

# Land Sales Act 1964 No 12

[1964-12]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Land Vendors Act 1964
- **Does not include amendments by**  
[Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)

### Authorisation

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# Land Sales Act 1964 No 12



New South Wales

An Act to regulate sales of certain land; to amend the [Conveyancing Act 1919](#) and certain other Acts in certain respects; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the [Land Sales Act 1964](#).
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 1A (Repealed)

## Part 2

### 1B-1E (Repealed)

## Part 3 Sale of land under instalment contracts

### 2 Definitions

In this Part, unless the context or subject matter otherwise indicates or requires:

**Instalment contract** means a contract, entered into after the commencement of this Part, for the sale of a lot in a subdivision comprising five or more lots where such contract provides for the purchase money to be paid by four or more part payments (whether by way of preliminary or other deposit or otherwise) and any option to purchase such a lot under which all or part of the consideration for the granting of such option (whether or not such consideration is to be applied to the purchase price) is payable by four or more part payments as aforesaid, but does not include:

- (a) a contract effecting a sale without resubdivision by a vendor who acquired less than five lots in a subdivision, or
- (b) a contract for the sale of a lot within the meaning of the [Strata Schemes \(Freehold Development\) Act 1973](#) or of a leasehold interest in a lot within the meaning of the [Strata Schemes \(Leasehold Development\) Act 1986](#).

**Licensed conveyancer** means the holder of a licence in force under the [Conveyancers Licensing Act 1992](#).

**Preliminary deposit** means an initial payment (not being a payment, or part payment, for an option, other than an option referred to in the definition of **instalment contract** in this section) by a person in connection with the proposed purchase of a lot in a subdivision made to a person, or the agent of a person, who has offered, or held himself or herself out as being willing, to sell, or has advertised for sale, such lot, where the payment is made before there is a contract between such persons for the sale and purchase of such land.

**Primary application** means an application to the Registrar-General to bring land under the provisions of the [Real Property Act 1900](#).

**Purchaser** includes a person (not being a person acting in the capacity of an agent for a vendor) by whom or on whose behalf a preliminary deposit is paid to a vendor.

**Sell** includes offer to sell, hold oneself out as being willing to sell, and advertise for sale.

**Subdivision** has the meaning given to **subdivision of land** by section 4B of the [Environmental Planning and Assessment Act 1979](#).

### 3 Sales by instalment contracts of lots in subdivisions

No person shall sell under an instalment contract any lot unless the subdivision in which the lot is comprised complies with the provisions of this Part.

### 4 Requirements as to subdivisions

A subdivision complies with the provisions of this Part if, at the time of the sale:

(a)

- (i) the land comprised in the subdivision is under the provisions of the [Real Property Act 1900](#), or
- (ii) a primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land and has not, at such time, been withdrawn, abandoned or rejected, or
- (iii) although the land comprised in the subdivision is not under the provisions of the [Real Property Act 1900](#) and no primary application has been lodged in the office of the Registrar-General for the issue to the vendor of a certificate of title for such land, a plan of such subdivision has, before the commencement of this Act, been registered in the office of the Registrar-General, and

(b) the boundaries of the various lots in the subdivision follow the boundaries shown in a plan of subdivision that is endorsed with a subdivision certificate within the meaning

of section 109C of the *Environmental Planning and Assessment Act 1979*, and

- (b1) in the case of a subdivision that requires development consent under the *Environmental Planning and Assessment Act 1979*, such a consent is in force, and
- (c) a trustee holds office under a trust deed that:
  - (i) relates to the subdivision,
  - (ii) complies with the provisions of this Part, and
  - (iii) has endorsed on it in writing the Minister's approval of the trust deed and the trustee appointed thereby.

Any approval referred to in paragraph (c) may be given subject to such terms and conditions as the Minister thinks fit.

## **5 Approval of trustee may be revoked**

- (1) The Minister:
  - (a) may by notice published in the Gazette revoke as on and from a day (not being earlier than the date of publication of the notice) to be specified in the notice the Minister's approval under this Part of any trustee appointed under a trust deed, and
  - (b) shall in any such notice specify a date on or after which the Minister proposes to exercise the Minister's powers under subsection (3) unless a new trustee, approved in writing by the Minister, has before that date been appointed to act in the place of the former trustee.
- (2) Any such revocation shall take effect on and from the day specified in the notice and referred to in subsection (1) (a) and thereupon the trustee shall cease to hold office as such trustee for all purposes. The Minister shall as soon as practicable after publication of the notice cause a copy of the notice of revocation to be served on the trustee and the vendor by whom, or for whom and on whose behalf, the trustee was appointed.
- (3) Where the Minister revokes the approval of any trustee as aforesaid and the vendor fails, before the date referred to in subsection (1) (b), to appoint a new trustee, approved in writing by the Minister, to act in the place of the former trustee the Minister may, by a trust deed executed by the Minister for and on behalf of the vendor (which trust deed the Minister is hereby authorised to execute) and that complies with the provisions of this Part, appoint, upon such terms and conditions as the Minister thinks fit, a new trustee to act in the place of the former trustee but only as regards the powers, authorities, duties and functions of the former trustee so far as they relate to sales of lots made before the appointment of the new trustee and to purchasers of such lots and the new trustee so appointed shall be deemed for the purposes of this

Part to be the trustee under the trust deed in respect of sales of lots made before his or her appointment.

Any terms and conditions (including terms and conditions providing for the remuneration of the new trustee by the vendor or out of moneys held by the new trustee on behalf of the vendor) upon which the appointment of a new trustee may be made as aforesaid and that are expressed to be binding on the vendor and any covenants or provisions in the trust deed appointing the new trustee that are expressed to be made on behalf of, or to be binding on, the vendor shall be deemed to be terms and conditions binding on, covenants by and provisions binding on, the vendor.

- (4) Nothing in this section prevents the vendor, where the Minister has appointed a new trustee in accordance with this section, from appointing a further trustee in accordance with the provisions of the trust deed under which the former trustee was appointed, to act as trustee under the trust deed in respect only of sales of lots made after his or her appointment.

## **6 Exemptions**

- (1) The Minister may by order published in the Gazette declare that the requirements of section 4 (c) and such other provisions of this Part as may be specified in the order shall not apply to or in respect of any subdivision specified in the order and any such order shall have effect according to its tenor.
- (2) An instalment contract for the sale of a lot in a subdivision of land under the provisions of the *Real Property Act 1900*, being a contract under which the vendor of the lot is:
- (a) a statutory body representing the Crown, or
  - (b) a local council,
- is exempt from the provisions of this Part.

## **7 Trust deeds**

- (1) A trust deed complies with the provisions of this Part if it:
- (a) makes provision for the appointment by the vendor for such period as the Minister may approve after the date of the certificate referred to in section 4 (b) of a person as trustee for purchasers of lots in the subdivision proposed to be sold,
  - (b)
    - (i) provides for the appointment by the vendor of a new trustee approved by the Minister to act under the trust deed, where the former trustee ceases for any reason to hold office before his or her duties as trustee have been completed,

and also provides that such appointment shall be made subject to such terms and conditions as the Minister may think fit and for such period as the Minister may approve, and

- (ii) contains a covenant binding the trustee that the trustee will, upon ceasing to be a trustee, transfer to the trustee appointed by the vendor under subparagraph (i), or by the Minister under section 5, any money held by the trustee or on the trustee's behalf, and any books of account kept by the trustee, in his or her capacity as such trustee,
- (c) has annexed thereto a copy of the form or forms of instalment contract to be used in connection with the sale of the land comprised in the subdivision (which form or forms shall provide that all moneys payable thereunder by way of preliminary or other deposit or fifteen per centum of the purchase price (whichever is the greater) shall be paid by the purchaser to the trustee) and the form or forms of mortgage to be used for the purposes of section 13,
- (d) contains a provision that all moneys received by the trustee from a purchaser under an instalment contract shall be retained by the trustee until the trustee has been authorised by the vendor to refund any such moneys, or:
  - (i) the trustee is satisfied that the purchaser has been given the notices prescribed in section 12, and
  - (ii) an instalment contract signed by both the vendor and the purchaser or their properly constituted attorneys has been presented to the trustee for inspection and the written authority of the purchaser to account to the vendor for such moneys has been furnished to the trustee,
- (e) contains a covenant binding the vendor that the vendor will, upon demand made by the trustee or any registered public accountant appointed by the trustee, make available for inspection the whole of the books of the vendor relating to the subdivision to which the trust deed relates and give to the trustee or to any such registered public accountant such oral or written information as the trustee or registered public accountant requires with respect to the subdivision to which the trust deed relates where inspection of such books or such information is necessary for the proper and effective carrying out of the trustee's powers, authorities, duties and functions under this Part and the trust deed,
- (f) contains covenants binding the trustee that the trustee will:
  - (i) exercise all due diligence and vigilance in carrying out the trustee's powers, authorities, duties and functions in watching the rights and interests of the purchasers of lots in the subdivision to which the trust deed relates,
  - (ii) punctually account for all moneys paid to the trustee in pursuance of this Part



in accordance with the provisions of this Part and the trust deed,

- (iii) keep or cause to be kept proper books of account with respect to all moneys paid to the trustee as aforesaid,
  - (iv) where the trustee has received fifteen per centum of the purchase price of any lot in a subdivision to which the trust deed relates, serve on the purchaser of such lot a notice in writing duly completed in or to the effect of the First Schedule, and on the vendor of such lot a notice in writing in or to the effect of the Second Schedule, and
  - (v) where the trustee has received a notice referred to in section 14 (1), serve on the purchaser a notice in writing duly completed in or to the effect of the Third Schedule,
- (g) shall specify addresses for the service of any notice or document respectively on the vendor and trustee in their capacities as such.

- (2) Any trustee or registered public accountant who except in the course of any court proceedings, divulges or communicates to any other person any information which the trustee or registered public accountant has acquired pursuant to subsection (1) (e) shall be guilty of an offence under this Act:

Provided that nothing in this subsection precludes a trustee from divulging or communicating any such information to the Minister, or any such information that relates to the sale of a particular lot to the purchaser of that lot or the purchaser's solicitor or licensed conveyancer.

## **8 Certain advertisements prohibited**

No person shall publish or cause to be published any advertisement referring to a subdivision and containing a statement that, or to the effect that, a trustee or trust deed has been approved by the Minister or referring in any way to this Act.

## **9 Receipts for certain preliminary deposits to indicate that sale is by instalment contract**

- (1) Where a vendor or the vendor's agent accepts a preliminary deposit in connection with the sale of a lot in a subdivision and such preliminary deposit is paid pursuant to an agreement (whether oral or in writing or partly oral and partly in writing), implementation of which would necessitate the vendor and purchaser entering into an instalment contract, the vendor or the vendor's agent accepting the preliminary deposit shall upon doing so give to the person paying the preliminary deposit a receipt on which are endorsed the words "sale by instalment contract".
- (2) Where a vendor or the vendor's agent gives to a person paying a preliminary deposit a receipt on which are required to be endorsed the words "sale by instalment contract", the vendor:

- (a) shall within seven days after the preliminary deposit was paid pay the amount of the preliminary deposit to the trustee under the trust deed relating to such subdivision and either:
- (i) tender to the purchaser for execution by the purchaser a copy of an instalment contract for the sale and purchase of the lot in connection with the sale of which the preliminary deposit was paid, such contract having annexed thereto or endorsed thereon an undertaking by the vendor that the vendor will refund to the purchaser an amount, not exceeding an amount stated in the undertaking, for the reasonable costs incurred by the purchaser as a client of a solicitor or conveyancer in procuring such advice relating to the proposed transaction and the provisions of this Part as the solicitor or conveyancer is obliged, upon an examination of the contract and the particulars of title given to the purchaser by the vendor, to furnish to the purchaser, as the client of the solicitor or conveyancer, or
  - (ii) authorise such trustee to refund to the purchaser the amount of the preliminary deposit and notify the purchaser in writing that the vendor is unwilling or unable to execute such an instalment contract, and
- (b) where the vendor tenders to the purchaser a copy of the instalment contract in accordance with paragraph (a) (i), shall not, for the prescribed period, sell or cause to be sold the lot comprised in the instalment contract to any person other than the purchaser except where the purchaser and the vendor have agreed in writing that the vendor is not required to comply with the requirements of section 10 (2) and the vendor has authorised such trustee to refund to the purchaser the amount of any preliminary deposit paid by the purchaser.

In this paragraph ***the prescribed period*** means a period of fourteen days after the date on which the vendor tenders to the purchaser a copy of the instalment contract in accordance with paragraph (a) (i) and, where the provisions of section 10 (2) (a) and (b) have been complied with, a further period of seven days after the expiration of the said period of fourteen days.

- (3) The amount for reasonable costs stated in the undertaking under subsection (2) (a) (i) may be varied by agreement in writing between the vendor and purchaser at any time before execution of the instalment contract by the purchaser.

## **10 Form of instalment contracts**

- (1) A vendor under an instalment contract, or the vendor's agent, shall not tender to a purchaser a copy of an instalment contract for the sale and purchase of a lot unless the instalment contract is in the form, or one of the forms, of instalment contract annexed to the trust deed relating to the subdivision in which the lot is comprised.
- (2) Within twenty-one days after tendering a copy of the instalment contract to a

purchaser, the vendor shall deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the vendor or the vendor's duly appointed attorney, if:

- (a) the copy of the instalment contract so tendered has been executed by the purchaser and has, within fourteen days after its having been so tendered, been delivered to the vendor or the agent of the vendor, and
- (b) the purchaser has complied with all terms and conditions required by the instalment contract to be complied with by the purchaser at or before the delivery to the purchaser of the counterpart of the contract duly executed as aforesaid.

**11 Vendor not to accept payment of instalments until 15 per cent of purchase price paid**

No person, other than the trustee under the trust deed relating to the subdivision in which the lot is included, shall accept any payment, other than a preliminary deposit, made by or on behalf of a purchaser of a lot under an instalment contract unless the vendor has been given a notice in writing, duly completed, in or to the effect of the Second Schedule by such trustee that fifteen per centum of the purchase price payable under the instalment contract has been paid by or on behalf of the purchaser, but nothing in this section prevents any person from accepting any such payment from such trustee.

**12 Notices to be given to purchasers**

- (1) No person shall receive an initial payment (whether by way of preliminary or other deposit or otherwise) in connection with an instalment contract unless, before receiving such payment, the person gives or causes to be given to the purchaser a notice in writing duly completed that is in or to the effect of the form in the Fourth Schedule and that complies with the requirements of this section and a notice in writing in the form in the Fifth Schedule and no person shall tender an instalment contract for execution by a purchaser unless at least twenty-four hours before so tendering such contract the person gives or causes to be given to the purchaser such notices.
- (2)
  - (a) The notice in or to the effect of the form in the Fourth Schedule:
    - (i) shall be signed by the vendor or by the vendor's duly appointed attorney and the signature shall be attested by a witness, or
    - (ii) where the vendor is a company, shall be under seal or shall be signed by an attorney of the company duly appointed under seal.
  - (b) Any such notice purporting to have been signed by an attorney shall be deemed to have been signed by the vendor or to be under the seal of the company as the case may be unless it is proved that such signatory was not authorised in that

behalf.

(3) It shall be a failure to comply with the requirements of subsection (1) if any notice given to the purchaser in pursuance thereof:

- (a) is in handwriting that is not clear and legible, or
- (b) is printed in type of a size smaller than that known as ten point Times, or
- (c) contains a material mis-statement or inaccuracy,

unless in the case of a material mis-statement or inaccuracy, the court before which the enforceability of any instalment contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such failure was accidental or due to inadvertence and was not of such a nature as to be liable to mislead or deceive any person to the person's prejudice or disadvantage, and that the purchaser was not in fact so misled or deceived.

(4) Any failure to comply with the provisions of this section by any agent of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable precautions against such failure the vendor had reasonable grounds to believe and did believe that all the requirements of this section had been complied with.

### **13 Instalment contract to contain implied term for assurance of lot to purchaser**

(1) Notwithstanding any stipulation therein, an instalment contract shall be deemed to contain a stipulation entitling the purchaser by notice in writing served on the vendor to require the vendor to do all such things and to execute all such instruments as may be necessary effectively to assure to the purchaser the lot comprised in the instalment contract for the interest therein specified if at the time of the execution of such instruments the purchaser:

- (a) shall have paid not less than fifteen per centum of the purchase money, or
- (b) shall have received a notice referred to in section 14 (1) and shall, within a period of twenty-eight days after receiving such notice, have served on the vendor a notice in writing informing the vendor that the purchaser proposes to exercise the purchaser's rights conferred by the stipulation implied by this section,

and shall, at the time of the execution by the vendor of such instruments, have executed a mortgage back to the vendor or to such mortgagee as the vendor may have directed which shall:

- (i) secure payment of the purchase money owing under the instalment contract at the date of the mortgage by instalments of the same amounts and payable at the same time as the remaining instalments payable under the instalment contract,

- (ii) be in the form, or one of the forms, of mortgage annexed to the trust deed relating to the subdivision in which the lot is included, and
  - (iii) be prepared and completed by or on behalf of the mortgagee at the expense of the mortgagor, which expense shall not in any case exceed the amount prescribed by any General Order made under section 206 of the *Conveyancing Act 1919* for the time being in force.
- (2) Nothing in subsection (1) prevents any mortgage referred to in that subsection from:
- (a) containing provisions for securing the payment of the purchase money owing under the instalment contract at the date of the mortgage different from those referred to in subsection (1) (i), or
  - (b) being in a form different from the form, or one of the forms, of mortgage annexed to the trust deed,
- where the vendor and purchaser have so agreed.
- (3) The rights conferred on a purchaser by subsection (1) shall be subject to section 14 (3).

#### **14 Notice of intention to charge land to be given to purchaser and trustee**

- (1) Before charging a lot the subject of an instalment contract with any form of security (other than statutory charges) which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall give to the purchaser, or the assignee of the purchaser, and to the trustee under the trust deed relating to the subdivision in which such lot is included notice in a form approved by the Registrar-General of the vendor's intention so to charge the lot.
- (2)
- (a) Where a vendor under an instalment contract gives to the purchaser a notice referred to in subsection (1), the vendor shall not within a period of twenty-eight days after giving the notice charge the lot comprised in the instalment contract as is mentioned in subsection (1).
  - (b) Where a purchaser who has been given a notice referred to in subsection (1) has within twenty-eight days after such notice was given served on the vendor a notice informing the vendor that the purchaser proposes to exercise the purchaser's rights under the stipulation implied by section 13, the vendor shall not within a period of twenty-eight days after the service on the vendor of the notice so informing the vendor charge the lot comprised in the instalment contract.
- (3) Where a purchaser or the purchaser's assignee:
- (a) has been given a notice referred to in subsection (1), and

(b) has not exercised the rights conferred on the purchaser by the stipulation implied by section 13,

then during the currency of the security to which such notice relates given in respect of the lot the purchaser or assignee shall not be entitled to exercise such rights, but nothing in this subsection affects any other rights of the purchaser or assignee under the instalment contract.

(4) In this section, **vendor** includes any assignee of a vendor and any person for the time being entitled to receive instalments under the instalment contract who has acquired in the lot the subject of the instalment contract an interest capable of being the subject of such a charge as is referred to in subsection (1).

### **15 Implied undertakings by vendor where plan of subdivision not registered**

Every instalment contract relating to a lot in a subdivision the plan of which has not been registered in the office of the Registrar-General shall be deemed to include undertakings by the vendor that:

- (a) where at the date of the instalment contract the plan has not been lodged for registration in the office of the Registrar-General, the vendor will lodge the plan for registration in such office within twenty-eight days after the making of the instalment contract, and
- (b) where at the date of the instalment contract or at any subsequent date the plan has been or is lodged for registration in such office, the vendor will do all things reasonably required of the vendor to procure prompt registration of such plan.

### **16 Implied undertakings in instalment contracts for sale of lots comprised in primary applications**

- (1) An instalment contract for the sale of a lot comprised in a primary application shall be deemed to include undertakings by the vendor:
  - (a) promptly to notify the purchaser and the trustee of all requirements made by the Registrar-General in respect of such application,
  - (b) to supply from time to time as required by the purchaser information as to the progress of such application, and
  - (c) promptly to attend to all matters reasonably necessary to procure the creation of a folio of the Register kept under the *Real Property Act 1900* and the issue of a certificate of title for the land comprised in such application.
- (2) In respect of any such primary application:
  - (a) all requirements made by the Registrar-General shall be deemed to be requisitions which the purchaser is entitled to make on the vendor and has made within the

time limited by the instalment contract for making requisitions, and

(b) if the vendor fails to satisfy such requirements within a reasonable time after being notified thereof by the Registrar-General the purchaser shall be entitled to exercise all remedies (including the right to make time of the essence of the contract) conferred by law on purchasers against vendors unable or unwilling to comply with or remove any requisition or objection.

(3) This section shall have effect notwithstanding any stipulation in the instalment contract.

**17 Stipulations in instalment contracts depriving purchasers of certain remedies to be void—rights of purchasers to make early payments**

(1) Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make time of the essence of the contract) in the event of undue delay by the vendor in procuring registration of such plan.

(2) Notwithstanding any stipulation in an instalment contract, a purchaser under the instalment contract may pay any instalment payable under the instalment contract although the time for payment has not arrived, and in any case where the instalment contract provides for the payment of interest on any instalment payable thereunder and that instalment is paid before the time for its payment has arrived, no interest shall be payable from the date of payment of the instalment.

**18 Stipulations in instalment contracts avoiding trustees' liabilities to be void**

Any stipulation in an instalment contract shall be void to the extent that it would have the effect of exempting a trustee under a trust deed from, or indemnifying the trustee against, liability for breach of trust should the trustee fail properly to perform the powers, authorities, duties and functions required of the trustee as trustee having regard to the provisions of the trust deed.

**19 Stipulations in instalment contracts for payment of trustees' expenses by purchaser to be void**

Any stipulation in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs, charges and expenses of the trustee under a trust deed in performing the trustee's powers, authorities, duties and functions under this Part, or any part of those costs, charges and expenses.

**20 Stipulations in instalment contracts for employment of specified solicitor etc by purchaser to be void**

Any stipulation in an instalment contract to the effect that the assurance to, or the

registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser under an instalment contract in the selection of a solicitor or conveyancer to act on the purchaser's behalf in relation to any interest in a lot agreed to be purchased, shall be void.

## **21 Payments to trustees or agents deemed to be payments to vendor**

Notwithstanding any stipulation in an instalment contract, any money paid by or on behalf of a purchaser of a lot under the instalment contract to the trustee under the trust deed relating to the subdivision in which such lot is included or to the agent of the vendor, whether by way of preliminary or other deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the trustee or other person.

## **22 Duties of vendors where lot is under [Real Property Act 1900](#)**

Notwithstanding any stipulation in an instalment contract, where a transfer, duly stamped within the meaning of the [Stamp Duties Act 1920](#) and executed pursuant to section 13, is held by or on behalf of the vendor under such contract, the vendor or the vendor's agent shall, if the purchaser has paid to the vendor or the vendor's agent, as the case may be, the fees referred to in paragraph (a):

- (a) forthwith lodge such transfer with the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such transfer, and
- (b) within seven days after so lodging such transfer, notify in writing the purchaser or the purchaser's solicitor that the vendor or the vendor's agent holds the receipt issued by the Registrar-General upon lodgment of the transfer and in such notification indicate a time and place for the purchaser or the purchaser's solicitor to inspect such receipt, and
- (c) promptly attend to all matters reasonably necessary to procure registration of such transfer, and
- (d) notify in writing the purchaser or the purchaser's solicitor when such transfer has been registered.

## **23 Duties of vendors where lot is not under [Real Property Act 1900](#)**

Notwithstanding any stipulation in an instalment contract, where a conveyance, duly stamped within the meaning of the [Stamp Duties Act 1920](#) and executed pursuant to section 13, is held by or on behalf of the vendor under such contract, the vendor or the vendor's agent shall, if the purchaser has paid to the vendor or the vendor's agent, as the case may be, the fees referred to in paragraph (a):



- (a) forthwith produce such conveyance to the proper officer at the office of the Registrar-General for registration, accompanied by the prescribed fees necessary to procure registration of such conveyance, and
- (b) within seven days after so producing such conveyance, notify in writing the purchaser or the purchaser's solicitor that the vendor or the vendor's agent holds the conveyance duly endorsed with the appropriate form of receipt given upon the registration of the conveyance and in such notice indicate a time and place for the purchaser or the purchaser's solicitor to inspect such registered conveyance.

## **Part 4 Miscellaneous**

### **24 Penalty**

Any:

- (a) contravention of, or failure to comply with, a provision of this Act or the regulations made under this Act, or
- (b) failure to comply with a covenant contained in a trust deed,

shall be an offence under this Act.

Any person guilty of an offence under this Act shall be liable to a penalty not exceeding 10 penalty units or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment.

### **25 Liability of directors of corporations**

Where an offence under this Act has been committed by a body corporate, each director of the body corporate at the time when the offence was committed and each person holding a managerial position or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless the director or person proves that the director or person exercised all due diligence to prevent the act or omission constituting the offence.

### **26 Proceedings for offences**

Proceedings for an offence under this Act shall be disposed of summarily before a Local Court held before a Magistrate sitting alone.

No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister.

Proceedings for any offence under this Act may be instituted at any time within a period of twelve months after the commission of the offence.

## 27 Savings

Nothing in this Act shall:

- (a) affect the liability of any person for an offence with which the person might be charged otherwise than under Part 3,
- (b) invalidate any contract or mortgage or other instrument evidencing or affecting the title to any land,

but where an instalment contract is entered into in contravention of Part 3, or the vendor fails to comply with any stipulation or undertaking to be complied with by the vendor and implied by Part 3 in an instalment contract, the purchaser shall be entitled by notice in writing served on the vendor to rescind the instalment contract and thereupon shall be entitled to recover as a debt any moneys paid by the purchaser under the instalment contract in any court of competent jurisdiction.

## 28 Notices

The provisions of section 170 of the *Conveyancing Act 1919* relating to the service of notices shall apply to Part 3, and for the purposes of such provisions the **last place of abode or business** of a trustee under a trust deed referred to in Part 3 or of a vendor by whom such a trustee has been appointed includes the address for service of notices on the trustee or vendor, as the case may be, specified in the trust deed.

## 29 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act:
  - (a) varying or adding to any of the Schedules to this Act,
  - (b) exempting from the provisions of Part 3 any class of vendors or any class of instalment contracts,
  - (c) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Schedules as varied or added to pursuant to any such regulations shall be the Schedules to this Act.

- (1A) A regulation may be made so as to include in a notice or other document under this Act matter relating to any provision of or made for the purposes of section 52A of the *Conveyancing Act 1919*.
- (2) (Repealed)
- (3) A regulation may apply differently according to such factors as may be specified in the regulation.

### 30 Savings and transitional provisions

The Sixth Schedule has effect.

#### First Schedule

(Section 7 (1) (f) (iv))

##### LAND SALES ACT 1964

###### NOTICE TO PURCHASER

To .....

According to the books of account kept by me, you have now paid at least fifteen per centum of the purchase price payable under instalment contract dated ..... for the sale of lot number ..... in a plan of subdivision which has been registered in the office of the Registrar-General as ..... (quote registered number; if the plan is unregistered give description of lot).

Under section 13 of the abovementioned Act, upon payment of fifteen per centum of the purchase price, you are entitled, by serving a notice in writing on ..... (name of vendor) the vendor, to require the vendor to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....(Trustee)

#### Second Schedule

(Section 7 (1) (f) (iv))

##### LAND SALES ACT 1964

###### NOTICE TO VENDOR

To .....

According to the books of account kept by me, the purchaser of lot number ..... in the plan of subdivision which has been registered in the office of the Registrar-General as ..... (quote registered number; if the plan is unregistered, give description of lot) has now paid at least fifteen per centum of the purchase price payable under instalment contract dated ..... for the sale of that lot.

.....(Trustee)

#### Third Schedule

(Section 7 (1) (f) (v))

##### LAND SALES ACT 1964

###### NOTICE TO PURCHASER

To .....

the purchaser of lot number ..... in a plan of subdivision which has been registered in the office of the Registrar-General as ..... (quote registered number; if the plan is unregistered give description of lot).

I have received a notice under section 14 (1) of the abovementioned Act, stating that the vendor to you of the

abovementioned lot intends to charge the lot with a security which could enable your interest in the lot to be overreached. A similar notice should have been served by the vendor on you.

Under section 13 of the abovementioned Act, you are entitled, within 28 days after service of this notice on you, by serving a notice in writing on ..... (name of vendor) the vendor, to require the vendor to transfer or convey to you the lot purchased by you, but only if you execute a mortgage in favour of the vendor securing payment of the unpaid purchase money. Unless you obtain a transfer or conveyance of the lot from the vendor, you could be deprived of all your rights in the lot purchased by you in certain circumstances, and it is therefore essential that you act without delay.

If you need assistance to enable you to exercise your rights mentioned above, you should consult your solicitor.

.....(Trustee)

## Fourth Schedule

(Section 12 (1))

### LAND SALES ACT 1964

#### PARTICULARS OF TITLE

in respect of lot number ..... in a plan of subdivision which has been registered in the office of the Registrar-General as ..... (quote registered number; if the plan is unregistered this fact must be stated) which said plan was approved by the Council of ..... (name of local government area) on the ..... day of ..... 19....., as certified by general manager's certificate number ..... of 19.....

The vendor of the said land is ..... (state full name and address of vendor).

The legal owner of the said land is ..... (state full name and address of legal owner) whose title is evidenced by ..... (state distinctive reference allocated to the folio of the Register kept under the [Real Property Act 1900](#), or lodgment number of the primary application or appropriate particulars, if old system title).

There is no outstanding equitable interest in the said land OTHER THAN ..... (delete the words "other than" if inappropriate).

There is no form of security charged on the land within described which could enable the interest of a purchaser to be overreached by a creditor either directly or indirectly EXCEPT ..... (delete the word "except" if inappropriate).

The name and address of the trustee for purchasers is .....

.....(Signature of vendor or the vendor's duly appointed attorney or seal of vendor-company)

Signed in my presence by the vendor, or the vendor's duly appointed attorney, who is personally known to me,

.....

.....(Witness)

## Fifth Schedule

(Section 12 (1))

### LAND SALES ACT 1964

#### ADVICE TO PURCHASERS

**1.** Before paying a preliminary deposit or signing an instalment contract you should carefully read

this notice and the notice headed "Particulars of Title".

2. If you have paid a preliminary deposit following agreement with the vendor of the land or the vendor's agent to buy the land on terms (by an instalment contract), the vendor must within seven days after the deposit was paid either:
  - (a) send you a contract together with an undertaking by the vendor to refund to you an amount, not exceeding an amount stated in the undertaking, for the reasonable costs incurred by you in procuring advice on certain matters from your solicitor or conveyancer, or
  - (b) authorise the trustee to refund the preliminary deposit to you and send you a notice that the vendor is unwilling or unable to sign a contract.

If you receive a contract together with an undertaking, you should consult your solicitor or conveyancer, BEFORE SIGNING THE CONTRACT.

If you receive a contract and within fourteen days return it signed by you to the vendor and do all other things required of you by the contract, you are entitled, within twenty-one days after you first received a contract, to have sent to you by the vendor a copy of the contract signed by the vendor. If you have received a copy of the contract within seven days after paying the preliminary deposit, and you do what is required of you as stated earlier in this paragraph, the vendor is prohibited from selling to anyone else during the twenty-one days after you have received the contract.

3. When you buy land by means of an instalment contract, it is usually not until you have paid all the instalments or in the circumstances mentioned in paragraph 6 (1) hereunder that you are entitled to have the land transferred into your name.
4. The contract may become binding on you from the moment you sign it, whether you have paid a deposit or not. A contract is not necessarily a formal printed document. A series of letters, or even a receipt for a deposit, if it contains certain simple statements may legally evidence a binding contract. But a receipt which bears the words "subject to contract" or similar words does not generally evidence a binding contract.
5. In determining whether or not you should pay a preliminary deposit before you sign an instalment contract or whether or not you should sign an instalment contract, you should make enquiries and satisfy yourself (after consulting your solicitor or conveyancer):
  - (a) whether the land described in the contract (usually by a lot number) is in fact the same as the land which you intend to buy,
  - (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road,
  - (c) whether water, gas, electricity, sewerage, or other services are available,
  - (d) whether the vendor is the full owner of the land so as to enable the vendor to transfer the full ownership to you when you have paid all the instalments and whether such ownership is subject to any mortgage or other prior charge or liability. A vendor whose title is an equitable one only, or is subject to a prior mortgage, charge or other liability is required to disclose such fact to you on the notice headed "Particulars of Title" handed to you before you pay a preliminary deposit or sign an instalment contract. If an outstanding equitable interest or any

form of security (ie mortgage, charge or other liability) is disclosed you are referred to paragraph 1 above,

- (e) whether the land is subject to a town and country planning scheme and, if so, whether the use to which you propose to put the land is permitted by that scheme.

These are but some of the matters which must be enquired into, and you should consult your own solicitor or conveyancer as to any other searches and enquiries which should be made in order that you may satisfy yourself that the vendor is able to pass to you a good title and that there is no legal impediment to the use of the land for the purpose for which you require it.

**6.**

- (1) If you purchase by an instalment contract, you are entitled, whether it is so provided in the contract or not, when you have paid 15 per cent of the purchase price or if you receive a notice that the vendor intends to mortgage or charge the land thus enabling your interest to be overreached, to have the land transferred to your name. You must, of course, sign a mortgage over the land in favour of the vendor for the amount outstanding and you must observe certain time limits and pay the costs of the transfer and mortgage. This puts you in a similar position to a purchaser for cash, as regards security of title.
  - (2) Subdivisions must be approved by the local council prior to the vendor or the vendor's agent accepting any payment from the purchaser of a lot, and a deposit, if paid, must be held by the trustee appointed to protect your interests and the interests of all other purchasers in the subdivision. The name and address of the trustee is shown on the notice headed "Particulars of Title". In addition, all instalments up to 15 per cent of the purchase money must be paid to the trustee. After the vendor and yourself have signed the contract and you have signed a written order authorising the trustee to do so, the trustee may pay out the moneys held by the trustee in accordance with that authority.
  - (3) Usually the title to the land in an instalment contract must be registered under the *Real Property Act* ("Torrens title"), or the vendor must have made application (a "primary application") to bring the land under the provisions of the *Real Property Act*. However, these requirements do not apply in the case of subdivisions effected before 31st July 1964.
- 7.** Within one month of the date of the contract you should ensure payment of stamp duty thereon, otherwise you may become liable to pay a fine in addition to the normal stamp duty.
- 8.** As soon as you sign a contract, or if you have only paid a preliminary deposit and are buying on terms (by instalment contract) and before you are entitled to have the land transferred to your name, or if you do not take advantage of your right to call for a transfer (see paragraph 6 (1) above) you may still gain some protection of your interest by lodging a caveat if the land is under the *Real Property Act* or, if the land is included in a primary application, by registering your contract. If you consider taking these steps would be to your advantage, you should consult a

solicitor.

9. If you buy under an instalment contract and are unable to ascertain from the vendor or the vendor's agent information relating to your purchase, or if you are dissatisfied with the information given by a vendor or the vendor's agent, you may seek such information from the trustee for the purchasers.

## Sixth Schedule Savings and transitional provisions

(Section 30)

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Land Sales Amendment Act 1998*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### 2 Forms

A form prescribed under section 14 as in force immediately before the amendment of that section by the *Land Sales Amendment Act 1998* is taken to be an approved form under that section, as amended, until a form is approved by the Registrar-General under that section.

### 3 Undertakings

- (1) In this clause:

**amending Act** means the *Land Sales Amendment Act 1998*.

- (2) The amendments made to section 9 by the amending Act do not apply to an undertaking tendered by a vendor to a purchaser before the commencement of those amendments.
- (3) Clause 5 of the *Land Sales Regulation 1997*, as in force immediately before its repeal

by the amending Act, continues to apply to an undertaking referred to in subclause (2) as if that Regulation were still in force.