



HOMES

No. 59 of 1977

ANALYSIS

1. Short title and citation.
2. Transfer of title on payment of purchase money.
3. Sale of land for home building.
Enforcement of restriction on transfers, &c., of land sold.
4. Previous contracts for sale of land for home building.
5. Application of *Housing and Construction Act 1977*.

AN ACT to amend the Homes Act 1935.

[21 September 1977]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Homes Act 1977*.

Short title and
citation.

(2) The *Homes Act 1935**, as subsequently amended, is in this Act referred to as the Principal Act.

* 28 Geo. V No. 98. For this Act as amended to 1959, see Reprint of Statutes (1826-1959), Vol. 2, p. 915. Subsequently amended by No. 18 of 1961, No. 55 of 1965, No. 27 of 1966, No. 1 of 1973, Nos. 51 and 80 of 1973, Nos. 28 and 101 of 1976, and No. 20 of 1977.

Transfer of
title on
payment of
purchase
money.

2 Section 17 of the Principal Act is amended by inserting after subsection (6C) the following subsection:—

“(6CA) Subsection (6C) does not apply in any case where the contract of sale expressly specifies the time at which, or the circumstances in which, the land to which it relates is to be transferred.”.

3 After Part IV of the Principal Act the following Part is inserted:—

“ PART IVA

“ SALE OF LAND FOR HOME BUILDING

Sale of land
for home
building.

“ 18A—(1) The Director may sell land for the purpose of the erection thereon of dwelling-houses.

“(2) Subject to this Act, a sale of land under this section shall be at such price and on such terms and conditions as the Director determines.

“(3) In determining the terms and conditions upon which land is sold under this section the Director shall endeavour to ensure that such terms and conditions are imposed on its sale as are, in his opinion, reasonably necessary to ensure that the land is used for the purpose for which it is sold, and, without prejudice to the generality of the foregoing provisions of this subsection, those terms and conditions may include terms or conditions designed to effect all or any of the following purposes:—

- (a) Restricting dealings in the land, or any part thereof, during a specified period;
- (b) Requiring the construction, or the commencement of the construction, of a dwelling-house on the land during a specified period.

Enforcement
of restriction
on transfers,
&c., of land
sold.

“ 18B—(1) Where land is transferred by the Director in pursuance of a contract entered into under this Part, the Director may, if in the contract he has reserved the right to do so, lodge with the Recorder a notification stating that the land is subject to this section.

“(2) A notification under this section shall contain particulars of the title of the land to which it relates and such other particulars as may be prescribed under the *Real Property Act* 1862 and is of no effect unless there is lodged with the Recorder the duplicate certificate of title of the land.

“(3) Regulations may be made under the *Real Property Act* 1862 for the purposes of subsection (2).

“(4) The Recorder shall register a notification lodged with him under this section by making an appropriate entry on the folium of the register book constituting the title to which the notification relates and on the duplicate certificate of title of the land.

“(5) Where, in respect of a transfer of land by the Director, a notification is lodged with the Recorder under subsection (1), no transaction entered into without the consent of the Director during the period of 5 years following the transfer is capable of taking effect unless—

- (a) it arises through the operation of the law relating to bankruptcy;
- (b) it is made by a person acting in the capacity of legal personal representative of the person or one of the persons to whom the land was transferred by the Director;
- (c) it is made by a mortgagee in the exercise of his rights as mortgagee; or
- (d) it is made in the execution of a judgment or order of a court.

“(6) Unless he is otherwise directed by an order of the Supreme Court, the Recorder—

- (a) shall not register such a transaction as is referred to in subsection (5) (c) if the Director has certified to the Recorder that he is of the opinion that the transaction results from collusion between the mortgagor and mortgagee; and
- (b) shall not register such a transaction as is referred to in subsection (5) (d) if the Director has certified to the Recorder that he is of the opinion that the judgment or order enforced by the execution was obtained as a result of collusion between the parties to the proceedings in which the judgment or order was given.

“(7) The Supreme Court may make an order directing the registration of a transaction to which subsection (6) applies if it is satisfied that there are not sufficient grounds for the opinion of the Director certified to the Recorder for the purposes of that subsection in respect of the transaction; and the transaction is not capable of taking effect unless the court so orders.

“(8) A notification lodged with the Recorder under this section remains in effect so long only as the person or one of the persons to whom the land was transferred by the Director remains registered as proprietor of the land.

“(9) If in the circumstances of a particular case the Director considers that a notification lodged with the Recorder under this section should cease to be of further effect, he may lodge with the Recorder a notice withdrawing that notification, and, on that notice being so lodged, the notification ceases to be of further effect.

“(10) On a notice being lodged with him under subsection (9) the Recorder shall by an appropriate entry in the register book cancel the registration of the notification to which it relates, and, on the production to him of the duplicate certificate of title of the land to which the notification relates, make a corresponding entry on that certificate of title.

“(11) In registering or cancelling the registration of a notification under this section the Recorder is entitled to assume that the Director is acting within the powers conferred on him by this section.

“(12) No fee is payable to the Recorder for registering or cancelling the registration of a notification under this section.

“(13) In this section—

‘Recorder’ means the Recorder of Titles;

‘transaction’, in relation to any land, means any transfer or transmission of the fee simple in the land,

and, unless the contrary intention appears, the expressions used in this section have the same meaning as they have for the purposes of the *Real Property Act 1862*.”.

Previous
contracts for
sale of land for
home building.

4—(1) Any contract for the sale of land entered into by the Director on or after 1st July 1976 but before the commencement of this Act in which it is agreed that until the expiration of a period of 5 years from the date of the transfer of the land pursuant to the contract the purchaser will not, without the consent of the Director, transfer the land, has effect, subject to this section, as if it were a contract entered into under Part IVA of the Principal Act in which the Director has reserved the right to lodge with the Recorder of Titles such a notification as is referred to in section 18B of that Act, and the provisions of that Part apply in relation to the contract accordingly.

(2) A notification may be given under section 18B of the Principal Act in respect of land transferred under a contract to which subsection (1) applies notwithstanding that the land was so transferred before the commencement of this Act except that, in such a case, the notification may only be given so long as the person or one of the persons to whom the land was transferred by the Director remains registered as proprietor of the land.

(3) Where a notification in respect of land transferred under a contract to which subsection (1) applies is lodged with the Recorder under section 18B of the Principal Act, but the duplicate certificate of the land is not lodged with him—

- (a) the notification has effect, notwithstanding that the duplicate certificate is not so lodged; and
- (b) the Recorder shall register the notification under subsection (4) of that section as if that subsection did not require him to make an entry on the duplicate certificate.

(4) Where a notification referred to in subsection (3) is registered as provided in paragraph (b) of that subsection, the Recorder shall make an appropriate entry of the registration of the notification on the duplicate certificate of the land when the duplicate certificate is next lodged with him.

(5) References in this section to the Principal Act shall be construed as references to that Act as amended by this Act.

5 References in the *Housing and Construction Act 1977* to the *Homes Act 1935* shall be construed as references to the *Homes Act 1935* as it has effect at the commencement of the *Housing and Construction Act 1977*. Application of
Housing and
Construction
Act 1977.

