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## SUBSTANDARD HOUSING CONTROL ACT 1973.

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### ANALYSIS.

#### PART I—PRELIMINARY.

1. Short title.
2. Interpretation.

#### PART II—RENT CONTROL OF SUBSTANDARD HOUSING

##### *Division I—Declaration of houses as substandard.*

3. Prescription of standards.
4. Declaration of houses as substandard.
5. Suspension of notices during improvements.
6. Certificates of fitness.
7. Houses ceasing to be substandard.
8. Appeals under Division I.

##### *Division II—Rent control.*

9. Maximum rental for substandard houses.
10. Furnishing of particulars of maximum rentals.
11. Rent in excess of maximum irrecoverable.
12. Demanding excess rents.
13. Prohibition on premiums, &c.

14. Display of notice of maximum rental.

##### *Division III—Receipts and records.*

15. Receipts for rent.
16. Records of rents paid.

##### *Division IV—Security of tenure.*

17. Avoidance of notice to quit during preliminary proceedings.
18. Limitation on orders for possession, &c., of controlled houses.
19. Interference with use or enjoyment of a controlled house.

#### PART III—MISCELLANEOUS AND SUPPLEMENTAL.

20. Works to bring houses up to standard.
21. Sale of substandard houses.
22. Avoidance of certain agreements.
23. Powers of entry and inspection, &c.
24. Service of notices.
25. Offences and penalties.
26. Expenses of Act.
27. Regulations.





SUBSTANDARD HOUSING CONTROL.

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No. 99 of 1973.

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AN ACT to make provision for the control of the rents payable in respect of certain substandard housing and for matters connected therewith.

[22 January 1974.]

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:—

PART I.

PRELIMINARY.

1 This Act may be cited as the *Substandard Housing Control Act* Short title. 1973.

## Interpretation.

**2**—(1) In this Act unless the contrary intention appears—

- “ controlled house ” means a declared substandard house for which a maximum rental is for the time being fixed under section nine;
- “ controlled tenancy ” means a tenancy of a controlled house;
- “ declared substandard house ” means a house that has been declared a substandard house under subsection (1) of section four and has not, under section seven, ceased to be such a house;
- “ Director ” means the Director of Housing;
- “ house ” means a building, or any part of a building, that is used or intended to be used as a dwelling, and includes any yard, garden, outbuildings, and appurtenances belonging thereto or usually enjoyed therewith;
- “ landlord ”, when used in relation to a tenancy, means a person who, whether in his own right or as trustee or agent for any other person, receives or is entitled to receive the rent payable in respect of that tenancy;
- “ notice of intention ” has the meaning assigned to that expression by subsection (2) of section four;
- “ owner ”, in relation to any house, means a person, other than a mortgagee not in possession, who is entitled (otherwise than as agent for any other person) to receive the rent of the house or any part thereof or, if the house or that part is not let at a rent, would be so entitled if it were so let;
- “ registered mortgagee ” means the person having a mortgage or incumbrance (within the meaning of the *Real Property Act 1862*) over any land, being a mortgage or incumbrance that is registered under that Act or the *Registration of Deeds Act 1935*;
- “ rent ”, when used in relation to a tenancy of any premises, includes any amount payable by the tenant to the landlord—
- (a) for the use of any furniture, fittings, or other articles pertaining to the premises;
  - (b) for the purpose of the repair, renovation, or improvement of the premises; or
  - (c) for the supply to, or the provision for use on, the premises of electricity or gas, or of water, fuel, or other domestic commodity, or of any domestic service.

(2) References in this Act to a house, a substandard house, or a controlled house shall, unless the context otherwise requires, be construed as including references to any part thereof.

(3) With respect to references in this Act to a house to which this Act applies, this Act shall be regarded as applying to a house when a notice of intention is served in respect thereof and as ceasing to apply to that house—

- (a) when that notice is withdrawn or ceases to be of any further effect; or
- (b) when, having become a declared substandard house following the service of that notice, it ceases to be such.

## PART II.

### RENT CONTROL OF SUBSTANDARD HOUSING.

#### *Division I—Declaration of houses as substandard.*

**3—**(1) Regulations under this Act may prescribe, with respect to houses generally, or any types, classes, or descriptions of houses, standards or requirements in relation to all or any of the following matters, that is to say:—

- (a) Situation, construction, condition, and state of repair;
- (b) Dimensions, cubical extent, and height of rooms;
- (c) Drainage, sanitation, ventilation, lighting, and cleanliness;
- (d) Protection from damp;
- (e) Water supply, bathing, laundry, and cooking facilities, and sanitary conveniences;
- (f) Freedom from infestation by vermin and rats; and
- (g) Other matters affecting the comfort or health of the inhabitants.

(2) A house that does not comply with any standard or requirement prescribed under subsection (1) of this section shall, for the purposes of this Act, be regarded as undesirable for human habitation or unfit for human habitation, but (whether or not any regulations have been made for the purposes of this section) nothing in this section shall be construed as preventing a house from being regarded as undesirable for human habitation or unfit for human habitation for any other reason.

Declaration of  
houses as  
substandard.

**4—(1)** Where the Director is satisfied that a house is undesirable for human habitation or unfit for human habitation he may by notice published in the *Gazette* declare the house to be a substandard house.

(2) Before, under this section, declaring a house to be a substandard house the Director shall—

(a) serve notices in writing (in this Act referred to as “ notices of intention ”) on the interested parties stating that representations may be made to him in relation thereto before such date as may be specified in the notice (being a date not less than thirty days after the service of the notice); and

(b) consider any representations that may be made to him by an interested party in accordance with such a notice.

(3) The Director may at any time withdraw a notice of intention, and on that notice being so withdrawn it ceases to be of any further effect.

(4) An interested party may, within thirty days of the publication of a notice under subsection (1) of this section in respect of a house, appeal to a magistrate, and, on hearing that appeal, the magistrate (unless he dismisses the appeal) may quash the notice.

(5) For the purposes of this section any owner or registered mortgagee of a house, or any part thereof, is in relation to that house an interested party.

Suspension of  
notices during  
improvements.

**5—(1)** Where a notice of intention has been served in respect of a house the Director, if he considers it proper so to do, may enter into an agreement in writing with an owner thereof whereby in consideration of the Director’s refraining from declaring the house to be a substandard house the owner undertakes, in accordance with the terms of the agreement, to carry out, with respect to the house, such works or other operations as may be specified therein.

(2) So long as, in respect of a house, the terms of an agreement entered into under subsection (1) of this section are being complied with no notice shall be published under subsection (1) of section four in respect thereof, and, when the terms of that agreement have been complied with, any notice of intention served in respect of the house ceases to be of further effect.

**6—**(1) On the application of the owner of a house and on payment of the prescribed fee the Director, if he is satisfied that at any time (in this section referred to as “the relevant date”) the house is neither undesirable for human habitation nor unfit for human habitation, shall issue his certificate to that effect. Certificates of fitness.

(2) Where a certificate has been issued under this section in respect of a house no notice of intention shall be served in respect of that house unless, by reason of conditions or circumstances that have arisen after the relevant date, the Director is satisfied that the house has become undesirable for human habitation or unfit for human habitation.

**7—**(1) Where the Director is satisfied that a declared substandard house is no longer a house that is undesirable for human habitation or unfit for human habitation he shall, by notice published in the *Gazette*, declare that that house has ceased to be a declared substandard house, and that house ceases to be a declared substandard house accordingly. Houses ceasing to be substandard.

(2) Where, on application by the owner of a house in the prescribed form, the Director refuses, or fails within the prescribed time, to make in respect of that house such a declaration as is referred to in subsection (1) of this section, the owner may appeal to a magistrate; and, on hearing that appeal, if the magistrate is satisfied that the house is neither undesirable for human habitation nor unfit for human habitation, he shall direct the Director to make the declaration and the Director shall comply with the direction.

**8—**(1) An appeal under this Division shall be brought, and shall be heard and determined, as prescribed. Appeals under Division I.

(2) Upon the hearing of an appeal under this Division, the magistrate may, if he thinks it just so to do, award costs to or against the appellant, and may assess the amount of those costs.

(3) The Director shall pay to the appellant any costs awarded to the appellant under subsection (2) of this section and any costs awarded against the appellant under that subsection may be recovered from him by the Director as a debt due to the Crown.

#### *Division II—Rent control.*

**9—**(1) The Director may, from time to time, by notice published in the *Gazette*, fix a maximum rental for a declared substandard house. Maximum rental for substandard houses.

(2) No maximum rental shall be fixed under subsection (1) of this section for a part of a declared substandard house unless a rental is so fixed for the whole of that house.

(3) Except as may be otherwise fixed under this section, the maximum rental for a part of a declared substandard house shall be a rental of an amount that bears to the amount of the maximum rental so fixed for the whole of that house as the number of rooms in that part of the house bear to the number of rooms in the whole of the house; and for the purposes of this subsection rooms not ordinarily used as living rooms or for sleeping shall be disregarded.

(4) The Director may by notice in the *Gazette* fix a maximum rental for a tenancy of a controlled house that includes payments for the use of furniture, but no maximum rental shall be fixed under this subsection in respect of a part of a controlled house unless a maximum rental has been fixed under subsection (1) of this section in respect of that part.

(5) A maximum rental fixed under this section shall be fixed as a weekly rental.

(6) A notice under this section takes effect on such day following the publication thereof as may be specified in that behalf in the notice; but, notwithstanding anything in the foregoing provisions of this subsection, such a notice is of no effect during the period of thirty days following the publication in the *Gazette* of the notice declaring the house to be a substandard house and, if an appeal is brought under section four in respect of that notice, is of no effect unless or until that appeal has been finally determined or has been withdrawn.

(7) In exercising his powers under this section the Director shall, so far as is practicable, fix maximum rentals which are uniform for houses of similar condition and accommodation in the same locality; and, in fixing a maximum rental in respect of any house, he shall take into account the accommodation provided in the house and its state of repair and general condition, and may take into account with respect to the house any of the matters mentioned in subsection (1) of section three, whether or not any standards or requirements have been prescribed in relation thereto.

**10**—(1) On application in writing by any person with respect to a house, and on the payment of the prescribed fee, the Director shall furnish that person with a certificate stating—

(a) whether at the date of the certificate any notices published under section nine are in force in respect of that house; and



(b) if so, the maximum rentals fixed pursuant thereto.

(2) For the purposes of this section a notice shall be deemed to be in force in respect of a house notwithstanding that it has not yet come into operation or is for the time being of no effect by virtue of subsection (6) of section nine; but in respect of such a notice the certificate referred to in subsection (1) of this section shall specify the date on which that notice will come into operation or state that the notice is for the time being of no effect by virtue of subsection (6) of section nine, as the case may require.

**11**—(1) Except in the case of a tenancy to which subsection (2) of this section applies, the maximum rent that is payable under a tenancy of a controlled house, or any part thereof, is the maximum rental fixed for that house, or that part thereof, as the case may be. Rent in excess of maximum irrecoverable.

(2) Where a maximum rental is fixed under subsection (4) of section nine in respect of a tenancy the maximum rent that is payable under that tenancy is the maximum rental so fixed.

(3) Notwithstanding any agreement to the contrary the amount by which any rent is in excess of the maximum rent payable is, by virtue of this section, irrecoverable.

(4) Where any sum has been paid on account of rent under any tenancy, being a sum that by virtue of this section would have been irrecoverable by the landlord, that sum, or any part of it—

(a) may, at any time within six months of its payment, be recovered by the tenant by whom it was paid from the landlord to whom it was paid; or

(b) may be deducted by that tenant from any rent payable by him under the tenancy during that six months.

(5) Any sum recoverable from a landlord under this section is so recoverable in a court of competent jurisdiction as a debt due from him.

(6) References in this section to a landlord or a tenant shall, respectively, be construed as including a reference to the legal personal representatives of a landlord or a tenant who has died.

(7) A person who makes an entry in a rent book or similar document showing or purporting to show a tenant as being in arrear in respect of any sum that by virtue of this section is irrecoverable is guilty of an offence.

(8) Except as otherwise expressly provided therein, nothing in this section prejudices or affects the recovery of any debt or the enforcement of any other right.

Demanding  
excess rents.

**12—**(1) A person who, whether as principal or agent or otherwise, demands or recovers as rent any sum that, by virtue of section eleven, is irrecoverable is guilty of an offence.

(2) A person who is party to a contract or arrangement under which any sum is paid or agreed to be paid to him as rent, being a sum that by virtue of section eleven is irrecoverable, is guilty of an offence.

Prohibition on  
premiums, &c.

**13—**(1) A person shall not, as a condition of the grant, renewal, or continuance of a controlled tenancy, require the payment of a premium in addition to rent.

(2) For the purposes of this section “premium” includes any fine or other like sum and any other pecuniary consideration in addition to rent.

(3) A person shall not (whether as principal or agent or otherwise) pay, give, or recover any consideration for obtaining or making available a key of a controlled house.

(4) A person shall not, as a condition of the grant, renewal, or continuance of a controlled tenancy, require the purchase of any furniture, fittings, or other articles; and any agreement for any such purchase is void.

(5) Any sum paid by way of a premium or consideration contrary to this section or so paid in pursuance of a condition or requirement imposed contrary to this section may be recovered from the person by whom, or on whose behalf, it was received and may, without prejudice to any other method of recovery, be deducted from the rent payable under the tenancy in respect of which it was paid.

(6) For the purposes of subsection (5) of this section any consideration paid or given as mentioned in subsection (3) of this section shall be deemed to have been so paid or so given in respect of any tenancy of the controlled house granted to the person by, or on whose behalf, that consideration was paid or given.

(7) A person who contravenes any provision of this section is guilty of an offence.

Display of  
notice of  
maximum  
rental.

**14—**(1) The Director may, by notice in writing served on the landlord under a controlled tenancy, direct that, during such time as is specified in the notice, the maximum rental fixed under this

Act in respect of that tenancy shall be shown prominently displayed on a notice affixed to some part of the premises subject to the tenancy.

(2) Where a notice is served under subsection (1) of this section in respect of a tenancy of any premises any landlord under a tenancy of those premises who fails to ensure that the directions contained in the notice are complied with is guilty of an offence.

*Division III—Receipts and records.*

**15**—(1) A person who, whether as principal or agent or otherwise, receives any payment of rent in respect of a controlled tenancy shall, within twenty-four hours after the making of that payment, give or cause to be given to the person making the payment a receipt (whether by way of entry in a rent book or by a separate document) for the payment that specifies—

Receipts for  
rent.

- (a) the premises in respect of which the payment was made;
- (b) the amount of the payment; and
- (c) the period in respect of which it is made.

(2) A tenant under a controlled tenancy shall, so long as he remains the tenant under that tenancy, keep the receipts given for the rent paid under that tenancy while he is the tenant; except that nothing in this section requires a receipt to be kept longer than six years.

(3) A person who fails to comply with this section is guilty of an offence.

**16**—(1) A landlord under a controlled tenancy shall keep, or cause to be kept, a record showing the rent received in respect of that tenancy during the last six years; and any person who fails to comply with this subsection is guilty of an offence.

Records of  
rents paid.

(2) A person who wilfully makes, or wilfully allows to be retained, in any record showing or purporting to show the amounts of the sums paid on account of rent payable in respect of a controlled tenancy, an entry that is false in a material particular is guilty of an offence.

*Division IV—Security of tenure.*

Avoidance of notice to quit during preliminary proceedings.

**17**—(1) Where a notice of intention has been served in respect of a house, any notice to quit given by or on behalf of the landlord to any tenant under a tenancy of the house, whether before or after the service of the notice of intention, but before the house becomes a controlled house, is of no effect unless—

- (a) the tenant has failed to pay rent in accordance with the conditions of the tenancy; or
- (b) the notice to quit is or has been confirmed by a magistrate under subsection (2) of this section.

(2) On the application of the landlord, a magistrate may, for the purposes of this section, confirm a notice to quit, if he is of opinion that, having regard to the conduct of the landlord and the tenant, it was not given or is not about to be given, as the case may be, in expectation or in consequence of the service of the notice of intention.

(3) Where the notice to quit was given before the service of the notice of intention, the notice to quit may be confirmed under this section as having effect on the day it was given.

Limitation on orders for possession, &c., of controlled houses.

**18**—(1) No order or judgment for the recovery of possession of a controlled house, or for the ejection of a tenant therefrom, shall be made or given so long as the tenant continues to pay the rent (being a rent that is not irrecoverable under this Part) unless—

- (a) the tenant has—
  - (i) contravened or failed to comply with any condition of the tenancy;
  - (ii) committed waste;
  - (iii) been guilty of conduct that is a nuisance or an annoyance to the occupiers of adjoining or neighbouring premises; or
  - (iv) been convicted of using the premises, or allowing them to be used, for an immoral or unlawful purpose,

and the court considers it reasonable to make the order or give the judgment;

- (b) the tenant, by subletting the house or any part thereof, or by taking in lodgers, is making a profit that, having regard to the rent paid by the tenant, is unreasonable, and the court considers it reasonable to make the order or give the judgment;

- (c) the premises are required by the landlord for his own occupation or that of his spouse, his parents, or his children or their spouses, or any of those persons;
- (d) the premises are reasonably required by the landlord for the occupation of some person in his employment, or that of a tenant of his, and the court, after considering all the circumstances of the case, including the availability of other accommodation for the tenant, considers it reasonable to make the order or give the judgment;
- (e) a contract for the sale of the house has been entered into under which the vendor is obliged to give vacant possession to the purchaser;
- (f) the tenant has given notice of his intention to quit, and, in consequence thereof, the landlord has entered into a contract for letting the house or has taken other steps as a result of which he would, in the opinion of court, be seriously prejudiced if he could not obtain possession;
- (g) possession of the house is reasonably required for its alteration or reconstruction to a substantial extent, or for its demolition, and the court is satisfied that greater hardship would be caused by refusing to make the order or give the judgment than otherwise; or
- (h) the house was let to the tenant as a consequence of his employment by the landlord and he has ceased to be in that employment.

(2) The execution of an order or judgment for the recovery of possession of a controlled house or for the ejection of a tenant therefrom may be stayed or suspended, or the date for possession thereunder may be postponed, for such period as the court thinks fit, either unconditionally or subject to such conditions in regard to the payment by the tenant of rent or mesne profits and otherwise, as the court thinks fit, and if those conditions are complied with the court may, if it thinks fit, discharge or rescind the order or judgment.

(3) The powers conferred by subsection (2) of this section may be exercised at any time before the order or judgment has been executed and may be so exercised notwithstanding that the order was made or judgment was given before the house became a controlled house.

(4) Where such an order or judgment as is referred to in subsection (1) of this section is made or given on any of the grounds mentioned in paragraph (c), paragraph (d), or paragraph (g) thereof any person who, without the consent of the Director—

(a) lets the house otherwise than to a person for whose occupation it was required, as mentioned in paragraph (c) or paragraph (d) of that subsection; or

(b) lets the house before the purpose for which the order or judgment was made or given under paragraph (g) of that subsection has been carried out,

is guilty of an offence.

(5) No order for costs shall be made in respect of proceedings for the recovery of possession of a controlled house, or for the ejection of a tenant therefrom, unless the court is of the opinion that the conduct of a party to the proceedings has been unreasonable, vexatious, or oppressive.

(6) Notwithstanding anything in any other Act a warrant for delivery of possession of a controlled house that, apart from this subsection, would remain in force for a fixed period shall remain in force for such further period or periods, if any, as the court may from time to time, whether before or after the expiration of that fixed period, direct.

(7) A person who, otherwise than in pursuance of the order of a court, evicts or ejects a tenant from a controlled house is guilty of an offence.

Interference  
with use or  
enjoyment of a  
controlled  
house.

**19—**(1) Any person who, without the consent of the tenant of a controlled house, or without reasonable cause (proof whereof shall be on the defendant), causes or allows any interference with the use or enjoyment by the tenant of his occupation of the house is guilty of an offence.

(2) References in this section to the use or enjoyment of the occupation of a house shall be construed as including references to the use or enjoyment—

(a) of any fittings, furniture, or other goods let therewith or contained therein;

(b) of any conveniences usually available to the tenant; and

(c) of any service supplied to, or provided in connection with, the house.

(3) For the purposes of this section conveniences shall be deemed to be usually available to a tenant where, before their use or enjoyment was interfered with or restricted, he was allowed to use them either at any time or at times specified by the landlord.

(4) Where the landlord, or his agent or servant, has been convicted of an offence under subsection (1) of this section, the court may order the landlord to do such things as may be specified in the order to enable the tenant to resume the ordinary use or enjoyment of his occupation of the house.

(5) A landlord who refuses or fails to comply with an order made against him under subsection (4) of this section is guilty of an offence.

### PART III.

#### MISCELLANEOUS AND SUPPLEMENTAL.

**20**—(1) Notwithstanding any covenant or agreement to the contrary—

Works to bring houses up to standard.

- (a) the owner of a house to which this Act applies may not require any tenant or occupier thereof to execute any works or do any other thing necessary to ensure that the house complies with the standards or requirements prescribed under section three, or any of them; and
- (b) the cost of the execution of those works or the doing of those other things is not recoverable from any such tenant or occupier by the owner.

(2) A person who, whether as principal or agent or otherwise, makes it a condition of the grant, renewal, or continuance of a tenancy of a house to which this Act applies that the tenant or occupier shall execute any works, or do any other thing, in relation to that house is guilty of an offence.

**21**—(1) An agreement for the sale and purchase of a house to which this Act applies is voidable at the option of the purchaser unless the vendor, before the contract was entered into, gave him notice in writing that the house was a declared substandard house or that a notice of intention had been served in respect thereof, as the case may be.

Sale of substandard houses.

(2) A person who, with respect to a house to which this Act applies, publishes or causes to be published a statement that—

- (a) is intended or apparently intended to promote the sale or disposal of the house; and
- (b) does not clearly state that the house is a declared substandard house or that a notice of intention has been served in respect thereof, as the case may be,

is guilty of an offence.

Penalty: For a first offence, two hundred dollars; and for a second or subsequent offence, four hundred dollars.

(3) It is a defence in any proceedings for an offence under subsection (2) of this section for the defendant to show—

- (a) that he does not hold, and is not entitled to, any estate or interest in the house;
- (b) that he was not engaging or intending to engage in any negotiations for the sale or disposal of the house; and
- (c) that he was not aware and could not reasonably have been expected to be aware that the house was a house to which this Act applies.

Avoidance  
of certain  
agreements.

**22** Any contract or arrangement (whether oral or in writing) the purpose or effect of which is either directly or indirectly to defeat, evade, or prevent the operation of this Act is of no effect.

Powers of  
entry and  
inspection, &c.

**23** —(1) An authorized officer may at any reasonable time enter and inspect a house—

- (a) which he has reason to believe may be undesirable for human habitation or unfit for human habitation; or
- (b) which is a house to which this Act applies.

(2) An authorized officer may require the occupier of any house that he is entitled to enter under subsection (1) of this section or any person who, either directly or indirectly, receives rent in respect of that house to state in writing his interest therein and the name and address of any other person known to him as having an interest therein, whether as freeholder, mortgagee, lessee, or otherwise; and any person who, having been required in pursuance of this section to give any information, refuses or fails to give that information, or knowingly makes any mis-statement in respect thereof, is guilty of an offence.



(3) On being required to do so by an authorized officer—

(a) a tenant under a tenancy shall produce to that officer the receipts required to be kept by him under section fifteen, and

(b) a landlord under a tenancy shall produce to that officer the record required to be kept by him under section sixteen, and a person who refuses or fails to comply with a requirement made of him under this subsection is guilty of an offence.

(4) The Director may appoint authorized officers for the purposes of this section, and references in this section shall be construed as references to an authorized officer so appointed.

**24**—(1) A notice required to be served on any person under this Act may be so served— Service of notices.

(a) by delivering it to him personally;

(b) by leaving it for him at his usual or last-known place of abode or business with some person apparently over the age of sixteen years apparently residing or employed thereat; or

(c) by sending it by certified mail addressed to him at his usual or last-known place of abode or business.

(2) Where a notice is required to be served under this Act on the owner or mortgagee of any land and that person is absent from the State or his name or address cannot, after reasonable inquiry, be ascertained that notice may be served on any agent or other person in this State to whom any rents or profits in respect of the land are paid or, as the case may be, to whom any payments under the mortgage or incumbrance of the mortgagee are paid.

(3) Where it appears impracticable to serve a notice on a person in accordance with the foregoing provisions of this section that notice, instead of being so served, may be advertised three times, at intervals of not less than one week between any two publications, in some newspaper or newspapers circulating throughout the State; and for the purposes of this subsection the *Gazette* shall be regarded as such a newspaper and one, but not more than one, of those publications shall be in the *Gazette*.

(4) Any notice required by this Act to be served on the owner or mortgagee of any land is, if due service thereof has been once made on the owner or mortgagee, binding on all persons claiming by, from, or under that owner or mortgagee.

Offences and penalties.

**25**—(1) Without prejudice to the rights of any other person, the Director, or a person authorized by him in that behalf, may take proceedings for offences under this Act.

(2) Except as otherwise provided therein, a person guilty of an offence under this Act is liable to a penalty of one hundred dollars and a further daily penalty of ten dollars.

Expenses of Act.

**26** The expenses of the Director under this Act shall be defrayed out of moneys provided by Parliament.

Regulations.

**27** The Governor may make regulations for the purposes of this Act.