

LAND SALES (AMENDMENT) ACT, 1980, No. 152

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 152, 1980.

An Act to amend Part II of the Land Sales Act, 1964, so as to vary the operation of that Part in relation to certain land and instruments. [Assented to, 10th December, 1980.]

Land Sales (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

- Short title. **1.** This Act may be cited as the "Land Sales (Amendment) Act, 1980".
- Commence- **2.** (1) This section and section 1 shall commence on the date
ment. of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- Principal Act. **3.** The Land Sales Act, 1964, is in this Act referred to as the Principal Act.
- Amendment of Act No. 12, 1964. **4.** The Principal Act is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

(1) Section 1B—

Omit the section, insert instead :—

1B. (1) In this Part—

"barrister" means a barrister of a court of any State or Territory of the Commonwealth;

Inter-
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SCHEDULE 1—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

“business day” means any day except—

- (a) a Saturday or Sunday; or
- (b) any other day the whole or any part of which is observed as a public holiday throughout New South Wales;

“land” has the meaning ascribed thereto in the Conveyancing Act, 1919, but does not include—

- (a) any estate or interest in land conferred by an option; or
- (b) any estate or interest in a lease originally granted for a term that does not exceed 3 years, whether or not the lease contains an option to renew it;

“land agent” means a person who is, within the meaning of the Auctioneers and Agents Act, 1941, a real estate agent, real estate salesman, stock and station agent or stock and station salesman;

“solicitor” means a solicitor of a court of any State or Territory of the Commonwealth;

“tender” includes a tender by post.

(2) For the purposes of this Part, an instrument is executed by an individual when his signature, or a mark or writing intended to take the place of his signature, is inscribed or impressed upon the instrument by the individual or by some other person authorised by him so to do, with the intention of authenticating the instrument as being that of, or as binding on, the individual.

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SCHEDULE 1—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(3) In this Part, a reference to a prescribed notice is a reference to a notice prescribed for the purposes of the section in which the expression occurs, being a notice that contains the particulars required to be inserted in it by the regulations made under this Act.

(4) Notwithstanding the definition of “land” in subsection (1), nothing in section 1C, 1D or 1E applies to or in respect of—

- (a) the execution by a person of an instrument in or by which the person—
 - (i) offers to become a lessee pursuant to an original grant of a lease; or
 - (ii) accepts an original grant of a lease as lessee; or
- (b) the tendering of an instrument to a person whose execution of which, or any part of which, would result (whether only upon or after the posting or delivery of the instrument or part or the communication of its contents, or not) in the person’s—
 - (i) offering to become a lessee pursuant to an original grant of a lease; or
 - (ii) accepting an original grant of a lease as lessee.

(2) (a) Section 1c (1)—

Omit the subsection.

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) Section 1c (2) (a) (ii)—

After “land”, insert “(being an option that may be exercised at a time occurring before the expiration of the next 2 business days after the day on which the instrument was executed)”.

(c) Section 1c (2) (a)—

Omit “or” where secondly occurring.

(d) Section 1c (2) (b) (ii)—

Omit “land,”, insert instead “land (being an option of the kind referred to in paragraph (a) (ii));”.

(e) Section 1c (2) (c), (d)—

After section 1c (2) (b), insert :—

(c) offers to sell to a person an option to buy land;
or

(d) accepts a person’s offer to buy an option to
buy land,

(f) Section 1c (3) (a)—

Omit “(a) or (b), as the case may be, or on any”.
insert instead “(a), (b), (c) or (d), as the case may
be, or on any solicitor or”.

(g) Section 1c (3A)—

After section 1c (3), insert :—

(3A) Where an individual has executed an
instrument in or by which he—

(a) offers to buy or sell; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (b) accepts an offer to buy or sell,
 an option to buy land, the transaction to which, for the purposes of subsection (3), the instrument relates is the buying of the land pursuant to an exercise of the option.
- (h) Section 1c (5) (a) (ii)—
 Omit “of the Supreme Court”.
- (i) Section 1c (5) (b) (ii)—
 Omit “but only if the instrument is executed by that individual on the same day as the auction and the sale is at a price not exceeding the amount of the bid”.
- (j) Section 1c (5) (c)—
 Omit the paragraph, insert instead :—
- (c) an instrument in respect of which a clerk of petty sessions, a barrister or a solicitor, other than—
- (i) a solicitor acting for the person referred to in subsection (2) (a), (b), (c) or (d), as the case may be;
 - (ii) any other solicitor employed in the legal practice of a solicitor so acting; or
 - (iii) where a solicitor so acting is a member of a partnership carrying on a legal practice, any other solicitor who is a member of, or employed by, that partnership,
- has signed a certificate stating that he explained the effect of the instrument to the individual before it was executed by him;

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(3) Section 1D—

Omit the section, insert instead :—

1D. (1) Subject to this section, when a person or his agent tenders or causes to be tendered to an individual an instrument in writing that relates to any land, the execution of which, or any part of which, instrument by the individual would result (whether only upon or after the posting or delivery of the instrument or part or the communication of its contents, or not) in the individual's—

Documents
to be
tendered by
vendors.

(a) offering to buy—

(i) that land; or

(ii) an option to buy that land (being an option that may be exercised at a time occurring before the expiration of the next 2 business days after the day on which the instrument is executed),

from that person;

(b) accepting that person's offer to sell—

(i) that land; or

(ii) an option to buy that land (being an option of the kind referred to in paragraph (a) (ii));

(c) offering to sell to that person an option to buy that land; or

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SCHEDULE 1—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (d) accepting that person's offer to buy an option to buy that land,

that person shall tender or cause to be tendered at the same time to the individual—

- (e) a copy of the instrument that is identical to it in all material respects; and
- (f) a prescribed notice.

(2) A person is not guilty of an offence under this Act in relation to a failure to tender to an individual a copy of an instrument or a prescribed notice in accordance with subsection (1) if the person satisfies the court that—

- (a) he, being a solicitor—
- (i) tendered the instrument to the individual as his client; and
 - (ii) had no estate or interest in the land to which, when the instrument was tendered, it related;
- (b) when the instrument was tendered, it related only to—
- (i) land purchased by the individual at an auction conducted by the holder of an auctioneer's license under the Auctioneers and Agents Act, 1941; or
 - (ii) land offered for sale, but not sold, at any such auction during the course of which the individual, or another person on his behalf, made a bid for the land; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(c) the individual was—

(i) a land agent; or

(ii) an individual of a class prescribed for the purposes of this subparagraph,

or if he produces to the court a certificate of the kind referred to in section 1c (5) (c) relating to the individual and the instrument.

(3) Subsection (1) does not apply to or in respect of the tender of an instrument by way of an advertisement referred to in section 1E (1).

(4) Nothing in this section requires a person to tender a copy of any instrument or a prescribed notice to any barrister or solicitor, whether or not the barrister or solicitor is a party to the transaction to which the instrument relates.

(4) (a) Section 1E (1) (a) (ii)—

Omit “land; or”. insert instead “land (being an option that may be exercised at a time occurring before the expiration of the next 2 business days after the day on which the instrument is executed);”.

(b) Section 1E (1) (b) (ii)—

Omit “land.”, insert instead “land (being an option of the kind referred to in paragraph (a) (ii));”.

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SCHEDULE 1—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(c) Section 1E (1) (c), (d)—

After section 1E (1) (b), insert :—

(c) offering to sell an option to buy land; or

(d) accepting an offer to buy an option to buy land,

(d) Section 1E (1)—

Omit “notice in or to the effect of the form prescribed for the purposes of this subsection that contains the particulars required to be inserted in it by the regulations made under this Act”, insert instead “prescribed notice”.