



ANNO VICESIMO TERTIO

GEORGII V REGIS.

A.D. 1932.

No. 2104.

An Act to enact certain provisions relating to certain Liabilities incurred in connection with Sales and Purchases of Vacant Subdivided Land and other Transactions, and for purposes incidental thereto.

[Assented to, November 30th, 1932.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Subdivided Land Debts Act, 1932". Short title.

2. In this Act—

Interpretation.

"Commissioner" means the Commissioner appointed under this Act:

"Contract" means contract for the sale and purchase of subdivided land entered into before the commencement of this Act:

"Purchaser" means the purchaser under a contract or any person in whom for the time being any right or liability of any such purchaser is vested:

"Subdivided land" means an allotment or allotments of land which has been subdivided into or contains not less than four blocks and has been offered for sale as sites for residential or shop premises, and on which at the time when the purchaser applies for relief under this Act no premises suitable for a residence or shop or for carrying on any business, trade, or manufacture have been built:

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“ Vendor ” means the vendor under a contract or any person in whom for the time being any right or liability of any such vendor is vested.

Appointment of
Commissioner.

3. (1) The Governor may appoint a Commissioner for the purpose of carrying this Act into operation. The Commissioner shall be a Judge of the Supreme Court or the Local Court Judge or a Special Magistrate.

(2) The Commissioner shall hold office until discharged by the Governor after he has dealt with all applications duly made under this Act and made such orders thereon as he deems proper.

Powers of
Commissioner as
to inquiries.

4. For the purpose of conducting his inquiries under this Act the Commissioner shall have all the powers which a Royal Commission, consisting of a sole Commissioner, has under the Royal Commissions Act, 1917, and that Act shall apply *mutatis mutandis* in relation to all proceedings and inquiries conducted by the Commissioner.

Duty to afford
hearing to parties
affected.

5. (1) Notwithstanding anything contained in the Royal Commissions Act, 1917, the Commissioner shall—

(a) afford every applicant a reasonable opportunity of giving evidence, calling and examining witnesses, and addressing the Commissioner, either personally or by counsel or solicitor or any member of his family. Where the applicant is in necessitous circumstances he shall be entitled to the services of the Public Solicitor :

(b) give to every vendor and interested party reasonable notice of the application and an opportunity of giving evidence, calling and examining witnesses, and addressing the Commissioner, either personally or by counsel or solicitor :

(c) on the request of any such applicant, vendor, or interested party permit him to inspect copies of all evidence taken by or supplied to the Commissioner in relation to the application made by such applicant or to any application on which an order is likely to be made affecting such vendor or interested party, and to make copies of such evidence :

(2) The Commissioner shall, on the request of any such applicant or interested party, issue a summons requiring the appearance before the Commissioner of any witness whom such person desires to call, and compelling any such witness to produce any documents.

(3) In this section “ interested party ” means any guarantor agent mortgagee or predecessor in title of any vendor, and any other person who in the opinion of the Commissioner is likely to be directly affected by any order made by the Commissioner.

Relief which may
be granted.

6. (1) The Commissioner may on application duly made in accordance with this Act and the regulations grant relief to any applicant in accordance with the following principles, and to the extent

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extent and in the manner that he deems equitable in the circumstances :—

- (a) Where the applicant is unable to carry out his contract in full without relief, but will, if relief under this paragraph is granted, have a reasonable prospect of being able to carry out his contract as modified by an order under this paragraph, the Commissioner may extend the time for payment of the purchase price or any part or instalments thereof, but so that the time for completion of purchase shall in no case be later than ten years from the commencement of this Act, unless the contract originally provided a later date, and may reduce the rate of interest payable under the contract to any rate which he deems equitable:
- (b) Where the contract purports to provide for payment of the purchase price or any part thereof without interest, the Commissioner shall apportion the money payable under the contract between principal and interest on the basis that such money includes the principal of the purchase money, and interest on the unpaid balance thereof at the rate of seven per centum :
- (c) Where it is shown that the applicant will have no reasonable prospect of carrying out his contract in full within ten years from the commencement of this Act, or any longer period fixed by the contract, the Commissioner may order any modifications, reductions, or postponements of the liabilities of the applicant which he deems equitable :
- (d) Where it is shown that any applicant was induced to enter into any contract by any false representation the Commissioner may, notwithstanding that the applicant may have affirmed the contract with knowledge of the falsity of the representation, order such modifications, reductions, or postponements of the liabilities of the applicant as he deems just, or he may release the applicant and the vendor from any unfulfilled obligations under the contract : Provided that this paragraph shall not apply in relation to any subdivided land bought at a sale by auction or after inspection by the purchaser if such inspection could have shown the falsity of the representation. In proceedings for relief under this paragraph a representation shown to the satisfaction of the Commissioner to be false shall be deemed to have been made with knowledge of its falsity, unless it is shown to the Commissioner that the person making it had reasonable grounds to believe, and did believe, it to be true :
- (e) The Commissioner shall order all such modifications, reductions, or postponements of the liabilities of the vendor and his predecessors in title, under any contract
for

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for sale and purchase, agency contract, mortgage, warranty, guarantee, or other agreement or transaction as he deems equitable, having regard to the relief (other than relief on account of false representation) given or proposed to be given to all the purchasers who have purchased subdivided land from that vendor :

- (f) The Commissioner may order the variation of any arrangement made between the vendor, or any agent of the vendor, or any guarantor, and the Commissioner of Taxes for payment of income tax due or becoming due by the vendor, and such variation shall be binding on the Commissioner of Taxes :
- (g) The Commissioner may make any other order not inconsistent with this Act, consequent on or incidental to any order made under the foregoing provisions of this section.

(2) Pending the final determination of any application the Commissioner may make any order which he thinks just, staying any proceedings, whether commenced before or after the commencement of this Act, against the applicant in any Court or in the exercise of any power conferred by law or agreement, or postponing any liability of the applicant under any contract until any date not later than the final determination of the application, and such order shall be binding on all Courts and persons.

Provision as to
certain judgments.

7. (1) Where a judgment by default has been obtained since the eighteenth day of November, nineteen hundred and thirty-one (being the date of the introduction into Parliament of the Bill known as the Subdivided Land Debts Bill, 1931) and before the commencement of this Act by a vendor against a purchaser for payment of any moneys due under any contract, this Act shall operate and be deemed to have operated as a stay of execution on such judgment as from the twenty-third day of August, nineteen hundred and thirty-two, until the final date for making applications to the Commissioner under this Act.

(2) Any reduction of purchase-money or interest authorised by this Act may be ordered by the Commissioner, notwithstanding that a judgment by default for the whole or any part of such purchase-money or interest may have been obtained against the purchaser, whether before or after the commencement of this Act. For the purpose of giving effect to this Act the Commissioner may reduce the amount payable under any such judgment (excluding any costs included therein) and the rate of interest thereunder, and such judgment, subject to the operation of subsection (1) of this section, shall have effect as altered by the Commissioner.

Time for
applications.

8. No application for relief shall be considered unless made within six months from a date to be fixed by the Commissioner by notice in the *Gazette* and by advertisement published in two daily newspapers circulating generally in the State : Provided that the Commissioner may further extend the time in any particular case for a period of not more than one month.

9. (1) Every

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9. (1) Every order made by the Commissioner shall be final and without appeal. Effect of orders.

(2) The rights and obligations of all persons shall be postponed, reduced, varied, or modified in accordance with the terms of any order relating thereto made by the Commissioner, and the fulfilment of any obligation as so postponed, reduced, varied, or modified shall be a discharge thereof for all purposes.

(3) No order made by the Commissioner under this Act shall operate so as to release any guarantor from his obligation under the guarantee except to the extent expressly mentioned in such order.

10. The moneys required for the salary and expenses of the Commissioner under this Act shall be paid out of moneys provided by Parliament for those purposes. Financial provision.

11. Any person who by any threat endeavours to dissuade or prevent a purchaser from making any application under this Act shall be guilty of an offence punishable summarily and liable to a penalty not exceeding One Hundred Pounds. Threats.

12. The Commissioner shall not order costs to be paid by any party to proceedings under this Act to any other party unless the Commissioner thinks that any application has been made without reasonable grounds therefor, or that any party by his conduct in any proceedings has put any other party to unnecessary expense, in which case the Commissioner may order the applicant or party at fault to pay to any other party or parties a reasonable sum to be fixed by the Commissioner for his or their costs. Any costs ordered by the Commissioner may be recovered by the party entitled thereto by action in any Court of competent jurisdiction. Costs.

13. (1) No contract or term, covenant, or condition of any contract shall prevent the Commissioner from making any order on any application under this Act, or prevent any person from making an application under this Act. Contracting out.

(2) Any contract or any term, covenant, or condition of any contract which would, apart from this section, operate so as to impose any forfeiture, burden, disability, or other disadvantage on any person in respect of the making of any application under this Act, shall be void to the extent to which it would so operate.

14. The Governor may make any regulations necessary or convenient for carrying this Act into effect, including, but without limiting the generality of the foregoing power, regulations as to the practice and procedure relating to any application to the Commissioner, and prescribing the forms to be used, and imposing penalties recoverable summarily not exceeding Twenty Pounds for breach of any regulation. Regulations.

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Validity of certain transactions relating to subdivided land.

15. A contract for the sale and purchase of subdivided land or any other transaction relating to subdivided land (whether such contract or transaction was entered into before or after the commencement of this Act) shall not be deemed invalid or illegal on the ground that a plan of subdivision comprising or including such land was not deposited in the Lands Titles Registration Office or the General Registry Office prior to the time when such contract or transaction was entered into if—

- (a) prior to the said time an application was made to the Government Town Planner under the Town Planning and Development Act, 1920, for approval of a plan of subdivision comprising or including the said land;
- (b) prior to the said time the Government Town Planner signified to the applicant or his agent by letter in the form known as Letter Form A that approval had been given to the proposal for the subdivision shown in the plan; and
- (c) at any subsequent time the said plan of subdivision or any altered or substituted plan accepted in lieu thereof as satisfactory by the Government Town Planner was deposited in the Lands Titles Registration Office or the General Registry Office.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

A. HORE-RUTHVEN, Governor.