

## New Zealand.



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1909, No. 8.

Title.

AN ACT to make Further Provision for the Closer Settlement of Land by the Establishment of Land Settlement Associations assisted by the Guarantee of the State. [24th December, 1909.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.

1. This Act may be cited as the Land Settlement Finance Act, 1909, and shall come into operation on the first day of January, nineteen hundred and ten.

Land settlement associations.

2. Any five or more persons may enter into an agreement in writing in the prescribed form for their incorporation as a land settle-

ment association under this Act, and for the purchase of land by that association in accordance with the provisions hereinafter contained.

3. Every such agreement shall be made between and executed by or on behalf of the several intending members of the association (hereinafter termed the purchasers) of the one part, and the vendor of the land so agreed to be purchased (hereinafter called the vendor) of the other part.

Parties to agreement for incorporation and purchase of land.

4. (1.) No land shall be so purchased unless it constitutes, at the date of the complete execution of the agreement, a single estate or a portion of a single estate.

Land to be purchased by association to form single estate.

(2.) "Estate" means a block of land which is vested in fee-simple at law or in equity in a single owner, or in two or more owners as joint tenants or tenants in common, but not in severalty, or over which any person or any two or more persons jointly or in common possess a power of sale of the legal fee-simple thereof, whether with or without the consent of the Supreme Court or of any person having any estate or interest in the land.

"Estate" defined.

(3.) "Block" means a block of land in one continuous area, but an area shall not be deemed to be non-continuous by reason merely of its being intersected by a road, railway, or stream.

"Block" defined.

(4.) No land shall be so purchased unless its area is sufficient for subdivision in accordance with the next succeeding section.

5. Every such agreement shall contain the following provisions:—

Provisions of agreement.

(a.) An agreement by the purchasers as between themselves to become incorporated as the members of a land settlement association under a name specified in the agreement:

Incorporation of association.

(b.) An agreement as between the said association of the one part and the vendor of the other part that the vendor will sell and that the association will purchase, at a price specified in the agreement, the land described in the agreement for a legal estate in fee-simple in possession, free from all incumbrances, liens, or other interests vested in any person, other than rights of way or other easements or servitudes:

Sale and purchase.

(c.) An agreement for the completion of the purchase on a specified day being not earlier than three months after the date of the agreement:

Completion of purchase.

(d.) A scheme of subdivision of the land so purchased (after deducting therefrom all roads dedicated in pursuance of the provisions hereinafter contained in that behalf) into a specified number of allotments not less than five, each of which allotments shall comprise not less than fifty acres and not more than two hundred acres, the boundaries and areas of the allotments being determined by the agreement and set forth in a plan of subdivision annexed thereto and certified as correct by a licensed surveyor:

Subdivision of land.

(e.) A scheme for the distribution of the said allotments among the purchasers in such manner that each subdivision is

Distribution of allotments.

allotted to a single purchaser or to two or more purchasers as tenants in common, and that no purchaser obtains more than one allotment or obtains a share in more than one allotment. The distribution of the allotments among the purchasers may either be effected by and set forth in the agreement itself, or be left to be subsequently determined, whether by lot or otherwise, in manner expressed in the agreement :

Dedication of roads.

(f.) A scheme for the dedication of such roads (if any) over the land as are necessary in order to provide for every allotment access to an existing public road. The roads so to be dedicated shall not be less than sixty-six feet in width, and shall be shown on the certified plan of subdivision hereinbefore referred to :

Formation of roads, &c.

(g.) An agreement as between the association and the purchasers that the association will expend on the formation and metalling of the said roads, and the construction of bridges, culverts, and other requisite appurtenances to those roads, such sum of money (hereinafter referred to as roading-money) as may be directed to be so expended in the Order in Council confirming the agreement under the provisions hereinafter contained in that behalf :

Subdivision of purchase-money.

(h.) A scheme for the subdivision of the total purchase-money and roading-money in specified proportions as between the allotments :

Sale and purchase of allotments.

(i.) An agreement between the association of the one part and each of the purchasers of the other part that the association will sell and the purchaser will purchase, for an estate in fee-simple, the allotment allocated to him under the scheme of distribution aforesaid, at a price equal to the proportion of the total purchase-money and roading-money which has been appropriated to that allotment in the aforesaid scheme for the subdivision of those moneys, and subject to all provisions contained in this Act with respect to such purchases :

Payment of costs.

(j.) An agreement between the purchasers as to the payment by each of them in specified proportions of all costs and expenses duly incurred by them or any of them in the preparation, execution, or confirmation of the agreement :

(k.) Such other terms as are required by regulations made under this Act :

(l.) Such other terms as the parties agree upon and as are incidental to the purposes of the agreement and consistent with this Act and with the regulations made thereunder :

(m.) A proviso that unless the agreement is confirmed by an Order in Council under the provisions of this Act within six months after the date of the agreement, the agreement shall on the expiration of that period of six months (except as regards the matters referred to in paragraph (j) of this section) become null and void.

Qualification of purchasers:

6. (1.) No person shall be capable of becoming a purchaser under any such agreement unless on the day on which he executes

the agreement he is qualified in accordance with the provisions of section ninety-seven of the Land Act, 1908, to become a lessee of Crown land under Part III of that Act.

(2.) Every person who executes any such agreement as a purchaser shall on the same day make and sign a statutory declaration in the prescribed form to the effect that he is qualified to become a purchaser in accordance with this section. and every such declaration shall be annexed to the agreement.

7. (1.) So soon as practicable after the complete execution of any such agreement, application in the prescribed form shall be made to the Governor by or on behalf of the purchasers for an Order in Council confirming the agreement in pursuance of this Act.

Application for confirmation of agreement.

(2.) The application shall be sent to the Minister of Finance, together with the original agreement, and together with a statutory declaration by a solicitor that the agreement has been duly executed in accordance with this Act.

8. (1.) On the receipt of the application the Minister of Finance shall refer the same, together with the agreement, to the Board of Land Purchase Commissioners under the Land for Settlements Act, 1908, for its report thereon.

Application to be submitted to Board of Land Purchase Commissioners.

(2.) It shall thereupon be the duty of that Board to make full and careful inquiry into the matter of the agreement, and to report to the Minister of Finance—

Board to furnish report.

(a.) Whether the land included in the agreement is fit for subdivision and settlement in manner contemplated by the agreement :

(b.) Whether the price fixed by the agreement is fair and reasonable :

(c.) Whether the provisions of the agreement as to subdivision, roading, and the distribution of the total purchase-money among the several allotments are fair and reasonable, and conform to the requirements of this Act and of the regulations made thereunder :

(d.) Whether in all other respects the agreement conforms to the requirements of this Act and of the regulations made thereunder :

(e.) What amount is, in the opinion of the Board, reasonably required to be expended by the association as roading-money in order to form and metal the roads dedicated by the association, and to construct bridges, culverts, and other requisite appurtenances to those roads :

(f.) Whether, having regard to the matters hereinbefore specified in this section and to all other relevant considerations, the agreement is fit and proper to be confirmed under this Act.

9. (1.) If the Board reports that the agreement is fit and proper to be so confirmed, the Governor may, if he thinks fit, by Order in Council, confirm the agreement accordingly ; and on and after the making of the Order the following provisions shall apply :—

Confirmation of agreement by Order in Council.

(a.) The purchasers by whom the agreement has been executed shall become a body corporate by the name specified in that behalf in the agreement.

Incorporation of purchasers.

(b.) The incorporation of the purchasers shall relate back to and be deemed to have taken effect from the time of the execution of the agreement by the first party executing the same.

(c.) The incorporated association shall be deemed to be and to have been a party to the agreement, and shall have the same rights and be subject to the same liabilities, according to the tenor of the agreement, both between the association and its members and between the association and the vendor, as if the association had been incorporated prior to the execution of the agreement, and had been a party thereto and had executed the same under its common seal.

(2.) The Order in Council shall specify the amount of roading-money to be expended by the association as determined by the report of the Board.

(3.) If the Board reports that the agreement is fit to be confirmed subject to certain modifications specified by the Board, and the Governor is satisfied that all the parties thereto have agreed in writing to those modifications, he may by Order in Council confirm the agreement as so modified, and all the provisions of this Act shall apply accordingly in the same manner as if those modifications had been contained in the original agreement.

Order in Council to be conclusive proof of incorporation.

10. Every Order in Council purporting to have been made under this Act and to confirm any such agreement shall be conclusive proof that all the requirements of this Act precedent to the making of the Order and the incorporation of the association have been duly fulfilled and observed, and no such Order or incorporation shall in any Court or in any proceedings be questioned or invalidated on any ground whatsoever.

Powers and functions of associations to be exercised by Public Trustee.

11. (1.) All the powers and functions of the association may be exercised by the Public Trustee as the agent of the association, or by such other person or persons as the Public Trustee appoints and authorises in that behalf from time to time, and the said powers and functions shall not be exercisable in any other manner or by any other person.

(2.) All moneys payable to the association shall be paid to the Public Trustee on behalf of the association, and pending the application of those moneys in pursuance of this Act they shall be invested by the Public Trustee in accordance with regulations.

(3.) All moneys payable by the association shall be paid on behalf of the association by the Public Trustee out of moneys in his hands belonging to the association.

(4.) All writs, notices, and other documents required to be served upon or given to the association shall be served upon or given to the Public Trustee as the agent of the association, and shall thereupon be deemed for all purposes to have been served upon or given to the association.

(5.) Without limiting the generality of the authority of the Public Trustee under this section, he may in the name of the association bring or defend any action or other legal proceeding, and execute any deeds or other instruments and affix thereto the seal of

the association, and exercise all powers of sale and all other powers vested in the association by any mortgage or other instrument.

(6.) All costs and expenses incurred by the Public Trustee in so acting as the agent of the association shall be refunded by the association, together with such reasonable sums by way of remuneration for his services as the Public Trustee from time to time determines with the consent of the Minister of Finance.

12. (1.) For the purpose of raising by way of loan the purchase-money payable for the land by the association to the vendor and the roading-money required to be expended by the association, the association may issue debentures in the prescribed form under its seal.

Association may raise purchase-money by issue of debentures.

(2.) Every such debenture shall be made payable twenty-one years after the date thereof, but shall contain a provision entitling the association to pay the debenture at any time after the expiration of five years from the date thereof on giving six months' notice, in manner specified in the debenture, of the intention so to pay the same.

(3.) All such debentures shall bear interest at a uniform rate not exceeding five per centum per annum, and the interest shall be payable by half-yearly payments on the days therein specified in that behalf.

(4.) No such debenture shall be issued at a discount.

13. (1.) All debentures issued by an association under the authority of this Act are hereby guaranteed by the Government of New Zealand, and if and so often as default is made by the association in the payment of any principal or interest due on any such debenture the Minister of Finance shall, without further authority than this Act, pay out of the Consolidated Fund to the holder of the debenture the amount so in arrear and unpaid.

Guarantee of debentures by Government.

(2.) The guarantee constituted by this Act shall be enforceable against the Crown by the holder of any debenture so guaranteed, in the same manner as if the guarantee were created by a contract between the holder and the Crown.

(3.) Every debenture issued under this Act shall bear on the face thereof a certificate signed by an officer of the Treasury Department authorised in that behalf by the Minister of Finance to the effect that the debenture is guaranteed by the Government of New Zealand under this Act.

(4.) A register of all debentures so certified shall be kept by the Treasury Department in such manner as the Minister of Finance directs.

(5.) All sums paid out of the Consolidated Fund in pursuance of this section, together with interest thereon at the rate of five per centum per annum, shall constitute a debt due by the association to the Crown.

14. No Order in Council shall be issued under this Act in any financial year whereby the total amount guaranteed by the Government during that year (not including the amount of current debentures issued in any preceding year) may exceed five hundred thousand pounds :

Limit of guarantee.

Provided that to the extent to which the full amount of five hundred thousand pounds is not guaranteed in any financial year, to

the same extent the amount guaranteed in any subsequent financial year may exceed five hundred thousand pounds:

Provided also that no guarantee shall be invalidated by any breach of this section.

Completion of purchase by conveyance or transfer.

15. (1.) After the confirmation of the agreement by Order in Council in manner aforesaid, the purchase of the land therein comprised shall be completed by the transfer or conveyance thereof to the association by the vendor according to the tenor of the agreement.

(2.) No stamp duty shall be chargeable on any such transfer or conveyance.

(3.) If the association fails without lawful justification duly to complete the purchase, the purchasers shall be jointly and severally liable to the vendor in damages in the same manner and to the same extent as if the contract had been made between the vendor and the several purchasers instead of between the vendor and the incorporated association.

Transfer or conveyance to contain or refer to certified plan of allotments.

16. (1.) Every such transfer or conveyance shall contain or refer to a sufficient plan certified by a licensed surveyor showing the several allotments into which the land is subdivided in accordance with the aforesaid agreement, and also showing all roads which are set apart for dedication in accordance with that agreement.

(2.) On the registration of the transfer or the execution of the conveyance the roads so shown on the plan shall be deemed to be legally dedicated as public highways.

Expenditure of roading-money by the association.

17. (1.) So soon as practicable after the completion of the purchase as between the association and the vendor, the association shall expend upon the roads so dedicated the full amount of roading-money specified in the confirming Order in Council.

(2.) The association may agree with the Minister of Public Works or with any local authority that the roading-money or any part thereof shall be so expended, on behalf of the association, by the said Minister or local authority.

Transfer or conveyance of allotment from association to each purchaser.

18. (1.) So soon as practicable after the completion of the purchase as between the association and the vendor, and after the allocation of the several allotments of the land among the purchasers in accordance with the tenor of the agreement, the association shall execute in favour of each purchaser a transfer or conveyance of the allotment so allocated to him for a legal estate in fee-simple in consideration of the sum appropriated to that allotment in the agreement as the purchase-money thereof, and it shall be the duty of the purchaser to accept the said transfer or conveyance accordingly.

(2.) On the execution of the said transfer or conveyance to any purchaser he shall pay to the association such proportion of the purchase-money of the allotment as he thinks fit, being not less than four per centum thereof, and shall execute in favour of the association a legal mortgage of the allotment to secure the balance of the purchase-money, together with interest on such part of the purchase-money as is for the time being unpaid.

Interest on unpaid purchase-money

(3.) The interest shall be computed at a rate greater by one-fourth per centum per annum than the rate at which the debentures

have been issued by the association, in such manner that if interest is payable on the debentures at four per centum, interest shall be payable under the mortgage at four and a quarter per centum, and so in all other cases.

(4.) The interest shall be payable at such intervals and times as the association determines and as are specified accordingly in the mortgage.

(5.) The first payment of interest shall be computed as from the day on which interest has first begun to accrue on the said debentures or any of them.

(6.) If default is made for a period of one month in the payment of any instalment of interest, additional interest at the rate of one per centum per annum shall thereupon become payable on the principal moneys for the period in respect of which the interest so in arrear has accrued, and no relief against the payment of any such additional interest shall be granted by any Court of law or equity.

(7.) The principal moneys secured by the mortgage shall be payable by such instalments and at such times as the mortgagor from time to time thinks fit, but the mortgagor shall in every year from the date of the mortgage pay at least such part of the principal moneys as amounts, together with the interest paid by him in that year, to six per centum of the principal moneys secured by the mortgage at the commencement of that year, and shall pay the full amount of those principal moneys within twenty years from the date of the mortgage.

Payment of principal moneys.

(8.) All moneys paid by the mortgagor to the association shall be appropriated in the first place to the payment of any interest then due.

(9.) On the lawful exercise by the association of the power of sale vested in it by the mortgage, all principal moneys secured by the mortgage shall forthwith become due and payable.

(10.) The costs of every conveyance or transfer by the association to a purchaser, and of every mortgage by a purchaser to the association, shall be paid by the purchaser.

19. Every mortgage given to an association under this Act by a member thereof shall be in the prescribed form, or in such one of the prescribed forms as the association deems appropriate to the case, and shall contain such terms, powers, covenants, and conditions (consistent with this Act) as are prescribed; but no such mortgage shall be invalidated by any want of conformity with the provisions of this Act or of the regulations made thereunder.

Mortgages to be in prescribed form.

20. On the exercise by the association of the power of sale vested in it by any mortgage, it shall not be lawful for the association to purchase the land comprised in that mortgage.

Association not to purchase mortgaged land under power of sale.

21. (1.) Until one-third of the principal moneys secured by any mortgage given to an association under this Act has been paid to the association, the mortgagor or any person claiming through or under him shall not be capable, without the prior consent in writing of the Minister of Finance given on the recommendation of the Land Board of the district in which the land is situated, of alienating, mortgaging, charging, or leasing the land or any part thereof, or of creating (other-

Limitation of power of alienation until payment of one-third of principal moneys.



wise than by will) any right, title, estate, or interest (whether legal or equitable) in the land or any part thereof.

(2.) Nothing in this section shall take away or restrict any power of sale or transfer which would otherwise be vested in an executor, administrator, or trustee of the estate of any person deceased, or in the committee of any lunatic's estate, or in the assignee in bankruptcy of the estate of any bankrupt.

Mortgagor to reside on land until payment of one-third of principal moneys.

22. Until one-third of the principal moneys secured by any mortgage given to an association under this Act has been paid to the association, the mortgagor or other person entitled for the time being to the possession of the land shall continuously reside thereon, except so far as he is for the time being exempted from the requirements of residence by the warrant in writing of the Minister of Finance granted on the recommendation of the Land Board of the district in which the land is situated.

Removal of minerals and other waste prohibited.

23. While any moneys remain owing to an association on the security of any mortgage given under this Act, it shall not be lawful for the mortgagor or any other person to remove any minerals from the mortgaged property or to commit any other species of waste in respect of that property.

Effect of breach of preceding sections.

24. The breach by any person of the requirements of either of the two last preceding sections shall be deemed to be a breach of the covenants and conditions of the mortgage, and the association may thereupon exercise all powers of sale and all other powers vested in the association by the mortgage in respect of any breach of the covenants and conditions thereof.

Land purchased under this Act to become subject to Part XIII of the Land Act, 1908.

25. (1.) All land which is transferred by an association to a purchaser under this Act shall thereupon become and at all times thereafter remain subject to the provisions of Part XIII of the Land Act, 1908, in the same manner as if it had been alienated by the Crown, and every certificate of title issued in respect of any such land shall have written thereon the memorandum provided for by that Part of that Act.

(2.) This section shall not apply to land which, at the time when it becomes legally vested in the purchaser, is not subject to the provisions of the Land Transfer Act, 1908.

On failure to complete purchase by original purchaser, association may sell allotment to other person.

26. (1.) If owing to the default of the purchaser or for any other reason the contract for the sale of any allotment is not completed, and the association becomes entitled to rescind the contract, the association may at any time after the rescission thereof resell the allotment for the same purchase-money to any other person.

(2.) Every such resale shall be effected on the same terms and in the same manner as if the purchaser had been a party to the confirmed agreement in lieu of the original purchaser, save that the purchaser on the resale shall not be liable for any interest accruing in respect of the period prior to the completion of the purchase.

(3.) No person shall be capable of becoming a purchaser under this section unless on the day of the completion of the purchase he is qualified under section ninety-seven of the Land Act, 1908, to become a lessee of Crown land under Part III of that Act, and every such purchaser shall be required by the association to make and sign

a statutory declaration in the prescribed form to the effect that he is qualified accordingly.

(4.) On the completion of any such contract of resale, the purchaser shall become and be a member of the association in lieu of the original purchaser of the allotment.

(5.) If any purchaser, before the completion of the purchase of his allotment, dies, or becomes a bankrupt, the contract of purchase shall be deemed to be rescinded, and all the provisions of this section as to the resale of an allotment shall be applicable accordingly. This subsection applies both to an original purchaser and to a purchaser under this section.

27. (1.) If any purchaser makes default in completing the purchase of his allotment or in executing a mortgage thereof to the association for the period of one month after being required so to do by the association, he shall, whether the contract is rescinded or not, forfeit and pay to the association by way of liquidated damages a sum equal to one-tenth of the amount of the purchase-money of his allotment.

Damages for failure of purchaser to complete his contract.

(2.) Nothing in this section shall be so construed as to take away from the association its right to obtain specific performance of any such contract in addition to the recovery of liquidated damages as aforesaid.

28. No purchaser of any allotment, whether he is an original member of the association or a purchaser under section twenty-six of this Act, shall be capable of making any assignment of his contract of purchase or of creating any charge or other disposition of his interest under that contract, and every such assignment, charge, or disposition shall be void and of no effect.

Contracts of purchase not assignable.

29. (1.) For the purpose of the investment of trust-moneys, debentures issued and guaranteed under this Act shall be deemed to be securities issued by the Government of New Zealand within the meaning of any Act, deed, will, settlement, or other instrument authorising the investment of trust moneys, except so far as the investment of trust moneys on such debentures is expressly prohibited by that Act, deed, will, settlement, or instrument.

Trust-moneys may be invested on debentures guaranteed under this Act.

(2.) This section applies to any Act, deed, will, settlement, or instrument whether passed or executed before or after the commencement of this Act.

30. Sections one hundred and sixteen and one hundred and seventeen of the Public Works Act, 1908 (relating to roads), shall have no application to any purchase, sale, or subdivision of land effected by an association under this Act.

Sections 116 and 117 of the Public Works Act not to apply.

31. (1.) The Public Trustee shall, during the month of April in every year (commencing with the year nineteen hundred and eleven), prepare a statement showing the revenue account and balance-sheet of every association under this Act.

Annual return by Public Trustee.

(2.) Every such statement shall be audited by the Audit Office, and after being so audited shall be delivered to the Minister of Finance, who shall lay the same before Parliament within ten days after the receipt thereof if Parliament is then sitting, or if not, then within ten days after the commencement of the next ensuing session.

## Regulations.

32. The Governor may from time to time by Order in Council make regulations as to the following matters:—

- (a.) The form of agreement to be entered into under section two hereof:
- (b.) The terms to be contained in any such agreement in addition to the terms hereinbefore provided for;
- (c.) The form of declaration to be made by purchasers under section six or section twenty-six hereof:
- (d.) The form of application for the confirmation of any such agreement:
- (e.) The mode of investment by the Public Trustee of the moneys of associations under this Act:
- (f.) The exercise by the Public Trustee of his powers, functions, and duties as the agent of such associations:
- (g.) The form of debentures to be issued by such associations:
- (h.) The mode in which such debentures shall be certified by the Treasury:
- (i.) The form or alternative forms in which mortgages shall be given to associations under this Act by members thereof, and the terms, covenants, powers, and conditions to be contained in such mortgages:
- (j.) The form, custody, and use of the seals of such associations:
- (k.) Any other matters in respect of which regulations are contemplated by this Act or are deemed necessary or expedient for carrying this Act into full effect.