

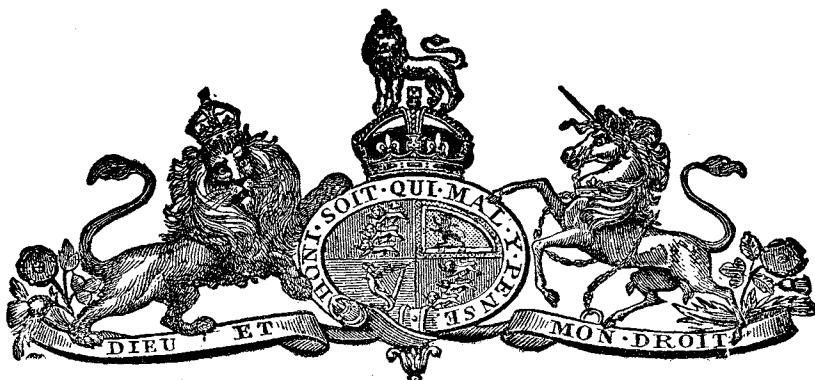
TASMANIA.

THE REAL PROPERTY ACT, 1932.

ANALYSIS.

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|---|--|
| <ol style="list-style-type: none"> 1. Short title. 2. Repeal. 3. Amendment of 25 Vict. No. 16. <ul style="list-style-type: none"> Section 17. Section 18. Section 29. Section 38. Section 53. Section 63. Section 69. Section 81. Sections 93 and 100. Section 103. Section 108. Fees payable to Recorder. Section 122. Section 125. <ul style="list-style-type: none"> Compensation for party deprived of land. Persons liable for damages. Damages in certain cases against assurance fund. Section 127. <ul style="list-style-type: none"> When actions may lie against the Recorder of Titles as nominal defendant. Notice of action. Results of action. | <ul style="list-style-type: none"> New Sections 146 to 156. <ul style="list-style-type: none"> Title by possession. Procedure on application. Notice of application. Power to reject application in certain cases. Caveats. Granting of application. Annulment of abandoned easements. Vesting orders. Grant to be conditional in certain cases. Procedure on making of order. Effect of order. Possession not to affect registered title till application lodged. <ol style="list-style-type: none"> 4. Amendment of 26 Vict., sess. 2, No. 1. <ul style="list-style-type: none"> Section 6. 5. Amendment of 50 Vict. No. 8. <ul style="list-style-type: none"> Sections 24 and 25. New Section 24. <ul style="list-style-type: none"> Extension of mortgage lease, &c. New Section 25. <ul style="list-style-type: none"> Registration and effect of extension. New Section 29. <ul style="list-style-type: none"> Attestation of instruments. 6. Amendment of 57 Vict. No. 5. |
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TASMANIA



1932.

ANNO VICESIMO TERTIO

GEORGII V. REGIS.

No. 52.

AN ACT to amend the Real Property Act.
 [18 January, 1933.]

A.D.
 1932.

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** This Act may be cited as “The Real Property Act, 1932.”
- 2** The enactments enumerated in Schedule (1) are hereby repealed to the extent therein specified.
- 3** The Principal Act is hereby amended —
 - I.** By deleting all the words from the word “one” in the twelfth line of Section Seventeen down to the word “Launceston” in the next line thereof, inclusive, and substituting therefor the words “a newspaper”:

Short title.

Section 17. Repeal.

Amend-
 ment of 25
 Vict No.
 16,

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- A.D. 1932. Section 18. II. By deleting all the words from the word "at" in the thirteenth line of Section Eighteen down to the word "elsewhere" in the fifteenth line thereof, inclusive, and substituting therefor the words "such newspapers":
- Section 29. III. By deleting the words "the Tasmanian" in the fourth line of Section Twenty-nine:
- Section 38. IV. By deleting from Section Thirty-eight all the words from and including the word "except" in the second line to the word "provided" in the fourth line thereof:
- Section 53. V. As to Section Fifty-three—
- (a) By inserting the figure "(1)" before the word "mortgage" in the first line thereof; and
- (b) By inserting at the end thereof the following new Subsection (2)—
- "(2) Where the trustee or assignee of the mortgagor or encumbrancer under the law relating to bankruptcy has disclaimed any land subject to mortgage or encumbrance, the mortgagee or encumbrancee, in lieu of giving notice to the mortgagor or encumbrancer as provided by Subsection (1) hereof, may publish in a newspaper a similar notice to all persons concerned.":
- Section 63. VI. By deleting from the fourth and fifth lines of Section Sixty-three the words "which instrument may be endorsed upon the memorandum of mortgage, encumbrance, or lease":
- Section 69. VII. By deleting from Section Sixty-nine the words "three times" in the third line and all the words from the word "published" in the fourth line down to the word "Launceston" in the fifth line thereof, inclusive:
- Section 81. VIII. By deleting from Section Eighty-one the words "three times" in the fifth and sixth lines and all the words from the word "published" in the sixth line down to the word "Launceston" in the seventh line thereof, inclusive:
- Sections 93 and 100. IX. By deleting from Sections Ninety-three and One hundred respectively all the words from and including the word "published" in the respective penultimate lines thereof to the end of the said sections respectively:
- Section 103. X. As to Section One hundred and three—
- (a) By inserting the figure "(1)" before the word "any" at the commencement thereof;
- (b) By deleting the words "declaration of" in the eighth line thereof;
- (c) By deleting all the words in the last line thereof; and

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(d) By inserting after the end thereof the following new Subsection (2):—

“(2) No person shall sign or give a certificate for the purposes of this section which is false to his knowledge in any material particular.

Penalty: Twenty Pounds.” :

XI. By substituting for repealed Section One hundred and eight the following new section:—

“**108** There shall be payable to the Recorder of Titles the respective fees specified in Part III. of Division P. of the schedule in respect of the several matters therein enumerated”:

XII. By deleting from Section One hundred and twenty-two the words “once in each of three successive weeks” in the third and fourth lines and all the words from “published” in the fourth line down to the word “Launceston” in the fifth line thereof, inclusive:

XIII. By substituting for repealed Section One hundred and twenty-five the following new section:—

“**125**—(1) Any person deprived of land, or of any estate or interest in land—

- i. In consequence of fraud :
- ii. Through the bringing of such land under the provisions of this Act :
- iii. By the registration of any other person as proprietor of such land, estate, or interest : or
- iv. In consequence of any error, omission, or misdescription in any certificate of title, or in any entry or memorial in the register book—

may bring and prosecute an action at law for the recovery of damages.

“(2) Such action shall—

- i. In any case in which such land has been included in two or more grants, be brought and prosecuted against such person as the Governor may appoint as nominal defendant : or
- ii. In any other case, subject to the provisions of Subsections (3), (4) and (5) hereof, be brought and prosecuted against the person—

(a) Upon whose application such land was brought under the provisions of this Act ;

(b) Upon whose application such erroneous registration was made ; or

(c) Who acquired title to the estate or interest in question through such fraud, error, omission, or misdescription.

Persons
liable for
damages.

Compensation for
party
deprived
of land.

Fees payable to
Recorder.

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Damages in
certain
cases
against
assurance
fund.

“(3) In every case in which the fraud, error, omission, or misdescription occurs upon a transfer for value, the transferee receiving the value shall be regarded as the person upon whose application the certificate of title was issued to the transferee.

“(4) Except in the case of fraud or of error occasioned by any omission, misrepresentation, or misdescription in his application or any instrument executed by him, the person upon whose application such land was brought under the provisions of this Act, or such erroneous registration was made, shall, upon a transfer of such land *bona fide* for value cease to be liable for the payment of any damages which might have been recovered from him under this section.

“(5) In any case where such person—

- i. Ceases to be liable for the payment of damages as aforesaid :
- ii. Is dead, bankrupt, or insolvent : or
- iii. Cannot be found within the jurisdiction—

such damages with costs of action may be recovered out of the assurance fund by action against the Recorder of Titles as nominal defendant.

“(6) In estimating such damages, the value of all buildings and other improvements erected or made subsequently to the deprivation shall be excluded, unless the same were erected or made in good faith by the claimant or by some person through whom he claims before he, or such person, as the case may be, was aware of any defect in the title to the land.

“(7) For the purposes of this section a person, who, but for the fraud or other act of any of the persons mentioned in Subsection (2) hereof, might have been possessed of any land, estate, or interest, or have been registered proprietor thereof, or have had his name entered on any certificate of title or grant as being entitled thereto, shall be deemed to have been deprived of such land, estate, or interest.”:

Section 127:

XIV. By substituting for repealed Sections One hundred and twenty-seven to One hundred and twenty-nine inclusive the following new Sections One hundred and twenty-seven to One hundred and twenty-nine :—

When
actions may
lie against
the Recorder
of Titles
as nominal
defendant.

“**127**—(1) Any person sustaining loss or damages through any omission, mistake, or misfeasance of the Recorder of Titles or any of his officers or clerks in the execution of their respective duties under the provisions of this Act may bring an action against the Recorder of Titles as nominal defendant for recovery of damages.

(2) Any person sustaining loss or damage by the registration of any other person as proprietor of land, or by any error, omission, or misdescription in any certificate of title, or any entry or memorial in the register-book, and who, by

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the provisions of this Act, is barred from bringing an action of ejectment or other action for the recovery of such land, estate, or interest, or to whose claim the remedy by action for recovery of damages as hereinbefore provided is inapplicable, may bring an action against the Recorder of Titles as nominal defendant for recovery of damages.

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“(3) In estimating any such damages as aforesaid the value of all buildings and other improvements erected or made subsequently to the loss or deprivation shall be excluded, unless the same were erected or made in good faith by the claimant or by some person, through whom he claims, before he, or such person, as the case may be, was aware of any defect in the title of the land.

“**128** In any case in which an action for recovery of damages is permitted to be brought against the Recorder of Titles as nominal defendant as hereinbefore provided, notice in writing of such action and of the cause thereof shall be served upon such nominal defendant one month at least before the commencement of such action. Notice of action.

“**129**—(1) If in any such action judgment is given in favour of the nominal defendant, or if the plaintiff discontinues or is non-suited, the plaintiff shall pay all costs of defending the action, and the same when taxed may be levied by execution in the name of the nominal defendant. Results of action.

“(2) If in any such action the plaintiff recovers final judgment against the Recorder of Titles as such nominal defendant, the court or judge before whom such action is tried shall certify the fact of such judgment and the amount of damages and costs recovered, and the amount of such damages and costs shall be paid to the person recovering the same, and shall be charged to the account of the assurance fund.

“(3) If the balance to the credit of the assurance fund is inadequate to defray the amount specified, such sum as may be necessary for that purpose shall be paid out of the Consolidated Revenue Fund, and the amount so advanced shall be repaid from the assurance fund as the same may thereafter accrue.”:

XV. By inserting after the said Division P of the said Schedule thereto the new Division Q set forth in Schedule (3) to this Act: and

XVI. By inserting after Section One hundred and forty-five thereof the following new Sections One hundred and forty-six to One hundred and fifty-six, inclusive:— New Sections 146 to 156.

“**146**—(1) Any person who claims that he has acquired a title by possession to land registered under this Act may apply to the Recorder for an order vesting the land to him for an estate in fee simple or other the estate claimed. Title by possession.

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Procedure
on applica-
tion.

“(2) Every such application shall be in writing in the form in Division Q of the Schedule, and shall include the several particulars indicated therein, and be executed by the applicant

“(3) Every such application shall be accompanied by a plan of survey (with field notes) of the land certified by a Government surveyor.

“**147**—(1) The Recorder shall cause the title of the applicant to be examined and reported upon by the solicitor, and thereafter refer the same to the Commissioners for their consideration.

“(2) The Commissioners may thereupon, in their discretion, reject the application altogether or in part, or may make such requisitions as to the title claimed to have been acquired, or as to any other matter relating to the application, as they think fit.

“(3) If an application is not rejected by the Commissioners as aforesaid, they shall direct that notice thereof be advertised in the Gazette and in a newspaper and be given to any person or persons named by them ; and notice thereof shall be given to every person appearing by the register book to have any estate or interest in the land, or in any encumbrance notified on the title thereto.

“(4) The applicant shall cause a copy of the notice of application to be posted in a conspicuous place on the land or at such place as the Commissioners direct and to be kept so posted for not less than one month prior to the granting of the application.

“(5) The Commissioners shall appoint a term not less than one month nor more than twelve months from the publication of the advertisement or service of the notice at or after the expiration of which the Recorder, unless a caveat is lodged forbidding the same, may make a vesting order as hereinafter provided.

Notice of
application.

“**148**—(1) The notice shall—

- i. Specify the volume and folium of the Crown grant or certificate of title affected by the application and any mortgage, charge, or lease registered as an encumbrance thereon : and
- ii. Be dated, and shall be served by being sent in a registered letter with the words “Lands’ Titles Office” endorsed on the outside thereof, posted to each person to be served at his address stated in the register book or supplied by the applicant, as the case may be.

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“(2) The Recorder shall cause a copy of such notice to be filed with a memorandum of the same having been sent out, and such memorandum shall be sufficient evidence that the notice was duly sent.

“**149** At any time prior to granting an application, the Commissioners in their discretion, notwithstanding any direction previously given by them as to the application, may reject the same altogether or in part if the applicant fails to comply to their satisfaction with any requisition made by them within such time as to them seems reasonable. Power to reject application in certain cases.

“**150**—(1) Any person claiming any estate or interest in the land in respect of which any such application is made may, before the granting thereof, lodge a caveat with the Recorder forbidding the granting of the application. Caveats.

(2) The caveat shall in all other respects be in the same form, be subject to the same provisions, and have the same effect with respect to the application against which it is lodged as a caveat against bringing land under the operation of this Act.

“**151** Subject as hereinbefore provided, after the expiration of the time appointed, the Commissioners, if satisfied that the applicant has acquired a title by possession to the land, may make an order vesting the land in the applicant, or person entitled thereto, for an estate in fee simple or other the estate acquired by the applicant, free from all encumbrances appearing by the register book to effect the existing title which have been determined or extinguished by such possession and free from any easement notified as an encumbrance which has been proved to the satisfaction of the Commissioners by evidence of non-user for a period of not less than thirty years to have been abandoned. Granting of application. Annulment of abandoned easements.

“**152** Where a vesting order is made the Commissioners shall direct the Recorder— Vesting orders.

I. To cancel the existing Crown grant or certificate of title and any instrument, entry, or memorial in the register book, either wholly or to such extent as is necessary to give effect to such vesting order: and

II. To issue to the applicant or person entitled to receive the same a new certificate of title for an estate in fee simple or other the estate acquired in the land comprised in such vesting order, free from all such encumbrances as aforesaid—

and the Recorder shall comply with such directions.

“**153** Upon granting the application, the Commissioners may grant the same conditioned upon the applicant contributing to the assurance fund such sum of money as the Grant to be conditional in certain cases.

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Commissioners certify to be, in their judgment, a sufficient indemnity by reason of the imperfect nature of the evidence of title or as against any uncertain or doubtful claim or demand incident to, or which may arise upon, the title or any risk to which the assurance fund may be exposed by the granting of the application

Procedure
on making
of order.

“**154**—(1) Where a vesting order is made by the Recorder, he shall make the entries directed to be made by Section One hundred and twelve of this Act in the case of the vesting orders therein mentioned, and the making or omission to make such entries shall be attended by the same results as declared by the said section in respect of the vesting orders therein mentioned.

“(2) In cancelling any Crown grant certificate of title, instrument, or any memorial or entry in the register book in pursuance of the direction in that behalf, the Recorder shall endorse thereon a memorandum stating the circumstances and authority under which the cancellation is made.

Effect of
order.

“**155**—(1) Any certificate of title issued by the Recorder in pursuance of such order shall be issued and registered in manner prescribed by Section Thirty-one of this Act, and thereupon the person named therein shall become the registered proprietor of the said land.

“(2) The certificate shall be dated with the date of the lodgment of such order with the Recorder.

Possession
not to affect
registered
title till
application
lodged.

“**156** The title of any person to any land of which he is registered proprietor shall not be affected by the adverse possession of such land by any person until such person or some other person claiming through him shall have lodged an application under this Act for a vesting order in respect of such land.”

XVII. By expunging from the schedule thereto Division H and substituting therefor the new Division H set forth in Schedule (2) to this Act.

Amend-
ment of 26
Vict., sess.
2, No. 1.

Section 6.

4 The Real Property Act, No. 2, is hereby amended by deleting all the words from the word “one” in the thirteenth line of Section Six thereof down to the word “Launceston” in the fifteenth line thereof, inclusive, and substituting therefor the words “a newspaper.”

Amend-
ment of 50
Vict. No. 8.

Sections 24
and 25.

5 The Real Property Act, No. 5, is hereby amended—

I. By substituting for repealed Sections Twenty-four and Twenty-five the following new Sections Twenty-four and Twenty-five :—

New Sec-
tion 24.
Extension
of mort-
gage, lease,
&c.

“**24** Any mortgage, encumbrance, or lease may be extended by an instrument in writing signed by the respective parties or their successors in title thereto and attested.

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“**25**—(1) Every such instrument when registered shall have the effect of extending the mortgage, encumbrance, or lease for the term therein specified. New Section 25. A.D. 1932.

“ (2) Every such instrument, if registered, shall be filed with the Recorder of Titles, who shall cause a memorial thereof to be entered in the register book and on the original mortgage, encumbrance, or lease thereby affected. Registration and effect of extension.

“ (3) The terms and conditions of the original mortgage, encumbrance, or lease may be varied or altered by any such extension, subject, however, to the provisions hereinafter contained.

“ (4) No extension of a lease of land subject to a mortgage or encumbrance shall be binding on the mortgagee or encumbrancee unless he shall have consented thereto in writing, and no extension of a first mortgage of land, which is subject to a subsequent mortgage, shall be binding upon the subsequent mortgagee if the terms or conditions of the first mortgage are varied or altered, unless such subsequent mortgagee shall have consented thereto in writing.” : and

II. By substituting for repealed Section Twenty-nine the following new Section Twenty-nine :— New Section 29.

“**29**—(1) Instruments under this Act signed by a person and attested by one witness shall be deemed to be duly executed by such person if such witness is— Attestation of instruments.

i. Within this State—

- (a) The Recorder :
 - (b) A notary public :
 - (c) A commissioner of the Supreme Court of Tasmania :
 - (d) A justice :
 - (e) A legal practitioner :
 - (f) A clerk to a legal practitioner :
 - (g) A clerk of petty sessions :
 - (h) A town clerk or council clerk :
 - (i) A postmaster :
 - (j) The head teacher of a State school :
 - (k) The manager or accountant of a bank : or
 - (l) The manager or secretary of a building society :
- and

ii. In any place beyond the State—

- (a) A notary public :
- (b) A commissioner of the Supreme Court of Tasmania :
- (c) The mayor or other chief officer of any city or municipal corporation in Great Britain or Ireland or any British possession :
- (d) The Agent-General :

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- (e) The officer administering the Government of any British possession or the judge of any court of record therein :
- (f) A police, stipendiary, or resident magistrate in any British possession :
- (g) The manager or accountant of any branch of a bank which is incorporated under the law of the Commonwealth, or of any State thereof, or of Great Britain or Ireland, or any British possession :
- (h) A justice of the peace in any State or Territory of the Commonwealth or in New Zealand :
- (i) The Registrar-General, or Recorder, or Commissioner, or Registrar of Titles in any State of the Commonwealth or in New Zealand : or
- (j) The British Consul-General, Consul, or Vice-Consul (or any person for the time being discharging the duties of such officer respectively) in any foreign country.

“(2) Any other person than those above enumerated may attest any such instrument, but in such case he shall appear before one of the persons so enumerated, who, after making due enquiries of such witness, shall endorse on such instrument a certificate in the form “C” in the schedule to the Principal Act, and such certificate shall be sufficient proof of the due execution of such instrument.

“(3) Where any instrument purports to be attested as provided by this section, the Recorder may give effect thereto without proof of the signature of the attesting witness or that he possessed the prescribed qualification.”

Amend-
ment of 57
Vict. No.
5.

6 The Real Property Act (No. 7) is hereby amended by deleting the words “in at least one newspaper published in the Cities of Hobart and Launceston” and substituting therefor the words “at least three times in a newspaper.”

SCHEDULES.

(1)

Regnal Year and Number.	Title of Act.	Extent of Repeal.
25 Vict. No. 16	The Real Property Act	Sections 108, 125, 127, 128, and 129
50 Vict. No. 8.... ..	The Real Property Act, No. 5	Sections 24 and 25
16 Geo. V. No. 81	The Real Property Act, 1926	Section 6

Real Property.

(2)

A.D. 1932.
—

H.

TRANSFER OF MORTGAGE, LEASE, OR ENCUMBRANCE.

I, *A.B.*, of _____, in
 consideration of £ _____ paid to me by *C.D.* of _____, in
 _____, the receipt of which sum I do hereby acknow-
 ledge, hereby transfer to the said *C.D.* the estate or interest in respect
 of which I am registered proprietor as set forth in memorandum of
 mortgage
 lease number _____, dated the _____ day of _____, 19 ____ .
 encumbrance

A.B., Transferror.

Signed by the abovenamed *A.B.*, this
 _____ day of _____, 19 ____ ,

in the presence of—

E.F.

I accept the above-written transfer.

C.D., Transferee.

(3)

Q.

TITLE BY POSSESSION.

APPLICATION FOR VESTING ORDER.

To the Recorder of Titles.

I, [*insert name, address, and occupation*], hereby apply for a vesting order, vesting in me all that piece of land being [*describe land by reference to allotment and section, giving volume and folium of existing certificate of title or Crown grant*] which land is delineated and coloured red upon the plan, dated _____, by *A.B.*, a Government surveyor, numbered _____ in the appendix hereto, for an estate in fee simple, in possession, free from encumbrances (other than any special reservation, exception, or condition in the Crown grant), and I solemnly and sincerely declare—

I. That the particulars of the possession on which my claim is based are—

- (a) [*Insert here the date on and circumstances in which the possession commenced*];
- (b) [*The name of the person by whom the possession was commenced*];
- (c) [*The duration of his possession and the nature thereof*]; and
- (d) [*The subsequent history and nature of the possession up to the time of lodging the application*]:

II. That there are no documents or evidence of title affecting such land in my possession or under my control other than those included in the schedule hereto;

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- III. That there are no mortgages or encumbrances registered on the abovementioned title save and except the following:—
[set out short particulars and state whether these mortgages or encumbrances have been extinguished or ceased to affect the land and, if so, how]:
- IV. That, save as aforesaid, I am not aware of any mortgage or encumbrance affecting the said land or that any person other than myself has any estate or interest therein, *[if there be any add]* save and except *[and set out same]*.
- V. That the names and addresses as far as known to me of the occupants of all lands contiguous to the said land are as follows:—
- VI.—(a) That the names and addresses so far as known to me of the owners of all lands contiguous to the said land are as follows:—
- (b) That the present value of the land including all improvements thereon is Pounds (£)
and no more.

And I make this solemn declaration by virtue of Section 132 of the Evidence Act, 1910.

Taken and declared at
in this
day of , 19 . }

Before me,

A Justice of the Peace.