

REAL PROPERTY (COVENANTS) AMENDMENT ACT 1986
No. 71

NEW SOUTH WALES



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REAL PROPERTY (COVENANTS) AMENDMENT ACT 1986 No. 71

NEW SOUTH WALES



Act No. 71, 1986

An Act to amend the Real Property Act 1900 so as to provide for the enforcement of certain charges imposed on land. [Assented to, 21 May 1986]

Real Property (Covenants) Amendment 1986

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 "Real Property (Covenants) Amendment Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Conveyancing (Covenants) Amendment Act 1986.

Amendment of Act No. 25, 1900

3. The Real Property Act 1900 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE REAL PROPERTY ACT 1900

(1) Section 3 (**Interpretation**)—

(a) Section 3 (1), definitions of "Covenant charge", "Covenant chargee", "Covenant charger"—

After the definition of "Consular officer", insert:

"Covenant charge"—Any charge on land created under section 88F of the Conveyancing Act 1919 for securing the payment of money.

"Covenant chargee"—The proprietor of a covenant charge.

"Covenant charger"—The proprietor of land or of any estate or interest in land subject to a covenant charge.

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(b) Section 3 (1), definition of “Mortgage”—

After “land”, insert “(other than a covenant charge)”.

(2) Section 13F (**Mortgages—application of sec. 39A**)—

(a) Section 13F (a)—

After “1897”, insert “or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to the Conveyancing Act 1919”.

(b) Section 13F (b)—

Omit “or chargee”, insert instead “, chargee or covenant charge”.

(3) Section 13M (**Registration of instruments executed before creation of folio**)—

Omit “or charge” wherever occurring, insert instead “, charge or covenant charge”.

(4) Section 14 (**Application to bring land under the Act**)—

(a) Section 14 (3) (d)—

Omit “or” where lastly occurring.

(b) Section 14 (3) (d1)—

After section 14 (3) (d), insert:

(d1) where the land to which the application relates is subject to a covenant charge, unless the covenant chargee consents to the application; or

(5) Section 33 (**Issue of certificates of title**)—

Section 33 (5) (b)—

Omit “or registered chargee”, insert instead “, registered chargee or covenant charge”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE REAL PROPERTY ACT 1900—*continued*

- (6) Section 33A (Delivery, etc., of instruments in the custody of the Registrar-General)—
- Section 33A (4A)—
- Omit “or charge” wherever occurring, insert instead “, charge or covenant charge”.
- (7) Section 39A (Treatment of certain instruments not in approved form)—
- (a) Section 39A (1) (b)—
- After “1897”, insert “or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to the Conveyancing Act 1919”.
- (b) Section 39A (1) (c)—
- Omit “or a charge”, insert instead “, charge or covenant charge”.
- (c) Section 39A (2)—
- Omit “or chargee” wherever occurring, insert instead “, chargee or covenant chargee”.
- (d) Section 39A (2) (b), (c), (3)—
- Omit “or charge” wherever occurring, insert instead “, charge or covenant charge”.
- (e) Section 39A (2) (c)—
- Omit “or charges”, insert instead “, charges or covenant charges”.
- (f) Section 39A (5)—
- Omit the subsection, insert instead:
- (5) Except as provided by section 101 of the Conveyancing Act 1919, where a mortgage or covenant charge is recorded under this section, anything done with respect to foreclosure because of a default in payment of an amount secured by the mortgage or charge, in so far as the thing done relates to land under the provisions of this Act, shall be done in accordance with those provisions, and not otherwise.

Real Property (Covenants) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE REAL PROPERTY ACT 1900—*continued*

(g) Section 39A (7)—

After “1897”, insert “or, in the case of a covenant charge, in the Register of Causes, Writs and Orders kept pursuant to the Conveyancing Act 1919”.

(h) Section 39A (8)—

Omit “or charger”, insert instead “, charger or covenant charger”.

(8) Section 53 (**Land under the provisions of this Act—how leased**)—

Section 53 (4)—

Omit the subsection, insert instead:

(4) A lease of land which is subject to a mortgage, charge or covenant charge is not valid or binding on the mortgagee, chargee or covenant chargee unless the mortgagee, chargee or covenant chargee has consented to the lease before it is registered.

(9) Section 54 (**Lease may be surrendered by execution of surrender in approved form**)—

Section 54 (5)—

Omit the subsection, insert instead:

(5) A lease subject to a mortgage, charge or covenant charge shall not be so surrendered without the consent of the mortgagee, chargee or covenant chargee.

(10) Part VII. Division 3, heading—

Omit the heading, insert instead:

DIVISION 3—*Mortgages, charges and covenant charges*

(11) Section 56 (**Land under this Act—how mortgaged or encumbered**)—

Section 56 (8)—

After section 56 (7), insert:

(8) This section does not apply to or in respect of a covenant charge.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE REAL PROPERTY ACT 1900—*continued*

(12) Section 57 (**Procedure on default**)—

(a) Section 57 (1)—

Omit “or charge”, insert instead “, charge or covenant charge”.

(b) Section 57 (2)—

Omit “or chargee”, insert instead “, chargee or covenant chargee”.

(c) Section 57 (2) (a)—

Before “default”, insert “in the case of a mortgage or charge,”.

(d) Section 57 (2) (a1)—

After section 57 (2) (a), insert:

(a1) in the case of a covenant charge, default has been made in—

(i) the payment, in accordance with the terms of the judgment to which the covenant charge relates, of the principal, interest or other money the payment of which is secured by the covenant charge; or

(ii) the payment, in accordance with the terms of that judgment, of any part of that principal, interest or other money;

(e) Section 57 (2) (b) (ii)—

Before “the default”, insert “in the case of a mortgage,”.

(f) Section 57 (2) (b), (3) (b), (d)—

Omit “or charger” wherever occurring, insert instead “, charger or covenant charger”.

(g) Section 57 (3) (d)—

Omit “or charge”, insert instead “, charge or judgment”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE REAL PROPERTY ACT 1900—*continued*

(13) Section 58 (**Power to sell**)—

(a) Section 58 (1), (3)—

Omit “or chargee” wherever occurring, insert instead “, chargee or covenant chargee”.

(b) Section 58 (1), (3)—

Omit “or charger” wherever occurring, insert instead “, charger or covenant charger”.

(c) Section 58 (3)—

Omit “or charges”, insert instead “, charges or covenant charges”.

(14) Section 58A (**Dispensing with notice or lapse of time**)—

Section 58A (2)—

After “section”, insert “does not apply to covenant charges but”.

(15) Section 59 (**Registration of transfer by mortgagee, chargee or covenant chargee**)—

(a) Omit “or chargee”, insert instead “, chargee or covenant chargee”.

(b) Omit “or charger”, insert instead “, charger or covenant charger”.

(c) Omit “or charge” wherever occurring, insert instead “, charge or covenant charge”.

(16) Section 60 (**In case of default, entry and possession, ejectment**)—

(a) Omit “or chargee”, insert instead “, chargee or covenant chargee”.

(b) Omit “or charge” wherever occurring, insert instead “, charge or covenant charge”.

(17) Section 61 (**Application for foreclosure order**)—

(a) Section 61 (1), (2)—

After “mortgage” wherever occurring, insert “or covenant charge”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE REAL PROPERTY ACT 1900—*continued*

- (b) Section 61 (1)—

After “mortgagee”, insert “or covenant chargee, as the case may be,”.
- (c) Section 61 (2)—

After “mortgaged”, insert “or charged”.
- (d) Section 61 (2), (2A)—

After “mortgagor” wherever occurring, insert “or covenant charger”.
- (e) Section 61 (2), (2A) (a) (i)—

After “mortgagee” wherever occurring, insert “or covenant chargee”.
- (18) Section 62 (**Foreclosure order**)—
 - (a) Section 62 (2)—

After “mortgagee”, insert “or covenant chargee”.
 - (b) Section 62 (2)—

Omit “in the land mentioned in such order”, insert instead “or covenant charger in the land mentioned in the order and, in the case of mortgaged land,”.
- (19) Section 63 (**Suspension of mortgagor’s rights as landlord**)—
 - (a) Section 63—

Omit “or chargee” wherever occurring, insert instead “, chargee or covenant chargee”.
 - (b) Section 63 (1), (3)—

Omit “or charger” wherever occurring, insert instead “, charger or covenant charger”.
 - (c) Section 63 (1)—

Omit “or charge”, insert instead “, charge or covenant charge”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE REAL PROPERTY ACT 1900—*continued*

- (20) Section 65 (**Discharge of mortgages, charges and covenant charges**)—
- (a) Section 65—
Omit “or charge” wherever occurring, insert instead “, charge or covenant charge”.
 - (b) Section 65 (1)—
Omit “or chargee”, insert instead “, chargee or covenant charge”.
- (21) Section 76 (**Transferee of land subject to mortgage, etc., to indemnify transferor**)—
- (a) Omit “or charge” wherever occurring, insert instead “, charge or covenant charge”.
 - (b) After “same” insert “(or, in the case of a covenant charge, any interest payable in accordance with the terms of the judgment to which the covenant charge relates)”.
 - (c) Omit “such instrument”, insert instead “the mortgage, charge or covenant charge”.
 - (d) Omit “therein contained”, insert instead “contained in the mortgage or charge”.
- (22) Section 124 (**Registered proprietor protected against ejectment except in certain cases**)—
- Section 124 (1) (b)—
- Omit the paragraph, insert instead:
- (b) The case of a chargee or covenant chargee as against a charger or covenant charger in default.
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