a) amended by 30, 1969, s. 14 (c).

(a) an application in the prescribed form which must state the name and address or the names and addresses of the person or persons entitled to be the registered proprietor or registered proprietors of each of the units defined on the plan and shall be signed by each person who has a registered estate or interest in the parcel which estate or interest would be affected by the deposit by the Registrar-General of the strata plan in the Lands Titles Registration Office under this Part and also signed by each person, if any, referred to in paragraph (c) of subsection (3) of this section in whom, by virtue of any lease, underlease or agreement or share in a company or right of ownership in the whole or any part of the land comprising the parcel, are vested the predominant rights to the exclusive use and occupation of any building unit referred to in that subsection;

(b) the duplicate of every certificate that would be affected by such deposit;

(c) where they exist, the duplicate and triplicate copies of such instruments as will be cancelled pursuant to subsection (6) of section 223na of this Act;

¹ The Building Act, 1923-1965, has been repealed and superseded by the Building Act, 1970-1971.

(d) all instruments, duly executed, which will be required to be registered in substitution for those that are to be cancelled pursuant to that subsection and which, upon such cancellation, are to be registered on the appropriate certificates for the units that will be issued upon the deposit of the strata plan under this Part;

(e) the certificate applying to the strata plan and referred to in subsection (1) of section 223md of this Act signed, on behalf of the council within whose area the parcel lies, by the town clerk or other officer thereof duly authorized by the council in that behalf;

(f) the certificate applying to the strata plan and referred to in subsection (2) of section 223md of this Act signed by the Director;

and

(g) the appropriate fees as prescribed.

(5) For the purposes of paragraph (a) of subsection (4) of this section, the person or persons referred to in paragraph (c) of subsection (3) of this section, in whom are vested the predominant rights to the exclusive use and occupation of the building units referred to in that subsection, shall be the person or persons entitled to be the registered proprietor or registered proprietors, respectively, of the units defined on the plan.

(6) For the purposes of this Act, an application referred to in paragraph (a) of subsection (2) or paragraph (a) of subsection (4) of this section shall be deemed to be a dealing in land and the provisions of this Act shall apply to and in relation to such application as if it were, as the case may require, an instrument referred to in and complying with the requirements of, section 56, 267 or 273 of this Act.

Subsec. (6)
inserted by 30,
1969, s. 14 (d).

223md. (1) Upon application in accordance with the regulations by or on behalf of the proposed applicant or applicants for the deposit of a strata plan under this Part, the council within whose area the proposed parcel lies may issue to the applicant or applicants a certificate signed by the town clerk or other officer of the council duly authorized by the council in that behalf certifying—

Certificate on
behalf of
council and by
the Director.
S. 223md
enacted by 37,
1967, s. 11.

(a) that the strata plan and the building unit scheme laid out therein are approved by the council;

(b) that the strata plan represents an accurate delineation of the units and unit subsidiaries (if any) as constructed or laid out on the parcel;

Para. (b)
substituted by
30, 1969,
s. 15 (a).

(ba) that—

Para. (ba)
inserted by 30,
1969, s. 15 (a).

(i) the building or buildings shown on the strata plan has or have been completed in compliance with the provisions of the Building Act, 1923-1965¹, and the regulations thereunder and in accordance with the plans and specifications relating thereto and approved by the council on the date of such approval which shall be specified in the certificate;

or

(ii) if there has been any contravention of or non-compliance with any provision of that Act or those regulations or any departure from those plans or specifications, such

¹ The Building Act, 1923-1965, has been repealed and superseded by the Building Act, 1970-1971.

contravention, non-compliance or departure is such as need not be rectified;

and

- (c) that each unit defined on the strata plan is approved by the council for separate occupation.

(2) Upon application in accordance with the regulations by or on behalf of the proposed applicant or applicants for the deposit of a strata plan under this Part, the Director may issue to the applicant or applicants a certificate signed by him certifying that the strata plan and the building unit scheme laid out therein are approved by him.

(3) The council may refuse an application referred to in subsection (1) of this section if—

- (a) the building shown on the strata plan, or any part thereof, or any plans, working drawings or specifications relating thereto, does not or do not comply with the Building Act, 1923-1965¹, or the regulations thereunder;
- (b) the building shown on the strata plan, or any part thereof has not been completed in accordance with, or does not conform with the plans, working drawings or specifications relating thereto which had been approved by the council under the Building Act, 1923-1965¹, or the regulations thereunder; but the council shall refuse the application if such approval had been granted before the first day of January, 1940;
- (c) the strata plan, or the building unit scheme laid out therein would contravene or be inconsistent with any regulation made under any provision of this Part or contravene or be inconsistent with any authorized development plan within the meaning of the Planning and Development Act, 1966-1967², or any law for the administration or enforcement of which the council is responsible or has power to act;
- (d) any unit defined on the strata plan is not approved by the council for separate occupation;

or

- (e) the application is not made or any fee is not paid as provided or required by this Part.

Subsec. (3a)
inserted by 30,
1969, s. 15 (b).

(3a) Notwithstanding anything contained in subsection (3) or subsection (5) of this section, a council shall not refuse an application referred to in subsection (1) of this section on any ground specified in paragraph (c) of subsection (3) of this section if—

- (a) the regulation, authorized development plan or law referred to in that paragraph had not been in force at the time when the plans and specifications relating to the building or buildings shown in the strata plan were approved by the council under the Building Act, 1923-1965¹, and the regulations thereunder;

and

- (b) the construction of the building or buildings had been commenced within twelve months after such approval had been given.

¹ The Building Act, 1923-1965, has been repealed and superseded by the Building Act, 1970-1971.

² Now Planning and Development Act, 1966-1975.

(4) The Director may refuse an application referred to in subsection (2) of this section if the strata plan or the building unit scheme laid out therein would contravene or be inconsistent with any provision of the Planning and Development Act, 1966-1967¹, or any regulation thereunder, or would be inconsistent with any authorized development plan within the meaning of that Act.

(4a) Notwithstanding anything contained in subsection (4) or subsection (5) of this section, the Director shall not refuse an application referred to in subsection (2) of this section on any ground specified in subsection (4) of this section if—

Subsec. (4a)
inserted by 30,
1969, s. 15 (c).

(a) the provision of the Planning and Development Act or the regulations or the authorized development plan referred to in that subsection had not been in force at the time when he had advised the council pursuant to the regulations that he was satisfied that the proposed building unit scheme—

(i) did not contravene, or is not inconsistent with any provision of, the Planning and Development Act, 1966-1967¹, or any regulation thereunder;

(ii) would not be inconsistent with any authorized development plan within the meaning of that Act;

and

(iii) did not contravene the requirement of regulation 16 of the regulations as in force at that time;

and

(b) the construction of the building or buildings for the proposed building unit scheme had been commenced within twelve months after the Director had so advised the council.

(5) Without limiting the effect of subsection (3) or subsection (4) of this section—

(a) the council or the Director may refuse an application referred to in subsection (1) or subsection (2) of this section—

(i) if the application or any annexure thereto or any document accompanying it does not comply with the appropriate provisions of this Part;

or

(ii) on any further grounds which may be prescribed;

or

(b) the council or the Director may grant such an application subject to compliance with such conditions as the council or the Director think fit or as may be prescribed.

(6) Without limiting the power contained in any other provision of this Part for the making of regulations for any of the purposes of this Part, such regulations may provide that, in relation to strata plans (other than strata plans to which subsection (3) of section 223mc of this Act applies), the granting by the Director of an application referred to in subsection (2) of this section shall be subject to the payment to the Director for payment by him into the Fund established under the Planning and Development Act, 1966-1967¹, of a sum calculated at a rate not exceeding three hundred dollars (if the parcel is

Subsec. (6)
amended by 130,
1972, s. 3.

¹ Now Planning and Development Act, 1966-1975.

situated in the Metropolitan Planning Area within the meaning of that Act) or forty dollars (if the parcel is situated outside that planning area) for each unit defined on the strata plan and where any money is paid into the Fund pursuant to any such condition, it shall be used by the State Planning Authority for the acquisition or development of reserves.

Subsec. (7)
inserted by 30,
1969, s. 15 (d).

(7) Where any portion of a building depicted on a deposited strata plan projects beyond any alignment of a street or road vested in the council within whose area the parcel depicted on the plan lies, the certificate issued by the council under section 223md of this Act to the proposed applicant or applicants referred to therein shall imply that, upon the deposit of the strata plan in the Lands Titles Registration Office—

(a) the care, control and management of that portion of the building shall be vested in the corporation to be incorporated upon such deposit by virtue of section 223nc of this Act;

and

(b) the council shall be deemed to have granted to the corporation a licence to hold and occupy that portion of the building so long as it has the care, control and management thereof and the corporation maintains that portion of the building in a proper state of repair to the satisfaction of the council.

Appeal against
refusal of
application.
S. 223me
enacted by 37,
1967, s. 11.

223me. (1) If the Director or a council refuses an application referred to in section 223md of this Act, the Director or the council, as the case may be, shall notify the applicant or applicants of such refusal and inform him or them of the reasons for such refusal.

(2) The applicant or applicants may appeal to the Planning Appeal Board established under the Planning and Development Act, 1966-1967¹, against any decision of the Director or a council refusing an application referred to in section 223md of this Act or granting any such application subject to compliance with any conditions as if the decision were a decision of the Director or the council under that Act and, for the purposes of any such appeal, the provisions of sections 26 and 27 of that Act and the regulations made under subsection (8) of section 27 of that Act governing the practice and procedure relating to appeals to that board under that Act shall, *mutatis mutandis*, and, subject to subsection (3) of this section, apply and have effect accordingly.

(3) For the purposes of subsection (2) of this section—

(a) the provisions of subsection (5) of section 26 of the Planning and Development Act, 1966-1967¹, shall be read and construed as if the passage “to the Authority and” were omitted from that subsection;

and

(b) the provisions of any regulation made under subsection (8) of section 27 of that Act shall be read and construed subject to the provisions of any regulations made under this Part and subject to the modifications, if any, made by the latter provisions to the former provisions referred to in this paragraph.

¹ Now Planning and Development Act, 1966-1975.

223mf. (1) The schedule to a strata plan, which shall form part of the plan, shall be set out in the form prescribed in the twenty-fifth schedule to this Act on a separate sheet attached to the plan and shall be completed in accordance with the provisions of this Part.

Unit entitlement of units.

S. 223mf enacted by 37, 1967, s. 11.

Subsec. (1) amended by 30, 1969, s. 16 (a).

(2) The unit entitlement of each unit and the aggregate unit entitlement of all the units shown in a strata plan shall be expressed in the schedule to such plan as whole numbers.

* * * * *

Subsecs. (3), (4), (5) struck out by 30, 1969, s. 16 (b).

(6) Subject to subsections (7), (8), (9), (10), (11) and (12) of this section, the schedule to a deposited strata plan shall, from time to time, be amended by the Registrar-General in accordance with—

- (a) an order of the Court made upon an application by any of the registered proprietors of the units defined on the plan, or by the corporation incorporated by virtue of section 223nc of this Act upon the deposit of the plan in the Lands Titles Registration Office under this Part acting pursuant to a unanimous resolution of the corporation, or by the administrator (if any) of the corporation appointed pursuant to section 223nm of this Act;

or

- (b) an application by all the registered proprietors of the units defined on the plan.

Para. (b) amended by 30, 1969, s. 16 (c).

(7) The Court shall cause notice of every application referred to in paragraph (a) of subsection (6) of this section to be given to such persons as the Court thinks fit; and any of those persons or his duly appointed agent may, before the conclusion of the hearing of the application, make a report in writing to the Court concerning the matter of the application or may appear at the hearing and any proceedings relating to the application and tender evidence, and call, examine and cross-examine witnesses and address the Court.

Subsec. (7) amended by 30, 1969, s. 16 (d).

(8) In any proceedings before the Court on any such application, any person claiming to have any interest in any of the units may, with the consent of the Court, appear personally or by counsel or solicitor and be heard and, in determining any such application, the Court shall have regard to any report made to the Court under subsection (7) of this section and to the relative values of the respective units at the time of the making of the application.

(9) As soon as practicable after an order of a kind referred to in paragraph (a) of subsection (6) of this section is made the applicant or applicants for the order shall forward to the Registrar-General a certified copy of the order of the Court together with an application in the prescribed form requesting him to amend the schedule to the deposited strata plan in accordance with the order.

(10) Upon receipt of an application for the amendment of the schedule to a deposited strata plan, the Registrar-General shall, if he is satisfied that the relevant provisions of this Part in relation thereto have been complied with, amend the schedule to the plan in accordance therewith.

(11) The Registrar-General may, in his discretion, substitute for any schedule to a deposited strata plan a new schedule which shall constitute the original schedule as amended pursuant to all orders and the appropriate applications referred to in subsection (6) of this section made prior to the substitution and, upon such substitution, the schedule so substituted shall be endorsed with his signature and shall be the schedule to the plan.

(12) An amendment of a schedule shall have effect when the Registrar-General endorses the same with his signature.

(13) The unit entitlements of the units as set out for the time being in the schedule to a deposited strata plan shall be the basis for determining—

(a) the respective undivided shares of the registered proprietors in the equitable estate in the common property to which the plan relates;

(b) the proportions payable by the respective registered proprietors of contributions levied by the corporation on the registered proprietors generally pursuant to powers vested in it by this Part;

and

(c) the proportions in which moneys (if any) received or held by the corporation for distribution among the registered proprietors generally are to be distributed among them.

Procedure prior to deposit of strata plan.
S. 223mg enacted by 37, 1967, s. 11.

223mg. (1) The Registrar-General may refuse to accept a strata plan for deposit in the Lands Titles Registration Office under this Part if any of the relevant requirements of this Part applicable to or in relation to such strata plan has not been complied with, or may return the plan to the person or persons who made the application for the deposit of the strata plan, or to his or their agent, for compliance with those requirements.

Subsecs. (2), (3), (4), (5), (6) struck out by 30, 1969, s. 17 (a).

* * * * *

Subsec. (7) substituted by 30, 1969, s. 17 (b).

(7) Where any of the registered proprietors is a company or a foreign company within the meaning of the Companies Act, 1962, as amended¹, the Registrar-General may defer the deposit of the strata plan in the Lands Titles Registration Office if he is satisfied that there is a floating or other charge affecting the parcel comprised in the strata plan which charge is registered under that Act or under a corresponding previous enactment, or required to be registered, or capable of being registered, under that Act, until he is satisfied that such charge has been discharged.

Subsec. (8) substituted by 30, 1969, s. 17 (c).

(8) Nothing in this Act as in force after the commencement of the Real Property Act Amendment Act, 1969, shall affect the validity of anything done under this Act as in force prior to such commencement.

Subsec. (9) struck out by 30, 1969, s. 17 (c).

* * * * *

Deposit of strata plan in Lands Titles Registration Office.
S. 223mh enacted by 37, 1967, s. 11; substituted by 30, 1969, s. 18.

223mh. If it appears to the Registrar-General that the deposit of the strata plan in the Lands Titles Registration Office would be consistent with, and would not contravene, the provisions of this Part and any other enactment, he shall deposit the plan in the Lands Titles Registration Office, give it a number as a deposited strata plan, and notify the registered proprietor or registered proprietors of the parcel or his or their agent in the prescribed form accordingly.

The keeping of registers, records, etc., by Registrar-General.
S. 223n enacted by 37, 1967, s. 11; substituted by 30, 1969, s. 19.

223n. After the commencement of the Real Property Act Amendment Act, 1969, all registers and records kept prior to such commencement by the Registrar of Companies for the purposes of this Part shall be transferred by him to the custody of the Registrar-General who shall retain them in his custody.

¹ Now Companies Act, 1962-1974.

223na. (1) Upon the deposit of a strata plan in the Lands Titles Registration Office by the Registrar-General, a memorial thereof shall be entered on every certificate affected thereby and the Registrar-General shall, subject to this Act, cancel the certificate issued in respect of the parcel and issue a certificate for each unit and a separate certificate for the common property comprised in the plan.

Certificates to be issued on deposit of strata plan.
S. 223na enacted by 37, 1967, s. 11.

(2) The person to be named in a certificate as the registered proprietor of the common property shall be the corporation incorporated by virtue of section 223nc of this Act comprising the registered proprietor or registered proprietors of the units defined in the deposited strata plan.

(3) Except as provided in subsection (6) of this section, the person or persons to be named in the certificate for a unit as the registered proprietor or registered proprietors thereof shall be the person or persons who, immediately prior to the deposit of the strata plan in the Lands Titles Registration Office by the Registrar-General, was or were the registered proprietor or registered proprietors, as the case may be, of the parcel comprised in the strata plan.

(4) On each certificate for a unit defined on a strata plan to which subsection (2) of section 223mc of this Act applies, the Registrar-General shall enter memorials of such subsisting registered estates and interests (if any), other than easements, that had been entered on the original certificate for the parcel and, on and after the issue of the certificate for the unit, the unit shall vest in the registered proprietor or registered proprietors for the time being thereof for an estate in fee simple subject to such estates and interests as are notified on the original certificate for the unit.

(5) On the certificate for the common property issued pursuant to subsection (1) of this section the Registrar-General shall enter memorials of such easements, if any, notified on the original certificate for the parcel as have not been extinguished and, on and after the issue of the certificate for the common property, the common property shall, subject to section 223nh of this Act, vest in the corporation as the registered proprietor thereof for an estate in fee simple subject to such easements as are notified on the original certificate for the common property but freed and discharged from all other estates and interests to which the parcel was subject immediately before the strata plan was deposited in the Lands Titles Registration Office under this Part.

(6) Where the strata plan relates to or incorporates a building unit scheme of a kind referred to in subsection (3) of section 223mc of this Act and is accompanied by an application as required by subsection (4) of that section signed by all persons who have registered estates and interests in the parcel and stating the names and addresses of the person or persons entitled to be the registered proprietor or registered proprietors of each of the units defined on the plan, the person or persons to be named in a certificate for a unit as the registered proprietor or registered proprietors thereof shall be the person or persons who appears or appear from the application to be entitled to be the registered proprietor or registered proprietors of the unit and it shall not be necessary to lodge with the Registrar-General for registration under this Act a memorandum of transfer in respect of such unit from the registered proprietor or registered proprietors of the parcel to such person or persons; but, upon the deposit of the strata plan in the Lands Titles Registration Office by the Registrar-General, the Registrar-General shall enter a memorial of the application on every certificate relating to the parcel and affected thereby and, upon such memorial being entered on a certificate, every subsisting registered estate and interest entered in that certificate shall be extinguished and discharged and the Registrar-General shall accordingly, by endorsement signed by him, cancel every instrument concerned, either totally or partially, as the case may require,

referring to the application as his authority for the cancellation, and the Registrar-General shall, on the relevant certificates that are issued for the units defined on the strata plan, register such instruments as were required to be registered in substitution for those that were so cancelled.

(7) Upon the issue of a certificate for a unit defined on a strata plan referred to in subsection (6) of this section, the unit shall vest in the registered proprietor or registered proprietors thereof in fee simple subject to such estates and interests as are registered on the certificate by virtue of the instruments referred to in that subsection.

(8) Notwithstanding paragraph xi of section 191 of this Act, it shall be lawful for a caveator, whose caveat has been extinguished by virtue of subsection (6) of this section, without the leave of the Court, to lodge another caveat relating to the same matter over a certificate for a unit defined on the strata plan or for the whole or any portion of the common property and for the Registrar-General to enter a memorial thereof in the Register Book.

(9) Where, after the deposit of a strata plan referred to in subsection (6) of this section in the Lands Titles Registration Office by the Registrar-General and the incorporation of the registered proprietors of the units defined thereon, the Registrar of Companies is satisfied, on the application of a company that had been formed and incorporated under the Companies Act, 1962-1966¹, or under any corresponding previous enactment, and on verification, by statutory declaration or otherwise as the Registrar of Companies may require, of matters contained in such application or of matters relevant thereto, that, because of the deposit of the strata plan, the purpose for which the company had been formed no longer exists and that it has no assets or liabilities, the Registrar of Companies may, notwithstanding anything contained in the Companies Act, 1962-1966¹, by order dissolve the company and strike the name of the company from his register.

(10) Where, after the deposit of a strata plan referred to in subsection (6) of this section in the Lands Titles Registration Office by the Registrar-General and the incorporation of the registered proprietors of the units defined thereon, the Court is satisfied, on the application of a company that had been formed and incorporated under the Companies Act, 1962-1966¹, or under any corresponding previous enactment, or on the application of a member or creditor of the company, that, because of the deposit of the strata plan, the purpose for which the company had been formed no longer exists, but that it has any assets or liabilities, the Court may, by order, dissolve the company and direct the Registrar of Companies to strike the name of the company from his register and by the same or a subsequent order, give such directions as it considers just for the disposal of its remaining assets, if any, or to render the persons who, immediately before the dissolution, were members of the company personally liable for its outstanding liabilities in such manner and in such proportions as the Court thinks proper.

Subsec. (11)
struck out by 30,
1969, s. 20.

* * * * *

Unit subsidiary
not to be dealt
with
independently
of unit to which
it is
appurtenant.
S. 223nb enacted
by 37, 1967,
s. 11.

223nb. (1) A registered proprietor shall not enter into any dealing with a unit subsidiary except where the dealing has effect as part of a dealing with the unit to which, in accordance with the relevant deposited strata plan, the unit subsidiary is appurtenant.

Penalty: Five hundred dollars.

¹ Now Companies Act, 1962-1974.

(2) Any dealing with a unit subsidiary in contravention of subsection (1) of this section is void.

223nc. (1) Subject to this Part, on and after the deposit of a strata plan in the Lands Titles Registration Office by the Registrar-General, the registered proprietor or registered proprietors for the time being of the units defined on the plan shall, by virtue of this section, be a body corporate—

Incorporation
of registered
proprietors of
units.
S. 223nc enacted
by 37, 1967,
s. 11.
Subsec. (1)
substituted by
30, 1969, s. 21.

- (a) incorporated, where the plan was deposited in the Lands Titles Registration Office before the commencement of the Real Property Act Amendment Act, 1969, by the name by which, as the corporation referred to in section 223mh of this Act as in force before such commencement, it was registered under this Part by the Registrar of Companies;

or

- (b) incorporated, where the plan was deposited in the Lands Titles Registration Office after the commencement of the Real Property Act Amendment Act, 1969, by the name "Strata Plan No. Incorporated", the number given to the strata plan as a deposited strata plan under section 223mh of this Act being inserted in the space preceding the word "Incorporated".

(2) The members of the corporation shall be the person who is or persons who are at the relevant time the registered proprietor or registered proprietors for the time being of the units defined on the deposited strata plan, each member being a member in respect of the unit or units of which he is the registered proprietor or one of the registered proprietors.

(3) The corporation shall have perpetual succession, shall be capable of being a party to legal proceedings in its corporate name, and shall have a common seal, on which shall be inscribed its name in legible characters, but it shall be sufficient if the abbreviation "Inc." is used in place of the word "Incorporated" in the name of the corporation, whether inscribed on its common seal or in any description of or reference to the corporation.

(4) Subject to this Part, the custody and use of the common seal of the corporation and the procedure for the calling of meetings and the conduct thereof shall be as provided by the constitution of the corporation as contained in its articles, or, if not so provided, as determined by the corporation.

(5) Subject to this Part and to its constitution, the corporation may also—

- (a) enter into contracts with any person, including a member of the corporation, and hold any real and personal property;
- (b) sue for or in respect of any damage or injury to the common property caused by any person, whether that person is a member of the corporation or has any interest in the common property or not;
- (c) be sued in respect of any matter connected with the parcel for which the registered proprietors of the units to which the common property relates are jointly liable;

(d) establish, keep and maintain a fund or funds which, in the opinion of the corporation, is or are sufficient, and which the corporation may use—

(i) for administrative expenses and for the control, management and administration of the common property and for the payment of any premiums of insurance;

and

(ii) for the discharge or the performance of any other function or obligation of the corporation;

(e) determine from time to time in writing the amounts to be raised from the members for the purposes aforesaid and the time and manner of payment by each of the members of the amount payable by him;

(f) raise amounts so determined by demanding and receiving payment of the same from members either in proportion to the unit entitlement of their respective units or in such other proportions as are agreed to by unanimous resolution of the corporation;

(g) remedy any breach of any provision of its articles if—

(i) the breach is one that may be remedied by the expenditure of money;

and

(ii) the breach has not been remedied by the person bound to comply with the provision within the time specified in a notice given to that person by the corporation specifying the nature of the breach and requiring the breach to be remedied within that time;

and

(h) exercise such other powers and functions as are conferred or necessarily implied or prescribed by or under this Part or its articles or are incidental or ancillary thereto.

(6) Any amount demanded pursuant to paragraph (f) of subsection (5) of this section from each member shall be due and payable in accordance with the terms of the relevant determination and that amount or so much thereof as from time to time becomes due and payable (but not paid) shall be recoverable by the corporation in an action in any court of competent jurisdiction as a debt due to it jointly and severally from the person who was the member at the time when the same was so demanded and the person who is the member at the time when the action is commenced.

(7) Subject to this Part and to its articles, the corporation shall—

(a) control, manage and administer the common property vested in it and do all things reasonably necessary for the enforcement of its articles and the control, management and administration of the common property;

(b) carry out the duties imposed on it by or under this Part or its articles;

(c) unless by unanimous resolution of the corporation it is otherwise resolved, insure and keep insured all buildings and other improvements on the parcel for the replacement value from time to time thereof against fire and such other risks as may be prescribed;

- (d) effect such insurance as it is required by law to effect and such other insurance as it may by special resolution determine;
- (e) pay premiums on policies of insurance effected by it;
- (f) unless otherwise directed by order of the Court pursuant to section 223nl of this Act, forthwith apply the insurance moneys when received by it in respect of damage to any building or improvements in re-building and re-instating the building or improvements so far as the same may lawfully be done;
- (g) keep in a state of good and serviceable repair and properly maintain the common property and such other portions of the buildings and other improvements, fittings and fixtures on the parcel as by its articles are entrusted to its care;
- (h) comply with any notice, order or other instrument duly served on it by any competent authority under any law requiring repairs to be done to, or work to be performed in respect of, the common property or any building or other improvement on the parcel;

and

- (i) comply with any reasonable request for the names and addresses of the persons who are members of the committee of the corporation.

(8) For the purposes of effecting any insurance pursuant to paragraph (c) of subsection (7) of this section, the corporation shall be deemed to have an insurable interest to the replacement value of the buildings and improvements referred to therein, and for the purpose of effecting any other insurance pursuant to that subsection, the corporation shall be deemed to have an insurable interest in the subject matter of such insurance.

(9) The moneys received by the corporation under a policy of insurance effected by it under or pursuant to paragraph (c) of subsection (7) of this section in respect of any buildings or other improvements on the parcel comprised in the relevant deposited strata plan shall not be liable to be brought into contribution with moneys received under any other policy of insurance except another policy effected under or pursuant to that paragraph in respect of the same buildings or improvements.

(10) Where the corporation performs any repairs, work or act that it is required or authorized by or under this Part or its articles or by or under any other Act to perform (whether or not the repairs, work or act were or was performed consequent upon the service on it by a competent authority of any notice or order), but the repairs, work or act were or was wholly or substantially the liability or the responsibility of the registered proprietor of one unit only or wholly or substantially for the benefit of some of the units only or wholly or substantially the liability or the responsibility of the registered proprietors of some of the units only, any money expended by the corporation in performing the repairs, work or act shall—

- (a) in the case where the repairs, work or act were or was wholly or substantially the liability or the responsibility of the registered proprietor of one unit only, be recoverable by the corporation in an action in any court of competent jurisdiction as a debt due to it jointly and severally from the relevant registered proprietor of the unit at the time when the repairs, work or act were or was performed and the relevant registered proprietor of the unit at the time when the action was commenced;

or

(b) in the case where the repairs, work or act were or was wholly or substantially for the benefit of some of the units only or wholly or substantially the liability or the responsibility of the registered proprietors of some of the units only, be recoverable by the corporation in an action in any court of competent jurisdiction as a debt due to it jointly and severally from the relevant registered proprietor of each of such units at the time when the repairs, work or act were or was performed and the relevant registered proprietor of that unit at the time when the action was commenced, the amount payable by any registered proprietor and former registered proprietor in respect of any unit being not more than the proportion of the debt which the unit entitlement of the unit then bears to the aggregate unit entitlement of all those units.

(11) Where the corporation incurs any expenditure or performs any repairs, work or act that it is required or authorized by or under this Part or its articles or by or under any other Act to perform (whether or not the expenditure was incurred or the repairs, work or act were or was performed consequent upon the service on it by a competent authority of any notice or order) and the expenditure or the repairs, work or act were or was rendered necessary by reason of any wilful or negligent act or omission on the part of, or breach of any provision of its articles by any person or his tenant, lessee, licensee or invitee, the amount of that expenditure or any money expended by it in performing the repairs, work or act shall be recoverable by it from that person as a debt in an action in any court of competent jurisdiction.

(12) On application by or on behalf of a person who is a member of the corporation in respect of a unit or by or on behalf of a prospective purchaser of a unit that is offered for sale, the corporation shall issue to that person a certificate in the prescribed form certifying—

- (a) the amount then unsatisfied of any determination made by the corporation pursuant to paragraph (e) of subsection (5) of this section;
- (b) the time and manner of payment of the amount determined by it pursuant to that paragraph;
- (c) the proportion of the amount of the determination which the member who is the registered proprietor of the unit is liable to pay to the corporation;
- (d) the amounts (if any) demanded from that member pursuant to paragraph (f) of subsection (5) of this section and then unpaid;
- (e) the amount (if any) then recoverable by the corporation in respect of the unit pursuant to subsection (6) of this section;
- (f) the amount (if any) then recoverable by the corporation in respect of the unit pursuant to subsection (10) of this section;
- (g) the sum or the respective sums standing to the credit of the fund or funds kept and maintained by the corporation pursuant to paragraph (d) of subsection (5) of this section, and the amount or respective amounts out of that fund or those funds committed or earmarked for any expenses already incurred by the corporation;

and

- (h) whether or not the corporation has incurred any expenditure or performed or is about to perform any repairs, work or act in respect of which a liability is likely to be incurred by the member

who is the registered proprietor of the unit under any provision of this Part or of the articles of the corporation and, if so, the estimated amount of the expenditure or the general nature of the repairs, work or act,

and as against the corporation and in favour of any person (including the member) relying in good faith on such certificate, that certificate shall be conclusive evidence of the matters certified therein.

(13) A notice or order requiring repairs to or work to be performed in respect of the parcel comprised in the deposited strata plan or any building or other improvements thereon which a competent authority is required or authorized by any law to serve may, notwithstanding anything contained in such law, be served on the corporation in the manner provided by this Part and, when served in that manner, the notice or order shall be deemed to have been duly served on the person on whom it was required to be served and, subject to this Part, the corporation shall comply therewith.

(14) Where a member who is not beneficially entitled to possession of a unit in respect of which he is a member is required to pay, and pays, any amount to the corporation pursuant to paragraph (f) of subsection (5) or to subsection (6) or subsection (10) of this section or any other provision of this Part or any provision of the articles of the corporation, he shall, subject to any agreement, express or implied, between him and the person beneficially entitled to possession of the unit, be entitled to recover from that person any amount so paid.

(15) The payment of any amount lawfully incurred by the corporation in the course of the exercise of any of its powers or functions or the carrying out of its duties or obligations or of any pecuniary penalty imposed on the corporation is, by force of this section, guaranteed by the persons who, for the time being, and from time to time, are the members of the corporation, the member who is, or the members who are, the registered proprietor or registered proprietors of each unit being liable under such guarantee only for such proportion of the money so incurred as the unit entitlement of that unit bears to the aggregate unit entitlement of all the units.

(16) Where—

(a) by reason of any liability of a member or former member of the corporation under subsection (15) of this section that member or former member has, in respect of any matter, been obliged to pay, and paid, more than the proportion for which he was liable in respect of that matter under subsection (6) of this section;

and

(b) any other member or members of the corporation has or have not discharged or fully discharged his or their liability under that subsection in respect of that same matter,

the member or former member referred to in paragraph (a) of this subsection shall be entitled to recover from the member or members referred to in paragraph (b) of this subsection in any court of competent jurisdiction, as a debt due to him from that member or those members, an amount not exceeding the amount by which the aggregate amount paid by him in respect of that matter exceeded the amount of the proportion for which he was liable in respect of that matter under subsection (6) of this section, but no member referred to in paragraph (b) of this subsection shall be held liable to pay under this subsection more than the amount remaining undischarged of his liability in respect of that matter under subsection (6) of this section.

PART XIXB

Restricted
powers of
corporation.
S. 223nd enacted
by 37, 1967,
s. 11.

223nd. (1) The corporation may, if authorized by a unanimous resolution of the corporation—

- (a) purchase, hire or otherwise acquire personal property for its own use or for use in connection with the enjoyment of the common property;
- (b) borrow moneys required by it for the purpose of carrying out its duties or exercising its powers;
- (c) secure the repayment of moneys borrowed by it, and the payment of interest thereon, by negotiable instrument or mortgage of unpaid contributions from the members (whether levied or not), or by any combination of those means;
- (d) deposit in any trading bank or savings bank account any moneys in any fund established pursuant to paragraph (d) of subsection (5) of section 223nc of this Act;
- (e) enter into and carry out an agreement with any member or any occupier of a unit for the provision of amenities or services by it to such unit or to the member or occupier;

and

- (f) grant to a member, or any person who has derived an interest in a unit through a member, any special privilege (not being a lease) in respect of the enjoyment of part or parts of the common property.

(2) Any grant made pursuant to paragraph (f) of subsection (1) of this section shall be determinable by notice in writing given by the corporation to that member or person pursuant to a special resolution of the corporation.

(3) Except in the course and for the purpose of controlling, managing, administering, maintaining, repairing and renewing the common property, or any part thereof or in the course and for the purpose of carrying out its functions and duties or exercising its powers as provided by this Part, the corporation shall not carry on any business for profit or for the purpose of securing pecuniary profit to its members.

Penalty: Five hundred dollars.

(4) Except as provided by this Part or in accordance with an order of the Court (which the Court is hereby authorized to make if it is satisfied that in all the circumstances it is proper to do so, having regard in particular to the corporation's accrued and contingent liabilities), the corporation shall not pay to any of its members any moneys received or held by it.

Penalty: Five hundred dollars.

Committee of
corporation.
S. 223ne enacted
by 37, 1967,
s. 11.

223ne. (1) Subject to this Part, the powers, functions and duties of the corporation shall be exercised and performed by the committee of the corporation in such manner as the corporation by resolution passed at a general meeting of the corporation may direct or, in the absence of such resolution, in such manner as the committee thinks fit.

Subsec. (2)
substituted by
30, 1969,
s. 22 (a).

(2) Until the first annual general meeting of the corporation, all the members thereof shall constitute the committee, but thereafter—

- (a) in the case of a corporation incorporated under this Part before the commencement of the Real Property Act Amendment Act, 1969, the committee shall consist of not less than three nor more than fifteen members who shall be elected at each annual general

meeting; but where there are not more than three members of the corporation, the committee shall consist of all those members;

and

- (b) in the case of a corporation incorporated under this Part after the commencement of the Real Property Act Amendment Act, 1969, the committee shall consist of not less than ten nor more than fifteen members who shall be elected at each annual general meeting; but where there are not more than ten members of the corporation, the committee shall consist of all those members.

(3) Except where the committee consists of all the members of the corporation, the corporation may, by special resolution passed at an extraordinary general meeting, remove any member of the committee before the expiration of his term of office and appoint another member in his place to hold office until the next annual general meeting.

(4) Subject to subsection (3) of this section, when a casual vacancy occurs on the committee, the remaining members of the committee may appoint, in place of, and for the unexpired part of the term of office of, the member of the committee whose office is vacant, another member of the corporation.

(5) Any meeting of the committee at which a quorum is present shall be competent to transact the business of the committee, and a quorum necessary for the transaction of such business shall—

Subsec. (5)
amended by 30,
1969, s. 22 (b).

(a) where the committee consists of only one member, be one;

(b) where the committee consists of two, three or four members, be two;

(c) where the committee consists of five or six members, be three;

(d) where the committee consists of seven or eight members, be four;

Para. (d)
substituted by
30, 1969,
s. 22 (b).

(e) where the committee consists of nine or ten members, be five;

Para. (e)
inserted by 30,
1969, s. 22 (b).

and

(f) where the committee consists of more than ten members, be six.

Para. (f)
inserted by 30,
1969, s. 22 (b).

(6) At the commencement of each committee meeting, the members present (if more than one) shall elect a chairman for the meeting who, in the case of equality of votes, shall have a second or casting vote and, if any chairman so elected vacates the chair during the course of a meeting, the members then present (if more than one) shall choose in his place another chairman who shall have the same rights of voting.

(7) At meetings of the committee all matters shall be decided by a majority of the votes of the members present.

(8) The committee may—

(a) subject to subsection (9) of this section, meet for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit;

(b) subject to such directions (if any) as may be given by special resolution of the corporation, for and on behalf of the corporation, employ agents and servants in connection with the control, management, administration, maintenance, repairing and renewing of the common property or any part thereof, and the exercise and

performance of the powers, functions and duties of the corporation, and lawfully terminate such employment;

and

- (c) subject to any restriction or direction that may be imposed or given by ordinary resolution passed at a general meeting of the corporation, delegate to one or more of its members such of its powers, functions and duties as it thinks fit, and at any time revoke such delegation.

(9) Any member of the committee may convene a meeting of the committee by giving to the other members of the committee not less than seven days' written notice specifying the reason for convening such meeting and the time and place of such meeting.

(10) Subject to the regulations, the committee shall—

- (a) keep minutes of its proceedings;
- (b) cause minutes to be kept, in a minute book of the corporation kept for the purpose, of proceedings at all general meetings of the corporation and include therein a record of every special resolution, unanimous resolution and other resolution of the corporation;
- (c) cause proper records and books of account to be kept in respect of its assets and liabilities, all sums of money received and expended by it and owing to and by it;
- (d) in, and in respect of, each year, prepare proper accounts relating to all moneys of the corporation, and the income and expenditure thereof, and present them at each annual general meeting of the corporation for approval by the corporation;
- (e) on the application of a member or of a mortgagee of a unit, or any person authorized in writing by either of them, make the books of account, records and all minutes kept by the committee available to him for inspection at all reasonable times;

and

- (f) furnish the Registrar-General in accordance with the regulations with such returns and information as may be prescribed.

(11) No fee shall be payable to the Registrar-General on the furnishing of any return or information required to be furnished under paragraph (f) of subsection (10) of this section.

(12) If default is made in complying with any provision of subsection (10) of this section, each member of the committee shall, unless he shows the court before which he is charged that he had taken all reasonable steps to ensure that the default did not occur, be guilty of an offence against this Act and liable, on conviction, to a penalty not exceeding Twenty-five dollars.

(13) All acts done in good faith by the committee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any member thereof, be as valid as if such member had been duly elected or had duly continued in office.

Para. (d)
amended by 30,
1969, s. 22 (c).

Para. (f)
amended by 30,
1969, s. 22 (d).

Subsec. (11)
substituted by
30, 1969,
s. 22 (e).

General
meetings.
S. 223nf enacted
by 37, 1967,
s. 11.

223nf. (1) Subject to this Part and to its articles, a corporation may hold general meetings as it thinks fit, but—

- (a) one such general meeting (which shall be called the annual general meeting and may be held in any calendar year in addition to any other meeting of the corporation held in the same year) shall be

held at least once in every calendar year and (except in the case of the first annual general meeting) not more than fifteen months after the date of the last preceding annual general meeting;

and

- (b) within six months after the deposit of the relevant strata plan in the Lands Titles Registration Office by the Registrar-General, the first annual general meeting of the corporation shall be held.

(2) The general meetings of the corporation, other than its annual general meetings, shall be called extraordinary general meetings.

(3) The committee of the corporation may, whenever it thinks fit, and shall, upon a requisition in writing made by members of the corporation entitled to not less than twenty-five per centum of the total unit entitlement of the units shown on the relevant strata plan, convene a general meeting of the corporation.

(4) Except where only one person is entitled to vote in respect of all the units defined on the relevant strata plan, at least fourteen days' notice of every general meeting of the corporation specifying the place, the date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given to all members of the corporation and to the mortgagees, if any, of the units defined on the relevant strata plan who have, in accordance with this Part, given the corporation written notice of their mortgages and have therein claimed their respective rights to vote as provided by this Part; but the non-receipt of such notice by any such member or mortgagee shall not invalidate the proceedings at any such meeting.

(5) Any notice required to be given under subsection (4) of this section shall be sufficiently given if sent by pre-paid letter addressed and posted to the person concerned to the last address of that person notified to the corporation or, if no such address has been so notified, to that person's last known place of abode or, if such person were a body corporate, to its registered office or principal place of business or other known address in the State.

(6) All business that is transacted—

- (a) at an annual general meeting of the corporation, with the exception of the election of the chairman for the meeting, the consideration of accounts and the election of members to the committee;

or

- (b) at an extraordinary general meeting, with the exception of the election of the chairman for the meeting,

shall be deemed to be special business.

(7) Except as provided in subsection (8) of this section, no business shall be transacted at any general meeting of the corporation unless a quorum, consisting of persons entitled to exercise the voting power in respect of not less than one-half of the number of the units defined on the relevant strata plan, is present at the time when the meeting proceeds to business.

(8) If within half an hour after the time appointed for a general meeting of the corporation the quorum referred to in subsection (7) of this section is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and if the quorum is not then present within half an hour after the time appointed for the meeting as so adjourned, the persons who are then present and entitled to vote shall constitute the quorum for the purposes of subsection (7) of this section.

(9) At the commencement of a general meeting of the corporation, the members present (if more than one) shall elect a chairman for the meeting.

Voting at
meetings of
corporation.
S. 223ng enacted
by 37, 1967,
s. 11.

223ng. (1) Subject to this section, at any meeting of the corporation—

(a) where a unanimous resolution of the corporation is required, each member shall be entitled to exercise one vote;

and

(b) except in the case of a unanimous resolution, one vote shall be exercisable in respect of each unit and that vote is exercisable by the member registered as the proprietor of that unit or, where there are two or more members registered as proprietors of the unit, by those members jointly.

(2) For the purposes of paragraph (b) of subsection (1) of this section, where, in respect of any unit, there are successive registered estates of freehold, the member or members entitled to exercise the power of voting in respect of that unit shall be the member or members registered as the proprietor or proprietors of the first of such estates as is, at the relevant time, an estate of freehold in possession.

(3) Where the estate of a member of the corporation in a unit in respect of which he is a member is subject to a registered mortgage or to registered mortgages, and the mortgagee or the first mortgagee, as the case may be, has given the corporation written notice of his mortgage and has in such notice claimed the right to exercise the power of voting otherwise exercisable by the member under subsection (1) of this section, then, at any meeting of the corporation, the power of voting conferred on the member by virtue of subsection (1) of this section shall not be exercisable by that member as the registered proprietor of the unit if, at the time of voting, the mortgagee or first mortgagee is present at the meeting personally or by proxy in which case such power may be exercised only by the mortgagee or first mortgagee; but if, at the time of voting, the mortgagee or first mortgagee is not present at the meeting personally or by proxy or is not deemed to be present at the meeting by virtue of subsection (12) of this section, the member himself may exercise that power of voting.

(4) At any general meeting, except where a unanimous resolution of the corporation is required, a poll may be demanded by any person present and entitled to exercise a power of voting, and, unless a poll is so demanded, a declaration by the chairman that the resolution has been carried shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of, or against, such resolution.

(5) A demand for a poll at any meeting of the corporation may be withdrawn.

(6) A poll, if demanded, shall be taken in such manner as the chairman thinks fit and the result of the poll, which shall be declared by the chairman as soon as it is ascertained, shall be deemed to be the resolution in respect of which the poll was demanded.

(7) Subject to subsection (11) and subsection (12) of this section, a vote may be exercised personally or by proxy but where two or more persons are entitled to exercise one vote jointly, that vote may, except in the case of a unanimous resolution, be exercised by any person (who may or may not be one of them) as their proxy jointly appointed by them.

(8) Except where a unanimous resolution or a special resolution of a corporation is required, every vote on any resolution shall be of equal value

unless a poll is demanded and held when the value of each vote shall correspond with the unit entitlement of the unit in respect of which it is exercised.

(9) The chairman of a meeting of the corporation shall have a deliberative vote and, in the case of an equality in voting on an ordinary resolution, whether on a poll or not, shall be entitled also to a casting vote.

(10) Except where a unanimous resolution of the corporation is required, a power of voting conferred on the registered proprietor or mortgagee of a unit shall not be exercisable unless all amounts accrued due and payable in respect of that unit to the corporation by the member or members liable to pay the same have been paid.

(11) Where, at any meeting of the corporation, a unanimous resolution of the corporation is required for any purpose and more than one person is entitled to attend the meeting and vote on the resolution—

- (a) the person proposing to move the proposed resolution shall give the committee of the corporation in writing not less than three weeks before the meeting is to be held notice of the motion;
- (b) the committee of the corporation shall give to each person who is entitled to receive notice of the meeting, a copy of the notice of motion which shall incorporate a voting paper in the prescribed form;

and

- (c) any person entitled to vote on the proposed resolution may, if he does not otherwise vote thereon, exercise an absentee vote by recording his vote on the voting paper in accordance with the regulations and delivering it or causing it to be delivered, duly completed in accordance with the regulations, to the corporation before the commencement of the meeting.

(12) A vote recorded on the voting paper by a person entitled to exercise an absentee vote and received by the corporation as provided by paragraph (c) of subsection (11) of this section shall, unless the voting paper has not been completed in accordance with the regulations, be accepted by the chairman of the meeting as a valid vote by the person exercising it and, for the purposes of this Part, any person entitled to exercise an absentee vote on a proposed resolution at a meeting whose absentee vote thereon has been received by the corporation as provided by paragraph (c) of subsection (11) of this section shall, except for the purposes of subsection (7) of section 223nf of this Act, be deemed to be present at the meeting and to have exercised his power of voting on that resolution.

(13) The right of a person to vote at a meeting of the corporation—

- (a) may, subject to this subsection, be exercised by him if he is of or over the age of eighteen years;
- (b) shall not be exercised by him if he is less than eighteen years of age, but may in that case be exercised by his guardian;
- (c) shall not be exercised by him if he is by any rule of law under a disability that prevents him from lawfully dealing with his property, but may in that case be exercised by the person who is, for the time being, authorized by law to control the property of the person under the disability.

(14) An instrument appointing a proxy for the purposes of this Part must be in the prescribed form and must be signed and attested as prescribed.

The common
property.
S. 223nh enacted
by 37, 1967,
s. 11.

223nh. (1) Subject to this Part, the corporation shall hold the common property in trust for the registered proprietors of the units defined on the relevant deposited strata plan, as tenants in common thereof in shares proportional to the unit entitlements from time to time of their respective units.

(2) Subject to this Act and the Planning and Development Act, 1966-1967¹, the corporation may, if authorized in that behalf by a unanimous resolution of the corporation, purchase or otherwise acquire for an estate in fee simple any other land that is contiguous to the parcel and on the completion of such purchase or acquisition and registration of the relevant instrument by the Registrar-General, such land shall be added to and form part of the common property and the Registrar-General shall amend the relevant deposited strata plan by including such land in the common property and the parcel.

(3) The corporation may, if authorized in that behalf by a unanimous resolution of the corporation, and with the approval of the Director and the council within whose area the parcel comprised within the relevant strata plan is situated, make application to the Registrar-General requesting him to amend, vary, correct or alter the designation of any defined part or parts of the common property or to set apart any part or parts thereof for any particular purpose and the Registrar-General may, at his discretion, grant such application and make such entries or endorsements on the strata plan or other records kept in the Lands Titles Registration Office to give effect to such grant.

(4) A registered proprietor of a unit shall not be competent to enter into any dealing with his share of his equitable estate in the common property which is appropriate to that unit except where the dealing has effect as part of a dealing with that unit and any dealing with the unit shall likewise operate as a dealing with the share of the common property which is appropriate to that unit, notwithstanding that no mention of such share of the equitable estate is made in the instrument evidencing or giving effect to such dealing.

(5) Subject to this Part, the corporation may, if authorized in that behalf by a unanimous resolution of the corporation, execute a transfer of any part of the common property (other than an easement to which section 223ni of this Act applies), but the Registrar-General shall not register any such transfer if—

(a) the transfer is not accompanied by a certificate of approval by the Director and a certificate of the council within whose area the common property lies, signed by the town clerk or other officer of the council duly authorized by the council in that behalf, certifying that the transfer in effect does not contravene and is not inconsistent with any authorized development plan within the meaning of the Planning and Development Act, 1966-1967¹, or any law for the administration or enforcement of which the council is responsible or has power to act;

(b) such other documents and particulars as are required by the regulations to be lodged with the Registrar-General together with the transfer have not been so lodged;

¹ Now Planning and Development Act, 1966-1975.

- (c) it appears to the Registrar-General that the transfer in effect does not comply with, or contravenes, or is inconsistent with, any provision of this Part;

or

- (d) in the case where any of the units defined on the relevant deposited strata plan or the part of the common property that is dealt with by the transfer is subject to any existing registered estate or interest which, in the opinion of the Registrar-General, ought to be cancelled and discharged before or at the same time as the registration of the transfer, such estate or interest is not cancelled or discharged by an appropriate instrument registered or accepted for registration by him.

(6) Upon the registration by the Registrar-General of a transfer of any land constituting part of the common property, the land shall cease to form part of the parcel and shall also cease to form part of the common property and the Registrar-General shall—

- (a) amend the relevant deposited strata plan by deleting therefrom that part of the land shown on the plan which is comprised in the transfer;

and

- (b) issue in the name of the transferee a certificate for the land transferred and thereupon such land shall be freed from any rights and easements created and existing over the land by virtue of subsection (3) of section 223ni of this Act and from any trust referred to in subsection (1) of this section.

Para. (b)
amended by 30,
1969, s. 23.

(7) The receipt in writing of the corporation for any moneys payable to the corporation under the terms of any transfer of any part of the common property and registered by the Registrar-General shall be a sufficient discharge to the person or persons who have paid those moneys and shall effectually exonerate him or them from seeing to the application or from being answerable for any loss or misapplication thereof.

(8) Any purchase moneys received by the corporation on the sale of any part of the common property shall be paid into the funds of the corporation to be used by the corporation to meet outstanding administrative expenses of the corporation and other expenses incurred by it in the control, management and administration of the common property and on account of premiums of insurance and other obligations of the corporation, and the balance, if any, remaining out of such purchase moneys shall, if the corporation by unanimous resolution so resolved, be paid to the registered proprietors of the units defined on the strata plan in amounts proportional to the unit entitlements for the time being of their respective units, but the corporation may, from any amount payable to a registered proprietor under this subsection, retain such sum as may then be lawfully due to the corporation from that registered proprietor.

223ni. (1) The corporation may, if it so resolves by unanimous resolution—

Easements.
S. 223ni enacted
by 37, 1967,
s. 11.

- (a) grant, or execute any instrument granting, an easement over any portion of the common property;

or

- (b) acquire or accept an easement granted for the benefit of the parcel or any portion thereof,

upon such terms and for such purposes as are approved by such resolution.

(2) When any grant of easement over common property is registered by the Registrar-General, the Registrar-General shall indicate on the relevant deposited strata plan, in such manner as he deems appropriate, the extent of such easement.

(3) By virtue of this section, the owner of each unit defined on a deposited strata plan and of the common property shall, in respect of that unit or the common property, as the case may be, and for the reasonable use and enjoyment thereof, have over any other unit or the common property, as the case may require, such rights of support, shelter and protection and such rights for the passage of garbage and for the connection, passage and provision of water, sewerage, drainage, gas, electricity and naturally or artificially heated or cooled air, and other services of whatsoever nature (including telephone, radio and television services) through or by means of pipes, wires, cable, ducts or other reasonable means as may from time to time be necessary, together with all ancillary rights necessary to make such rights effective (including rights of entry by himself or his agents, servants and workmen at all reasonable times for the purpose of inspecting, maintaining, repairing, replacing, renewing or restoring any pipe, wire, cable, duct, or other material used by virtue of any right vested in him) and the owner of any unit or of the common property over which any such right exists shall be under and subject to a corresponding duty, and such rights may be enjoyed and enforced accordingly by the persons in whom they are vested as if they are easements, but any person exercising such rights shall be liable to make good any damage done in the course thereof.

Constitution of
the corporation.
S. 223nj enacted
by 37, 1967,
s. 11.

223nj. (1) Subject to this Part—

(a) the corporation and the members thereof shall be bound by the constitution of the corporation as contained in its articles to the same extent as if they respectively had agreed with each other under seal to be bound thereby and as if the constitution contained covenants on the part of the corporation and each member to observe all the provisions of the articles that are applicable to them respectively, whether the reference to a member therein were a reference to him as the registered proprietor of a unit or otherwise;

and

(b) where any articles of the corporation relate to the manner in which or the purposes for which any unit, unit subsidiary or part of the common property is to be used, any person who uses or occupies such unit, unit subsidiary or common property shall be bound to comply therewith.

(2) The corporation or any member thereof may, subject to the rules of the Court, apply to the Court for, and the Court may make, an order enforcing the performance or restraining the breach of any of the articles of the corporation by any person bound thereby or bound to comply therewith.

(3) Upon the incorporation of the corporation by virtue of section 223nc of this Act, the articles set out in the twenty-sixth schedule to this Act shall, subject to this section, be the first articles of the corporation.

Subsec. (4)
amended by 30,
1969, s. 24.

(4) Subject to this Part, the corporation may, by special resolution, amend its constitution by varying, amending, rescinding or adding to its articles or making any articles in place of any article so rescinded but no such resolution shall have effect unless and until a copy of the resolution certified as prescribed is lodged with the Registrar of Companies if the resolution is made before the commencement of the Real Property Act Amendment Act, 1969, or with the Registrar-General if the resolution is made after such commencement.

(5) Subject to this Part, the articles of the corporation may regulate and control the corporation, the committee of the corporation and the affairs of the corporation and the management, administration, use and enjoyment of the units, the unit subsidiaries and the common property that are comprised in the relevant deposited strata plan.

(6) If any provision of the articles of the corporation is inconsistent with any provision of this Act, the latter provision shall prevail and the former provision shall, to the extent of the inconsistency, have no force or effect.

(7) If any provision of the articles of a corporation—

(a) confers any power or imposes any duty on the corporation which is not incidental to or necessarily consequential on the performance of the powers or duties imposed or conferred on it by this Part;

or

(b) prohibits or restricts the devolution of any unit or the equitable estate of the registered proprietor of a unit in the common property or the transfer, lease or mortgage thereof or other dealing therewith or destroys or modifies any right or easement implied or created by this Act,

such provision has no force or effect.

(8) The corporation shall, on the application of a member thereof or a mortgagee of a unit defined on the relevant deposited strata plan, or any person authorized in that behalf in writing by such a member or mortgagee, make the constitution of the corporation available to him for inspection at any reasonable time.

223nk. (1) Where—

(a) the buildings and other improvements on a parcel are insured by a corporation for the replacement value thereof;

and

(b) a registered proprietor of a unit within the parcel has mortgaged the unit,

Insurance.
S. 223nk enacted
by 37, 1967,
s. 11.

the registered proprietor may insure against any damage to the unit in a sum not exceeding the amount for the time being secured by the mortgage or mortgages on the unit that are noted on the relevant policy of insurance.

(2) Where any such policy of insurance is in force, payment when due thereunder shall, in accordance with the terms and conditions of the policy, be made by the insurer to the mortgagees whose interests are noted thereon in the order of their respective priorities as appear from the Register Book but, subject to the terms and conditions of the policy, the insurer's liability thereunder is limited to—

(a) the sum insured as stated in the policy;

(b) the amount of the loss;

or

(c) the amount sufficient at the date of the loss to discharge the mortgage or mortgages on the unit noted on the policy,

whichever is the least amount.

(3) Payment by the insurer to a mortgagee under any such policy shall not entitle the mortgagor to a discharge of the mortgage but, upon such payment by the insurer to the mortgagee—

- (a) if the amount of the payment equals the amount necessary to discharge the mortgage held by the mortgagee upon the unit, the insurer is entitled to obtain from the mortgagee a transfer of that mortgage;

or

- (b) if the amount of the payment is less than the amount necessary to discharge the mortgage held by the mortgagee upon the unit, the insurer is entitled to obtain from the mortgagee, a transfer of such undivided share of the mortgagee's estate and interest in the mortgage as the amount of the payment bears to the amount that was owing under the mortgage immediately before the payment.

(4) Where the buildings and other improvements on a parcel are not insured by the corporation, or have been insured to less than their replacement value, a registered proprietor of a unit within the parcel may—

- (a) insure against any damage to the unit in a sum not exceeding the amount of the replacement value of that unit less the amount (if any), calculated in accordance with subsection (6) of this section, to which the unit is, in accordance with that subsection, deemed to be insured under the policy or policies of insurance effected on the buildings and other improvements by the corporation;

and

- (b) notwithstanding any existing policies of insurance, insure against any damage to the unit in a sum not exceeding the amount for the time being secured by mortgages (if any) on the unit that are noted on the relevant policy of insurance.

(5) The provisions of subsections (2) and (3) of this section apply and have effect to and in relation to a policy of insurance of a kind referred to in paragraph (b) of subsection (4) of this section, to and in relation to the insurer thereunder and any payment to be made or made by the insurer thereunder and the mortgages which, and the mortgagees whose interests, are noted thereon as fully and effectually as if they were, respectively, a policy of insurance, the insurer, a payment to be made or made by the insurer, the mortgages and mortgagees and any estates and interests of mortgagees to and in relation to which and whom those provisions expressly apply and have effect.

(6) For the purposes of paragraph (a) of subsection (4) of this section, the amount to which the unit referred to therein is deemed to be insured under the policy or policies of insurance (if any) effected on the buildings and other improvements by the corporation shall be calculated by multiplying the amount, as stated in that policy, or the aggregate amount, as stated in those policies, to which the buildings and other improvements are insured by the unit entitlement of the unit and dividing the product so obtained by the aggregate unit entitlement of all the units included in the parcel.

(7) Nothing in this section shall restrict the right of the registered proprietor of a unit to effect a policy of insurance against risks other than damage to his unit.

(8) The moneys received by a registered proprietor under a policy of insurance effected by him under or pursuant to paragraph (a) of subsection (4) of this section shall not be liable to be brought into contribution with moneys

received under any other policy of insurance except another policy of insurance effected by him under or pursuant to that paragraph.

(9) This section shall apply and have effect notwithstanding any other law relating to insurance.

223nl. (1) An application in the prescribed form for the cancellation of a deposited strata plan may be made to the Registrar-General—

Cancellation of
deposited strata
plan.
S. 223nl enacted
by 37, 1967,
s. 11.

(a) by the registered proprietor (if only one) or all the registered proprietors (if more than one) of all the units defined on the plan;

or

(b) by a person who, upon application to the Court in accordance with the rules of the Court, has obtained from the Court an order declaring that the Court is satisfied that, having regard to the rights and interests of all persons who have interests in the parcel, it is just and equitable that the plan should be cancelled.

(2) The Court may grant or refuse an application referred to in paragraph (b) of subsection (1) of this section and when, or at any time after, granting the application, may by order impose such conditions and give such directions (including directions for the payment of money or that any consent referred to in this section be dispensed with) as it thinks fit, for the purpose of adjusting, as between all or any of the persons whose rights will be affected by the cancellation of the plan, the respective rights and duties of those persons so far as they may be affected by the granting of the application.

(3) There must be lodged with the Registrar-General in support of every application for the cancellation of a deposited strata plan, unless the Registrar-General dispenses with the production thereof—

(a) the duplicate certificate for every unit and the common property to which the plan relates;

(b) the duplicate instrument (if any) evidencing or creating every registered estate or interest relating to each of those units and to the common property;

and

(c) a copy of each order (if any) referred to in paragraph (b) of subsection (1) and in subsection (2) of this section verified or certified as prescribed.

(4) Where—

(a) the Court makes an order of a kind referred to in paragraph (b) of subsection (1) of this section;

and

(b) —

(i) the person having the custody or control of any duplicate certificate or instrument required for the purposes of an application or proposed application for the cancellation of a deposited strata plan refuses or neglects, when requested in writing by an applicant or a person proposing to make the application, to produce that duplicate to him or to the Registrar-General for the purposes of the application;

or

- (ii) the production of any such duplicate certificate or instrument cannot be obtained as the person last known to have the custody or control thereof is dead, or is not in the State or cannot be found, or the production thereof is impracticable to obtain for any other reason,

the Court may, on the application of any person who has a registered estate or interest in the parcel or any part thereof, and on such terms and conditions as it thinks fit, by order, direct the Registrar-General to dispense with the production thereof or, in its discretion in any case to which subparagraph (i) of paragraph (b) of this subsection applies, order the person referred to in that subparagraph to produce the duplicate to the Registrar-General in accordance with the order.

(5) Subject to this Part, upon acceptance by the Registrar-General of an application for the cancellation of a deposited strata plan, the Registrar-General shall, if he is satisfied—

- (a) that all duplicate certificates and instruments that are required to be lodged with him in connection with or in support of the application have been so lodged;
- (b) that, at the date of the application, the registered proprietor of every unit and the common property to which the plan relates and the administrator, if any, of the corporation, and every person who has a registered estate or interest in any unit or in the whole or any part of the common property have consented in writing to the cancellation of the strata plan (except where the Court has by order directed that any such consent be dispensed with, which order the Court has power to make upon such terms and conditions as it thinks fit);
- (c) that the conditions and directions, if any, imposed or given by any order of the Court made under subsection (2) of this section have been complied with;

and

- (d) that notice in a form approved by him of the applicant's or the applicants' intention to make the application had, not less than two weeks nor more than four weeks before the receipt by him of the application, been published at least once in the *Gazette* and once either in a daily newspaper circulating generally throughout the State or in a newspaper generally circulating in the area in which the parcel lies,

cancel the deposited strata plan by making and signing an endorsement to that effect on the strata plan and making a memorandum of such cancellation in the Register Book on every certificate affected thereby.

(6) Upon the cancellation of the deposited strata plan—

- (a) the land which, immediately prior to the cancellation, constituted the parcel shall vest in fee simple in the persons who then were the registered proprietors of the units defined on the plan as tenants in common, in undivided shares proportional to the unit entitlements of their respective units, but—
 - (i) the estate in such land so vested in each of them shall thereupon be subject to such estates and interests as, immediately prior to the cancellation, were notified on the original certificate for each unit of which he was the

registered proprietor, but had not been discharged or extinguished;

and

- (ii) the land shall be free from any rights that, prior to the cancellation, existed over the parcel by virtue of subsection (3) of section 223ni of this Act and from any trust referred to in subsection (1) of section 223nh of this Act,

and the Registrar-General shall cancel the certificates for the units and the common property and issue the certificates in respect of the parcel accordingly;

- (b) the corporation, the members of which, immediately prior to the cancellation, were the registered proprietors of the units defined on the deposited strata plan shall, by force of this subsection, be dissolved;

and

- (c) the Registrar-General shall make an entry in his records accordingly.

Para. (c)
amended by 30,
1969, s. 25.

(7) Where any building or other improvement on a parcel is damaged or destroyed, but the deposited strata plan relating thereto is not cancelled pursuant to subsection (5) of this section and an application for the cancellation thereof is not pending, the Court may, subject to the rules of Court, and the provisions of the Building Act, 1923-1965¹, the Planning and Development Act, 1966-1967², and the by-laws or regulations thereunder, by order settle a scheme—

- (a) for the re-instatement in whole or in part of the building or improvement;
- (b) for the transfer of specified estates or interests of registered proprietors of any of the units or the common property defined on the plan to registered proprietors of other units defined thereon or the corporation;

and

- (c) for such other matters incidental thereto as the Court considers fair and equitable.

(8) In the exercise of its powers under subsection (7) of this section, the Court may make such orders as it deems necessary or expedient for giving effect to the scheme, including orders—

- (a) directing the application of insurance moneys received by the corporation in respect of damage to the building or received by the registered proprietor of a unit in respect of damage to the unit;
- (b) directing the payment of money by or to the corporation or by or to any other person;
- (c) directing such amendment of the deposited strata plan as the Court thinks fit;

and

- (d) imposing on any person who is a party to the scheme such terms and conditions as the Court thinks fit.

¹ The Building Act, 1923-1965, has been repealed and superseded by the Building Act, 1970-1971.

² Now Planning and Development Act, 1966-1975.

(9) An application to which subsection (2) of this section applies or for an order referred to in subsection (7) of this section may be made to the Court by the corporation, an administrator of the corporation, or a registered proprietor or a mortgagee or an encumbrancee of a unit defined on the strata plan and, upon making the application, the applicant shall serve a copy thereof on the Registrar-General who shall thereupon make an endorsement on the deposited strata plan that the application has been made.

(10) In any proceedings relating to any application to the Court referred to in subsection (9) of this section, any person claiming to have any estate or interest in the parcel or in any part of the parcel and any insurer with whom any insurance has been effected on the buildings or other improvements on the parcel or any part thereof and any other persons whose evidence would, in the opinion of the Court, be material in the determination of the application shall have the right to appear and be heard.

(11) The Court may, from time to time, by order, cancel, vary, modify or discharge any order made by it under this section subject to such terms and conditions as it thinks fit and, on making any such order, shall send a copy thereof to the Registrar-General.

(12) Upon the dissolution of the corporation, unless the Court upon application and in such cases as it deems just, otherwise orders, the persons who, immediately prior to the dissolution were the members thereof become jointly and severally liable for the payment of any debt lawfully incurred by the corporation in the course of the exercise of any of its powers or functions or the carrying out of its duties or obligations prior to the dissolution and of any pecuniary penalty imposed on the corporation prior to the dissolution.

(13) On any application to the Court under this section, the Court may make such order for the payment of costs as it thinks fit.

Administrator.
S. 223nm
enacted by 37,
1967, s. 11.

223nm. (1) A corporation, a creditor of a corporation or any person having an estate or interest in a unit or in the parcel or any part of the parcel shown on a deposited strata plan may make an application to the Court for the appointment of an administrator of the corporation.

(2) The Court may, in its discretion and on cause shown, appoint a person to be administrator of the corporation for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit.

(3) The remuneration of the administrator and the expenses incurred by him in the course of the exercise of any of his powers or functions or the carrying out of his duties or obligations as such shall be administrative expenses of the corporation.

(4) The administrator of a corporation has, subject to such directions as the Court may from time to time give by order made upon application by the administrator himself, the corporation, a creditor of the corporation or any other person referred to in subsection (1) of this section, to the exclusion of the corporation and the committee of the corporation, the powers, functions, duties and obligations of the corporation, and, for the purposes of this Part, an amount lawfully incurred by the administrator as such in the course of the exercise of any of his powers or functions or the carrying out of his duties or obligations shall be deemed to be an amount lawfully incurred by the corporation in the course of the exercise of its powers or functions or the carrying out of its duties or obligations, as the case may be.

(5) The administrator may, by writing under his hand, delegate or revoke the delegation of any of the powers or functions vested in him and, until such

delegation is so revoked, the powers or functions so delegated may be exercised by the delegate and, when so exercised, shall have the same consequences as if they were exercised by the administrator.

(6) The Court may, in its discretion, on the application of the administrator or any person referred to in subsection (1) of this section, remove or replace the administrator.

(7) On any application made under this section, the Court may make such order for the payment of costs as it thinks fit.

(8) Forthwith after a person is appointed or ceases to be an administrator of a corporation, he shall furnish the Registrar-General with notices in the prescribed form together with such other documents as are prescribed.

Subsec. (8)
amended by 30,
1969, s. 26.

Penalty: Fifty dollars.

223nn. (1) Notwithstanding anything contained in section 223na of this Act, upon the deposit of a strata plan by the Registrar-General in the Lands Titles Registration Office under this Part every road, street or reserve shown thereon shall, by operation of this section, become vested for the purpose indicated on the plan for an estate in fee simple in the council of the area in which it is situated without compensation or payment to any person, and the Registrar-General shall make on any certificate such entries as he deems necessary to record the vesting accordingly.

Effect of
deposit of strata
plan on roads,
streets and
reserves shown
thereon.
S. 223nn enacted
by 37, 1967,
s. 11.

(2) Every road or street so vested in a council shall, for all purposes, be a public road.

223no. (1) A corporation shall at or near the front building alignment of the parcel comprised in the relevant deposited strata plan cause to be continuously available a receptacle suitable for the purposes of postal delivery, with the name of the corporation clearly designated thereon.

Service of
documents.
S. 223no enacted
by 37, 1967,
s. 11.

Penalty: Fifty dollars.

(2) A document may be served on the corporation, or the committee of the corporation—

(a) by despatching it by post enclosed in a pre-paid letter addressed to the corporation or the committee of the corporation, as the case may be, to the postal address of the building or buildings erected on the parcel;

or

(b) by placing it in the receptacle referred to in subsection (1) of this section.

(3) As from time to time the postal address of the building or buildings erected on the parcel is altered, the corporation shall forthwith give notice of the alteration in the prescribed form to the Registrar-General who shall make an appropriate entry in his records.

Subsec. (3)
amended by 30,
1969, s. 27.

(4) In this section, "document" includes summons, notice, order and other legal process.

223np. (1) If a corporation or the committee of a corporation commits a breach of any of the provisions of this Part or makes default in complying with any requirement of, or duty imposed on it by, any provision thereof, the corporation and each person who at the time of the breach or default was a member of the committee of the corporation shall be guilty of an offence and

Breaches of
provisions of
this Part.
S. 223np enacted
by 37, 1967,
s. 11.

liable to a penalty expressly prescribed for such breach or default, or, if no penalty is so prescribed, to a penalty not exceeding fifty dollars.

(2) It shall be a defence to a charge against a member of the committee of a corporation for an offence under any provision of this Part if the defendant satisfies the court before which he is charged that he took all reasonable steps to ensure that the breach or default constituting the offence did not occur or that the breach or default occurred accidentally or through inadvertence.

(3) Proceedings for any offence under this Part shall not be commenced without the consent in writing of the Attorney-General.

(4) Where a requirement or duty is imposed on a corporation by this Part, any person for whose benefit or for the benefit of whose unit that requirement or duty is imposed on the corporation may apply to the Court for an order compelling the corporation to carry out the requirement or perform the duty, as the case may be, and, on such an application being made, the Court may make such order as it thinks proper.

Powers of entry.
S. 223nq enacted by 37, 1967, s. 11.

223nq. Where, by or under any law, a person is authorized or empowered to enter upon any land or part of any land comprised in a deposited strata plan, he is entitled to enter upon any part of the land comprised in that plan to the extent necessary or expedient to enable that person to exercise his authority or powers under that law.

Regulations.
S. 223nr enacted by 37, 1967, s. 11.

223nr. (1) The Governor may make such regulations, not inconsistent with this Act, as are necessary or expedient for the purposes of giving effect to this Part and of any matters incidental thereto.

(2) Without limiting the generality of the provisions of subsection (1) of this section, such regulations may—

- (a) prescribe particulars which strata plans or applications accompanying them must contain and requirements with which strata plans or applications accompanying them must comply for any of the purposes of this Part;
- (b) prescribe the manner and procedure to be followed in connection with any application under this Part, other than an application to the Court;
- (c) prescribe, in addition to the grounds set out in section 223md of this Act, any grounds on which a council or the Director may refuse an application referred to in subsection (1) or subsection (2) of that section;
- (d) prescribe conditions subject to compliance with which any such application may be granted;
- (e) make such provisions as are required or authorized to be made by regulations under this Part;
- (f) modify, but only for the purposes of section 223me of this Act, the effect of any regulation made under subsection (8) of section 27 of the Planning and Development Act, 1966-1967¹;
- (g) prescribe the matters and returns to be furnished to the Registrar-General by the committee of every corporation and the manner in which they are to be furnished;

Para. (g) amended by 30, 1969, s. 28.

¹ Now Planning and Development Act, 1966-1975.

- (h) prescribe the manner in which any document or copy of a document required to be used for the purposes of this Part is to be verified or certified;
 - (i) prescribe all or any of the forms to be used for the purposes of this Part;
 - (j) prescribe any fees that are not prescribed under any other Act, but are payable for any of the purposes of this Part;
 - (k) provide that a breach or contravention of, or non-compliance with, any provision of the regulations is an offence against the regulations punishable by a penalty not exceeding two hundred dollars;
- and
- (l) prescribe or provide for all or any other matters not prescribed or provided for by this Part but which by this Part are required or permitted to be prescribed or provided for by regulation or which may be necessary or convenient to be prescribed or provided for by regulation to give effect to this Part or for more effectually giving effect to matters to which this Part applies.

PART XX

PART XX

PROCEDURE AND PENALTIES

224. In the conduct of actions and other proceedings in the Court, provided for under the Act, there shall be the same rights of appeal, and the same rules of procedure and practice shall apply as are in force or exist for the time being in respect of actions and other proceedings of a similar nature in such Court, except as the same are varied or altered by the rules and regulations contained in the twenty-first schedule hereto: Provided that the Judges of the said Court shall have power, from time to time to make other rules and orders for regulating proceedings in such Court under this Act, and, from time to time to rescind, alter, or vary such rules and orders.

Practice,
procedure,
appeals, and
rules of Court.

225. The Judges of the said Court shall have power from time to time to fix and regulate the fees payable upon all proceedings before the Court under this Act; and until the Judges shall otherwise order, the fees shall be according to those payable in respect of proceedings of a similar nature in the said Court.

Fees of Court.

226. Any summons issued by the Registrar-General under the authority of this Act may be in the form of the twenty-second schedule hereto.

Forms of
summons by
Registrar-
General.

227. If any person shall refuse or neglect to obey or comply with the requirements of any such summons the Registrar-General may apply to a Judge for a summons calling upon such person to show cause why he should not obey or comply with the same, and any Judge may, on the hearing of such summons, make such order in the premises as he shall think fit, and unless the Judge shall on such hearing certify that such refusal or neglect was reasonable, such person shall forfeit and pay a penalty, to be enforced by the said Judge, not exceeding two hundred dollars.

On refusal or
neglect of
person
summoned,
Registrar-
General may
apply to Judge.
S. 227 amended
by 37, 1967,
s. 12.

228. Any declaration under this Act may be made before the Registrar-General, any Deputy Registrar-General, a Notary Public, Justice of the Peace, or Commissioner for taking Affidavits in the Supreme Court.

Declarations,
before whom to
be made.

Felonies under
this Act.

229. If any person is guilty of the following offences, or any of them (that is to say)—

- (I) forges or procures to be forged or assists in forging or fraudulently affixes procures to be affixed or assists in affixing the seal of the Registrar-General, or an impression or part of an impression of such seal to any instrument;
- (II) forges or procures to be forged or assists in forging the name, signature, or handwriting of the Registrar-General or of any officer in any case where such officer is by this Act expressly or impliedly authorized to affix his signature;
- (III) stamps, or procures to be stamped, or assists in stamping, any document with any forged seal purporting to be the seal of the Registrar-General;
- (IV) forges or procures to be forged or assists in forging the name, signature, or handwriting of any person whomsoever, to any instrument which is by this Act, or in pursuance of any power contained in this Act, expressly or impliedly authorized to be signed by such person;
- (V) uses, with an intention to defraud any person whomsoever, any document upon which any impression or part of the impression of any seal of the Registrar-General has been forged, or fraudulently affixed knowing the same to be fraudulently affixed, or any document the signature to which has been forged knowing the same to have been forged;

such person shall be guilty of felony.

Perjury.

230. If any person wilfully makes a false oath or declaration concerning any instrument, dealing, matter or procedure, under or in pursuance of this Act, such person shall be guilty of perjury.

Punishment of
felony or
perjury.
S. 231 amended
by 30, 1969,
s. 29.

231. Any person convicted of felony or perjury under this Act shall be liable to imprisonment for any term not exceeding fourteen years.

Penalty for
certifying
incorrect
instruments.
S. 232 amended
by 37, 1967,
s. 13.

232. Any person who shall falsely or negligently certify to the correctness of any application or instrument under this Act shall incur therefor a penalty not exceeding one hundred dollars; but such penalty shall not prevent any person sustaining loss or damage in consequence of error or mistake in any such application or instrument from recovering damages against the person who shall have certified the same.

Certain
fraudulent acts
to be mis-
demeanours.
S. 233 amended
by 30, 1969,
s. 30.

233. If any person is guilty of any of the following offences, that is to say—

- (I) wilfully and fraudulently makes any false statement in any application to bring land under the provisions of this Act, or in any application to be registered as proprietor, whether in possession, reversion, remainder, or otherwise on a transmission, or in any other application to be registered under this Act as proprietor of any land, or any estate or interest in any land;
- (II) wilfully and fraudulently suppresses, withholds, or conceals, or assists, or joins in, or is privy to the suppressing, withholding, or

concealing from the Registrar-General, the Acting Registrar-General, or any Deputy Registrar-General any material document, fact, or matter of information;

- (III) wilfully and fraudulently gives false evidence, or makes a false statement in his examination before the Registrar-General, the Acting Registrar-General, or any Deputy Registrar-General;
- (IV) fraudulently procures or makes, or assists in fraudulently procuring or making, or is privy to the fraudulent procurement or making of any certificate or other instrument or of any entry in the Register Book, or of any erasure or alteration in any entry in the Register Book, or in any instrument or form issued by the Registrar-General;
- (V) fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar-General;
- (VI) knowingly misleads or deceives any person hereinbefore authorized to demand explanation or information in respect of any land, or the title to any land, which is the subject of any application to bring the same under the provisions of this Act, or in respect of which any instrument or dealing is proposed to be registered or recorded;

such person shall be guilty of a misdemeanour, and shall incur a penalty not exceeding one thousand dollars, or may, at the discretion of the Court before which the case may be tried, be imprisoned with or without hard labour for any period not exceeding three years.

234. Any certificate, instrument, entry, erasure, or alteration procured, or made by fraud as in the last preceding section mentioned shall, whether there shall be a conviction under such section or not, be void as regards all parties or privies to such fraud.

Certificate, etc.,
procured by
fraud to be
void.

235. All penalties for any offence against this Act, or any Act hereby repealed, not made punishable, in the first instance, by imprisonment, or in the discretion of the Court, by a fine or imprisonment, may be recovered before a Special Magistrate or two Justices of the Peace in a summary way on complaint at the instance of any person.

Penalties, how
recovered.
S. 235 amended
by 2246, 1935,
s. 4 (2nd
Sched.).

236. All proceedings for recovery of penalties under this Act may be conducted as appointed by, and shall be regulated under, the Justices Act, 1921¹.

Proceedings
before justices.
S. 236 amended
by 2246, 1935,
s. 4 (2nd
Sched.).

* * * * *

Ss. 237, 238,
239 repealed by
2293, 1936,
s. 4 (2nd
Sched.).

240. No proceeding or conviction for any act hereby declared to be a felony or a misdemeanour shall affect any remedy which any person aggrieved or injured by such act may be entitled to against the person who has committed such act, or against his estate.

Conviction not
to affect civil
remedy.

¹ Now Justices Act, 1921-1975.

PART XXI

PART XXI

MISCELLANEOUS

Scale of maps or plans.
S. 241 amended by 30, 1969, s. 31; 116, 1972, s. 7 (a) to (g).

241. Every map or plan required to be deposited as hereinbefore provided, except a strata plan as defined in section 223m of this Act, shall be in accordance with the following rules as to scale:— If the land proposed to be dealt with shall contain not more than 4,000 square metres, such map or plan shall be on a scale of not less than 1:2,000; if such land shall contain more than 4,000 square metres, but not more than 2 hectares, then such map or plan shall be upon a scale of not less than 1:5,000; if such land shall contain more than 2 hectares, but not more than 32 hectares, then such map or plan shall be upon a scale of not less than 1:10,000; and if such land shall contain more than 32 hectares, then such map or plan shall be upon a scale of not less than 1:20,000.

Every certificate of title shall have a diagram showing measurements.
S. 242 amended by 30, 1969, s. 32.

242. Every certificate of title for land brought under the provisions of this Act after the passing hereof, except a certificate for a unit that is represented on a strata plan within the meaning of Part XIXB of this Act, shall have a diagram drawn in the margin of such certificate, showing the measurements of the land contained therein, such plan to be supplied by the Surveyor-General when practicable without involving any cost to the Government, or shall refer to a plan deposited in the Lands Titles Office showing such measurements.

Cases where measurements not required.
S. 242a enacted by 403, 1887, s. 2, as amended by 2246, 1935, s. 4 (2nd Sched.); 30, 1969, s. 33 (a), (b).

242a. It shall not be necessary to supply, show, or state the dimensions, measurements, or bearings of any closed road or reserve or any closed part of any road or reserve for any purpose of this Act unless those dimensions, measurements, or bearings shall be required by the Registrar-General to be supplied, shown, or stated, and the Registrar-General may in any other case dispense with the necessity for supplying, showing, or stating any dimensions, measurements, or bearings for the purposes of this Act.

S. 243 repealed by 657, 1896, s. 2 (1st Sched.).

* * * * *

Provision for person under disability of infancy, idiocy, or lunacy.

244. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceedings under this Act, is an infant, idiot, or lunatic, the guardian or committee of the estate of such person may make such applications, give such consent, do such acts, and be party to such proceedings as such person himself, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act.

When no guardian or committee, Court or Judge may appoint one.
S. 245 amended by 30, 1969, s. 34.

245. In any case where there is no guardian or committee of the estate of any such infant, idiot, or lunatic, or where any person entitled to any estate or interest in land is a person of unsound mind, the Court may appoint a guardian or committee for the purposes of this Act, and from time to time may change such guardian or committee.

Unregistered instruments to confer claim to registration.

246. Every instrument signed by a registered proprietor, or by any person claiming through or under a registered proprietor, purporting to pass an estate or interest in land for the registration of which estate or interest provision is made in this Act shall, until registered, be deemed to confer upon the person intended to take under such instrument, or any person claiming through or under him, a right or claim to the registration of such estate or interest. The Registrar-General, upon application for such registration by any person other than the person immediately claiming from a registered proprietor, may reject the same altogether or may register the applicant as proprietor of the estate or

interest, either forthwith or at the expiration of some defined period of time, and may direct such other entries to be made in the Register Book, and such advertisements to be published, as he may deem necessary.

247. The Registrar-General may, in the event of great loss or inconvenience being likely to arise, register any document signed by a registered proprietor, or by any person claiming through or under a registered proprietor, notwithstanding that such document be not in any of the forms prescribed by this Act, nor otherwise in accordance with the provisions hereof: Provided that such document purports to create an estate or interest in land for the registration of which estate or interest provision is made in this Act, and would in equity, apart from the provisions of this Act, be regarded as vesting such estate or interest in the person intended to take under such document. The Registrar-General, upon application for such registration, may reject the same altogether, or may proceed as directed in the last preceding section.

Informal documents may be registered.

248. On registering any such applicant, as mentioned in the two last preceding sections, the Registrar-General shall, so far as possible, enter the like memorial of every document or instrument produced by the applicant in the same manner as if such document or instrument had been presented for registration in its proper order of time, and the duplicate certificate, or other instrument of title shall be delivered up and the like memorials or other entries made thereon: Provided that no such registration shall be made if it would interfere with the right of any person claiming under any instrument previously registered under this Act.

Memorial to be entered.

249. Nothing contained in this Act shall affect the jurisdiction of the Courts of law and equity in cases of actual fraud or over contracts or agreements for the sale or other disposition of land or over equities generally.

Equities not abolished.

And the intention of this Act is that, notwithstanding the provisions herein contained for preventing the particulars of any trusts being entered in the Register Book, and without prejudice to the powers of disposition or other powers conferred by this Act on proprietors of land, all contracts and other rights arising from unregistered transactions may be enforced against such proprietors in respect of their estate and interest therein, in the same manner as such contracts or rights may be enforced against proprietors in respect of land not under the provisions of this Act: Provided that no unregistered estate, interest, contract, or agreement shall prevail against the title of any *bona fide* subsequent transferee, mortgagee, lessee, or encumbrancee, for valuable consideration, duly registered under this Act.

250. No *lis pendens* affecting lands under the provisions of this Act shall hereafter be registered.

Lis pendens not to be registered.

251. Except as provided in Part VIIA of this Act, no person shall acquire any right or title to land under the provisions of this Act by any length of adverse possession, nor shall the right of the registered proprietor to recover possession of any such land be barred by any length of adverse possession.

No title by adverse possession. S. 251 amended by 39, 1945, s. 8.

252. So often as any new street or road shall become vested in any Corporation or District Council by any means other than in pursuance of an order for opening the same the Corporation or Council affected shall immediately furnish the Registrar-General with a map or plan showing particulars of the new street or road so having become vested as aforesaid.

Corporations and district councils to furnish Registrar-General with plans of new streets, etc.

Surveyor-General to furnish Registrar-General with particulars of orders confirming opening of new roads, etc.

253. Whenever an order for opening a new road or closing an old road, or for the exchange of any water or other reserve, through or affecting land under the provisions of this Act shall have been duly confirmed, the Surveyor-General shall forthwith after such confirmation forward to the Registrar-General particulars of the date of such confirmation, and of the width, length, bearings, and measurements of such road, or of the exact dimensions and position of such reserve, and of the land taken in exchange.

Power of Registrar-General to make necessary alterations on plans in his office.

254. The Registrar-General shall make reference to the particulars so furnished to him as aforesaid on any plan deposited in his office which is affected thereby, and shall also make an entry on the certificate in the Register Book, and alter the plan in the margin thereof in accordance with such survey maps, plans or particulars, and require the registered proprietor, or any mortgagee or encumbrancee, who may hold the same, to deliver up the duplicate certificate for the purpose of being cancelled or corrected as the case may require.

Ss. 255, 256 repealed by 36, 1939, s.8.

* * * * *

Registration of woman as entitled to land for her separate use or as her separate property.

257. Any certificate or other instrument evidencing the title of any woman to land may contain a statement to the effect that she is seized of or entitled to or takes such land for her separate use, or as her separate property, and, upon registration of such certificate or other instrument, she shall be deemed the registered proprietor of the land for her separate use or as her separate property accordingly; and any married woman so registered, unless restrained from alienation, shall, for the purposes of this Act, be deemed a *feme sole*.

Reference to Real Property Acts.

258. Where, in any Act now in force, reference is made to the Real Property Acts, or any of them, such reference shall be deemed to extend to this Act.

General powers of Court not affected.

259. Any special jurisdiction by this Act given to the Court shall not prejudice or take away the ordinary jurisdiction of the Court.

Valuable consideration may be proved by prior instruments.

260. Whenever in any action, suit or other proceeding affecting the title to any land, it shall become necessary to determine the fact whether any person is a purchaser, transferee, mortgagee, encumbrancee, or lessee, for valuable consideration or not, any party to such action, suit or other proceeding may give in evidence any transfer, mortgage, encumbrance, lease or other instrument affecting the title to such land, although the same may not be referred to in the certificate or may have been cancelled by the Registrar-General.

General covenants to be implied in instruments.

261. In every instrument charging, creating, or transferring any estate or interest in land, there shall be implied the following covenant by the party charging, creating, or transferring such estate or interest, with the party in whose favour such estate or interest is charged or created, or to whom the same is transferred, and his executors, administrators, and transferees, that is to say—That he, the covenanting party, will do such acts and execute such instruments as in accordance with the provisions of this Act may be necessary to give effect to all covenants, conditions, and purposes expressly set forth in such instrument, or by this Act declared to be implied against such party in instruments of a like nature.

Implied powers and covenants may be modified or negatived.

262. Every covenant and power by this Act implied in any instrument may be negatived or modified by express declaration contained in or endorsed on the instrument.

263. In any action for a breach of any such covenant, it shall be lawful to allege that the party against whom such action is brought did covenant precisely in the same manner as if such implied covenant, with or without modification, as the case may be, had been expressed in words in such instrument, any law or practice to the contrary notwithstanding; and every such implied covenant shall have the same force and effect and be enforced in the same manner as if it had been set out at length in such instrument.

In action for breach, party may be proceeded against as if he had covenanted in express words.

264. Where any covenants are by this Act implied against two or more persons, such implied covenants shall be construed to be joint and several.

Implied covenants to be joint and several.

265. Where in any mortgage or encumbrance the short form of covenant given in the sixteenth schedule hereto and numbered 1, or where in any lease any of the other short forms of covenant given in such schedule shall be used, the covenant set opposite such short form in the said schedule shall be implied in such mortgage, encumbrance, or lease as fully and effectually as if set out at length therein: Provided that the parties to any such instrument may by express words add to or modify any such short form, in which case the same shall imply the covenant as set out at length, with the addition or modification so expressed.

Short forms of covenants in mortgages and leases.

266. Whenever, in any application or instrument under this Act, the following words shall be used "Except and always reserved to all coals, seams of coals, mines, minerals, and quarries, but paying reasonable compensation to ,," they shall be taken to have the same effect, and be construed as if the form of words contained in the seventeenth schedule hereto had been inserted therein; and the Registrar-General, on issuing a certificate, shall insert the words so used in the application or instrument, and the same shall be as binding and effectual as if he had inserted therein the words at length contained in the said seventeenth schedule.

Short form for expressing exception of mines and minerals.

267. Instruments under this Act shall be attested by one witness who, if the person executing the instrument be personally known to such witness, may be—

Before whom instruments may be executed.

If the instrument be executed within the limits of South Australia: the Registrar-General, any Deputy Registrar-General, or a Notary Public, Justice of the Peace, or Commissioner for taking Affidavits in the Supreme Court:

If executed within the United Kingdom of Great Britain and Ireland: the Mayor or other Chief Officer of any City or Corporation, or a Notary Public, or any Commissioner for taking Affidavits:

If executed in any British possession: the officer administering the Government of, or a Judge of any Court of Record in such possession, or a Notary Public or any Commissioner for taking Affidavits:

And, if executed at any foreign place: any British Consular officer (which expression shall include Consul-General, Consul, and Vice-Consul, and any person for the time being discharging the duties of any of those offices):

And in such case the execution of the instrument shall be verified by such witness endorsing thereon a certificate in the form of the eighteenth schedule hereto.

PART XXI

Attestation how proved in other cases.
S. 268 amended by 36, 1939, s. 9.

268. Such witness, whether the instrument be executed within or without the limits of South Australia, may also be any other person, but in such case the execution of the instrument shall be proved before one of the officers or persons specified in the last preceding section by the witness acknowledging his signature to the instrument, and declaring that the party executing the same was personally known to him, that the signature thereto is in the handwriting of such party, and that such party did freely and voluntarily sign the same, in the presence of the witness, and was at that time of sound mind, and such officer or other authorized person shall thereupon endorse on the instrument a certificate in the form of the nineteenth schedule hereto.

Registrar-General may dispense with proof.

269. The Registrar-General may, in any case where he is satisfied of the due execution of an instrument, or in any special case, dispense with the proof of execution hereinbefore required.

Execution of instrument by corporation.

270. A corporation may execute instruments under the provisions of this Act by affixing thereto its common seal, and such execution shall be equivalent to signature.

S. 271 amended by 37, 1967, s. 14; repealed by 116, 1972, s. 8.

* * * * *

S. 272 amended by 44, 1960, s. 6; 37, 1967, s. 15; 30, 1969, s. 35; repealed by 116, 1972, s. 8.

* * * * *

Authority to register.

273. The Registrar-General shall not receive any application for bringing land under the provisions of this Act, or any instrument purporting to deal with or affect land, unless there shall be endorsed thereon a certificate that the same is correct for the purposes of this Act, signed by the applicant or party claiming under or in respect of such instrument, or by a solicitor, or licensed land broker.

No person except solicitors and land brokers entitled to recover fees for work done under this Act.

274. No person other than a solicitor or licensed land broker shall be entitled to sue for or receive any fees, costs, or charges for work done in reference to applications, transfers, or other dealings relating to land, nor to any right of set-off in respect of any such fees, costs, or charges, nor to any lien or right to retain any deed, paper, or writing which shall have come into his possession in reference to any such work.

Forms in schedules.

275. Whenever a form in any schedule hereto is directed to be used, such direction shall apply equally to any form to the like effect for a similar purpose authorized in conformity with the provisions of this Act; and any variation from such forms, not being in matter of substance, shall not affect their validity or regularity; but they may be used with such alterations as the character of the parties or the circumstances of the case may render necessary.

Notices, how to be given.

276. Where by this Act notice is required to be given to or served on any person, and no special provision is made as to the mode of giving or serving such notice, it shall be sufficient if the same is posted in a registered letter directed to such person at his usual or last-known place of abode in South Australia, or at his address as appearing in the Register Book or as given in any application or caveat; and such notice shall be deemed to have been served at the time when the same would in the ordinary course of the post be delivered or reach the post town or office to which or nearest to which such notice is directed: Provided that the Registrar-General may, in any special

case, cause or authorize such notice to be given by advertisement in the *Government Gazette* and in such newspapers as he shall think fit.

277. (1) The Governor may make such regulations as may be necessary or convenient for carrying into effect the provisions and objects of this Act, and without limiting the generality of the foregoing, may make regulations—

Regulations.
S. 277 enacted
by 116, 1972,
s. 9.

(a) providing for and prescribing the fees and charges payable for or in respect of the doing of any act or thing under this Act;

and

(b) providing for and prescribing the charges recoverable by solicitors and licensed land brokers for transacting business under the provisions of this Act.

(2) Without limiting the generality of subsection (1) of this section a regulation made under this Act may amend or revoke any regulation made under the Fees Regulation Act, 1927.

SCHEDULES REFERRED TO

1st Sched.
substituted by
regulation made
under Fees
Regulation Act,
1927; *Gaz.* 20th
Sept., 1962,
p. 722; repealed
by 116, 1972,
s. 10.

* * * * *

Sec. 27.
2nd sched.
amended by 37,
1967, s. 16.

THE SECOND SCHEDULE

Application to bring Land under the provisions of the Real Property Act, 1886-1975

I, A.B., of [here insert residence and description] do declare that I am [or that C.D., of (here insert residence and description) is] seized of an estate of freehold [here state the nature of the estate of freehold] in all that piece of land situated in [here state the situation] containing [here state the area] be the same a little more or less [exclusive of roads intersecting the same, if any] with [here state rights-of-way and other privileges or easements appertaining, and set forth a sufficient description to identify the land] which piece of land is of the value of \$ and no more, and is [the town allotment or country section, or is part of the town allotment, or country section] originally granted to , by land grant under the hand and seal of , formerly Governor [or Resident Commissioner] of the State of South Australia, dated the day of , numbered in the plan of the [district, township, or county] of , as delineated on the public maps of the State, deposited in the Survey Office, Adelaide: And I do further declare that I am not aware of any mortgage, encumbrance, or claim affecting the said land, or that any person hath any claim, estate, or interest on or in the said land, at law or in equity, in possession, reversion remainder or expectancy, or that any person has, or claims any right-of-way or other easement affecting the said land other than is set forth and stated as follows, that is to say [here state particulars of mortgages, encumbrances, dower, or other interest to which the land may be subject, and of all rights-of-way and other easements which any other person is entitled to or claims]: And I further declare that there is no person in possession or occupation of the said lands adversely to my estate or interest [or the estate or interest of the said C.D. therein] and [that the said land is now in the occupation of, here state names and descriptions of occupiers, or that the said land is now unoccupied], and that the names and addresses of the owners and occupiers of the lands contiguous thereto, are [here state the names and addresses of owners and occupiers of lands contiguous thereto, or to me unknown] and that there are no documents or instruments of title affecting the land above described in my possession or under my control, [or in the possession or under the control of the said C.D.] other than those enumerated in the Schedule hereto, and I do hereby [or if so, on behalf of the said C.D.] apply to have the land above described brought under the provisions of the Real Property Act, 1886-1975, and I make this solemn declaration conscientiously believing the same to be true, and appoint [here insert address within the City of Adelaide] as the address to which notices in respect of this application may be sent.

Dated at , this day of 19 .

Made and subscribed by the above-named }
in the presence of , this day of } [Signature.]

To the Registrar-General.

I, A.B., the above declarant, hereby request you to issue the certificate of title for the land described in the above declaration in the name of

Witness to signature— [Signature.]

The Schedule referred to
[Here set out a list of all documents and instruments of title]

THE THIRD SCHEDULE

Sec. 39.
3rd sched.
amended by 30,
1969, s. 36.

Caveat forbidding Lands to be brought under the Real Property Act, 1886-1975.

To the Registrar-General.

Take notice that I, A.B., of [here insert residence and description] claiming [here state the nature of the estate or interest claimed, and the ground on which such claim is founded] in the land described as [here state particulars of description from application] and mentioned in notice dated the day of , as land in respect of which an application has been made to have the same brought under the provisions of the Real Property Act, 1886-1975, do hereby forbid the bringing of the said land under the provisions of the said Act; and I appoint [here insert address within South Australia] as the place at which notices and proceedings relating hereto may be served.

Dated this day of , 19 .

[Signature.]

THE FOURTH SCHEDULE

Sec. 73.

Register Book, vol. , folio

SOUTH [Royal Arms] AUSTRALIA

Certificate of Title

[If the Certificate is issued pursuant to a Transfer or other dealing, refer to it here.]

A.B., of [here insert residence and occupation or other description], is the proprietor of an estate [here describe the estate of freehold] subject nevertheless to such encumbrances, liens, and interests as are notified by memorial underwritten or endorsed hereon in [here insert sufficient description to identify the land, and refer to map or plan in margin of or endorsed on certificate and to the public map deposited in the office of the Surveyor-General. The map or plan in the certificate shall, when necessary and wherever practicable, show the distance from the nearest street, road or corner of a section.]

In witness whereof I have hereunto signed my name and affixed my seal, this day of , 19 .

Signed the day of } [Signature of Registrar-General.] (L.S.)
19 , in the presence of }

Registrar-General.

THE FIFTH SCHEDULE

Sec. 89.

Right-of-Way

Together with full and free right and liberty to and for the proprietor or proprietors for the time being taking or deriving title under or through this instrument, so long as he or they shall remain such proprietors, and to and for his and their tenants, servants, agents, workmen, and visitors, to pass and repass for all purposes, and either with or without horses or other animals, carts, or other carriages.

Sec. 96.
6th sched.
amended by 36,
1939, s. 10 (1);
37, 1967, s. 16;
116, 1972, s. 11.

THE SIXTH SCHEDULE

Memorandum of Transfer

I, A.B. [here insert residence and description] being registered as the proprietor of an estate [here state the nature of the estate or interest, and if not an estate of freehold, refer to the instruments of title creating the same], subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon in [here insert sufficient description to identify the land intended to be transferred, and (or) over which any right-of-way or other easement is intended to be created or transferred, and refer to the existing grant or certificate of the land, and state whether the land intended to be dealt with is the whole or part only of that comprised in the grant certificate or other instrument of title, and if part only set forth the boundaries in metres, and refer to the plan delineated in the margin of or annexed to the transfer, or to a deposited plan showing such boundaries] in consideration of [here set forth the consideration, and from whom it moves: if a money consideration say: in consideration of the sum of \$ paid to me by C.D., of (here insert residence and description), the receipt of which sum I hereby acknowledge, if any other consideration set out the same, and from whom it moves], do hereby transfer [or if an easement is created say grant] to the said C.D. [or to C.D. of here insert residence and description] all my estate and interest [or if the transfer is by a mortgagee or encumbrancee exercising power of sale, say, all the estate and interest of (the mortgagor's or encumbrancer's name) or if the transfer is of a less estate or of an easement, describe same] in [or over, or as the case may be] the said land above described. [If the easement is appurtenant say together with and describe the easement.]

In witness whereof I have hereunto subscribed my name this day of
19

Accepted

[Signature.]

[Signature of transferee] Transferee.

[Signature of witness] Witness to signature of transferee.

Sec. 107.
7th sched.
amended by 36,
1939, s. 10 (1);
37, 1967, s. 16.

THE SEVENTH SCHEDULE

Form of Transfer of Land upon Sale under Writ of Fieri Facias, or under a Warrant of Execution

I [insert name], as [insert title of officer executing transfer] the person appointed to execute the writ or warrant hereinafter mentioned, in pursuance of a writ of *feri facias*, tested the day of , 19 ¹ and issued out of the Supreme [or as the case may be] Court in an action wherein A.B. is plaintiff and C.D. is defendant, which said A.B. [or C.D.] is registered as the proprietor of an estate [here state nature of the estate] in the land hereinafter described, subject to the encumbrances, liens, and interests notified by memorandum, underwritten, or endorsed hereon, in consideration of the sum of \$ paid to me by E.F. [insert residence and description] do hereby transfer to the said E.F. all the estate and interest of the said A.B. [or C.D.] in all that piece of land being [here insert description of the land, and refer to the debtor's grant or certificate.]

Dated the day of , 19 ¹.

[Sheriff's or other officer's signature.]

Accepted

[Signature of transferee] Transferee.

[Signature of witness] Witness to signature of Transferee.

Sec. 107.
Amended by 36,
1939, s. 10 (1);
37, 1967, s. 16.

Form of Transfer of Lease, Mortgage, or Encumbrance upon Sale, under Writ of Fieri Facias, or under a Warrant of Execution

I [insert name], as [insert title of officer executing transfer], the person appointed to execute the writ or warrant hereinafter mentioned, in pursuance of a writ of *feri facias*, tested the day of , 19 ¹, and issued out of the Supreme [or as the case may be] Court in an action wherein A.B. is plaintiff and C.D. is defendant, which said A.B. [or C.D.] is registered as the proprietor of a lease [or mortgage, or encumbrance as the case may be] numbered of [or upon] the land hereinafter described, subject to the encumbrances, liens, and interests notified by memorandum underwritten, or endorsed hereon, in consideration of the sum of \$, paid to me by E.F. [insert residence and description], do hereby transfer to the said E.F. all the estate and interest of the said A.B. [or C.D.] in all that piece of land [here describe the land according to the description in the lease, mortgage, or encumbrance, or in general terms by reference to the registered instrument.]

Dated the day of , 19 ¹.

[Sheriff's or other officer's signature.]

Accepted

[Signature of transferee] Transferee.

[Signature of witness] Witness to signature of Transferee.

¹ In a previous reprint of this Act pursuant to the Acts Republication Act, 1967, Arabic numerals substituted pursuant to s. 7 (1) of that Act.

Form of Transfer of Land under Decree or Order of Supreme Court

Sec. 107.
Amended by 36,
1939, s. 10 (1).

I [*insert name*], in pursuance of a decree or order of the Supreme Court, dated the _____ day of _____, 19¹, and entered in the Register Book vol. _____, folio _____, hereby transfer to E.F. [*insert residence and description*], subject to the encumbrances, liens, and interests notified written or endorsed hereon, all the estate and interest of C.D., of [*here state residence and description*] in all that piece of land being [*here insert description of the land, and refer to the grant or certificate*], in respect of which the said C.D. is registered as the proprietor of an estate [*here state the nature of the estate*].

Dated the _____ day of _____, 19¹.

[*Signature.*]

Accepted

[*Signature of transferee*] Transferee.

[*Signature of witness*] Witness to signature of Transferee.

Form of Transfer of Lease, Mortgage, or Encumbrance under Decree or Order of Supreme Court.

Sec. 107.
Amended by 36,
1939, s. 10 (1).

I [*insert name*], in pursuance of a decree or order of the Supreme Court, dated the _____ day of _____, 19¹, and entered in the Register Book, vol. _____, folio _____, hereby transfer to E.F. [*insert residence and description*], subject to the encumbrances, liens and interests notified by memorandum underwritten, or endorsed hereon, all the estate and interest of C.D., of [*here state residence and description*] who is registered as the proprietor of a lease [*or mortgage, or encumbrance, as the case may be*], numbered _____ of [*or upon*] the land hereinafter described in all that piece of land [*here describe land, according to the description in the lease, mortgage, or encumbrance, or in general terms by reference to the registered instrument.*]

Dated the _____ day of _____, 19¹.

[*Signature.*]

Accepted

[*Signature of transferee*] Transferee.

[*Signature of witness*] Witness to signature of Transferee.

THE EIGHTH SCHEDULE

Memorandum of Lease

Sec. 116
8th sched.
amended by 37,
1967, s. 16.

I, A.B., of [*here insert residence and description*] being registered as the proprietor of an estate [*here state the nature of the estate or interest, and if not an estate of freehold refer to the instrument of title creating the same*], subject, however to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon, in [*here insert sufficient description to identify the land and follow the other directions given in the form of a transfer in the Seventh Schedule hereto so far as the same are applicable*] do hereby lease to C.D., of [*here insert residence and description*] all the said lands [*if so, together with, here describe the easements if any*] to be held by him the said C.D., as lessee for the space of _____ years from the _____ day of _____, 19¹, at the yearly rental of \$ _____, payable [*here insert terms of payment of rent*] subject to the following covenants, conditions, and restrictions [*here set forth special covenants, if any*].

I, the above-named C.D., do hereby accept this Lease of the above-described lands [*if so, and easements*] to be held by me as lessee and subject to the conditions, restrictions, and covenants above set forth.

Dated this _____ day of _____, 19¹.

[*Signature.*]

THE NINTH SCHEDULE

Memorandum of Mortgage

Sec. 128.
9th sched.
amended by 37,
1967, s. 16.

I, A.B., [*here insert residence and description*] being registered as the proprietor of an estate [*here state the nature of the estate or interest, and if not an estate of freehold refer to the instrument of title creating the same*], subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon, in [*here insert sufficient description to identify the land and follow the other directions given in the form of a transfer in the Sixth Schedule hereto so far as the same are applicable.*]

In consideration of the sum of \$ _____, this day lent to me by C.D., of [*here insert residence and description*], the receipt of which sum I hereby acknowledge, do hereby covenant with the said C.D., that I will pay to him, the said C.D., the above sum of \$ _____ on the _____ day of _____. Secondly, that I will pay interest on the said sum of \$ _____ at the rate of _____.

¹ In a previous reprint of this Act pursuant to the Acts Republication Act, 1967, Arabic numerals substituted pursuant to s. 7 (1) of that Act.

\$ for every \$100 by the year, by equal payments on the , in every year. Thirdly [here set forth special covenants, if any]. And for the better securing to the said C.D. the repayment in manner aforesaid of the said principal sum and interest, I hereby mortgage to the said C.D. all my estate and interest in the said land [if so, and easements] above described.

In witness whereof I have hereto signed my name this day of 19 .

[Signature.]

Sec. 128.
10th sched.
amended by 37,
1967, s. 16.

THE TENTH SCHEDULE

Memorandum of Encumbrance for Securing a Sum of Money

I, A.B., of [here insert residence and description] being registered as the proprietor of an estate [here state the nature of the estate or interest, and if not an estate of freehold refer to the instrument of title creating the same], subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten, or endorsed hereon, in [here insert sufficient description to identify the land and follow the other directions given in the form of a transfer in the Sixth Schedule hereto so far as the same are applicable].

And desiring to render the said land [if so, and easements] available for the purpose of securing to and for the benefit of C.D. the [sum of money, annuity, or rent charge] hereinafter mentioned, do hereby encumber the said land [if so, and easements] for the benefit of the said C.D. with the [sum, annuity, or rent charge] of \$, to be raised and paid at the times and in the manner following, that is to say [here state the times appointed for the payment of the sum, annuity, or rent charge intended to be secured, the interest, if any, and the events on which such sum, annuity, or rent charge shall become and cease to be payable, also any special covenants or powers and any modification of the powers or remedies given to an encumbrancee by the Real Property Act, 1886-1975]. And subject as aforesaid the said C.D. shall be entitled to all powers and remedies given to an encumbrancee by the Real Property Act, 1886-1975.

In witness whereof I have hereunto signed my name this day of 19 .

[Signature.]

Sec. 150.
11th sched.
amended by 36,
1939, s. 10 (2);
37, 1967, s. 16.

THE ELEVENTH SCHEDULE

Transfer of Mortgage, Lease, or Encumbrance, to be endorsed on duplicate Mortgage, Encumbrance, or Lease

Transferred to C.D., of [here insert residence and description], in consideration of \$.
Receipt acknowledged.

Accepted

[Signature.]

[Signature of transferee] Transferee.

[Signature of witness] Witness to signature of Transferee.

Sec. 191.
12th sched.
amended by 30,
1969, s. 37.

THE TWELFTH SCHEDULE

Caveat forbidding Registration, of dealing with Estate or Interest

To the Registrar-General of South Australia.

Take notice that I, A.B., of [residence and description] claiming [here state the nature of the interest claimed, and the grounds upon which such claim is founded] in [describe land, and refer to grant or certificate] forbid the registration of any dealing with the estate or interest of C.D. in the said land [if so unless such dealing shall be expressed to be subject to my claim]. Address for service of notices and proceedings: [here insert an address within South Australia].

Dated this day of , 19 .

A.B. [or A.B., by his agent, E.F.]

I, the above-named A.B. [or E.F., of (residence and description), agent for the above-named A.B.], make oath and say [or declare] that the allegations in the above caveat are true in substance and in fact [if no personal knowledge add, as I have been informed and verily believe].

Sworn [or declared] by the said A.B. }
[or E.F.] at , this }
day of , 19 . }
Before me. }

THE THIRTEENTH SCHEDULE

Sec. 155.

Power of Attorney

I, A.B., of [here insert residence and description], do hereby appoint C.D., of [here insert residence and description], as my attorney, and authorize him to act for me in making applications to bring any land, estate, or interest [or if it is only intended to give power to bring any particular land under the provisions of this Act, describe same] of which I am, or shall hereafter be, seized or possessed under the provisions of the Real Property Act, 1886-1975, and to execute all or any instruments that may be necessary for giving effect to any dealing with any land, estate, or interest of which I am or may be the registered proprietor [or if it is intended to limit the power to particular land or to particular dealings, shortly describe the same]. In witness whereof I have hereunto set my hand this day of , 19 .

[Signature.]

THE FOURTEENTH SCHEDULE

Sec. 157.

Revocation of Power of Attorney

I, A.B., [here insert residence and description], do hereby revoke the power of attorney, dated the day of , 19 , given by me to C.D., of [here insert residence and description].

Dated this day of , 19 .

[Signature.]

* * * * *

15th sched.
repealed by 30,
1969, s. 38.

THE SIXTEENTH SCHEDULE

Sec. 265.

Short Forms of Covenants and their Interpretation

Short form.

Covenant at length.

1. The mortgagor or encumbrancer will insure: The mortgagor or encumbrancer will insure, and during the continuance of this mortgage keep insured, against loss or damage by fire, in the name of the mortgagee or encumbrancee, in some public insurance office to be approved by the mortgagee or encumbrancee, to the amount of their full value, all buildings and erections which shall for the time being be erected on the mortgaged land, and shall be of a nature or kind capable of being so insured, and will when required by the mortgagee or encumbrancee deposit with him the policy of every such insurance, and within seven days after each premium shall become payable the receipt for such premium, and if default shall be made in the observance or performance of this covenant, it shall be lawful for the mortgagee or encumbrancee, without prejudice, nevertheless to and concurrently with the power granted him by this mortgage and by the Real Property Act, 1886-1975, so to insure such buildings and erections, and the costs of such insurance shall be a debt from the mortgagor or encumbrancer to the mortgagee or encumbrancee, and shall be added to the principal moneys hereby secured, and shall, during the continuance of this mortgage, be a charge upon the mortgaged land, and bear interest at the same rate as the said principal moneys, and all moneys which shall be received by virtue of any such insurance as aforesaid, shall, at the option of the mortgagee or encumbrancee, be laid out in making good the loss or damage in respect of which the same shall be received or be applied by the mortgagee or encumbrancee in or towards satisfaction of the moneys hereby secured.
2. The lessee will insure: The lessee will insure, and during the continuance of this lease keep insured, against loss or damage by fire, in the joint names of the lessor and the lessee, in some public insurance office to be approved by the lessor, to the amount of their full value, all buildings and erections which shall for the time being be erected on the land hereby leased, and shall be of a nature or kind capable of being so insured, and will, when required by the lessor, deposit with him the policy of every such insurance, and within seven days after each premium shall become due the receipt for such premium, and on any breach or non-observance of this covenant the lessor may, without prejudice to and concurrently with the other powers granted to him by this lease and the Real Property Act, 1886-1975, so insure such buildings and erections, and the costs of effecting such insurance shall be added to the rent hereby reserved, and shall be a charge upon the said leased land, and recoverable by action or distress in the same manner as the said rent is recoverable. All moneys which shall be received under or by virtue of any such insurance as aforesaid shall be laid out and expended in making good the loss or damage in respect of which the same shall be received.

Short form.	Covenant at length.
3. The lessee will paint outside every alternate year:	The lessee will, in every alternate year during the currency of this lease, paint all the outside woodwork and ironwork belonging to the premises hereby leased, with two coats of proper oil colours, in a workmanlike manner.
4. The lessee will paint and paper inside every third year:	The lessee will, in every third year during the currency of this lease, paint the inside wood, iron, and other work belonging to the premises hereby leased, and now or usually painted, with two coats of proper oil colours, in a workmanlike manner, and also re-paper, with paper of the quality now used, such parts of the said premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now washed, stopped, whitened, or coloured respectively.
5. The lessee will fence:	The lessee will, during the continuance of this lease, erect and put up a good and substantial fence on the boundaries of the said leased land upon which no substantial fence now exists.
6. The lessee will cultivate:	The lessee will, during the continuance of this lease, cultivate, use, and manage all such parts of the land hereby leased as are or shall be broken up or converted into tillage in a proper and husbandmanlike manner, and will not impoverish or waste the same.
7. The lessee will not use the premises as a shop:	The lessee will not convert, use, or occupy the premises hereby leased, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or permit or suffer the said premises, or any part thereof, to be used for any such purposes or otherwise than as a private dwelling-house, without the consent in writing of the lessor.
8. The lessee will not carry on offensive trades:	The lessee will not during the continuance of this lease use, exercise, or carry on, or permit or suffer to be used, exercised, or carried on, upon the premises hereby leased, or any part thereof, any noxious, noisome, or offensive art, trade, business, occupation, or calling, or do, permit, or suffer any act, matter, or thing whatsoever upon the said premises, or any part thereof, which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of the adjoining lands and hereditaments of any of them.
9. The lessee will not without leave assign or sublet:	The lessee will not assign, transfer, demise, sublet, or set over, or otherwise by any act or deed procure the leased land, or any part thereof, to be assigned, transferred, demised, sublet, or set over unto any person whomsoever, without the consent in writing of the lessor first had and obtained.
10. The lessee will not cut timber:	The lessee will not cut down, fell, injure, or destroy any growing or living timber or timber-like trees standing or being upon the leased land, without the consent in writing of the lessor.
11. The lessee will carry on the business of a publican, and conduct the same in an orderly manner; will apply for renewal for licence, and will facilitate transfer of licence:	The lessee will at all times, during the continuance of this lease, use, exercise and carry on in and upon the leased premises the trade or business of a licensed victualler or publican, and retailer of spirits, wines, ales, beer, and porter, and keep open and use the messuage, tenement, or inn, and buildings upon the leased land as and for an inn or public-house for the reception, accommodation, and entertainment of travellers, guests, and other persons resorting thereto or frequenting the same, and manage and conduct such trade or business in a quiet and orderly manner, and will not do, or commit, or permit, or suffer to be done or committed, any act, matter, or thing whatsoever whereby or by means whereof any licence shall or may be forfeited or become void or liable to be taken away, suppressed, or suspended in any manner howsoever; and also will from time to time during the continuance of this lease, at the proper times for that purpose, apply for and endeavour to obtain, at his own expense, all such licences as are or may be necessary for carrying on the said trade or business of a licensed victualler or publican in and upon the said leased premises and keeping the said messuage, tenement, or inn open as and for an inn or public-house as aforesaid; and also will at, or if necessary before, the expiration or other sooner determination of this lease, sign and give such notice or notices for renewal or transfer of any licence as may be requisite or as may be desired by the lessor, and allow such notice or notices for renewal or transfer of any licence as may be required by law to be affixed to the said messuage, tenement, or inn, to be thereto affixed and remain so affixed during such time or times as shall be necessary or expedient in that behalf, and generally will do all such further acts, matters, and things as shall be necessary to enable the lessor, or any person authorized by him, to obtain the renewal of any licence, or any new licence, or the transfer of any licence then existing and in force.

THE SEVENTEENTH SCHEDULE

Sec. 266.

Except and always reserved to his heirs, executors, administrators, and assigns, all coals, seams of coal, mines, minerals, and quarries of stone and slate which now are, or at any time hereafter may be found in, upon, or under the said land and premises, with full liberty of ingress, egress, and regress, at all times, to and for the said his heirs, executors, administrators, and assigns, and his or their agents, servants, and workmen, and all others to be by him or them authorized, at all times, with or without horses and other cattle, carts, or other carriages, laden or unladen, engines, machinery, and all necessary implements and things, into, upon, and from the said lands and premises, and every or any part thereof, and full right there to view, survey, dig for, work, store, carry away, sell and dispose of the said coals, mines, minerals, and quarries of stone and slate; and also for the purposes aforesaid, to erect steam-engines and other machinery, with the buildings necessary thereto, and to sink pits, make waggon-ways, and use all other inventions and means for draining, sinking, storing, leading, carrying away, selling, and disposing of such coals, mines, minerals, stone, and slate, doing or suffering to be done as little damage as possible in the exercise of the said liberties and rights, and paying and allowing to his heirs, executors, administrators, and assigns, a reasonable compensation for damage to the surface of the said land, or any buildings or fences thereon.

THE EIGHTEENTH SCHEDULE

Sec. 267.

Certificate of Registrar-General, Justice of the Peace, &c., before whom instrument may have been executed by the parties thereto

Appeared before me at , the day of , A.B., of [here insert residence and description], the party executing the within instrument, being a person well known to me, and did freely and voluntarily sign same.

(Signed) Registrar-General, J.P., &c.

THE NINETEENTH SCHEDULE

Sec. 268.

Certificate of Registrar-General, Justice of the Peace, &c., taking declaration of attesting witness

19th sched.
amended by 36,
1939, s. 11.

Appeared before me at , the day of 19 , C.D., of [here insert name, residence, and description of attesting witness], a person known to me and of good repute, attesting witness to this instrument, and acknowledged his signature to the same; and did further declare that A.B., the party executing the same, was personally known to him the said C.D., that the signature to the said instrument is in the handwriting of the said A.B., and that the said A.B., did freely and voluntarily sign the same in the presence of him the said C.D., and was at that time of sound mind.

(Signed) Registrar-General, J.P., &c.

* * * * *

20th Sched.
repealed by 116,
1972, s. 12.

THE TWENTY-FIRST SCHEDULE

Sec. 224.

Rules and Regulations for procedure in the matter of Caveats

1. The caveator may bring an action for the purpose of establishing his claim, or may for such purpose take proceedings by way of petition to the Supreme Court. Such petition shall be filed, and shall contain, as concisely as may be, a statement of the material facts on which the petitioner relies, such statement to be divided into paragraphs, numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct allegation, and shall state specifically what estate, interest or charge the petitioner claims; and the Master of the said Court shall, upon the receipt of such petition, appoint a time for hearing the same.

Person entering caveat may establish his claim.

Proceedings to be had thereon.

2. The petitioner shall cause a copy of such petition, with notice of the time appointed for hearing, to be served seven days at least before the time appointed for the hearing of the said petition, on the caveatee, or at the address given in his application.

Copy of petition to be served upon claimant.

3. On the day of hearing, the caveatee is personally, or by counsel, to show cause, and if necessary by affidavit, why the prayer of such petition should not be granted.

Showing cause on petition.

4. If the caveatee shall not appear on the day appointed for hearing, the Court may, upon due proof of the service of such petition, make such order, in the absence of the caveatee, either for the establishment of the rights of the caveator, or as the nature and circumstances of the case may require, as to such Court may seem meet.

Hearing petition on non-attendance of claimant.

5. On the hearing of the petition, and upon reading the affidavits, if any, filed in support thereof, and any documents produced to the Court, and hearing what may be alleged on behalf of the caveatee and caveator, the Court may, if it shall think fit, make an order establishing the right of the caveator, or directing any inquiries to be made or other proceedings taken for the purpose of ascertaining the rights of the parties, and for that purpose may adjourn the hearing and order the petition to be served on any other persons the Court may consider necessary, and every person

Hearing of petition.

Question of fact
may be referred
to a jury.
Parties to
produce deeds,
etc.

6. The Court may, if it shall think fit, direct any question of fact brought before it to be decided before a Judge thereof; and for that purpose may direct an issue to be tried, wherein the caveator shall be plaintiff and the caveatee shall be defendant; and the said Court shall direct when and where the trial of such issue shall take place; and the Court may also direct the parties to produce all deeds, books, papers, and writings in their custody or power, on oath before the Master, on a day to be named by the Court, and each party shall have liberty to inspect the same, and take copies thereof, at his own expense; and such of them as either party shall give notice to have produced at the trial, shall be produced accordingly, and the issue may be in the form following, viz:—

Form of issue. The day of in the year of our Lord, 19 1.

Proceedings where petitioner establishes his claim.

Effect of order.

**Court may
require action to
be brought.**

Order for costs.

Injunction by Supreme Court.

**Court may
make order.**

12. The Court may discharge any such order, with or without costs, and generally act in the premises in such manner as the justice of the case requires; and the Registrar-General, without being made a party to the proceedings, upon being served with any order, or a copy thereof, shall obey the same.

THE TWENTY-SECOND SCHEDULE

In the matter of the Real Property Act, 1886-1975.

A.B. [here insert addition] is hereby summoned to appear before me at the Lands Titles Office, on the day of , 19¹, at of the clock in the [fore or after] noon, then and there [here insert purpose of summons and describe the documents or instruments (if any) required to be produced].

Given under my hand and seal the day of , 191.

_____, Registrar-General. (L.S.)

¹ In a previous reprint of this Act pursuant to the Acts Republication Act, 1967, Arabic numerals substituted pursuant to s. 7 (1) of that Act

THE TWENTY-THIRD SCHEDULE

FORM 1

Application to Amend Certificate

Sec. 223a.
23rd sched.
enacted by 39,
1945, s. 9.

To the Registrar-General of Deeds.

I, _____, hereby apply to have the certificate of title Register Book volume _____ folio _____ amended in the following particulars:—[*State the nature of proposed amendment, and, in a case in which the description in the certificate is erroneous or imperfect on the face of it, add the words—on the ground that the certificate is erroneous or imperfect on the face of it.*]: And I declare:—

1. That the land which would be described by the certificate when amended in accordance with this application is now in my occupation, and has been actually and *bona fide* occupied by me or persons holding under me since _____ as being land included in that certificate.

2. The nature of such occupation was as follows:—[*State generally how and by whom the land has been occupied as for instance—by myself as a farm and dwelling; by my tenants, A.B. and C.D., as shops; or partly by me as a dwelling, and partly by my tenant A.B., as a shop.*]

3. That the names and addresses so far as known to me of the occupants of all lands contiguous to the land so occupied by me are as follows:—

4. That the names and addresses so far as known to me of the owners of all lands contiguous to the land so occupied by me are as follows:—

5. That no part of the said land has been the subject of any proceedings under the Real Property Act, 1886-1975, or any corresponding previous enactment or in any court of competent jurisdiction—[*if there have been any such proceedings, add "except that" and go on to give particulars of such proceedings and their result.*]

6. That to the best of my knowledge and belief the reasons why the description of the land in the said certificate does not accord with the description of the land so occupied by me are the following:—[*Set out reasons.*]

7. That the name of the post office nearest to the land is [*here state name*].

8. That the land is situate in the [*here state district council or municipality*].

Declared and subscribed at
by the said
this day
of 19 before me

FORM 2

Sec. 223a.

Application to Amend Certificate

To the Registrar-General of Deeds.

I, _____, the registered proprietor of the land which is described as follows in the certificate of title Register Book volume _____ folio _____ [*set out full particulars as in certificate*] hereby apply to have the Register Book amended in the following particulars:— [*State the nature of the proposed amendment, and mention the volume and folio of every certificate and the name of every registered proprietor whose certificate of title would be affected by the proposed amendment*]: And I declare:—

1. That to the best of my knowledge and belief the discrepancy between the description in my certificate of title and that in the other certificates abovementioned is due to error in survey or misdescription, and has arisen [*give the supposed cause of discrepancy or state that the applicant is unable to assign any specific cause for the discrepancy*].

2. That the title to the land affected by the proposed amendment has never been in contest between me or as I believe any one from whom I claim and any other person in any proceeding under the Real Property Act, 1886-1975, or any corresponding previous enactment or in any court of competent jurisdiction. [*If there have been any such proceedings add "except that" and go on to give particulars of such proceedings and their result.*]

3. That the land as described in my certificate has been actually and *bona fide* occupied by me and persons holding under me since _____ as being land included in that certificate.

4. That the nature of such occupation was as follows:—[*State generally how and by whom the land has been occupied, as, for instance, by myself as a farm and dwelling; by my tenants A.B. and C.D., as shops; or partly by me as a dwelling, and partly by my tenant, A.B., as a shop.*]

5. That the name of the post office nearest to the land is [*here state name*].

6. That the land is situate in the [*here state district council or municipality*].

Declared and subscribed at
by the said
this day
of 19 before me

Unit Entitlement		Office Use Only	
		Current C's of T.	
Unit No.	Unit Entitlement	Vol.	Fol.
Aggregate			

THE TWENTY-SIXTH SCHEDULE

First Articles of a Corporation

Sec. 223nj
26th sched.
enacted by 37,
1967, s. 17.

1. In these articles, unless the contrary intention appears—

- (a) words and expressions have the same respective meanings as they have in Part XIXB of the Real Property Act, 1886-1975;

and

- (b) “the Act” means the Real Property Act, 1886-1975, as amended from time to time and includes the regulations made under any provision thereof.

2. The corporation, its agents and servants shall be permitted by the registered proprietor or occupier of a unit, and shall have the right, at all reasonable times and on giving the registered proprietor or the occupier reasonable notice (except in cases of emergency when no such notice shall be required), to enter upon the unit for the purpose or in the course of carrying out the functions or duties of the corporation or exercising its powers which, without limiting the generality of the foregoing, shall be deemed to include power—

- (a) to inspect the unit;

- (b) to carry out maintenance repairs or work;

and

- (c) to enter upon and inspect any part of the unit for the purpose of ensuring that the Act and these articles are being observed.

3. The registered proprietor of a unit shall do or cause to be done the following:—

- (a) upon all rates, taxes, charges, outgoings and assessments in respect of his unit becoming payable, forthwith pay the same;

- (b) subject to the Act and these articles, repair and maintain his unit and always keep the same in a state of good repair;

and

- (c) notify the corporation forthwith of any change of ownership or of occupancy of his unit.

4. The registered proprietor of a unit and every occupier thereof shall not—

- (a) use the common property or permit the same to be used in such a manner as unreasonably to interfere with the use and enjoyment thereof by other members of the corporation or occupiers of units or their families or visitors;

or

- (b) use the unit or any unit subsidiary that is appurtenant thereto or permit the same to be used in such a manner or for such purposes as would cause a nuisance or hazard to any other member of the corporation or occupier of any unit or the families or visitors of any such member or occupier.

5. The registered proprietor of a unit and every occupier thereof shall not—

- (a) change the use or alter the character of that unit or any unit subsidiary that is appurtenant to that unit;

or

- (b) erect or alter any structure on any unit subsidiary that is appurtenant to that unit,

unless express approval for doing so has been obtained by a unanimous resolution of the corporation.

6. The corporation shall—

- (a) keep in a state of good and serviceable repair and always properly maintain all chattels, fixtures and fittings (including elevators, stairways and fire escapes, if any) held by the corporation or used or intended, adapted or designed for use in connection with the common property or the enjoyment thereof by the registered proprietors or occupiers of the units or by their families or visitors;

- (b) always maintain in good repair and proper working order and renew, where renewal thereof is reasonably necessary, the pipes, wires, cables, ducts and the other apparatus and equipment, if any, of whatsoever nature installed in the building by the corporation or entrusted to its care by these articles or used or intended, adapted or designed for use in connection with or for the provision of any of the services in respect of which rights are, by virtue of section 223ni of the Act, vested in the owner of the common property;

and

- (c) at the written request of the registered proprietor or registered mortgagee of a unit, produce for inspection to that registered proprietor or mortgagee or to any person authorized in writing by him, the policy or policies of insurance effected by the corporation and the receipt or receipts for the last premium or premiums in respect thereof.

7. The registered proprietor of a unit and every occupier thereof shall not—

- (a) use the unit or permit the unit to be used for any purpose which may be unlawful;

(b) except with and in accordance with the corporation's permission (which the corporation may withdraw at any time by written notice given pursuant to a special resolution), keep any animals in the unit or in the common property;

or

(c) make undue noise in or about any unit or the common property.

8. (1) Where the common boundary between any of the units or any part of a unit and the common property or any part of the common property lies within or is the whole or a part of a wall, floor or ceiling of the building or other improvements on the parcel, such wall, floor or ceiling is hereby entrusted to the care of the corporation.

(2) All fittings and fixtures that had been attached to the parcel before the incorporation of the corporation or which have since been installed in the building by the corporation, but are appurtenant to all the units or to one or more of the units and the common property are hereby entrusted to the care of the corporation.
