



REGISTRATION OF DEEDS

No. 90 of 1974

ANALYSIS

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AN ACT to amend the Registration of Deeds Act 1935.

[19 December 1974]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Registration of Deeds Act* 1974. Short title, citation, and commencement.

(2) The *Registration of Deeds Act 1935*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on a date to be fixed by proclamation.

Interpretation.

2 Section 5 of the Principal Act is amended by inserting before the definition of “instrument” the following definition:—

“ ‘index’ includes a copy of an index made pursuant to section 43 (1);”.

3 Part II of the Principal Act is amended by repealing Divisions III and IV thereof and substituting therefor the following Divisions:—

“ Division III—Method of registration

Mode of registration.

“ 12—(1) A person who wishes to register any instrument, will, or letters of administration under this Act shall lodge with the Registrar—

(a) in respect of the instrument, will, or letters of administration, an application for registration in the prescribed form and containing—

(i) the prescribed particulars; and

(ii) a certificate, signed by the person on whose behalf the application is made or by the legal practitioner acting for that person, as to the correctness of those particulars and that there has been no failure to comply with Division II of Part XVI of the *Local Government Act 1962* with respect to the transaction to which the application relates; and

(b) such other documents as may be prescribed, and shall pay the prescribed fee.

“(2) The Registrar may refuse to accept for registration any instrument, will, or letters of administration if, in his opinion, it does not, or they do not, comply with the provisions of this Act.

“(3) Subject to this section, the Registrar—

- (a) shall number every application for registration according to the order of time in which it is delivered to him;
- (b) shall certify thereon the day and time when it was delivered to him;
- (c) shall make and file in the Registry a record, made in the prescribed manner, of the application and every writing in respect of which the application is made; and
- (d) shall certify on the instrument, will, or letters of administration in respect of which the application is made that it is, or they are, registered at the day and time referred to in paragraph (b).

“(4) A certificate under subsection (3) (d) is evidence of the registration and time of registration of the instrument, will, or letters of administration to which it relates.

“ 13 The Registrar shall, in the prescribed manner, make indexes of all instruments, wills, and letters of administration registered under this Act. Indexing of registered instruments, &c.

“ *Division IV—Certificates of satisfaction of mortgages and judgments*

“ 14—(1) A certificate of satisfaction in accordance with this section may be registered under this Act as an instrument. Certificates of satisfaction of mortgages and judgments.

“(2) A certificate of satisfaction shall contain the prescribed particulars, and may certify that—

- (a) all the moneys due under a registered mortgage or judgment have been paid, or that that mortgage or judgment is otherwise wholly satisfied;
- (b) a registered mortgage or judgment has been partially satisfied and it is desired to release a portion of the land thereby affected, that portion being defined in the certificate; or
- (c) a registered mortgage or judgment has been partially satisfied by the payment of a specified part of the moneys due thereunder.

“(3) A certificate of satisfaction—

- (a) of a mortgage shall be signed by the mortgagee; or
- (b) of a judgment shall be signed by the person to whom the money is payable under the judgment or by his solicitor for him and on his behalf.

“(4) The signature to a certificate of satisfaction shall be attested.”.

Purchasers not to be affected by *lis pendens* unless registered.

4 Section 26 of the Principal Act is amended by omitting therefrom the words “written on parchment and”.

5 After section 27 of the Principal Act the following section is inserted in Part II thereof:—

Vacation of registration of *lis pendens*.

“27A—(1) The plaintiff may apply, in writing, to the Registrar to vacate the registration of a *lis pendens* under this Act.

“(2) The Supreme Court or a judge may make an order vacating the registration of a *lis pendens*—

- (a) either before or after the determination of the *lis pendens*;
- (b) upon the application by summons of a party to the litigation or of a person who claims an estate or interest in the land mentioned in the memorandum under section 26 as intended to be affected by the *lis pendens*; and
- (c) either *ex parte* or otherwise,

and may direct the person who caused the registration to be made to pay all or any of the costs and expenses occasioned by the registration and vacating thereof.

“(3) The Registrar shall—

- (a) on receiving an application under subsection (1); or
- (b) on being served with an order under subsection (2),

record, in the prescribed manner, that the registration of the *lis pendens* to which the application or order relates is vacated.”.

6 Section 32 of the Principal Act is repealed and the following section is substituted therefor:—

Requirements as to survey plans.

Cf. 25 Vict. No. 16, s. 103 (3).

“32 Every survey plan to be registered under this Act shall comply with the requirements of the Registrar, expressed generally or for the particular case, and shall be certified as correct by a surveyor.”.

Searches.

7 Section 37 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(4) Notwithstanding the foregoing provisions of this section, where a transparency of a survey plan has been made pursuant to section 43 (1), a person may only inspect that transparency, whether or not the plan is still kept in the Registry, unless, where it is still so kept, the Registrar directs that he may inspect the plan itself.”.

8 Section 41 of the Principal Act is amended—

Offences by
other persons.

- (a) by omitting from subsection (1) the words “fourteen or section twenty” and substituting therefor the numeral “12”;
- (b) by omitting from that subsection the words “Penalty: Forty dollars” and substituting therefor the words “Penalty: \$200”; and
- (c) by omitting from subsection (3) the words “Penalty: Forty dollars” and substituting therefor the words “Penalty: \$200”.

9 Sections 42 and 43 of the Principal Act are repealed and the following sections are substituted therefor:—

“42 There is payable to the Registrar such fees as are prescribed ^{Fees.} in respect of matters under this Act.

“43—(1) The Registrar may cause to be made a transparency of any document, record, or index that is kept in the Registry and may, subject to the provisions of the *Archives Act* 1965, keep that transparency in lieu of, or in addition to, the document, record, or index of which it is a transparency. ^{Power of Registrar to make transparencies for record purposes.}

“(2) For the purposes of subsection (1)—

‘document’ includes a survey plan, but does not include a deed or document deposited with the Registrar under this Act or any other previous Act;

‘transparency’ has the meaning assigned to that expression by section 43A (4).

“43A—(1) Subject to the regulations and on payment of the prescribed fee, a person may, at any time when the Registry is open to the public, search any indexes kept by the Registrar and make such of the following inspections as are appropriate:— ^{Searches by, and copies of documents, &c., for, the public.}

(a) He may inspect a document or record kept in the Registry, if a transparency has not been made of the document or record pursuant to section 43 (1); and

(b) If a transparency of such a document or record has been so made, he may only inspect the transparency, whether or not the document or record is still kept in the Registry, unless, where it is still so kept, the Registrar directs that he may inspect the document or record itself.

“(2) The Registrar shall, on application and payment of the prescribed fee, furnish a person with a copy of, or extract from, a document, survey plan, or record kept in the Registry.

“(3) A copy for the purposes of subsection (2) may, in the Registrar’s discretion, be written or traced or be made by such photocopying process as the Registrar determines.

“(4) In this section—

‘machine copy’, in relation to a document, survey plan, or record, means a copy of the document, plan, or record—

- (a) made by a machine wherein, or made by a process whereby, a latent image of the document, plan, or record is produced from surface contact with the document, plan, or record or by the use of photo-sensitive material other than transparent photographic film; or
- (b) made by an electrostatic process;

‘photocopying process’, in relation to a copy of a document, survey plan, or record, means the process of making a photographic copy or machine copy of the document, plan, or record;

‘photographic copy’, in relation to a document, survey plan, or record, means a print made from a transparency of the document, plan, or record;

‘transparency’, in relation to a document, survey plan, or record, means—

- (a) a developed negative or positive photograph of that document, plan, or record (in this definition referred to as ‘an original photograph’) made on a transparent base, by means of light reflected from, or transmitted through, the document, plan, or record;
- (b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph; or
- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface

contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series.”.

10 The second and third Schedules to the Principal Act are repealed.

Repeal of
Second and
Third
Schedules.