

South Australia



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A.D. 2001

**SOUTH AUSTRALIAN CO-OPERATIVE AND COMMUNITY HOUSING
(ASSOCIATED LAND OWNERS) AMENDMENT ACT 2001**

No. 34 of 2001

[Assented to 3 August 2001]

An Act to amend the South Australian Co-operative and Community Housing Act 1991.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *South Australian Co-operative and Community Housing (Associated Land Owners) Amendment Act 2001*.

(2) The *South Australian Co-operative and Community Housing Act 1991* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

(a) by inserting in subsection (1) after the definition of "associate" the following definition:

"associated land owner", in relation to a registered housing association, means the registered proprietor of land that is leased by the registered housing association for the purposes of providing housing;;

(b) by inserting in subsection (1) after the definition of "principles of co-operation" the following definition:

"property" of a housing association—see subsection (6);;

(c) by striking out from the definition of "registered housing association" in subsection (1) "the schedule" and substituting "Schedule 1";

(d) by inserting after subsection (5) the following subsection:

(6) For the purposes of this Act, a reference to property or premises of, or held by, a housing association includes a reference to property or premises of an associated land owner leased by the housing association for the purposes of providing housing.

Amendment of s. 97—Service on registered housing co-operatives

4. Section 97 of the principal Act is amended by inserting after paragraph (c) the following paragraph:

(d) by transmission by facsimile transmission or electronic mail to the co-operative's facsimile number or electronic mail address (in which case the notice or document will be taken to have been given or served at the time of transmission).

Amendment of Sched. 1—Housing Associations

5. The Schedule of the principal Act is designated as Schedule 1 and amended—

(a) by inserting in clause 4(4)(a)(iii) "or an agreement between the Authority and an associated land owner under clause 1 of Schedule 2" after "Part 7";

(b) by inserting after paragraph (b) of clause 8 the following paragraph:

(c) the following subparagraph were inserted after subparagraph (iii) of section 66(2)(a):

(iia) to an associated land owner;

(c) by inserting after paragraph (h) of clause 10(2) the following paragraph:

(ha) that an associated land owner has failed to comply with a term of an agreement between the Authority and an associated land owner under clause 1 of Schedule 2; or.

Insertion of Sched. 2

6. The following Schedule is inserted after the current Schedule of the principal Act (as amended by this Act):

SCHEDULE 2 *Associated Land Owners*

Financial transactions

1. (1) The Authority may, before entering into a transaction with a registered housing association involving the construction, development or improvement of housing on land of an associated land owner, require the associated land owner to enter into an agreement with the Authority that contains (with or without modification or addition) one or more terms prescribed by the regulations for the purposes of this clause.

(2) An agreement under subclause (1)—

(a) must provide for its review on a periodical basis; and

(b) may be altered by agreement between the Authority and the associated land owner.

Creation of statutory charge

2. (1) The Authority may, in order to secure the enforcement of—

(a) an agreement with an associated land owner under clause 1; and

(b) an agreement with a registered housing association under Division 3 of Part 7 that applies in relation to subsidised premises on land of the associated land owner,

impose a charge under Division 4 of Part 7 on the land of the associated land owner.

(2) For the purposes of the imposition of a charge under subclause (1), the Authority may deliver to the Registrar-General a notice, in a form determined by the Registrar-General—

(a) setting out or incorporating the terms of the charge; and

(b) setting out the real property over which it is to exist; and

(c) requesting the Registrar-General to make a notation under this section in the Register Book.

(3) The notice may provide for the imposition of the charge over the whole of an allotment notwithstanding that the subsidised premises only comprise a part of that allotment.

(4) On receipt of a notice under subclause (2), the Registrar-General must, in relation to the real property referred to in the notice, enter an appropriate notation in the Register Book.

(5) When an entry is made under subclause (4), a charge over the real property is created.

(6) While a charge exists over real property, the Registrar-General must not register an instrument affecting the property unless—

- (a) the instrument was executed before the charge was created or relates to an instrument registered before the charge was created; or
- (b) the instrument is an instrument of a prescribed class; or
- (c) the Authority consents to the registration in writing; or
- (d) the instrument is expressed to be subject to the charge; or
- (e) the instrument is a duly stamped conveyance that relates to the transfer or sale of the real property under clause 3.

(7) Subject to this Division, an instrument registered under subclause (6)(a), (b), or (c) has effect, in relation to the charge, as if it had been registered before the charge was created.

(8) If an instrument is registered under subclause (6)(e), the charge will be taken to be cancelled and the Registrar-General must make the appropriate entries in the Register Book to give effect to the cancellation.

(9) The Authority may, on its own initiative, by further notice to the Registrar-General under this section, cancel the charge.

(10) Where the Authority delivers a notice to the Registrar-General under this section, the Authority must send a copy of the notice to the associated land owner and the registered housing association.

(11) In this clause—

"allotment" means the whole of the land comprised in a certificate of title;

"subsidised premises" means premises of a registered housing association acquired, developed or improved with the assistance of the Authority.

Enforcement of statutory charge

3. (1) If a registered housing association or associated land owner fails to comply with the terms of an agreement secured by a charge under this Schedule, the charge may be enforced as follows:

- (a) the Authority must, by notice in writing, inform the housing association and associated land owner of the breach and give them at least one month to remedy the breach; and
- (b) if the breach is not remedied within the time allowed in a notice under paragraph (a), the Authority must appoint an independent investigator or investigators to carry out an investigation and report to the Authority on the matter; and
- (c) the investigator or investigators must give the housing association and associated land owner a reasonable opportunity to make submissions in relation to the matter; and

(d) where, on the report of the investigator or investigators, it appears reasonable to enforce the charge, the Authority may apply to the Minister for an order under subclause (2) in relation to the property subject to the charge.

(2) The Minister may, on application under subclause (1), in relation to the property that is subject to the charge—

(a) order that steps be taken to transfer the property—

(i) to the Authority;

(ii) to another registered housing association or associated land owner;

(iii) with the agreement of the person or persons occupying the property—to the South Australian Housing Trust; or

(b) order that steps be taken to sell the property on the open market.

(3) The associated land owner must comply with the terms of the order within a reasonable time.

Maximum penalty: \$10 000.

(4) If the property is transferred pursuant to an order under subclause (2)(a), the value of the property will be taken to be its current market value.

(5) If the property is transferred to the Authority, the Authority must, as soon as is reasonably practicable, divest itself of the property.

(6) If the property is sold pursuant to an order under subclause (2)(b), the money received in respect of the sale must be applied as follows:

(a) firstly—in paying the costs of the sale and any other costs of a prescribed kind;

(b) secondly—in discharging any liabilities secured by instrument registered before the charge was created, or that is taken to have such effect by virtue of clause 2;

(c) thirdly—in discharging the amount or amounts secured by the charge over that property;

(d) fourthly—in discharging any other liabilities secured by registered instruments;

(e) fifthly—in discharging any other liabilities that exist in relation to that property of which the Authority has notice;

(f) sixthly—in payment to the Fund.

(7) The title obtained on the sale of the property will be free of—

(a) any charge under this Schedule; and

(b) all other liabilities discharged under subclause (6); and

(c) any other liability that may exist on account of any mortgage, charge or encumbrance.

(8) If the associated land owner does not comply with the terms of an order under subclause (2) within a reasonable time, the Minister may take such steps as are necessary to give effect to the order.

(9) The power of the Minister to act under subclause (8) includes the power to rescind any contract and to deal with or dispose of the property to which the order relates, and the power to make, execute, sign and give such contracts, instruments and documents as the Minister thinks necessary.

(10) If the Minister acts under subclause (8), a conveyance executed by the Minister will, on registration or enrolment, operate to vest title to the property in the body named in the conveyance as transferee.

(11) The Registrar-General must, on production of a conveyance executed under subclause (10), register the conveyance and, notwithstanding the *Real Property Act 1886*, production of the duplicate certificate of title will not be required (but, if the duplicate certificate of title is not produced, the Registrar-General will cancel the existing certificate of title and issue a new certificate in the name of the transferee).

(12) If an order is made under this clause for the transfer or sale of property, the Authority must take such steps as are reasonably practicable—

- (a) to protect the interests of creditors of the housing association; and
- (b) to protect the interests of creditors of the associated land owner with debts or claims arising from transactions related to the property or obligations of the associated land owner under this Act; and
- (c) to assist any tenant whose tenancy is affected or who is otherwise inconvenienced by virtue of the order.

Creation of option

4. (1) A charge over real property under this Schedule also constitutes an option to the Authority to purchase the property in the event of a proposed sale by the associated land owner (being an option that prevails over any other option that may exist in relation to the property).

(2) If an associated land owner proposes to sell real property that is subject to such an option (other than in pursuance of an order under clause 3), the associated land owner must give the Authority at least two months notice, in writing, of the proposed sale.

(3) The Authority must then decide, within the two month period, whether or not to exercise the option.

(4) If the Authority decides to exercise the option, the value of the property will be taken to be the current market value of the property.

(5) If the Authority decides not to exercise the option, the associated land owner may proceed to sell the property on the open market (subject to the charge on the property being discharged by the associated land owner on completion of the sale).

(6) If the Authority acquires property from an associated land owner pursuant to this clause, the Authority must, as soon as is reasonably practicable, divest itself of the property.

Powers of investigation

5. Part 8 applies in relation to associated land owners.

Appeals

6. Subject to the regulations, an associated land owner that is directly affected by an act or decision of the Authority under this Act may make an application for relief under section 84 and, for that purpose, Part 11 applies in relation to the associated land owner as if the associated land owner were a registered housing association, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

Service on associated land owners

7. (1) Service of any process, notice or other document may be effected on an associated land owner—

- (a) personally; or
- (b) by post addressed to the associated land owner's address for service; or
- (c) by transmission by facsimile transmission or electronic mail to the associated land owner's facsimile number or electronic mail address (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) An associated land owner's address for service is the postal address of which the Authority has been last notified in writing as the person's address for service.

Remission from taxes, etc.

8. Section 104 applies to an associated land owner as if—

- (a) the associated land owner were a registered housing association; and
- (b) a reference to a tenant-member of the housing association were a reference to a tenant of the registered housing association with which the land owner is associated,

and subject to such other modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

Misrepresentation as to being associated land owner

9. A person must not, in order to gain an advantage for himself or herself or any other person, falsely represent that a body is an associated land owner.

Maximum penalty: \$10 000.

Miscellaneous

10. Sections 92, 93, 94, 96(2) and (5), 98, 99, 100, 101, 102, 105 and 106 apply, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, with respect to associated land owners as if they were registered housing associations.

Regulations

11. Without limiting the operation of section 107, the Governor may, by regulation—

- (a) require associated land owners to furnish prescribed information to the Authority in prescribed circumstances;
- (b) make provision for, or in relation to, the form or content of any agreement between the Authority and associated land owners.