



New South Wales

Real Property and Conveyancing Amendment Act 1997 No 95

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Real Property and Conveyancing Amendment Act 1997 No 95

Act No 95, 1997

An Act to amend the *Real Property Act 1900* and the *Conveyancing Act 1919* with respect to caveats, joint tenancy and the giving of certain notices; and for other purposes. [Assented to 7 November 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the Real Property and Conveyancing Amendment Act 1997.

2 Commencement

This Act commences on 1 January 1998.

3 Amendment of Real Property Act 1900 No 25

The Real Property Act 1900 is amended as set out in Schedule 1.

4 Amendment of Conveyancing Act 1919 No 6

The Conveyancing Act 1919 is amended as set out in Schedule 2.

Schedule 1 Amendment of Real Property Act 1900

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (2):

- (3) Notes in the text of this Act do not form part of this Act.

[2] Section 36 Lodgment and registration of documents

Insert before section 36 (6A):

- (6AA) A caveat that is lodged with the Registrar-General and is subsequently uplifted is ineffective to prohibit the recording or registration of any dealing or delimitation plan, or the granting of any application, the recording, registration or granting of which is prohibited by the caveat, until the caveat is relogged with the Registrar-General.

[3] Part 7A, Division 3, heading

Omit the heading. Insert instead:

Division 3 Caveats against dealings, possessory applications, plans and applications for cancellation of easements

[4] Section 74F Lodgment of caveats against dealings, possessory applications, plans and applications for cancellation of easements

Insert after section 74F (4):

- (4A) Any person who claims to be entitled to any legal or equitable interest in an easement the recording of which is the subject of an application for cancellation under section 49 may, at any time before the application is granted, lodge with the Registrar-General a caveat prohibiting the Registrar-General from granting the application.

[5] Section 74F (10)

Insert after subsection (9):

- (10) On the lodgment of a caveat under subsection (4A) in relation to an easement, the Registrar-General must, if an application for cancellation of the recording of the easement has been lodged in the office of the Registrar-General, give notice in writing of the lodgment of the caveat to the applicant concerned.

[6] Section 74H Effect of caveat lodged under section 74F

Omit section 74H(1). Insert instead:

- (1) Subject to this section, while a caveat lodged under section 74F remains in force:
- (a) the Registrar-General must not, except with the written consent of the caveator:
- (i) record in the Register any dealing, or
 - (ii) grant any possessory application, or
 - (iii) register any delimitation plan, or
 - (iv) cancel the recording of any easement,
- if it appears to the Registrar-General that the recording of the dealing, the granting of the possessory application, the registration of the delimitation plan or the cancellation of the recording of the easement is prohibited by the caveat, and
- (b) the caveat does not have the effect of prohibiting:
- (i) the recording in the Register of a dealing, or
 - (ii) the granting of a possessory application, or
 - (iii) the registration of a delimitation plan, or
 - (iv) the cancellation of the recording of an easement,
- except to the extent that the recording of such a dealing, the granting of such an application, the registration of such a plan or the cancellation of the recording of such an easement would affect the estate or interest claimed in the caveat.

[7] Part 7A, Division 4, note

Insert after the heading to Division 4 of Part 7A:

Note. Section 36 (6AA) provides that a caveat that is uplifted after it is lodged with the Registrar-General is ineffective until it is relogged with the Registrar-General.

[8] Section 74R Right to obtain injunction not affected

Omit “or” from section 74R (c).

[9] Section 74R (e)

Insert after paragraph (d):

, or

- (e) where the caveat relates to an application for the cancellation of the recording of an easement—restraining the cancellation of the recording of the easement.

[10] Section 97

Insert after the heading to Part 12:

97 Severance of joint tenancy by unilateral action

- (1) A transfer by a joint tenant of the joint tenant’s interest in the land that is the subject of a joint tenancy to himself or herself severs the joint tenancy.
- (2) If a joint tenancy is severed by unilateral action by one joint tenant, the Registrar-General may require the person who severs the joint tenancy to provide the Registrar-General, before recording the instrument that severs the joint tenancy, with:
 - (a) the names and addresses of the joint tenants or, if the addresses are unknown, evidence of the efforts made by the person to locate the addresses of the joint tenants, and

- (b) a statement that the person is not aware of any limitation or restriction on his or her capacity or entitlement to sever the joint tenancy (arising, for example, from the capacity in which the person holds an estate or interest in the land concerned or from a private agreement).
- (3) The Registrar-General may require the person who severs a joint tenancy to provide additional information concerning:
 - (a) other persons who may be affected by the severance of the joint tenancy, and
 - (b) any limitation or restriction on the capacity or entitlement of the person to sever the joint tenancy, and
 - (c) any other matter that the Registrar-General considers appropriate.
- (4) The Registrar-General may require any information provided for the purposes of this section to be provided by statutory declaration.
- (5) The Registrar-General must give notice of the lodgment of a dealing for registration or recording that may sever a joint tenancy to all joint tenants in the joint tenancy (other than any joint tenant who lodges the dealing). Section 12A (2) and (3) applies to and with respect to a notice given under this section.

Schedule 2 Amendment of Conveyancing Act 1919

(Section 4)

[1] Section 30

Insert after section 29C:

30 Notice of severance of joint tenancy

- (1) A person who unilaterally severs, or causes the severance of, a joint tenancy in land to which the *Real Property Act 1900* does not apply must give notice of the severance to all joint tenants in the joint tenancy as soon as practicable after the joint tenancy has been severed.
- (2) The notice is to be given in a form approved by the Registrar-General.
- (3) Failure to give notice as required by and in accordance with this section does not invalidate or otherwise affect the severance of the joint tenancy.

[2] Section 66G Statutory trusts for sale or partition of property held in co-ownership

Insert after section 66G (1):

- (1A) Subject to this section, on the death of a co-owner, any proceedings by or against the co-owner under subsection (1) (whether instituted before or after the commencement of this subsection) survive against or for the benefit of the estate of the deceased co-owner despite, in the case of a joint tenancy, the rule of survivorship.

[3] Section 196AA

Insert after section 196:

196AA Power of Registrar-General to serve notice of proposed action

- (1) The Registrar-General may, before taking any action under this Division involving:

- (a) the registration or recording of a plan (including a plan on which any easement, profit à prendre, restriction or positive covenant is indicated in accordance with section 88B (2)), or
 - (b) the amendment of any such plan,

give notice of the proposed action to any person that the Registrar-General considers should be notified of it.
- (2) If the Registrar-General gives notice under this section, the Registrar-General:
 - (a) may refuse to take the action until after the expiration of a period specified in the notice, and
 - (b) may proceed to take the action at or after the expiration of the period so specified unless the Registrar-General is first served with, or with written notice of, an order of the Supreme Court restraining the Registrar-General from so doing.
- (3) If a person given notice under this section does not within the time limited by the notice serve on the Registrar-General or give the Registrar-General written notice of an order of the Supreme Court restraining the Registrar-General from taking the action, no action by that person or by any person claiming through or under that person may be instituted against the Registrar-General in respect of the taking of the action specified in the notice.
- (4) No action may be instituted against the Registrar-General for failure to give a notice under this section.

[Minister's second reading speech made in—
Legislative Assembly on 17 September 1997
Legislative Council on 21 October 1997]