

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 43 of 1985

An Act to amend the Land Sales Act 1984 in certain
particulars

[ASSENTED TO 24TH APRIL, 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. This Act may be cited as the *Land Sales Act Amendment Act 1985*.

2. Commencement. (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Subject to subsection (1), this Act or the provisions thereof specified by Proclamation shall commence on the day or days appointed by Proclamation for the commencement of this Act or, as the case may be, those provisions.

3. Citation. (1) In this Act the *Land Sales Act 1984* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Land Sales Act 1984-1985*.

4. Amendment of s. 4. Section 4 of the Principal Act is amended by omitting the expression "1984" occurring at the end of the section and substituting the expression "1985".

5. Amendment of s. 6. Interpretation. Section 6 of the Principal Act is amended by, in subsection (1)—

(a) omitting the expression "1983" wherever occurring after the expression "*Building Units and Group Titles Act 1980*—" and substituting in each case the expression "1984".

(b) inserting after the definition "group titles plan" the following definition:—

" "Local Authority" means a Local Authority within the meaning of the *Local Government Act 1936-1985* and includes Brisbane City Council;";

(c) in the definition "Registrar" omitting the expression "1984" and substituting the expression "1985";

(d) inserting after the definition "Registrar" the following definition:—

" "registrable instrument of transfer" means—

(a) in respect of land that was relevant freehold land at the time when a person entered upon the purchase thereof, a memorandum of transfer of the land in favour of that purchaser capable of being registered in the office of the Registrar of Titles;

(b) in respect of land that was relevant leasehold land at the time when a person entered upon the purchase thereof, an instrument of transfer of the land in favour of that purchaser capable of being registered or noted in the

appropriate register or book in the office of the person charged with registering or noting such transfers;

or

- (c) in respect of a lot that was a proposed lot at the time when a person entered upon the purchase thereof, a memorandum of transfer of the lot in favour of that purchaser capable of being registered in the office of the Registrar of Titles;”.

6. Amendment of s. 8. Restriction on selling and purchasing. Section 8 of the Principal Act is amended by, in subsection (1), in paragraph (b)—

(a) in provision (i), omitting the expression “1979” and substituting the expression “1984”;

(b) in provision (ii), omitting the expression “1982” and substituting the expression “1984”.

7. Amendment of s. 10. Rectification of copy plan under s. 9. Section 10 of the Principal Act is amended by—

(a) in subsection (1), omitting the second paragraph;

(b) omitting subsection (4) and substituting the following subsections:—

“(4) The duty imposed by this section continues until a registrable instrument of transfer that relates to the land in question has been delivered by the vendor or the vendor’s agent to the purchaser or his agent.

(5) For the purpose of determining whether a copy plan referred to in section 9 (1) given to a purchaser (whether given in due time in accordance with that section or at a later time) complies with that section every rectification notice given, together with the copy plan to which it relates, shall be deemed to be the copy plan referred to in section 9 (1) given to the purchaser.”.

8. Amendment of s. 11. Contractual requirement re holding of money. Section 11 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) Where an instrument, that is intended to bind a person (absolutely or conditionally) to purchase relevant land, provides for the payment of money in respect of the purchase, all moneys payable thereunder by the purchaser, by way of deposit or otherwise, shall be paid directly to the Public Trustee constituted under the *Public Trustee Act 1978-1981* unless the parties to the instrument agree that such moneys shall be paid directly to—

a solicitor whose name is on the roll of solicitors of the Supreme Court of Queensland and who practises as a solicitor in Queensland, or

a real estate agent duly licensed under the *Auctioneers and Agents Act 1971-1985*, specified in the instrument.

Moneys paid to a person pursuant to this subsection shall be held by that person in a trust account maintained by him or, where he is a person other than the Public Trustee, by the firm of which he is a member and dealt with by him in accordance with this Part and the law governing the operation of his trust account.”;

(b) in subsection (2), omitting the words “that might restrict the purchaser in his selection of a person to be trustee shall be void.” and substituting the words “that provides for money, referred to in that subsection, to be paid contrary to that subsection shall be void.”;

(c) in subsection (3)—

(i) inserting after the words “purchaser or his agent to the” the words “Public Trustee or to a”;

(ii) in the proviso, omitting the words “and is duly nominated by the purchaser to be the trustee.” and substituting the words “and is the trustee specified in the instrument.”.

9. Amendment of s. 12. Trustee’s duty. Section 12 of the Principal Act is amended by:—

(a) omitting paragraphs (b) and (c) and substituting the following words:—

“or

(b) in any other case, a registrable instrument of transfer that relates to the land in question has been delivered by the vendor or the vendor’s agent to the purchaser or his agent.”;

(b) in the general words following paragraph (b), as inserted by paragraph (a) of this section, omitting the expression “or (c)”.

10. Amendment of s. 13. Avoidance of instrument for breach of s. 9. Section 13 of the Principal Act is amended by—

(a) in subsection (1), inserting before the words “, any particular contained therein” the words “(whether given in due time in accordance with section 9 (1) or at a later time)”;

(b) omitting subsection (2) and substituting the following subsection:—

“(2) A notice of avoidance under subsection (1), if it is to be effectual, shall be given—

(a) before a registrable instrument of transfer that relates to the land in question has been delivered by the vendor or the vendor’s agent to the purchaser or his agent; or

- (b) in the case where at any time after the time prescribed by section 9 (1) for giving a copy plan a notice of rectification, such as is referred to in section 10 (1), has been given to the purchaser in respect of any particular in such a copy plan previously given and the purchaser seeks to avoid the instrument in question by reason of the inaccuracy to which the notice of rectification relates—
 - (i) before the expiration of a period of 30 days after the receipt by the purchaser of the notice of rectification; or
 - (ii) before the delivery of a registrable instrument of transfer as aforesaid,whichever occurs sooner.”.

11. Repeal of s. 14. Avoidance of instrument for breach of s. 11.
The Principal Act is amended by repealing section 14 and substituting the following section:—

“**14. Avoidance of instrument for breach of s. 11.** Where money payable by a purchaser under an instrument to which section 11 (1) applies is paid to the vendor or vendor’s agent or to another person at the direction of the vendor or his agent, in breach of section 11 (3), the purchaser may avoid the instrument by notice in writing given to the vendor or to the vendor’s agent at any time before—

- (a) a registrable instrument of transfer that relates to the land in question has been delivered by the vendor or the vendor’s agent to the purchaser or his agent;
or
- (b) the purchaser has disposed of his interest in the land to which the instrument relates,

whichever occurs sooner.”.

12. Amendment of s. 15. Avoidance of instrument upon ground of lapse of time. Section 15 of the Principal Act is amended by—

(a) omitting the word “six” occurring after the words “a period of” and substituting the word “nine”;

(b) omitting all words from and including the expression “before—” to the end of the section and substituting the following words:—

“before a registrable instrument of transfer that relates to the land in question has been delivered by the vendor or the vendor’s agent to the purchaser or his agent, the purchaser may avoid the instrument relating to the sale or purchase by notice in writing given to the vendor or to the vendor’s agent at any time before—

- (a) such a registrable instrument of transfer has been so delivered;
or

(b) the purchaser has disposed of his interest in the land to which the instrument relates,

whichever occurs sooner.”

13. Amendment of s. 19. Exemption from Part. Section 19 of the Principal Act is amended by—

(a) in subsection (1), omitting the word “two” and substituting the words “not more than three”;

(b) in subsection (4), omitting the words “both or either of the two” and substituting the words “one or more than one of the”.

14. Amendment of s. 21. Statement identifying proposed lot etc. Section 21 of the Principal Act is amended by, in subsection (4), omitting the expression “1983” and substituting the expression “1984”.

15. Amendment of s. 22. Rectification of statement under s. 21. Section 22 of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting the words “of a description referred to in section 21” and substituting the words “of particulars referred to in section 21 (1)”;

(ii) omitting the second paragraph;

(b) omitting subsection (4) and substituting the following subsections:—

“(4) The duty imposed by this section continues until a registrable instrument of transfer that relates to the lot in question has been delivered by the vendor or the vendor’s agent to the purchaser or his agent.

(5) For the purposes of determining whether a statement in writing of particulars referred to in section 21 (1) given to a purchaser (whether given in due time in accordance with that section or at a later time) complies with that section every rectification notice given, together with the statement to which the notice relates, shall be deemed to be the statement in writing of those particulars referred to in section 21 (1) given to the purchaser.

This subsection shall not be construed to make any rectification notice given part of the contract of purchase in connexion with which the statement in writing is given.”

16. Amendment of s. 23. Contractual requirement re holding of money. Section 23 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) Where an instrument, that is intended to bind a person (absolutely or conditionally) to purchase a proposed lot, provides for the payment of money in respect of the purchase, all moneys

payable thereunder by the purchaser, by way of deposit or otherwise, shall be paid directly to the Public Trustee constituted under the *Public Trustee Act 1978-1981* unless the parties to the instrument agree that such moneys shall be paid directly to—

a solicitor whose name is on the roll of solicitors of the Supreme Court of Queensland and who practises as a solicitor in Queensland, or

a real estate agent duly licensed under the *Auctioneers and Agents Act 1971-1985*,

specified in the instrument.

Moneys paid to a person pursuant to this subsection shall be held by that person in a trust account maintained by him or, where he is a person other than the Public Trustee, by the firm of which he is a member and dealt with by him in accordance with this Part and the law governing the operation of his trust account.”:

(b) in subsection (2), omitting the words “that might restrict the purchaser in his selection of a person to be trustee shall be void.” and substituting the words “that provides for money, referred to in that subsection, to be paid contrary to that subsection shall be void.”:

(c) in subsection (3)—

(i) inserting after the words “purchaser or his agent to the” the words “Public Trustee or to a”:

(ii) in the proviso, omitting the words “and is duly nominated by the purchaser to be the trustee.” and substituting the words “and is the trustee specified in the instrument.”:

16A. Amendment of s. 24. Trustee's duty. Section 24 of the Principal Act is amended by omitting paragraph (b) and substituting the following words:—

“(b) in any other case, a registrable instrument of transfer that relates to the lot in question has been delivered by the vendor or the vendor's agent to the purchaser or his agent.”:

17. Amendment of s. 25. Avoidance of instrument for breach of s. 21 (1). Section 25 of the Principal Act is amended by—

(a) in subsection (1), inserting before the words “, any particular contained therein” the words “(whether given in due time in accordance with section 21 (1) or at a later time)”:

(b) omitting subsection (2) and substituting the following subsection:—

“(2) A notice of avoidance under subsection (1), if it is to be effectual, shall be given—

(a) before a registrable instrument of transfer that relates to the lot in question has been delivered by the

vendor or the vendor's agent to the purchaser or his agent; or

- (b) in the case where at any time after the time prescribed by section 21 (1) for giving a statement in writing a notice of rectification, such as is referred to in section 22 (1), has been given to the purchaser or his agent in respect of any particular in such a statement in writing previously given and the purchaser seeks to avoid the instrument in question by reason of the inaccuracy to which the notice of rectification relates—
- (i) before the expiration of a period of 30 days after the receipt by the purchaser or his agent of the notice of rectification; or
- (ii) before the delivery of a registrable instrument of transfer as aforesaid,

whichever occurs sooner.”.

18. Repeal of s. 26. Avoidance of instrument for breach of s. 23. The Principal Act is amended by repealing section 26 and substituting the following section:—

“**26. Avoidance of instrument for breach of s. 23.** Where money payable by a purchaser under an instrument to which section 23 (1) applies is paid to the vendor or vendor's agent or another person at the direction of the vendor or his agent, in breach of section 23 (3), the purchaser may avoid the instrument by notice in writing given to the vendor or to the vendor's agent at any time before—

- (a) a registrable instrument of transfer that relates to the lot in question has been delivered by the vendor or the vendor's agent to the purchaser or his agent;
- or
- (b) the purchaser has disposed of his interest in the lot to which the instrument relates,

whichever occurs sooner.”.

19. Amendment of s. 27. Avoidance of instrument upon ground of lapse of time. Section 27 of the Principal Act is amended by—

(a) omitting the expression “18” occurring after the words “a period of” and substituting the expression “24”;

(b) omitting all words from and including the words “before a Certificate of Title” to the end of the section and substituting the following words:—

“before a registrable instrument of transfer that relates to the lot in question has been delivered by the vendor or the vendor's agent to the purchaser or his agent, the purchaser may avoid the

instrument relating to the sale or purchase by notice in writing given to the vendor or to the vendor's agent at any time before—

(a) such a registrable instrument of transfer has been so delivered;

or

(b) the purchaser has disposed of his interest in the lot to which the instrument relates,

whichever occurs sooner.”.

20. New ss. 31A and 31B. The Principal Act is amended by inserting after section 31 the following sections:—

“31A. Powers of inspectors. (1) In this section and in section 31B, unless the contrary intention appears—

“account” means any account (whether or not it is a trust account) at a bank to which trust moneys are, or have been, deposited;

“authorized person” means—

the Registrar or an inspector.

or

any person authorized by the Minister for the purposes of this section or section 31B;

“bank” means a bank carrying on business under an Act of this State or of the Commonwealth and includes any other financial institution;

“document” includes any book, record, account, plan, contract or other instrument;

“inspector” means an inspector appointed pursuant to the *Auctioneers and Agents Act 1971-1985*;

“trust moneys” includes—

(a) any moneys that are or have been deposited to an account as required by this Act and any moneys that, pursuant to this Act, should have been deposited to any such account; or

(b) any instrument for the payment of any such money where the instrument may be paid into a bank, and any security for such money the title to which is transferable by delivery.

(2) An authorized person may—

(a) question any person for the purpose of determining whether the provisions of this Act have been, or are being, complied with;

(b) for the purpose of questioning any person, as authorized by paragraph (a), require that person to

attend before him at such times and places as are specified by that authorized person;

- (c) require any person who has the possession, custody or control of any document that he believes is relevant to any matter under this Act to produce that document for his examination at such times and places as are specified by that authorized person.

(3) An authorized person may examine any document referred to in subsection (2) (c) and may take such notes or copies of or extracts from any such document or of any entries therein, as he may deem necessary.

(4) Where an authorized person deems it necessary to do so for the purpose of obtaining evidence for production in proceedings or possible proceedings against any person for an offence committed against this Act, he may impound any document examined by him pursuant to subsection (3) but the person who had the possession, custody or control of the document immediately prior to its being so impounded shall be entitled within a reasonable time to a copy certified as correct by the authorized person and such certified copy shall in all courts be admissible in evidence as if it were the original thereof.

(5) Any document impounded under subsection (4) may be detained for such period as the authorized person who impounded it thinks fit and, where any proceedings are commenced for the purpose of which such document was impounded, shall be detained until the final determination of those proceedings including any appeal in respect of those proceedings.

(6) A person shall not—

- (a) obstruct, threaten, or intimidate an authorized person in the exercise of his powers, authorities or functions or in the discharge of his duties under this section or section 31B or attempt so to do;
- (b) when required under this section to attend before an authorized person, fail without lawful excuse to so attend in accordance with such requirement;
- (c) when required under this section to produce for examination any document, fail to produce such document, in accordance with such requirement;
- (d) subject to subsection (9) when required under this section to answer any question, give an answer which is false or misleading or, knowing or being in a position to know the answer required, fail to answer that question; or
- (e) retake or attempt to retake any document impounded under the authority of this section.

(7) A person guilty of an offence against this section shall be liable to a penalty of not more than \$2 000 and not less than \$200 or to imprisonment for not more than six months, or to

both such fine and imprisonment, and, on a second or subsequent offence, to a penalty of not more than \$5 000 and not less than \$500 or to imprisonment for twelve months, or to both such fine and imprisonment.

(8) Any requirement under this section may be made verbally, or by writing addressed to the person to or on whom it is made in which case it may be served by—

- (a) delivering it to him personally; or
- (b) leaving it at, or forwarding it by certified mail to, his usual place of residence or business or his place of residence or business last known to the person by whom it is left or, as the case may be, forwarded.

Where a requirement in writing is served by forwarding it by certified mail as provided in paragraph (b), it shall be deemed to have been received at the time when certified mail would have been received at that address in the ordinary course of post.

(9) No person shall be required under this section to answer any question that tends to incriminate him in any offence.

31B. Duties of bank managers. An authorized person may, for the purpose of determining whether the provisions of this Act are being, or have been, complied with, require the manager or other principal officer of a bank with which trust moneys are or have been deposited (whether to a trust account or any other account) to disclose each and every such account to the authorized person upon demand in writing delivered to him personally by the authorized person.

The person to whom such a demand is made shall permit the authorized person to examine and make and take away with him a copy of or extract from each and every such account and of or from any document relating to any such account.”.

21. Amendment to Schedule. The Schedule is amended by—

(a) omitting the expression “1983” occurring after the expression “*Building Units and Group Titles Act 1980*” and substituting the expression “1984”;

(b) inserting before the expression “s. 98” the following words:—

“s. 69 In subsection (1), omit all words from and including the words “(b) that, in respect of” to but not including the words “(c) that, in respect of” and substitute the following words:—

“(b) that in respect of a sale or purchase of relevant land (within the meaning of the *Land Sales Act 1984*) effected by that auctioneer or real estate agent, whether as such or as a principal, he has complied with the provisions of Part II of that Act binding upon him; or

- (ba) that in respect of a sale or purchase of a proposed lot (within the meaning of the *Land Sales Act 1984*) effected by that auctioneer or real estate agent, whether as such or as a principal, he has complied with the provisions of Part III of that Act binding upon him; or”.
- s. 90 In subsection (9), omit the words “and any person who is required pursuant to section 67A (5) to pay money into a trust account”.