

## " FORM II E.

(Section 27 E.)

## MEMORANDUM OF DISCHARGE OF COVENANT.

I [or We] A.B. as registered proprietor  
of an estate in fee simple as set forth, &c. [and C.B. as registered  
proprietor of a mortgage as set forth &c. or as the case may be] or I  
A.B. of as tenant in fee  
simple of or as the case may be hereby dis-  
charge the land referred to in volume folio of  
the register book from the burden of a covenant set forth in

In witness whereof I have hereunto signed my name

this day of in the presence  
of E.F."

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**TOWN BUILDING.**


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**No. 74 of 1962.**

AN ACT to make provision for building up to bound-  
aries in cities and towns. [14 February 1963.]

**B**E 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:—

Short title  
and com-  
mencement.

**1**—(1) This Act may be cited as the *Town Building Act*  
1962.

(2) This Act shall commence on the day on which the  
*Local Government Act 1962* commences.

**2** This Act applies to urban building areas under the *Local Government Act 1962*. Application of Act.

**3** In this Act, unless the contrary intention appears—

“adjoining owner” means the owner or one of the owners and “adjoining occupier” means the occupier or one of the occupiers of land, buildings, storeys, or rooms adjoining those of the building owner;

“building owner” means such one of the owners of adjoining land as is desirous of building or such one of the owners of buildings, storeys, or rooms separated from one another by a party wall or party structure as does or is desirous of doing a work affecting that party wall or party structure;

“external wall” means an outer wall or vertical enclosure of a building not being a party wall;

“party arch” means an arch separating adjoining buildings, storeys, or rooms belonging to different owners or occupied or constructed or adapted to be occupied, by different persons or separating a building from a public way or a private way leading to premises in other occupation;

“party fence wall” means a wall used or constructed to be used as a separation of adjoining lands of different owners and standing on lands of different owners and not being part of a building, but does not include a wall constructed on the land of one owner the footings of which project into the land of another owner;

“party structure” means a party wall and also a partition, floor, or other structure separating vertically or horizontally buildings, storeys, or rooms approached by distinct staircases or separate entrances from without;

“party wall” means—

(a) a wall forming part of a building and used or constructed to be used for separation of adjoining buildings belonging to different owners or occupied, or constructed or adapted to be occupied, by different persons; or

(b) a wall forming part of a building and standing to a greater extent than the projection of the footings on lands of different owners.

Interpretation.  
Cf. 57 & 58  
Vict., c. cexxiii,  
s. 5; 9 Geo.  
VI No. 75, s. 5.

Rights of owners of adjoining lands respecting erection of walls on line of junction.

57 & 58 Vict., c. ccxiii, s. 87; 1 Geo. VI No. 78, s. 7.

4—(1) Where lands of different owners adjoin and are unbuilt on at the line of junction, and either owner is about to build on any part of the line of junction, the following provisions have effect:—

- (a) If the building owner desires to build a party wall on the line of junction, he may serve notice thereof on the adjoining owner, describing the intended wall;
- (b) If the adjoining owner consents to the building of a party wall, the wall shall be built half on the land of each of the two owners, or in such other position as is agreed between the two owners;
- (c) The expense of the building of the party wall shall be from time to time defrayed by the two owners in due proportion, regard being had to the use made and which may be made of the wall by the two owners respectively;
- (d) If the adjoining owner does not consent to the building of a party wall, the building owner shall not build the wall otherwise than as an external wall placed wholly on his own land;
- (e) If the building owner does not desire to build a party wall on the line of junction, but desires to build an external wall placed wholly on his own land, he may serve notice thereof on the adjoining owner describing the intended wall; and
- (f) Where in the cases provided for in paragraphs (d) and (e) the building owner proceeds to build an external wall on his own land he has the right at his own expense at any time after the expiration of one month from the service of the notice to place on the land of the adjoining owner below the level of the lowest floor the projecting footings of the external wall with concrete or other solid substructure thereunder, making compensation to the adjoining owner or occupier for any damage occasioned thereby, the amount of the compensation, if any differences arise, to be determined as provided in section eight.

(2) Where an external wall is built on the boundary of the land of the building owner or against another external wall or against a party wall, the building surveyor of the municipality may allow the footing of the side next such boundary or other external or party wall to be omitted, as provided by the Building Regulations.

(3) Where a party wall is built in pursuance of this Act on land under the *Real Property Act* 1862, the owner of the land shall at the expense of the other owner prepare, execute, and register an instrument creating an easement of support in respect of the wall appurtenant to the other land on which it is built.

**5—(1)** The building owner has the following rights in relation to party structures:—

Rights of building owner as to party structures. *Ibid.*, s. 88 and s. 8.

- (a) A right to make good, underpin, or repair any party structure which is defective or out of repair;
- (b) A right to pull down and rebuild any party structure which is so far defective or out of repair as to make it necessary or desirable to pull it down;
- (c) A right to pull down any timber or other partition which divides any buildings and is not conformable with the provisions of the *Local Government Act* 1962 in respect of building, and to build instead a party wall conformable thereto;
- (d) In the case of buildings having rooms or storeys which are the property of different owners and intermixed, a right to pull down such of those rooms or storeys, or such parts thereof as are not built in conformity with those provisions, and to rebuild them in conformity with those provisions;
- (e) In the case of buildings connected by arches, or communications over public ways or over passages belonging to other persons, a right to pull down such of those buildings, arches, or communications, or such parts thereof as are not built in conformity with those provisions, and to rebuild the same in conformity with those provisions;
- (f) A right to raise and underpin any party structure permitted by this Act to be raised or underpinned, or any external wall built against such a party structure, upon condition of making good all damage occasioned thereby to the adjoining premises or to the finishings and decorations thereof, and of carrying up to the requisite height all flues and chimney stacks belonging to the adjoining owner on or against that party structure or external wall;
- (g) A right to pull down any party structure which is of insufficient strength for the building intended to be built, and to rebuild it of sufficient strength for that purpose, upon condition of making good all damage occasioned thereby to the adjoining premises or to the finishings and decorations thereof;
- (h) A right to cut into any party structure upon condition of making good all damage occasioned to the adjoining premises by the operation;

- (i) A right to cut away footings or chimney breasts, jambs, or flues projecting, or other projections, from any party wall or external wall in order to erect an external wall against that party or external wall, or for any other purpose, upon condition of making good all damage occasioned to the adjoining premises by the operation;
- (j) A right to cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of that wall's or building's overhanging or encroachment upon the ground of the building owner, in order to erect an upright wall against it on condition of making good any damage sustained by the wall or building by reason of such cutting away or taking down;
- (k) A right to perform any other necessary works incidental to the connection of a party structure with the adjoining building or structure; and
- (l) A right to raise a party fence wall or pull it down and rebuild it as a party wall.

(2) This section is subject to section four hundred and thirty of the *Local Government Act 1962*.

Rights of adjoining owner.

*Ibid.*, s. 89 and s. 9.

**6**—(1) Where a building owner proposes to exercise any of the rights set forth in section five, the adjoining owner may by notice require the building owner to build on any party structure affected such chimney copings, jambs, or breasts or flues, or such piers or recesses, or any other like works as may fairly be required for the convenience of the adjoining owner, and are specified in the notice, and the building owner shall comply with the requisition in all cases where the execution of the required works will not be injurious to the building owner, or cause to him unnecessary inconvenience or unnecessary delay in the exercise of his right.

(2) Any difference that arises between a building owner and an adjoining owner in respect of the execution of works required under this section shall be determined in the manner provided in section eight.

Rules as to exercise of rights by building and adjoining owners.

*Ibid.*, s. 90 and s. 10.

**7**—(1) A building owner shall not, except with the consent in writing of the adjoining owner and of the adjoining occupiers, or in cases where any party wall or structure is dangerous (in which case the provisions of Division XVII of Part XVI of the *Local Government Act 1962* apply), exercise any of his rights under this Act in relation to a party wall, party fence wall, or party structure, unless at least six weeks before doing so he has served on the adjoining owner a party wall or party structure notice stating the nature and particulars of the proposed work, and the time at which the work is proposed to be commenced.

(2) When a building owner in the exercise of any of his rights under this Act lays open a part of the adjoining land or building, he shall, at his own expense, make and maintain for a proper time a proper hoarding and shoring or temporary construction for the protection of the adjoining land or building and the security of the adjoining occupier.

(3) A building owner shall not exercise any right by this Act given to him capriciously or in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner or to the adjoining occupier.

(4) A party wall or structure notice is not available for the exercise of any right unless the work to which the notice relates is begun within six months after the service thereof, and is prosecuted with due diligence.

(5) Within fourteen days after the receipt of such a notice, or at any time before building operations are commenced, the adjoining owner may serve on the building owner a notice requiring him to build on the party structure any works to the construction of which he is entitled under section six.

(6) A notice under subsection (5) shall specify the works required by the adjoining owner for his convenience, and shall, if necessary, be accompanied by explanatory plans and drawings.

(7) If either owner does not within fourteen days after the service on him of any notice express his consent thereto, he shall be considered as having dissented therefrom, and thereupon a difference shall be deemed to have arisen between the building owner and the adjoining owner.

**8** In cases not specially provided for by this Act, where a difference arises between a building owner and an adjoining owner in respect of matter arising with reference to any work to which a notice given under this Act relates, that difference shall be referred to two arbitrators, one to be appointed by each party, or their umpire, pursuant to the *Arbitration Act 1892*.

Settlement of difference between building and adjoining owners.  
1 Geo. VI No. 73, s. 11; Cf. 57 & 58 Vict., c. cxxiii, s. 91.

**9**—(1) A building owner, his servants, agents, and workmen, at all usual times of working, may enter and remain on any land for the purpose of executing, and may execute, any work which he has become entitled or is required in pursuance of this Act to execute, removing any furniture, or doing any other thing which may be necessary.

Power of building owner to enter premises.  
57 & 58 Vict., c. cxxiii, s. 92; 1 Geo. VI No. 73, s. 12.

(2) Where a close, building, or room is not open he and they may, accompanied by a police officer within the meaning of the *Police Regulation Act 1898*, break open fences or doors in order to obtain entry.

(3) Before entering for the purposes of this section the building owner shall, except in a case of emergency, give fourteen days' notice of his intention so to do to the occupier and owner, and in the case of emergency shall give such notice as may be reasonably practicable.

Building owner to underpin adjoining owner's building.  
*Ibid.*, s. 93 and s. 13.

**10** Where a building owner intends to erect within ten feet of a building belonging to an adjoining owner a building or structure any part of which within that ten feet extends to a lower level than the foundations of the building belonging to the adjoining owner, he may, and, if required by the adjoining owner, shall (subject to section eleven) underpin or otherwise strengthen the foundations of the adjoining owner's building so far as may be necessary, and the following provisions have effect:—

- (a) At least one month's notice in writing shall be given by the building owner to the adjoining owner, stating his intention to build, and whether he proposes to underpin or otherwise strengthen the foundations of the adjoining owner's building, which notice shall be accompanied by a plan and sections showing the site of the proposed building and the depth to which he proposes to excavate;
- (b) If the adjoining owner within fourteen days after being served with the notice, gives a counter notice in writing that he disputes the necessity of, or that he requires, such underpinning or strengthening, a difference shall be deemed to have arisen between the building owner and the adjoining owner;
- (c) The building owner is liable to compensate the adjoining owner and occupier for any inconvenience, loss, or damage which may result to them by reason of the exercise of the powers conferred by this section; and
- (d) Nothing in this section relieves the building owner from any liability to which he would otherwise be subject in case of injury caused by his building operations to the adjoining owner.

Security to be given by building owner and adjoining owners.  
*Ibid.*, s. 94 and s. 14.

**11**—(1) An adjoining owner may, if he thinks fit, by writing, require the building owner, before commencing any work which he is authorized by this Act to execute, to give such security as is agreed upon or, in case of difference, is settled by a commissioner of a court of requests, for the payment of all such expenses, costs, and compensation in respect of the work as may be payable by the building owner.

(2) The building owner may, if he thinks fit, at any time after service on him of a party wall or party structure requisition by the adjoining owner, and before beginning a work to which the requisition relates, but not afterwards,

serve a counter-requisition on the adjoining owner requiring him to give such security for payment of the expenses, costs, and compensation for which he is, or will be liable, as may be agreed upon, or in the case of difference, may be settled as provided in subsection (1) of this section.

(3) If the adjoining owner does not within one month after service of a counter-requisition give security accordingly, he shall at the end of that month be deemed to have ceased to be entitled to compliance with his party wall or party structure requisition, and the building owner may proceed as if no party wall or party structure requisition had been served on him by the adjoining owner.

**12**—(1) As to expenses to be borne jointly by the building owner and the adjoining owner—

Rules as to  
expense in  
respect of  
party  
structures.  
*Ibid.*, s. 95  
and s. 15.

- (a) if a party structure is defective or out of repair, the expense of making good, underpinning, or repairing it shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes or may make of the structure;
- (b) if a party structure is pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull it down, the expense of the pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner may make of the structure;
- (c) if a timber or other partition dividing a building is pulled down in the exercise of the right by this Act vested in a building owner, and a party structure is built instead thereof, the expense of pulling down the partition and of building a party structure, and also of building any additional party structures that may be required by reason of the partition's having been pulled down, shall be borne by the building owner and the adjoining owner in due proportion, regard being had to the use that each owner may make of the party structure and to the thickness required for the support of the respective buildings parted thereby;
- (d) if rooms or storeys, or parts thereof, which are the property of different owners and intermixed in any building are pulled down in pursuance of the right by this Act vested in a building owner and are rebuilt in conformity with the *Local Government Act 1962*, the expense of the pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner may make of such rooms or storeys; and



- (e) if arches or communications over public ways or over passages belonging to other persons than the owners of the buildings connected by those arches or communications or any parts thereof, are pulled down in pursuance of the right by this Act vested in a building owner, and are rebuilt in conformity with the *Local Government Act 1962*, the expense of the pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner may make of such arches or communications.
- (2) As to expenses to be borne by the building owner—
- (a) if a party structure, or an external wall built against another external wall, is raised or underpinned in pursuance of the power by this Act vested in a building owner, the expense of raising or underpinning it and of making good all damage occasioned thereby, and of carrying up to the requisite height all such flues and chimney stacks belonging to the adjoining owner on or against the party structure or external wall as are by this Act required to be made good and carried up, shall be borne by the building owner;
- (b) if a party structure which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull it down, is pulled down and rebuilt by the building owner, the expense of pulling down and rebuilding it and of making good any damage by this Act required to be made good and a fair allowance in respect of the disturbance and inconvenience caused to the adjoining owner shall be borne by the building owner;
- (c) if a party structure is cut into by the building owner, the expense of cutting into it and of making good any damage by this Act required to be made good shall be borne by the building owner;
- (d) if a footing, chimney breast, jamb, or floor is cut away in pursuance of the powers by this Act vested in a building owner, the expense of the cutting away and of making good any damage by this Act required to be made good shall be borne by the building owner;
- (e) if a party fence wall is raised for a building, the expense of raising it shall be borne by the building owner; and
- (f) if a party fence wall is pulled down and built as a party wall the expense of pulling it down and building it as a party wall shall be borne by the building owner.

(3) If at any time the adjoining owner makes use of a party structure, or any part thereof, raised or underpinned in pursuance of the power by this Act vested in a building owner, or of a party fence wall pulled down and built as a party wall, or any part thereof, beyond the use thereof made by him before the alteration, there shall be borne by the adjoining owner from time to time a due proportion of the expenses (having regard to the use that the adjoining owner may make thereof)—

(a) of raising or underpinning the party structure or external wall, and of making good all damage occasioned thereby to the adjoining owner, and of carrying up to the requisite height all such flues and chimney stacks belonging to the adjoining owner on or against the party structure or external wall as are by this Act required to be made good and carried up; or

(b) of pulling down and building the party fence wall as a party wall.

**13**—(1) Within one month after the completion of any work which a building owner is by this Act authorized or required to execute, and the expense of which is in whole or in part to be borne by an adjoining owner, the building owner shall deliver to the adjoining owner an account in writing of the particulars and expenses of the work, specifying any deduction to which the adjoining owner or some other person may be entitled in respect of old materials, or in other respects; and the work shall be estimated and valued at fair average rates and prices, according to the nature of the work and the locality and the market price of materials and labour at the time.

Recovery of expenses by building owner.

*Ibid.*, ss. 96, 97, 98, and ss. 16, 17.

(2) At any time within one month after the delivery of the account the adjoining owner, if dissatisfied therewith, may declare his dissatisfaction to the building owner by notice in writing, specifying his objection thereto, and thereupon a difference shall be deemed to have arisen between the parties, and shall be determined as provided in section eight.

(3) If within the period of one month mentioned in subsection (2) the adjoining owner does not declare in the manner provided his dissatisfaction with the account, he shall be deemed to have accepted it, and shall pay it on demand to the party delivering it, and if he fails to do so, the amount so due may be recovered as a debt.

(4) Any amount determined to be due in an arbitration under subsection (2) may likewise be recovered as a debt if not paid within one month.

**14**—(1) Where the adjoining owner is liable to contribute to the expenses of building a party structure, then, until his contribution is paid, the building owner at whose expense it was built shall subject to this section stand possessed of the sole property in the structure.

Party structure to belong to building owner till contribution paid.

*Ibid.*, s. 99 and s. 18.

(2) Where the structure is under the *Real Property Act* 1862, the right conferred by this section is not available against the proprietor of an interest registered after the right arose unless the person entitled to the right gives notice thereof to the Recorder of Titles as prescribed under that Act.

(3) On receipt of a notice under this section the Recorder shall enter a memorandum thereof in the register book, and, until a memorandum is entered under subsection (4), the structure shall be deemed to be excluded from the certificate of title of the adjoining owner and included in the certificate of title, if any, of the building owner.

(4) Upon the production to the Recorder of sufficient evidence of payment or release of the contribution he shall cause a memorandum to that effect to be entered in the register book.

Adjoining owner liable to expenses incurred on his requisition.

*Ibid.*, s. 100 and s. 19.

Saving for lights, &c., in party walls.

*Ibid.*, s. 101 and s. 20.

**15** The adjoining owner is liable for all expenses incurred on his requisition by the building owner, and in default payment thereof may be recovered from him as a debt.

**16** Nothing in this Act authorizes an interference with an easement of light or other easement in or relating to a party wall, or takes away, abridges, or prejudicially affects the right of any person to preserve or restore a light or other thing in or connected with a party wall in case of its being pulled down or rebuilt.

Notices and service.

**17**—(1) Notices and requisitions under this Act shall be in writing.

(2) The provisions of the *Local Government Act* 1962 apply to the giving and serving of notices under this Act.

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## PUBLIC HEALTH.

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No. 75 of 1962.

AN ACT to consolidate and amend the law relating to public health. [14 February 1963.]

**B**E 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**—(1) This Act may be cited as the *Public Health Act* 1962.

Short title and commencement.