

# LEGISLATIVE COUNCIL

---

Read 1° 24 April 1985

*(Brought in by the Honourable C. J. Hogg)*

(No. 2)

## A BILL

To amend the *Sale of Land Act* 1962 with respect to the preselling of allotments and to amend the *Strata Titles Act* 1967, the *Transfer of Land Act* 1958, the *Local Government Act* 1958 and the *Building Control Act* 1981 and for other purposes.

5 BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

### Short title.

1. This Act may be cited as the *Sale of Land (Allotments) Act* 1985.

### Commencement.

10 2. This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

### Principal Act.

3. In this Act the *Sale of Land Act* 1962 is referred to as the Principal Act.

Act No. 6975.  
Reprinted to No.  
9858.  
Subsequently  
amended by No.  
10087.

**Substitution of section 8A and insertion of new sections 8B to 8G.**

4. (1) For section 8A of the Principal Act there shall be substituted the following sections:

**Sale of subdivided land.**

'8A. (1) Where—

5

(a) a notice of intention to subdivide land into three or more allotments has been given (whether before or after the commencement of the *Sale of Land (Allotments) Act 1985*); or

(b) in respect of any land such a notice is required to be given—  
a person shall not sell such an allotment unless—

10

(c) the land—

(i) is under the operation of the *Transfer of Land Act 1958*; or

(ii) is the subject of an application to bring the land under the operation of the *Transfer of Land Act 1958* and the conditions and requirements relating to the making of the application and to the lodging of the plan of subdivision in the Office of Titles prescribed by the regulations have been complied with; and

15

20

(d) the allotment is on a plan of subdivision which has been—  
(i) sealed by the council of the municipality concerned; and

(ii) approved by the Registrar pursuant to section 97 of the *Transfer of Land Act 1958*.

25

(2) Where—

(a) a notice of intention to subdivide land into only two allotments has been given (whether before or after the commencement of the *Sale of Land (Allotments) Act 1985*); or

30

(b) in respect of any land such a notice is required to be given—  
and neither of the allotments has been sold before that commencement, a person shall not sell either of those allotments unless the allotment is on a plan of subdivision which has been—

(c) sealed by the council of the municipality concerned; and

35

(d) where any part of the land is under the operation of the *Transfer of Land Act 1958*, approved by the Registrar pursuant to section 97 of that Act.

(3) Where a contract for the sale of land has been entered into in contravention of sub-section (1) or (2) the purchaser may rescind the contract at any time before the completion of the contract and any person who has paid money under the contract shall be entitled to recover it.

40

(4) Sub-section (1) shall not apply to the sale of an allotment on a plan of subdivision sealed by the council of the municipality concerned before the commencement of the *Sale of Land (Allotments) Act 1985*.

5 (5) Notwithstanding anything in any Act the failure of any person to comply with sub-section (11) of section 569 of the *Local Government Act 1958* as in force before the commencement of section 9 or to comply with any corresponding previous enactment shall not affect the validity of any contract conveyance or transfer entered into in respect of land comprised in any plan in respect of which that sub-section or  
10 the corresponding previous enactment (as the case may be) was not complied with.

(6) In this section—

15 “Notice of intention to subdivide” in relation to land means a notice of intention to subdivide land in the form of the Thirtieth Schedule to the *Local Government Act 1958*.’

#### Sale of land prior to approval of plan.

‘8B. (1) Sub-sections (1) (d) (ii) and (2) of section 8A shall not apply to the sale of an allotment on a plan of subdivision where—

20 (a) the contract for the sale of that allotment provides that the deposit moneys payable by the purchaser are to be paid—

(i) to a solicitor or licensed estate agent who shall be named or specified in the contract to be held by the solicitor or licensed estate agent on trust for the purchaser until the approval of the plan of subdivision; or

25 (ii) into a special purpose banking account in a bank in Victoria specified by the vendor in the contract in the joint names of the purchaser and the vendor until the approval of the plan of subdivision; and

30 (b) the deposit moneys paid under the contract do not exceed 10 per cent of the purchase price of the allotment.

(2) The deposit moneys paid by the purchaser prior to the approval of the plan under any conditional contract of sale of an allotment shall be paid (as the case requires)—

35 (a) to the solicitor or licensed estate agent named or specified in the contract; or

(b) into a special purpose banking account in the bank in Victoria specified in the contract in the joint names of the purchaser and the vendor.

40 (3) Notwithstanding any other provisions of this Act or the provisions of any other Act, a solicitor or licensed estate agent to whom deposit moneys are paid pursuant to this section shall unless otherwise directed in writing by the vendor or the purchaser pay those moneys into an interest-bearing Trust Account.

(4) Nothing in this section shall require a solicitor or licensed estate agent to whom deposit moneys are paid pursuant to this section to account to the purchaser for the interest earned on those deposit moneys.

(5) A banking account established under sub-section (2) (b) may be drawn upon only with the signature of both the vendor and the purchaser or the personal representative of the vendor or purchaser (as the case may be). 5

(6) Nothing in this section shall impose any additional liability upon the bank in respect of any money deposited pursuant to sub-section (2) (b). 10

(7) The vendor shall not demand from a purchaser under a conditional contract of sale of an allotment—

- (a) any premium for entering into the contract; or
- (b) the payment of more than 10 per cent of the purchase price of the allotment as deposit moneys. 15

Penalty: 50 penalty units.

(8) In this section and section 8F unless inconsistent with the context or subject-matter, “approval” in relation to a plan of subdivision means—

- (a) in the case of an allotment referred to in section 8A (2) which is not under the operation of the *Transfer of Land Act 1958*, the sealing of the plan by the council of the municipality concerned; and 20
- (b) in any other case, the approval of the plan by the Registrar under section 97 of the *Transfer of Land Act 1958*. 25

(9) In this section and in sections 8C, 8D, 8E, 8F and 8G “conditional contract of sale” in relation to an allotment, means a contract of sale which contains the conditions specified in sub-section (1) of this section.’

**Disclosure of works.**

‘8C. (1) The vendor shall disclose in a conditional contract of sale of an allotment details of any works affecting the natural surface level of the land in the subdivision concerned which to the vendor’s knowledge— 30

- (a) have been carried out on any land in the subdivision after the sealing of the plan of subdivision and before the date of the contract; or 35
- (b) are at the date of the contract proposed to be carried out on any land in the subdivision.

(2) Where—

- (a) any works referred to in sub-section (1) are being or are to be carried out at the direction of a municipality or public authority; and 40

(b) the vendor has been required to submit plans of the works or proposed works to the municipality or public authority—  
the vendor shall include a copy of the plans in the contract of sale.

(3) Where a vendor knowingly or recklessly—

5 (a) supplies false information to the purchaser under a conditional contract of sale; or

(b) fails to supply all the information required to be supplied in a conditional contract of sale—

10 the vendor shall be guilty of an offence and liable to a penalty of not more than 50 penalty units.’

**Amendments to plan.**

15 ‘8D. (1) Where after the sealing of the plan of subdivision and before the approval of the plan by the Registrar under section 97 of the *Transfer of Land Act* 1958 an amendment to the plan is required by the Registrar or requested by the vendor, the vendor shall within the prescribed period after the receipt of the requirement of the Registrar or the making of the request by the vendor (as the case requires) advise the purchaser in writing of the proposed amendment.

20 (2) The purchaser may rescind a conditional contract of sale within 14 days after being advised by the vendor under sub-section (1) of an amendment to the plan of subdivision which will materially affect the allotment to which the contract relates.’

**Possession.**

25 ‘8E. (1) The purchaser under a conditional contract of sale shall not be entitled to possession of the allotment to which the contract relates before the approval by the Registrar under section 97 of the *Transfer of Land Act* 1958 of the relevant plan of subdivision.

30 (2) The vendor under a conditional contract of sale shall not require the purchaser under the contract to take possession of the allotment to which the contract relates before the approval by the Registrar of the relevant plan of subdivision.

Penalty: 50 penalty units.

35 (3) The vendor shall allow the purchaser under a conditional contract of sale reasonable access to the allotment for any purpose connected with the proposed development or use of the allotment.

(4) Sub-sections (1), (2) and (3) shall not apply to the sale of an allotment of a kind referred to in section 8A (2).’

**Rescission of conditional contract.**

‘8F. (1) If the vendor under a conditional contract of sale of an allotment fails to comply with section 8B or 8C the purchaser may rescind the contract of sale at any time before the approval of the plan of subdivision.

5

(2) If the plan of subdivision is not approved within 12 months after the date of the conditional contract of sale of an allotment on that plan of subdivision, the purchaser may, at any time after the expiration of that period of 12 months but before the plan is so approved, rescind the contract.’

10

**Repayment of deposit moneys.**

‘8G. (1) Where—

(a) the vendor rescinds a conditional contract of sale of an allotment as a result of a default by the purchaser, the vendor shall be immediately entitled to be paid the deposit money and any interest accrued in the vendor’s own right; or

15

(b) the purchaser rescinds a conditional contract of sale of an allotment as a result of a default by the vendor or pursuant to section 8D or 8F, the purchaser shall be entitled to the immediate return of the deposit moneys together with any interest accrued.

20

(2) Nothing in sub-section (1) shall limit or affect the power of the court—

(a) to order the repayment of the deposit moneys (whether that order is made pursuant to section 49 (2) of the *Property Law Act* 1958 or otherwise); or

25

(b) to relieve a purchaser against forfeiture of the deposit.

(3) Where a purchaser rescinds under section 8D or 8F a contract for the sale of an allotment of a kind referred to in section 8A (2), the purchaser shall be liable to pay an occupation rent for the period (if any) during which the purchaser was in actual occupation of the allotment or entitled to the receipt of the rents and profits thereof.’

30

(2) Notwithstanding the substitution of section 8A of the Principal Act by this section, section 8A as in force before the commencement of this Act shall continue to apply to and in relation to the sale of any allotment on a plan of subdivision of only two allotments which allotment was sold on or after the commencement of the *Sale of Land (Amendment) Act* 1969 and before the commencement of this Act.

35

**Consequential amendments to section 9.**

5. (1) In section 9 of the Principal Act—

(a) sub-sections (1), (4) and (5) shall be repealed; and

5

(b) in sub-section (2) the expression “sub-section (1)” shall be repealed.

(2) Sub-section (1) of section 9 of the Principal Act as in force immediately before the commencement of this Act shall continue to apply to and in relation to the sale of allotments on any plan of subdivision of three or more allotments which was sealed by the council of the municipality concerned before that commencement.

10

**Arbitration of disputes.**

6. In section 14A (1) of the Principal Act for the expression “section 9” there shall be substituted the expression “section 8A or 9”.

**New section 14B inserted.**

15 7. After section 14A of the Principal Act there shall be inserted the following section:

**Further powers of arbitrator with respect to subdivisational land.**

“14B. (1) Where any difference or dispute arises between the vendor and the purchaser with respect to—

20

(a) the non-compliance by either party with the requirements of section 8B, 8C, 8D, 8E, 8F or 8G; or

(b) a proposal by the purchaser to rescind the contract of sale pursuant to section 8D or 8F—

25

either party may refer the difference or dispute to an arbitrator for determination.

(2) Without affecting the generality of section 21, the arbitrator may make an order under this section requiring the vendor to pay compensation to the purchaser in respect of any loss suffered by the purchaser arising out of the contract.”.

**30 Holding of deposit moneys.**

8. In section 27 (11) of the Principal Act for the expression “8A” there shall be substituted the expression “8B”.

**Amendment of section 7 of the *Strata Titles Act 1967*.**

35 9. (1) For sub-sections (1) to (5) of section 7 of the *Strata Titles Act 1967* there shall be substituted the following sub-sections:

‘(1) A person shall not sell a unit before the relevant plan of strata subdivision has been sealed and—

- (a) approved by the Registrar pursuant to section 97 of the *Transfer of Land Act 1958*; or
- (b) registered under Part II. of this Act.
- (2) Sub-section (1) shall not apply to the sale of a unit where—
- (a) the contract for the sale of the unit provides that the deposit moneys payable by the purchaser are to be paid— 5
- (i) to a solicitor or licensed estate agent who shall be named or specified in the contract to be held by the solicitor or licensed estate agent on trust for the purchaser until the plan of strata subdivision has been so approved or registered; or 10
- (ii) into a special purpose banking account in a bank in Victoria specified by the vendor in the contract in the joint names of the purchaser and the vendor until the plan of strata subdivision has been so approved or registered; and 15
- (b) the deposit moneys paid under the contract do not exceed 10 per cent of the purchase price of the unit.
- (3) The deposit moneys paid by the purchaser prior to the approval or registration of the plan under any conditional contract of sale of a unit shall be paid (as the case requires)— 20
- (a) to the solicitor or licensed estate agent named or specified in the contract; or
- (b) into a special purpose banking account in Victoria specified in the contract in the joint names of the purchaser and the vendor. 25
- (4) Notwithstanding any other provisions of this Act or the provisions of any other Act, a solicitor or licensed estate agent to whom deposit moneys are paid pursuant to this section shall unless otherwise directed in writing by the vendor and the purchaser pay those moneys into an interest-bearing Trust Account. 30
- (5) Nothing in this section shall require a solicitor or licensed estate agent to whom deposit moneys are paid pursuant to this section to account to the purchaser for the interest earned on those deposit moneys.
- (5A) A banking account established under sub-section (3) (b) may be drawn upon only with the signature of both the vendor and the purchaser or the personal representative of the vendor or purchaser (as the case may be). 35
- (5B) Nothing in this section shall impose an additional liability upon the bank in respect of any money deposited pursuant to sub-section (3) (b). 40
- (5C) The vendor shall not demand from a purchaser under a conditional contract of sale of a unit—
- (a) any premium for entering into the contract; or



(b) the payment of more than 10 per cent of the purchase price of the unit as deposit moneys.

Penalty: 50 penalty units.

5 (5D) In this section and in sections 7AA, 7AB and 7AC “**conditional contract of sale**” in relation to a unit, means a contract of sale which contains the conditions specified in sub-section (2) of this section.’

10 (2) Section 7 of the *Strata Titles Act 1967* (as amended by this section) and sections 7AA, 7AB and 7AC shall apply to and in relation to any unit on a plan of strata subdivision sealed by the council on or after the commencement of this Act.

(3) Section 7 of the *Strata Titles Act 1967* as in force immediately before the commencement of this Act shall continue to apply to and in relation to any unit on a plan of strata subdivision sealed by the council before the commencement of this Act.

15 **New sections 7AA, 7AB and 7AC.**

10. After section 7 of the *Strata Titles Act 1967* there shall be inserted the following sections:

**Amendment of plan.**

20 ‘7AA. (1) Where after the sealing of a plan of strata subdivision and before the approval of the plan by the Registrar under section 97 of the *Transfer of Land Act 1958* or the registration of the plan under Part II. of this Act (as the case requires) an amendment to the plan is required by the Registrar or requested by the vendor, the vendor shall within  
25 the prescribed period after the receipt of the requirement of the Registrar or the making of the request by the vendor (as the case requires) advise the purchaser in writing of the proposed amendment.

(2) The purchaser may rescind the conditional contract of sale within 14 days after being advised by the vendor under sub-section (1) of an amendment to the plan of strata subdivision which will materially  
30 affect the unit to which the contract relates.’

**Rescission of conditional contract.**

‘7AB. (1) If the vendor under a conditional contract of sale of a unit fails to comply with section 7, the purchaser may at any time before the plan of strata subdivision is approved or registered, rescind  
35 the contract of sale.

(2) If the plan of strata subdivision is not so approved or registered within 12 months after the date of the conditional contract of sale of a unit on that plan of strata subdivision the purchaser may, at any time after the expiration of that period of 12 months but before the plan is  
40 so approved or registered, rescind the contract.’

**Repayment of deposit moneys.**

'7AC. (1) Where—

(a) the vendor rescinds a conditional contract of sale as a result of a default by the purchaser, the vendor shall be immediately entitled to be paid the deposit money and any interest accrued in the vendor's own right; or 5

(b) the purchaser rescinds a conditional contract of sale as a result of a default by the vendor or pursuant to section 7AA or 7AB the purchaser shall be entitled to the immediate return of the deposit moneys together with any interest accrued. 10

(2) Nothing in sub-section (1) shall limit or affect the power of the court—

(a) to order the repayment of the deposit moneys (whether that order is made pursuant to section 49 (2) of the *Property Law Act 1958* or otherwise); or 15

(b) to relieve a purchaser against forfeiture of the deposit.

(3) Where a purchaser rescinds a conditional contract of sale under section 7AA or 7AB, the purchaser shall be liable to pay an occupation rent for the period (if any) during which the purchaser was in actual occupation of the unit or entitled to the receipt of the rents and profits thereof.' 20

**Amendments to the *Transfer of Land Act 1958*.**

11. In section 97 (2A) of the *Transfer of Land Act 1958* paragraph (b) shall be repealed. 25

**New section 569BAA inserted in *Local Government Act 1958*.**

12. After section 569B of the *Local Government Act 1958* there shall be inserted the following section:

**Resealing of plans.**

'569BAA. (1) Where the Registrar of Titles refers a sealed plan of subdivision to the applicant for the council's consent to the amendment and resealing of the plan, the engineer shall within 7 days after the referral forward the amended plan to any relevant authority referred to in section 569B (2) for the consent of that authority to the amendment. 30

(2) If within 14 days after the forwarding of the amended plan to a relevant authority under sub-section (1), no consent or refusal has been received from the authority, the authority shall be deemed to have consented to the amendment. 35

(3) The council shall not reseal the amended plan if a relevant authority to which the plan has been forwarded under sub-section (1) has refused to consent to the amendment. 40

(4) The council, within 45 days after receipt of the amended plan, shall—

(a) cause the amended plan to be resealed with the seal of the municipality and forwarded to the applicant; or

5 (b) serve on the applicant notice in writing of the council's refusal to reseat the plan and the council's reasons for that refusal.

(5) A plan of subdivision resealed by the council under this section shall for the purposes of this Act and any other Act be deemed—

10 (a) to be the sealed plan of subdivision; and

(b) to have been resealed on the day that the plan of subdivision was first sealed.

15 (6) Any action taken under this Act or any other Act in relation to the sealed plan of subdivision before its resealing under this section shall be deemed to have been taken in relation to the resealed plan of subdivision.

(7) Except as provided in this section the provisions of this subdivision other than this section shall not apply to or in relation to the resealing of a plan of subdivision under this section.

20 (8) In this section “relevant authority” means an authority which or the services provided by which the engineer considers will be directly affected by the amendment to the sealed plan of subdivision.’

**Amendment of the *Building Control Act 1981*.**

25 13. (1) Section 20 of the *Building Control Act 1981* is amended as follows:

(a) In sub-section (2) for the expression “(2) An” there shall be substituted the expression “(2) Subject to sub-section (2A), an”;

30 (b) After sub-section (2) there shall be inserted the following sub-section:

“(2A) An application for approval to construct demolish or remove a building may be made by the purchaser under a contract for the sale of an allotment referred to in section 8B (1) of the *Sale of Land Act 1962*.”; and

35 (c) After sub-section (15) there shall be inserted the following sub-section:

“(15A) The Co-ordinator shall not grant building approval in respect of an application relating to an allotment on a plan of subdivision—

40 (a) to which section 8A (1) of *Sale of Land Act 1962* applies unless the sealed plan of subdivision has been approved by the Registrar of Titles under section 97 of the *Transfer of Land Act 1958*; and

- (b) to which section 8A (2) of the *Sale of Land Act* 1962 applies unless—
- (i) in the case of land under the *Transfer of Land Act* 1958, the plan of subdivision has been sealed by the council and approved by the Registrar of Titles under section 97 of the *Transfer of Land Act* 1958; 5
  - (ii) in the case of any other land, the plan of subdivision has been sealed by the council.”.
- (2) After section 55 (6) of the *Building Control Act* 1981 there shall be inserted the following sub-section: 10
- ‘(7) In this section “owner” includes a purchaser under a contract for the sale of an allotment referred to in section 8B (1) of the *Sale of Land Act* 1962.’.



