



ANNO VICESIMO PRIMO

# ELIZABETHAE II REGINAE

A.D. 1972

\*\*\*\*\*

## No. 2 of 1972

An Act to amend the Law of Property Act, 1936-1969.

[Assented to 16th March, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Law of Property Act Amendment Act, 1972". Short titles.

(2) The Law of Property Act, 1936-1969, as amended by this Act, may be cited as the "Law of Property Act, 1936-1972".

(3) The Law of Property Act, 1936-1969, is hereinafter referred to as "the principal Act".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 41 of the principal Act is repealed and the following section is enacted and inserted in its place:— Repeal of s. 41 of principal Act and enactment of section in its place—

41. (1) Where a person proposes to execute a deed, he must sign or place his mark upon the deed. Execution and attestation of deeds.

(2) A deed must be attested by at least one witness who is not a party to the deed.

(3) Indenting shall not be necessary in any case.

(4) Every instrument expressed to be an indenture or a deed, or to be sealed, which is executed and attested in accordance with this section, shall be deemed to be sealed.

(5) This section does not affect—

(a) the law relating to the execution of a deed by a corporation;

(b) the validity, operation or effect of a deed executed before the commencement of the Law of Property Act Amendment Act, 1972;

(c) the manner in which a deed is proved;

or

(d) the law relating to undelivered deeds or deeds in escrow.

(6) Where it appears in any proceedings that a deed has not been duly executed by a party to the deed, or the signature or mark of a party to the deed has not been duly attested, but that the party purported or intended to execute the deed and has taken a benefit under the deed, the execution of the deed by that party shall be deemed to have been duly made and attested in accordance with this section.

Enactment of  
ss. 55a and 55b  
of principal  
Act—

4. The following sections are enacted and inserted in the principal Act immediately after section 55 thereof:—

Enforcement  
of rights  
against  
mortgagor.

55a. (1) A right of sale or foreclosure in respect of mortgaged land, a right to enter into possession of mortgaged land or a right to appoint a receiver in respect of mortgaged land shall not be enforceable by the mortgagee against the mortgagor by action or otherwise unless—

(a) the mortgagee has served upon the mortgagor a notice in writing—

(i) alleging a breach of a covenant or condition of the mortgage by the mortgagor;

(ii) if the breach is capable of remedy, requiring the mortgagor within twenty-eight days after service of the notice, or such longer period as may be stipulated in the notice, to remedy the breach;

and

(iii) if the mortgagee seeks compensation for the breach, requiring the mortgagor within twenty-eight days after service of the notice or such longer period as may be stipulated in the notice, to pay to the mortgagee the amount of the cost and expenses, stipulated in the notice, that the mortgagee has reasonably incurred in consequence of the breach;

and

(b) the mortgagor has failed to comply with the requirements of the notice.

(2) Where a mortgage contains a provision by virtue of which a liability to repay moneys under the mortgage falls due in the event of a breach of a covenant or condition of the mortgage at an earlier date than if there were no such breach, that provision shall be inoperative unless a notice has been served upon the mortgagor in conformity with the provisions of subsection (1) of this section and the mortgagor has failed to comply with the requirements of the notice.

(3) In any proceedings brought by a mortgagee for the recovery of a mortgage debt or for the enforcement of a mortgage, or in proceedings instituted by a mortgagor within twenty-one days after service of a notice under this section, a court may, upon such fair and equitable terms as it may determine, grant relief to a mortgagor against the enforcement of rights of a kind referred to in subsection (1) of this section, and may re-instate the position of the mortgagor in all respects as if no breach of a covenant or condition of the mortgage had occurred.

(4) The jurisdiction conferred by this section is exercisable—

(a) by the Supreme Court;

or

(b) where the mortgage is for an amount not exceeding eight thousand dollars, by a local court of full jurisdiction.

55b. (1) Notwithstanding any covenant to the contrary, a mortgagee shall be deemed to have covenanted with the mortgagor that where the mortgagee makes demand of any amount in pursuance of the mortgage, he will at the request of the mortgagor, supply him with reasonable particulars of how the amount of the demand is arrived at.

Collateral  
covenants.

(2) Where a mortgage is entered into after the commencement of the Law of Property Act Amendment Act, 1972, and a covenant collateral to a mortgage is made between the mortgagor and mortgagee, the collateral covenant shall become invalid upon extinguishment of the mortgage debt.

(3) Any covenant by which a mortgagee might enforce a personal right to the repayment of a debt secured by a mortgage after and without re-opening the foreclosure is invalid.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor