

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE



No. 3 of 1985

An Act to amend the Property Law Act 1974-1982 in
certain particulars and for related purposes

[ASSENTED TO 18TH MARCH, 1985]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Property Law Act Amendment Act 1985*.

(2) In this Act the *Property Law Act 1974–1982* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Property Law Act 1974–1985*.

2. Amendment of s. 4. Interpretation. Section 4 of the Principal Act is amended by—

(a) inserting after the definition “instrument” the following definition:—

“ “instrument of subordinate legislation” includes any Proclamation, Order-in-Council, regulation, rule, by-law, ordinance or instrument made under any Act;”;

(b) inserting after the definition “Registrar” the following definition:—

“ “Registrar of Dealings” means the Registrar of Dealings appointed under the *Lands Act 1962–1984*;”;

(c) inserting after the definition “unregistered land” the following definition:—

“ “warden” means a warden appointed or deemed to have been appointed for the purposes of the *Mining Act 1968–1983*;”.

3. New s. 57A. The Principal Act is amended by inserting after section 57 the following section:—

“ **57A. Effect of Act or instrument of subordinate legislation.**

(1) An instrument of subordinate legislation shall not have the effect of rendering void or unenforceable any contract or dealing concerning property that is made, entered into or effected contrary to the legislation unless, in the case of an instrument duly made by the Governor in Council, it expressly provides that such a contract or dealing shall be void or, as the case may be, unenforceable.

(2) Where an Act or instrument of subordinate legislation requires that a certificate, consent or approval relating to any contract or dealing with property (by sale, lease, mortgage or otherwise) be obtained or tendered before or at the time the contract is entered into or the time of the dealing, then, in the absence of greater particularity as to that time in the Act or instrument, it shall be sufficient compliance with that requirement if the certificate, consent or approval is obtained or tendered as required at or immediately before—

(a) in the case of a sale, settlement therein;

(b) in the case of a lease, the lessee's entry into possession thereunder;

(c) in the case of a mortgage, the mortgagor's accepting liability thereunder; and

(d) in the case of any other dealing, its finalization.

(3) This section applies in relation to an Act or instrument of subordinate legislation whether enacted or made before or after the commencement of the *Property Law Act Amendment Act 1985*."

4. Amendment of s. 59. Contracts for sale, etc. of land to be in writing. Section 59 of the Principal Act is amended by omitting the word "bought" and substituting the word "brought".

5. Amendment of s. 64. Right to rescind on destruction of or damage to dwelling-house. Section 64 of the Principal Act is amended by omitting from subsection (3) the words "unit within the meaning of the *Building Units Titles Act 1965-1972*" and substituting the words "a lot on a building units plan within the meaning of the *Building Units and Group Titles Act 1980-1984*".

6. Amendment of s. 80. Inspection and production of instruments. Section 80 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:—

"(2) Subject to the provisions of any other Act, where in the case of a mortgage of land the mortgagor executes any instrument or other document subsequent to that mortgage in relation to—

(a) any authorized dealing with the land; or

(b) a second or subsequent mortgage,

the mortgagee or other person holding the relevant certificate of title, instrument of lease or other documents of title shall—

(c) upon being requested in writing so to do by the mortgagor or a person entitled to the benefit of the subsequent instrument or document;

(d) at the cost of the person making that request; and

(e) upon payment or tender to that mortgagee or other person of his proper costs and expenses in that behalf,

produce the document or documents of title for lodgment at the office of the Registrar or the office of the Registrar of Dealings or in the warden's office, as the case may be, so that the subsequent instrument or document may be registered.

(2A) If the mortgagee or other person refuses or neglects to comply with a request made pursuant to subsection (2), the mortgagor or person entitled to the benefit of the subsequent instrument or document concerned may make application to a Judge of the Supreme Court in Chambers for an order directed to that mortgagee or other person to show cause why the document or documents of title should not be produced pursuant to subsection (2).

(2B) If the mortgagee or other person neglects or refuses to attend before the Judge of the Supreme Court in Chambers at the time therein appointed, the Judge may issue a warrant authorizing and directing some person to be named therein to apprehend and arrest the person so ordered to show cause and bring him before a Judge of the Supreme Court in Chambers for examination.

(2C) Upon the appearance before the Judge of any person pursuant to subsection (2A) or (2B) and after examining that person upon oath the Judge may—

- (a) order that person to deliver up the document or documents of title; or
- (b) order the Registrar, Registrar of Dealings or warden, as the case may be, to dispense with production of the document or documents of title to enable the subsequent instrument or document to be registered.”.

7. Amendment of s. 94. Obligation to transfer instead of discharging mortgage. Section 94 of the Principal Act is amended by in subsection (3), in subparagraph (b), omitting the word “mortgagor” where it occurs at the end of that subparagraph and substituting the word “mortgagee”.

8. Amendment of s. 171. Registration of powers and instruments revoking powers. Section 171 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

“(1A) A duplicate or attested copy of an instrument lodged for registration pursuant to subsection (1) shall be lodged with the original of that instrument.”.