

Queensland



LAND SALES ACT 1984

**Reprinted as in force on 20 July 1993
(includes amendments up to Act No. 68 of 1992)**

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 20 July 1993. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced on or before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use citations and references permitted by Division 2 of that Act;
- express gender specific provisions in a way consistent with current legislative drafting practice as permitted by section 24 of that Act;
- use different spelling consistent with current legislative drafting practice, as permitted by section 26 of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by sections 36, 37, 39 and 40 of that Act;
- use the numbering and renumbering of provisions and references permitted by section 43 of that Act;

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

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LAND SALES ACT 1984

[as amended by all amendments that commenced on or before 20 July 1993²]

An Act to regulate certain sales of land

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Land Sales Act 1984*³⁻⁵.

Commencement

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

(2) Except as is provided in subsection (1) the provisions of this Act or such of them as are specified in the proclamation shall commence on the date or dates appointed by proclamation.

Application of Act

5.(1) This Act applies in relation to a sale or purchase of relevant land situated in Queensland or of a proposed lot that, when it becomes a registered lot, will be situated in Queensland, wherever the contract for sale or other instrument under which the sale or purchase was entered upon is made.

(2) A reference in any provision of this Act to a sale or purchase of relevant land or a proposed lot shall be construed as a reference to a sale or purchase entered upon by a vendor or purchaser under an instrument made after the commencement of the provision in which the reference occurs.

Interpretation

6.(1) In this Act—

“building units plan” means a building units plan within the meaning of the *Building Units and Group Titles Act 1980*;

“group titles plan” means a group titles plan within the meaning of the *Building Units and Group Titles Act 1980*;

“land held from the Crown for an estate of leasehold” means—

(a) a holding under the *Land Act 1962*;

(b) a miner’s homestead within the meaning of the *Miners’ Homestead Leases Act 1913*;

“leasehold building units plan” means a leasehold building units plan within the meaning of the *South Bank Corporation Act 1989*;

“lot” includes a registered lot and a proposed lot;

“plan” includes a building units plan, a group titles plan and a leasehold building units plan;

“proposed lot” means that, which will become a registered lot upon registration of a plan;

“purchase” includes—

(a) agree to purchase;

(b) acquire an option to purchase;

(c) enter upon a transaction that has as its object the acquisition of a right (not immediately exercisable) to purchase or to be given an option to purchase;

(d) sign an instrument that is intended to legally bind a signatory to purchase;

(e) enter upon a transaction or sign an instrument with a view to any person securing or attempting to secure another’s agreement to sell;

“registered lot” means a lot shown on a plan registered under the *Building Units and Group Titles Act 1980* or the *South Bank Corporation Act 1989*;

“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 immediate registration (subject to its being duly stamped as required by any applicable law relating to stamp duty) in the land registry; or
- (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 immediate registration or noting (subject to its being duly stamped as required by any applicable law relating to stamp duty) in the land registry; 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 immediate registration (subject to its being duly stamped as required by any applicable law relating to stamp duty) in the land registry;

“registrar” means the chief executive of the department;

“relevant land” includes relevant freehold land and relevant leasehold land but does not include a lot;

“relevant freehold land” means—

- (a) in relation to a case where land under the provisions of the Real Property Acts has been subdivided by means of a plan of survey that is not registered in the land registry—the subdivisational portions thereof;
- (b) in relation to a case where land under the provisions of the Real Property Acts is being or is about to be subdivided by means of a plan of survey—the proposed subdivisational portions thereof;

“relevant leasehold land” means—

- (a) in relation to a case where land held from the Crown for an estate of leasehold has been subdivided by means of a plan of survey that is not registered in the department administered by the Minister administering the *Land Act 1962*—the subdivisational portions thereof;

- (b) in relation to a case where land held from the Crown for an estate of leasehold is being or is about to be subdivided by means of a plan of survey—the proposed subdivisional portions thereof;

“**sale**” or “**sell**” includes—

- (a) agree to sell; and
- (b) grant an option to purchase; and
- (c) enter upon a transaction that has as its object the grant of a right (not immediately exercisable) to purchase or to be given an option to purchase; and
- (d) procure a person to enter upon a purchase;

“**vendor’s agent**” means a person who procures another to purchase, other than—

- (a) a vendor under a contract for sale of relevant land or of a proposed lot; and
- (b) a person who, if a contract for sale of relevant land or of a proposed lot (the subject of the purchase) were made, would be a vendor thereunder; and
- (c) a person who in the matter of the purchase in question acts only as agent for a purchaser.

(2) For the purposes of this Act—

- (a) a person who signs (personally or by an agent) an instrument that is intended to bind the person (absolutely or conditionally) to purchase relevant land or a proposed lot shall be taken to have entered upon a purchase of the land or lot and in this Act is referred to as “**the purchaser**”, and the person who is entitled to enforce obligations under the instrument against the first person shall be taken to be the vendor of the land or lot in relation to that person and in this Act is referred to as “**the purchaser’s vendor**”;
- (b) a person who signs (personally or by an agent) an instrument that is intended to bind the person (absolutely or conditionally) to sell relevant land or a proposed lot shall be taken to have entered upon a sale of the land or lot and in this Act is referred to as “**the vendor**”, and the person who is entitled to enforce obligations

under the instrument against the first person shall be taken to be the purchaser of the land or lot in relation to that person and in this Act is referred to as “**the vendor’s purchaser**”.

(3) Subsection (2)(b) shall not be construed to limit the meaning of the expression “sale” or “sell” as defined in subsection (1).

PART 2—SALE OF RELEVANT LAND

Construction of certain provisions

7. The provisions of this Part apply only where relevant land is part only of the land described in the instrument of title that relates to that relevant land.

Part not to apply to large transactions

7A.(1) This Part does not apply to a large transaction.

(2) In subsection (1)—

“**large transaction**” means a transaction—

- (a) for the sale of relevant land comprising 6 or more subdivisional portions, or proposed subdivisional portions, to a single person; or
- (b) for the purchase of relevant land comprising 6 or more subdivisional portions, or proposed subdivisional portions, by a single person.

Restriction on selling and purchasing

8.(1) A person shall not sell or purchase relevant land unless—

- (a) in the case of relevant freehold land—the subdivisional plan of survey relating to it has been approved by the appropriate local authority under its common seal before the event that marks the entry of a person upon the purchase;

- (b) in the case of relevant leasehold land—the lessee thereof has obtained the permission or approval of the appropriate Minister to the subdivision by reason whereof the land is relevant leasehold land before the event that marks the entry of a person upon the purchase;

and that approval or permission subsists at the time of such event.

(2) An instrument made in contravention of this section is void and any person who had paid money thereunder shall be entitled to recover the amount thereof, together with the amount of interest (if any) that has accrued in respect of that amount since the money was so paid, by action as for a debt due and owing to the person by the person to whom the money was paid.

(3) A person who contravenes this section by reason of a purchase by the person of relevant land is not guilty of an offence by virtue of this section or section 32.

Identification of land

9.(1) Before a person enters upon a purchase of relevant land there shall be given to the person—

- (a) in the case of relevant freehold land—a copy of the relevant subdivisional plan of survey in relation to the subdivision by reason whereof it is relevant freehold land, in the form which has been approved under the common seal of the appropriate local authority;
- (b) in the case of relevant leasehold land—a copy of the relevant subdivisional plan of survey in relation to the subdivision by reason whereof the land is relevant leasehold land being a subdivision to which the permission or approval of the appropriate Minister has been obtained;

clearly identifying the land to which the instrument that marks the person's entry upon the purchase relates.

(2) The obligation prescribed by subsection (1) rests upon the vendor's agent, where it is the agent who procures the signing of the instrument concerned by the purchaser or by the purchaser's agent, and otherwise rests upon the prospective vendor.

Delivery of registered plan

10.(1) In the case of—

- (a) relevant freehold land—if the plan of survey to which section 9 refers is varied at any time the vendor and the vendor's agent shall as soon as is reasonably practicable after registration of the relevant subdivisional plan of survey in the land registry give to the purchaser or the purchaser's agent a copy of the plan of survey in the form which has been registered;
- (b) relevant leasehold land—if the plan of survey to which section 9 refers is varied at any time the vendor and the vendor's agent shall as soon as is reasonably practicable after the relevant subdivisional plan of survey is registered in the department administered by the Minister administering the *Land Act 1962*, give to the purchaser or the purchaser's agent a copy of the plan of survey in the form which has been registered.

(2) Subsection (1) applies whether the copy plan referred to in section 9 is given in due time in accordance with that section or at a later time.

(3) It shall be sufficient compliance with subsection (1) if 1 of them, the vendor or the vendor's agent, discharges the duty thereby imposed, whereupon the other of them shall be freed of the duty in respect of giving the copy plan that has been given.

(4) Where a vendor or a vendor's agent is required under subsection (1) to give to the purchaser or the purchaser's agent a copy plan of survey then—

- (a) the vendor or the vendor's agent shall not deliver to the purchaser or the purchaser's agent a registrable instrument of transfer in respect of the relevant land the subject of the purchase in question; and
- (b) the purchaser shall not be required to pay the outstanding purchase moneys;

until the expiration of a period of 30 days after the receipt by the purchaser or the purchaser's agent of a copy plan of survey in accordance with subsection (1) or until the time stipulated by the instrument in respect of the sale and purchase for the payment of those purchase moneys (whichever period is the later to expire) unless it is otherwise agreed in writing between

the vendor or the vendor's agent and the purchaser or the purchaser's agent after the receipt by the purchaser or the purchaser's agent of a copy plan in accordance with subsection (1).

Contractual requirement re holding of money

11.(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 the payment whereof the purchaser is bound to make in terms of the instrument, whether by way of deposit or otherwise, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor shall be paid directly to the Public Trustee constituted under the *Public Trustee Act 1978* unless the parties to the instrument agree that such moneys shall be paid directly to—

- (a) 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
- (b) a real estate agent duly licensed under the *Auctioneers and Agents Act 1971*;

specified in the instrument.

(1A) Moneys paid to a person pursuant to subsection (1) shall be held by that person in a trust account maintained or established by the person for the purposes of this Act or, where the person is a person other than the Public Trustee, maintained or so established by the firm of which the person is a member and dealt with by the person in accordance with this Part and the law governing the operation of the person's trust account.

(2) Any provision of an instrument to which subsection (1) relates or of any other instrument made in connection with such an instrument that provides for money, referred to in that subsection, to be paid contrary to that subsection shall be void.

(3) Money payable by a purchaser under an instrument such as is first referred to in subsection (1) (being money to which that subsection applies) shall not be paid to the vendor or vendor's agent but shall be paid directly by the purchaser or the purchaser's agent to the Public Trustee or to a trustee referred to in that subsection and specified in the instrument.

(3A) However, such money may be paid directly to the vendor's agent where that agent is a person of a description referred to in subsection (1) and is the trustee specified in the instrument.

(4) Nothing in this section or section 12 shall be construed as requiring money, on payment of which, in terms of an instrument such as is first referred to in subsection (1), the purchaser becomes entitled in terms of the instrument to a registrable instrument of transfer in exchange therefor, to be paid to a person specified in subsection (1) as trustee.

(5) Moneys payable to a trustee pursuant to the provisions of this Part shall, if they are paid to a solicitor, be deemed to be trust moneys within the meaning of the *Trust Accounts Act 1973*.

Trustee's duty

12.(1) A person who receives money as a trustee in accordance with section 11(1) shall retain the money in the person's trust account until the purchaser or vendor becomes entitled, in accordance with this Part or the instrument in terms of which the money was paid or otherwise according to law, to a refund or payment of the money whereupon the trustee shall dispose of the money in accordance with the law governing the operation of the person's trust account.

(2) Nothing in section 11 or this section shall be construed as prohibiting the investment by the trustee, in the name of the trustee and in accordance with the law in that respect (if any) governing the operation of the trust account in question, of money retained in that account in pursuance of those sections in any manner agreed upon by the parties to the instrument under or in relation to which the money was paid and notified to the trustee in writing signed by the parties.

(3) Money invested as specified in subsection (2) continues to be money in the trust account of the trustee notwithstanding that it is so invested and upon the calling in or maturing of such an investment the proceeds thereof shall, if they are not further invested as so specified, be paid forthwith by the trustee into a trust account maintained or established by the trustee for the purposes of this Act.

Avoidance of instrument for breach of s.9

13.(1) Where in respect of a purchase to which section 9(1) relates—

- (a) there has not been given to the purchaser or the purchaser's agent a copy plan referred to in that section; or
- (b) there has not been given to the purchaser or the purchaser's agent when required by section 10(1) a copy plan referred to in that section; or
- (c) a copy plan in accordance with section 9(1) (whether given in due time in accordance with that section or at a later time) and a copy plan in accordance with section 10(1), have been given to the purchaser or the purchaser's agent;

the purchaser may avoid the instrument made in respect of the purchase by notice in writing given to the vendor or the vendor's agent if the purchaser has been materially prejudiced by the failure to give a copy plan referred to in paragraph (a) or (b) or, in the case referred to in paragraph (c), by any variation of the copy plan first mentioned in that paragraph.

(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 the purchaser's agent; or
- (b) where the purchaser seeks to avoid the instrument in question by reason of any variation of the copy plan given in accordance with section 9(1)—
 - (i) before the expiration of a period of 30 days after the receipt by the purchaser or the purchaser's agent of the copy plan given in accordance with section 10(1); or
 - (ii) before the delivery of a registrable instrument of transfer as aforesaid;

whichever occurs sooner.

Avoidance of instrument for breach of s.11

14. Where money payable by a purchaser under an instrument such as is first referred to in section 11(1) is paid to the vendor or vendor's agent or to another person at the direction of the vendor or the vendor's 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 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 the purchaser's agent.

Avoidance of instrument upon ground of lapse of time

15. Where an instrument relating to the sale or purchase of relevant land has been made and a period of 9 months, or that period as extended or further extended under section 31B, has elapsed from the date on which it was made 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 the purchaser's 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 such a registrable instrument of transfer has been so delivered.

Consequences of avoidance

17.(1) Where a purchaser has avoided an instrument pursuant to this Part any person who, in respect of the transaction evidenced by the instrument, has received money paid by or on behalf of the purchaser shall, subject to the person complying with the law governing the person's trust account if the money is held in a trust account, forthwith refund the amount of that money to the purchaser or as the purchaser directs in writing together with the amount of interest (if any) that has accrued in respect of that amount since the money was so paid.

(2) A person entitled to a refund or payment of money pursuant to this section may recover the money by action as for a debt due and owing to the person by the person by whom it is payable.

Declaration of non-application of Part in respect of certain relevant leasehold land

18.(1) A regulation may declare that, subject to any specified conditions, the provisions of this Part, or any of those provisions, do not have effect in relation to—

- (a) a specified miner's homestead within the meaning of the *Miners' Homestead Leases Act 1913* or a specified class of such miner's homestead; or
- (b) a specified holding under the *Land Act 1962* or a specified class of such holding;

or in relation to any subdivision or any subdivisional portion or proposed subdivisional portion thereof.

(2) Where a person has contravened or failed to comply with a condition to which a declaration under subsection (1) is subject, the Supreme Court may, on the application of a person who is a purchaser under any sale or purchase of the holding or miner's homestead in question, or any subdivisional portion or proposed subdivisional portion thereof to which the declaration relates, order the person first mentioned in this subsection to comply with the condition.

(3) A declaration made under subsection (1) before the commencement of this subsection continues to have effect, after the commencement, as if it had been made by a regulation.

Exemption from Part

19.(1) A person by whom or on whose behalf land is to be subdivided into not more than 5 subdivisional portions may make application in the prescribed form to the Registrar to be exempted from compliance with all or any of the provisions of this Part in relation to the subdivision in respect of which the application is made.

(2) Subject to subsection (2B), the registrar must, within 15 days of receipt of the application—

- (a) grant the application by instrument of exemption; or
- (b) refuse it by written notice to the applicant.

(2A) If the registrar grants the application—

- (a) the registrar may grant it subject to any condition specified in the instrument; and
- (b) the registrar must specify in the instrument the provisions of this Part in relation to which the exemption is granted.

(2B) If the application is defective in a way that hampers the registrar's consideration of the application, the registrar may seek further information from the applicant to cure the defect.

(3) The registrar may, by instrument in writing, revoke an exemption granted under subsection (2) that is subject to conditions if the conditions are not being complied with in all respects and in like manner may vary such conditions.

(3A) Notice in writing of a revocation or variation shall be given to the person to whose land the exemption related.

(4) While an exemption granted under subsection (2) subsists such of the provisions of this Part as are specified in the instrument of exemption shall not apply in relation to the sale or purchase of 1 or more than 1 of the subdivisional portions in respect of which it was granted.

(5) Where a person has contravened or failed to comply with a condition to which an exemption under subsection (2) is subject, the Supreme Court may, on application of a purchaser of a subdivisional portion in respect of which the exemption was granted, order the person to comply with the condition.

(6) Notwithstanding the provisions of section 8, a person may agree to sell or purchase relevant land that is land in respect of which a person is eligible to make an application for exemption under subsection (1) if the instrument that binds a person to purchase the relevant land is conditional upon the grant under subsection (2) of an exemption from section 8 or from that section and any other provision of this Part.

(7) In a case to which subsection (6) applies application for the exemption shall be made within 30 days after the event that marks the entry of a purchaser upon the purchase of the relevant land in question.

(8) Where application for exemption for the purposes of subsection (6) is not made within the time prescribed by subsection (7) the instrument in question referred to in subsection (6) is void and any person who has paid money thereunder shall be entitled to recover the amount thereof, together

with the amount of interest (if any) that has accrued in respect of the money since it was so paid, by action as for a debt due and owing to the person by the person to whom the money was paid.

PART 3—SALE OF PROPOSED LOTS

Application of Part to sale or purchase of proposed lots

20.(1) The provisions of this Part apply to and in relation to the sale or purchase of a proposed lot.

(2) Nothing in this Part applies to or in relation to any right or interest in or in respect of a proposed lot where the right or interest in question is a right of participation in a time-sharing scheme within the meaning of the Corporations Law.

Statement identifying proposed lot etc.

21.(1) Before a person enters upon a purchase of a proposed lot there shall be given to the person (or to the person's agent) a statement in writing, signed by the person who is to become the person's vendor or that person's agent, that—

- (a) clearly identifies the lot to be purchased; and
- (b) states the names and addresses of the prospective vendor and the prospective purchaser; and
- (c) clearly states whether the prospective vendor or the prospective vendor's agent (whether personally or by any employee) has made or offered to the prospective purchaser or the prospective purchaser's agent any representation, promise or term with respect to the provision to the purchaser of a Certificate of Title that relates to the lot in question only; and
- (d) if any representation, promise or term, such as is referred to in paragraph (c) has been made or offered, clearly states the particulars thereof; and

(e) states the date on which it is signed.

(2) The obligation prescribed by subsection (1) rests upon the prospective vendor's agent, when it is the prospective vendor's agent who procures the signing of the instrument concerned by the purchaser or by the purchaser's agent, and otherwise rests upon the prospective vendor.

(3) The statement in writing referred to in subsection (1) shall be separate from the instrument before the signing of which it is to be given.

(4) Where a prospective vendor is required to give a statement in writing prescribed by subsection (1) and is also a person required by section 49 of the *Building Units and Group Titles Act 1980* to give a statement in writing prescribed by that section and a statement is given in accordance with that section it shall be sufficient compliance with subsection (1) if the particulars prescribed by subsection (1) are included in the statement given in accordance with section 49 aforesaid and in that event subsection (3) shall not apply to the case.

Rectification of statement under s. 21

22.(1) If a statement in writing of particulars referred to in section 21(1) given in accordance with, or pursuant to section 21(4) in sufficient compliance with, section 21(1)—

- (a) is not accurate at the time it is given; or
- (b) contains information that subsequently to the time it is given becomes inaccurate in any respect;

it is the duty of the vendor and the vendor's agent to give to the purchaser or the purchaser's agent a statement in writing signed by the vendor or the vendor's agent of particulars required to be included in a statement given for the purposes of section 21(1) as soon as is reasonably practicable after the proposed lot has become a registered lot.

(2) Subsection (1) applies whether the statement in writing is given in due time in accordance with section 21 or at a later time.

(3) It shall be sufficient compliance with subsection (1) if 1 of them, the vendor or the vendor's agent, discharges the duty thereby imposed, whereupon the other of them shall be freed of the duty in respect of giving the rectification notice that has been given.

(4) Where a vendor or a vendor's agent is required under subsection (1) to give to the purchaser or the purchaser's agent a statement of particulars then—

- (a) the vendor or the vendor's agent shall not deliver to the purchaser or the purchaser's agent a registrable instrument of transfer in respect of the lot the subject of the purchase in question; and
- (b) the purchaser shall not be required to pay the outstanding purchase moneys;

until the expiration of a period of 30 days after the receipt by the purchaser or the purchaser's agent of a copy of the statement of particulars in accordance with subsection (1) or until the time stipulated by the instrument made in respect of the sale and purchase for the payment of those moneys (whichever period is the later to expire) unless it is otherwise agreed in writing between the vendor or the vendor's agent and the purchaser or the purchaser's agent, after receipt by the purchaser or the purchaser's agent of a copy of the statement of particulars in accordance with subsection (1).

Contractual requirement re holding of money

23.(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 the payment whereof the purchaser is bound to make in terms of the instrument, whether by way of deposit or otherwise, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor shall be paid directly to the Public Trustee constituted under the *Public Trustee Act 1978* unless the parties to the instrument agree that such moneys shall be paid directly to—

- (a) 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
- (b) a real estate agent duly licensed under the *Auctioneers and Agents Act 1971*;

specified in the instrument.

(1A) Moneys paid to a person pursuant to subsection (1) shall be held by that person in a trust account maintained or established by the person for the

purposes of this Act or, where the person is a person other than the Public Trustee, maintained or so established by the firm of which the person is a member and dealt with by the person in accordance with this Part and the law governing the operation of the person's trust account.

(2) Any provision of an instrument to which subsection (1) relates or of any other instrument made in connection with such an instrument that provides for money, referred to in that subsection, to be paid contrary to that subsection shall be void.

(3) Money payable by a purchaser under an instrument such as is first referred to in subsection (1) (being money to which that subsection applies) shall not be paid to the vendor or vendor's agent but shall be paid directly by the purchaser or the purchaser's agent to the Public Trustee or to a trustee referred to in that subsection and specified in the instrument.

(3A) However, such money may be paid directly to the vendor's agent where that agent is a person of a description referred to in subsection (1) and is the trustee specified in the instrument.

(4) Nothing in this section or section 24 shall be construed as requiring money, on payment of which, in terms of an instrument such as is first referred to in subsection (1), the purchaser becomes entitled in terms of the instrument to a registrable instrument of transfer in exchange therefor, to be paid to a person specified in subsection (1) as trustee.

(5) Moneys payable to a trustee pursuant to the provisions of this Part shall, if they are paid to a solicitor, be deemed to be trust moneys within the meaning of the *Trust Accounts Act 1973*.

Trustee's duty

24.(1) A person who receives money as a trustee in accordance with section 23(1) shall retain the money in the person's trust account until the purchaser or vendor becomes entitled, in accordance with this Part or the instrument in terms of which the money was paid or otherwise according to law, to a refund or payment of the money whereupon the trustee shall dispose of the money in accordance with the law governing the operation of the person's trust account.

(2) Nothing in section 23 or this section shall be construed as prohibiting the investment by the trustee, in the name of the trustee and in accordance

with the law in that respect (if any) governing the operation of the trust account in question, of money retained in that account in pursuance of those sections in any manner agreed upon by the parties to the instrument under or in relation to which the money in question was paid and notified to the trustee in writing signed by the parties.

(3) Money invested as specified in subsection (2) continues to be money in the trust account of the trustee notwithstanding that it is so invested and upon the calling in or maturing of such an investment the proceeds thereof shall, if they are not further invested as so specified, be paid forthwith by the trustee into a trust account maintained or established by the trustee for the purposes of this Act.

Avoidance of instrument for breach of s.21(1)

25.(1) Where in respect of a purchase to which section 21(1) relates—

- (a) there has not been given to the purchaser or the purchaser's agent a statement in writing in accordance with, or that pursuant to section 21(4) sufficiently complies with, section 21(1); or
- (b) there has not been given to the purchaser or the purchaser's agent when required by section 22(1) a statement in writing in accordance with that section; or
- (c) a statement in writing in accordance with, or that pursuant to section 21(4) sufficiently complies with, section 21(1) (whether given in due time in accordance with that section or at a later time) and a statement in writing in accordance with section 22(1), have been given to the purchaser or the purchaser's agent;

the purchaser may avoid the instrument made in respect of the purchase of the proposed lot by notice in writing given to the vendor or the vendor's agent if the purchaser has been materially prejudiced by the failure to give a statement in writing referred to in paragraph (a) or (b) or, in the case referred to in paragraph (c), by the inaccuracy of any particular in the statement in writing first mentioned in that paragraph.

(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 the purchaser's agent; or

- (b) where the purchaser seeks to avoid the instrument in question by reason of the inaccuracy of any particular in the statement in writing given in accordance with, or pursuant to section 21(4) in sufficient compliance with, section 21(1)—
 - (i) before the expiration of a period of 30 days after the receipt by the purchaser or the purchaser's agent of the statement in writing given in accordance with section 22(1); or
 - (ii) before the delivery of a registrable instrument of transfer as aforesaid;

whichever occurs sooner.

Avoidance of instrument for breach of s.23

26. Where money payable by a purchaser under an instrument such as is first referred to in section 23(1) is paid to the vendor or vendor's agent or another person at the direction of the vendor or the vendor's 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 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 the purchaser's agent.

Avoidance of instrument upon ground of lapse of time

27. Where an instrument relating to the sale or purchase of a proposed lot has been made and a period of 36 months, or that period as extended or further extended under section 31B, has elapsed from the date on which it was made 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 the purchaser's 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 such a registrable instrument of transfer has been so delivered.

Consequences of avoidance

29.(1) Where a purchaser has avoided an instrument pursuant to this Part any person who, in respect of the transaction evidenced by the instrument, has received money paid by or on behalf of the purchaser shall, subject to the person complying with the law governing the person's trust account if the money is held in a trust account, forthwith refund the amount of that money to the purchaser or as the purchaser directs in writing together with the amount of interest (if any) that has accrued in respect of that amount since the money was so paid.

(2) A person entitled to a refund or payment of money pursuant to this section may recover the money by action as for a debt due and owing to the person by the person by whom it is payable.

PART 4—MISCELLANEOUS PROVISIONS**Contracting out of Act void**

31. Any covenant, agreement or condition made, entered into or imposed in or in respect of an instrument that is intended to bind a person in respect of the sale or purchase of relevant land or a proposed lot where by it is agreed or acknowledged that the provisions of this Act or any of them shall not apply in relation to the instrument or the transaction evidenced by the instrument shall be void.

Giving of notices

31A.(1) A notice, copy plan of survey or statement in writing (a “notice”) required or authorised to be given by this Act to any person may be given to that person—

- (a) by delivering the notice to the person personally;
- (b) by leaving the notice for the person at the person's usual or last known place of business or residence;
- (c) by sending the notice to the person by registered post;

(d) in the case of a corporate person by leaving the notice at or sending the notice to its registered office or principal place of business in the State.

(2) If a person is absent from the State, the notice may be given as is provided in subsection (1) to the person's agent in the State.

(3) If the person is deceased, the notice may be given as is provided in subsection (1) to the person's legal personal representative.

(4) Notwithstanding anything in the foregoing provisions of this section, the Supreme Court may in any case make an order directing the manner in which any notice to which this section applies is to be given.

Extension of period specified in s.15 or 27

31B.(1) Where an instrument is made in respect of the purchase of relevant land or a proposed lot, the vendor thereunder may make an application to the Minister for an extension of the period—

- (a) specified in section 15, where the instrument relates to relevant land; or
- (b) specified in section 27, where the instrument relates to a proposed lot;

or that period as previously extended or further extended pursuant to this section.

(2) An application under this section shall be made in the prescribed form and manner and shall be made—

- (a) in the case of an application in respect of the period specified in section 15—not later than 30 days before the expiration of the period, or the period as previously extended or further extended pursuant to this section;
- (b) in the case of an application in respect of the period specified in section 27—not later than 60 days before the expiration of the period, or the period as previously extended or further extended pursuant to this section.

(3) The Minister may require an applicant to supply such further information as the Minister considers necessary in relation to the application.

(4) The Minister may cause such inquiries and reports to be made as the Minister deems proper.

(5) The Minister may require notice in writing of the application to be given to such person or persons as the Minister thinks fit.

(6) As soon as is practicable after the Minister's receipt of an application under subsection (1), or, where the applicant has been required to supply further information under subsection (3), after the receipt of the further information, the Minister—

(a) shall grant the application by extending the period, the period as previously extended or further extended; or

(b) shall refuse to grant the application;

as the Minister thinks fit and the Minister's decision on the application is final.

(7) The Minister may, if the Minister grants an application, grant it without conditions or grant it subject to such conditions as the Minister thinks fit and specifies in the grant of the application.

(8) Where a person has contravened or failed to comply with a condition to which a grant of an application is subject pursuant to subsection (7), the Supreme Court may, on the application of the purchaser concerned, order the person first mentioned in this subsection to comply with the condition.

(9) Where an application has been made under this section and before the application has been determined the period to which the application relates would, but for this subsection, have expired, that period shall be deemed not to have elapsed until such time as the application is determined but where there is any delay on the part of the vendor in furnishing information that the vendor has been required to supply under this section, being a delay that the Minister considers unreasonable, the Minister may refuse the application.

Offences against Act

32.(1) A person who contravenes section 8(1), 11(1) or (3), 12, 23(1), 23(3) or 24 commits an offence.

Maximum penalty—

(a) in the case of an individual—100 penalty units, imprisonment for 6 months or both; or

(b) in the case of a corporation—500 penalty units.

(2) A person who contravenes section 9, 10 or 21 commits an offence.

Maximum penalty—

(a) in the case of an individual—10 penalty units; or

(b) in the case of a corporation—50 penalty units.

(3) Any liability imposed by this section is in addition to any other liability or remedy provided by law.

(4) Without limiting subsection (3), the institution of proceedings for an offence against this Act is not a condition precedent to any right to enforce any other liability or remedy provided by law.

Proceedings for offences

33.(1) Proceedings in respect of an offence against this Act shall be had in a summary way under the *Justices Act 1886* upon the complaint of the Registrar or a person authorised by the Registrar either generally or in a particular case.

(2) It shall not be necessary to prove the appointment of the Registrar or the authority of a complainant to lay the complaint in proceedings in respect of an offence against this Act in the absence of evidence that challenges such appointment or authority.

Evidentiary provision

34. In proceedings in respect of an offence against this Act a copy of an instrument purporting to relate to the sale or purchase of relevant land or a proposed lot and produced on behalf of the complainant shall be admissible in evidence as if it were the original thereof.

Delegations

35. The chief executive may delegate the chief executive's powers under this Act to an officer or employee of the department.

Regulations

36.(1) The Governor in Council may make regulations for the purposes of this Act.

- (2) A regulation may make provision with respect to—
- (a) prescribing or approving forms for the purposes of this Act, the method of verifying any information required by or in forms and the completion or preparation of forms in accordance with the directions contained in forms; and
 - (b) the matters for which fees, costs and charges are payable under this Act, the amounts of the fees, costs and charges, the persons who are liable to pay fees, costs and charges, when fees, costs and charges are payable, and the recovery of any unpaid amount of fees, costs and charges; and
 - (c) prescribing offences for contraventions of a regulation, and fixing a maximum penalty of a fine of 20 penalty units for such a contravention.

ENDNOTES

1 Index to Endnotes

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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation on or before 20 July 1993. Future amendments of the *Land Sales Act 1984* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

3 List of legislation

Land Sales Act 1984 No. 41

date of assent 9 May 1984

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1985 (proc pubd Gaz 25 May 1985 p 878)

as amended by—

Land Sales Act Amendment Act 1985 No. 43

date of assent 24 April 1985

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1985 (proc pubd Gaz 25 May 1985 p 878)

Land Sales Act Amendment Act (No. 2) 1985 No. 105

date of assent 18 December 1985

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1985 (proc pubd Gaz 21 December 1985 p 2218)

Statute Law (Miscellaneous Provisions) Act 1989 No. 103

date of assent 25 October 1989

commenced on date of assent

Justice Legislation (Miscellaneous Amendments) Act 1991 No. 42

date of assent 5 August 1991
commenced on date of assent

South Bank Corporation Amendment Act 1991 No. 67 s 29 Sch 2

date of assent 24 October 1991
commenced 5 June 1992 (proc pubd Gaz 5 June 1992 p 1033)

Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40

date of assent 14 August 1992
s 124 commenced 2 July 1993 (1993 SL No. 203)
remaining provisions commenced on date of assent

Lands Legislation Amendment Act 1992 No. 64 s 3 Sch 1

date of assent 7 December 1992
s 3 commenced on 26 March 1993 (1993 SL No. 88)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 s 3 Sch 2

date of assent 7 December 1992
commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Chap	=	Chapter
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
prev	=	previous
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Long title amd (see s 37 RA)

Arrangement

s 3 amd 1989 No. 103 s 3 Sch
om (see s 36 RA)

Amendment and citations

s 4 amd 1985 No. 43 s 4; 1989 No. 103 s 3 Sch
om 1992 No. 40 s 122

Interpretation

s 6 def “**building units plan**” amd 1985 No. 43 s 5

def **“group titles plan”** amd 1985 No. 43 s 5
 def **“land held from the Crown for an estate of leasehold”** ins 1985
 No. 105 s 4
 def **“land registration authority”** ins 1992 No. 40 s 123
 amd 1992 No. 64 s 3 Sch 1
 def **“leasehold building units plan”** ins 1991 No. 67 s 29 Sch 2
 def **“Local Authority”** ins 1985 No. 43 s 5
 om 1992 No. 40 s 123
 def **“plan”** sub 1991 No. 67 s 29 Sch 2
 def **“registered lot”** sub 1991 No. 67 s 29 Sch 2
 def **“Registrar”** amd 1985 No. 43 s 5
 om 1992 No. 40 s 123
 def **“registrar”** ins 1992 No. 40 s 123
 def **“registrable instrument of transfer”** ins 1985 No. 43 s 5
 amd 1985 No. 105 s 4; 1992 No. 40 s 123; 1992 No. 64 s 3 Sch 1
 def **“relevant freehold land”** amd 1992 No. 40 s 123; 1992 No. 64 s 3
 Sch 1
 def **“relevant leasehold land”** amd 1985 No. 105 s 4; 1992 No. 40 s 123;
 1992 No. 64 s 3 Sch 1

Construction of certain provisions

s 7 amd 1985 No. 105 s 5

Part not to apply to large transactions

s 7A ins 1992 No. 40 s 124

Restriction on selling and purchasing

s 8 amd 1985 No. 43 s 6; 1985 No. 105 s 6; 1992 No. 40 s 125

Identification of land

s 9 amd 1985 No. 105 s 7

Delivery of registered plan

s 10 amd 1985 No. 43 s 7
 sub 1985 No. 105 s 8
 amd 1992 No. 40 s 126; 1992 No. 64 s 3 Sch 1

Contractual requirement re holding of money

s 11 amd 1985 No. 43 s 8; 1985 No. 105 s 9

Trustee’s duty

s 12 amd 1985 No. 43 s 9
 sub 1985 No. 105 s 10

Avoidance of instrument for breach of s. 9

s 13 amd 1985 No. 43 s 10; 1985 No. 105 s 11

Avoidance of instrument for breach of s. 11

s 14 sub 1985 No. 43 s 11
 amd 1985 No. 105 s 12

Avoidance of instrument upon ground of lapse of time

s 15 amd 1985 No. 43 s 12; 1985 No. 105 s 13

When purchaser’s interest disposed of

s 16 om 1985 No. 105 s 14

Declaration of non-application of Part in respect of certain relevant leasehold land

s 18 sub 1985 No. 105 s 15
amd 1992 No. 40 s 127

Exemption from Part

s 19 amd 1985 No. 43 s 13; 1985 No. 105 s 16; 1991 No. 42 s 3 Sch; 1992 No. 40 s 128; 1992 No. 68 s 3 Sch 2

Application of Part to sale or purchase of proposed lots

s 20 sub 1985 No. 105 s 17
amd 1992 No. 40 s 129

Statement identifying proposed lot etc.

s 21 amd 1985 No. 43 s 14

Rectification of statement under s. 21

s 22 amd 1985 No. 43 s 15; 1985 No. 105 s 18

Contractual requirement re holding of money

s 23 amd 1985 No. 43 s 16; 1985 No. 105 s 19

Trustee's duty

s 24 amd 1985 No. 43 s 16A
sub 1985 No. 105 s 20

Avoidance of instrument for breach of s. 21

s 25 amd 1985 No. 43 s 17; 1985 No. 105 s 21

Avoidance of instrument for breach of s. 23

s 26 sub 1985 No. 43 s 18
amd 1985 No. 105 s 22

Avoidance of instrument upon ground of lapse of time

s 27 amd 1985 No. 43 s 19; 1985 No. 105 s 23

When purchaser's interest is disposed of

s 28 om 1985 No. 105 s 24

Notices to Registrar

s 30 om 1985 No. 105 s 25

Giving of notices

s 31A ins 1985 No. 43 s 20
sub 1985 No. 105 s 26

Extension of period specified in s. 15 or 27

s 31B ins 1985 No. 43 s 20
sub 1985 No. 105 s 26

Offences against Act

s 32 amd 1985 No. 105 s 27
sub 1992 No. 40 s 130

Evidentiary provision

s 34 amd 1985 No. 105 s 28

Delegations

s 35 amd 1985 No. 105 s 29
sub 1992 No. 40 s 131

Regulations

s 36 ins 1992 No. 40 s 131

SCHEDULE—AMENDMENTS OF AUCTIONEERS AND AGENTS ACT 1971

amd 1985 No. 43 s 21
om 1992 No. 40 s 132

5 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS
under section 43 of *Reprints Act 1992*

Original	Renumbered as
11(1) (1st unnumbered paragraph)	11(1)(a)
11(1) (2nd unnumbered paragraph)	11(1)(b)
11(1) (2nd sentence)	11(1A)
11(3) (2nd sentence)	11(3A)
23(1) (1st unnumbered paragraph)	23(1)(a)
23(1) (2nd unnumbered paragraph)	23(1)(b)
23(1) (2nd sentence)	23(1A)
23(3) (2nd sentence)	23(3A)