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**SUBSTANDARD HOUSING CONTROL ACT 1975**

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**ANALYSIS**

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**SUBSTANDARD HOUSING CONTROL**

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**No. 82 of 1975**

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**AN ACT to amend the Substandard Housing Control Act 1973.**

**[22 December 1975]**

**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 *Substandard Housing Control Act 1975*.

Short title and citation.

(2) The *Substandard Housing Control Act 1973* is in this Act referred to as the Principal Act.

Interpretation.

**2** Section 2 of the Principal Act is amended—

(a) by omitting from subsection (1) the definition of “controlled house” and substituting the following definition:—

“ ‘controlled house’ means a house that is a controlled house by virtue of section 5;”;

(b) by omitting from the definition of “declared substandard house” in that subsection the words “subsection (1) of section four” and substituting the words “subsection (6) of section 4”;

(c) by omitting from the definition of “notice of intention” in that subsection the words “subsection (2) of section four” and substituting the words “subsection (1) of section 4”;

(d) by inserting in that subsection, after the definition of “owner”, the following definition:—

“ ‘Recorder’ means the Recorder of Titles;”;

(e) by inserting in that subsection, after the definition of “registered mortgagee”, the following definition:—

“ ‘relevant date’, in respect of a controlled house, means—

(a) where the notice of intention is withdrawn, the date on which the notice is withdrawn; and

(b) where the house ceases to be a substandard house, the date on which it ceases to be a substandard house;”;

(f) by omitting subsection (3).

**3** Section 4 of the Principal Act is repealed and the following section substituted:—

“ 4—(1) Where the Director is satisfied that a house does not conform to the standards prescribed by regulations made under section 3 or is, in the opinion of the Director, otherwise undesirable or unfit for human habitation, he may serve a notice (in this Act referred to as a ‘notice of intention’) in writing on the interested parties—

(a) specifying works or other operations that need to be carried out in order that the house shall comply with those standards and be fit for human habitation; and

(b) fixing the maximum rental payable in respect of that house in accordance with his assessment thereof.

Declaration of houses as substandard.

“(2) Where the Director serves a notice under subsection (1) he shall cause the notice to be registered in accordance with section 8A.

“(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) Where the Director withdraws a notice of intention he shall, in accordance with section 8A, serve notice on the Recorder that the notice has been withdrawn.

“(5) Where the works or other operations specified in a notice of intention served in respect of a house are carried out, the owner may serve on the Director a notice of completion and if the Director is satisfied with those works or operations he shall withdraw the notice of intention.

“(6) Where any person served with a notice of intention fails within 30 days of the service of the notice, or such further time as the Director may allow, to carry out the works or operations specified in the notice or such other works as may be agreed upon between that person and the Director or having appealed in respect thereof his appeal has been dismissed the Director may by notice registered in accordance with section 8A declare the house in respect of which the notice is served to be a substandard house and he shall serve copies of the notice so registered on the interested parties.

“(7) Where a notice is quashed under section 8 the Director shall, in accordance with section 8A, serve notice on the Recorder that the notice has been quashed.

“(8) 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.”.

**4** Section 5 of the Principal Act is repealed and the following section substituted:—

“5—(1) On the registration in accordance with section 8A of a notice of intention in respect of a house, the house becomes a controlled house and remains so until it ceases to be a controlled house by virtue of subsection (2).

“(2) Where—

(a) in respect of a controlled house the notice of intention is withdrawn; or

House to become controlled house upon service of notice of intention.

(b) a declared substandard house ceases to be such by virtue of section 7,

the house ceases to be a controlled house—

(c) at the expiration of 6 months after the relevant date; or

(d) when the tenant of his own volition vacates the house after the relevant date,

whichever is the earlier.”.

Certificate  
of fitness.

**5** Section 6 of the Principal Act is amended—

(a) by omitting from subsection (1) the words “(in this section referred to as ‘the relevant date’)”; and

(b) by omitting from subsection (2) “relevant date” and substituting “date on which the certificate was so issued”.

Houses ceasing  
to be sub-  
standard.

**6** Section 7 of the Principal Act is amended—

(a) by inserting in subsection (1) after the word “Director” the words “, on application of the owner or otherwise,”;

(b) by omitting from subsection (1) all the words following the word “shall” and substituting therefor the words “issue a certificate declaring that the house has ceased to be a substandard house.”; and

(c) by omitting subsection (2) and substituting the following subsection:—

“(2) Where the Director issues a certificate under subsection (1) he shall serve notice on the Recorder that the notices previously registered under this Act in respect of the land to which the certificate relates are cancelled and on the Recorder making the necessary entries in the register book consequent upon the notice the house ceases to be a substandard house.”.

**7** Section 8 of the Principal Act is repealed and the following section substituted:—

Appeals under  
Division I.

“8—(1) Where any person is aggrieved—

(a) by the service of a notice of intention on him under subsection (1) of section 4;

(b) by the refusal of the Director to withdraw a notice of intention in accordance with subsection (5) of section 4; or

(c) by the refusal of the Director to issue a certificate declaring that that person’s house has ceased to be a declared substandard house under subsection (1) of section 7,

he may appeal to a magistrate; and, on hearing the appeal, if the magistrate is satisfied that—

(d) the Director should not have served a notice on that person;

(e) the Director should have withdrawn the notice of intention;  
or

(f) the Director should have issued a certificate declaring that the house has ceased to be a declared substandard house,

he shall quash the notice or direct the Director to withdraw the notice of intention or to issue a certificate declaring that the house has ceased to be a declared substandard house (as the case may be) and the Director shall comply with any such direction.

“(2) An appeal under this Division shall be brought, and shall be heard and determined, as prescribed.

“(3) 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.

“(4) The Director shall pay to the appellant any costs awarded to the appellant under subsection (3) 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.”.

**8** After section 8 of the Principal Act the following section is inserted:—

“8A—(1) The provisions of the Schedule have effect in relation to the registration of notices under this Part and with respect to the withdrawal, quashing, or cancellation of those notices. Registration of notices.

“(2) Nothing in section 40 of the *Real Property Act* 1862 shall be construed as affecting the validity of any notice or certificate under this Part or as prejudicing or affecting the operation of any such notice or certificate.”.

**9** After Division I of Part II of the Principal Act the following Division is inserted:—

“*Division IA—Fixing of maximum rental.*

“8B—(1) The maximum rental payable in respect of a controlled house is the maximum rental fixed by the Director in the notice of intention served in respect of the house under section 4 (1) unless another maximum rental is fixed for the house in accordance with subsection (2). Maximum rental in respect of a controlled house.

(2) The landlord and the Director may, after the relevant date, agree to a maximum rental other than the maximum rental payable in respect of a controlled house under subsection (1) and any rental so agreed upon shall be the maximum rental payable in respect of the house as from the date specified in the agreement fixing the maximum rental.

“(3) Except as may be otherwise agreed upon by the landlord and the Director, the maximum rental for a part of a controlled 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 the same proportion as the number of rooms in that part of the house bears to the number of rooms in the whole of the house; and for the purposes of this subsection rooms not used as living rooms or for sleeping shall be disregarded.

“(4) The maximum rental fixed in respect of a controlled house may include payment for the use of furniture.

“(5) Where the landlord disputes the maximum rental fixed by the Director in accordance with section 4 (1) in respect of a controlled house or the Director and the landlord fail to agree to a maximum rental under subsection (2) the landlord may apply to the Valuer-General for the Valuer-General’s determination of the maximum rental who shall thereupon determine the maximum rental and that rental shall be the maximum rental payable in respect of the house.

“(6) This section does not apply in respect of the period during which a house is a declared substandard house.”.

Maximum  
rental for  
substandard  
houses.

**10** Section 9 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “published in the *Gazette*” and substituting therefor the words “in writing served on the owner”;
- (b) by omitting from subsection (4) the words “in the *Gazette*” and substituting therefor the words “in writing served on the owner”;
- (c) by omitting from that subsection the words “controlled house” (whenever occurring) and substituting “declared substandard house” in each case;
- (d) by omitting subsection (6) and substituting the following subsection:—

“(6) A notice under this section takes effect on such day following the service thereof on the owner as may be specified in that behalf in the notice.”; and



(e) by transposing that section from Division II of Part II to the end of Division IA of that Part.

**11** The heading to Division II of Part II of the Principal Act is amended by omitting the words “*Rent control*” and substituting the words “*Enforcement of rent control*”.

Amendment of heading.

**12** Section 10 of the Principal Act is amended—

Furnishing particulars of maximum rentals.

- (a) by omitting from paragraph (a) of subsection (1) the word “published” and substituting “served”;
- (b) by omitting from subsection (2) the words “or is for the time being of no effect by virtue of subsection (6) of section nine”; and
- (c) by omitting from that subsection all the words following the word “operation” (second occurring).

**13** Section 17 of the Principal Act is amended—

Notice to quit in respect of a controlled house of no effect except in certain circumstances.

(a) by omitting subsection (1) and substituting the following subsection:—

“(1) Where a house is a controlled 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 house became 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).”;
- (b) by omitting from subsection (2) the words “service of the notice of intention” and substituting the words “house becoming a controlled house”; and
- (c) by omitting from subsection (3) the words “service of the notice of intention” and substituting the words “house became a controlled house”.

**14** Section 18 of the Principal Act is amended by omitting from subsection (1) (e) the words “has been entered into” and substituting “had been entered into before the house became a controlled house”.

Limitation on orders for possession, etc. of controlled houses.

**15** Section 21 of the Principal Act is amended—

Sale of substandard houses.

- (a) by omitting from subsection (1) the words “house to which this Act applies” and substituting “controlled house”; and

(b) by omitting from subsection (2) the words "house to which this Act applies" and substituting "controlled house".

Schedule.

**16** The Schedule contained in the Schedule to this Act is added at the end of the Principal Act as the Schedule thereto.

Registration  
of former  
notices.

**17**—(1) As soon as practicable after the commencement of this Act the Director, in respect of each house that, at that commencement, is a controlled house, shall cause to be registered in accordance with section 8A—

(a) if the house is not a declared substandard house, the notice of intention by virtue of which the house is a controlled house; or

(b) if the house is a declared substandard house, the notice published under section 4 (1) of the Principal Act, by virtue of which it is such a house.

(2) If within two months of the commencement of this Act the provisions of subsection (1) are not complied with in respect of any house referred to therein any notice published or served under section 4 of the Principal Act in respect of that house before the commencement of this Act ceases to have further effect, but nothing in this subsection prejudices or affects the operation of any notice served under section 4 of the Principal Act after the commencement of this Act.

Expiry of Act.

**18** This Act expires at the expiration of the period of 21 months after the date of the commencement thereof and thereafter the Principal Act has effect as if this Act had not been enacted.

#### SCHEDULE

(Section 16)

#### " SCHEDULE

(Section 8A)

1.—(1) A notice required to be registered under section 8A shall be so registered by lodging with the Recorder—

(a) a copy of the notice; and

(b) particulars of the title to the land on which the house to which the notice relates is situated.

(2) Where a notice has been registered under sub-paragraph (1) the Recorder shall make an appropriate entry of the notice on the folium of the register book constituting the title to the land to which the notice relates.

2.—(1) Where the whole or any part of the land referred to in paragraph 1 (1) is not under the *Real Property Act* 1862 the Recorder shall bring under that Act so much of the land that is not under that Act by registering a qualified certificate of title thereto in accordance with section 19 of that Act.

(2) Where part only of the land to which a notice relates is required to be brought under the *Real Property Act 1862* by this paragraph the Recorder shall issue a consolidated title to the whole of the land to which the notice relates and for that purpose may call in and cancel in accordance with section 136 of that Act the certificates of title to the parts of the land.

(3) The Recorder is not bound, for the purposes of sub-paragraph (1), to investigate the title to any land.

(4) Where by this paragraph the Recorder is required to bring any land under the *Real Property Act 1862*, and no survey such as he could require under section 104 of that Act is available, the land may be described on the certificate of title by means of a description by metes and bounds instead of by reference to a plan.

(5) Where, in any certificate of title registered pursuant to this paragraph, land is described by means of a description by metes and bounds—

- (a) no action shall be brought against the Recorder or the assurance fund constituted under the *Real Property Act 1862* by reason or in respect of any difference between the area of the land or the position or dimensions of the boundaries stated in the certificate of title and the actual area, position, or dimensions as found by admeasurement on the ground;
- (b) a solicitor who acts for any party taking or proposing to take any estate or interest in the land from the registered proprietor of the certificate of title is not under any duty to check that the description in the certificate of title agrees with the description in the antecedent document of title; and
- (c) upon such evidence of boundaries as he deems sufficient, the Recorder may cancel the certificate of title and replace it by a fresh certificate of title describing the land in accordance with that evidence.

3. A notice served on the Recorder under subsection (4) or subsection (7) of section 4 shall identify the notice that has been withdrawn or quashed and, on receipt, the Recorder shall make an entry on the folium of the register book constituting the title to the land to which the notice withdrawn or quashed relates that it has been withdrawn or quashed, as the case may be.

4. A notice served on the Recorder under section 7 shall contain particulars of the title to the land on which the house to which the certificate relates is situated and, on the receipt of the notice, the Recorder shall make an entry on the folium of the register book constituting the title to that land that the notices previously registered in respect of that land have been cancelled.

5. No fee is payable in respect of the registration or the cancellation of the registration of a notice in accordance with this Schedule.”.