

New Zealand.



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1939, No. 7.

AN ACT to amend the Land Transfer Act, 1915.

Title.

[14th September, 1939.]

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

1. This Act may be cited as the Land Transfer Amendment Act, 1939, and shall be read together with and deemed part of the Land Transfer Act, 1915 (hereinafter referred to as the principal Act).

Short Title.

See Reprint of Statutes, Vol. VII, p. 1162

Qualifications
for
appointment
to certain
offices altered.

2. Section seven of the principal Act is hereby amended by omitting the words "or has passed such special examination as is prescribed by regulations under this Act", and substituting the words "or is qualified to be admitted as a barrister or solicitor of the Supreme Court, or has passed the Law Professional Examination of the University of New Zealand, or has passed such special examination in the Law of Property and the Acts relating thereto as is prescribed by regulations under this Act".

Removal of
easements and
*profits à
prendre* from
Register.

3. (1) Where any easement or *profit à prendre* has been determined or extinguished the Registrar shall, upon proof to his satisfaction of the determination or extinguishment, notify it upon the Register, upon the duplicate copy of the instrument creating or evidencing the easement or *profit à prendre* (if it is produced to him for the purpose), and upon any other relevant instrument of title:

Provided that, unless the determination or extinguishment was by effluxion of time or merger, the Registrar, before making the entry in the Register, shall give notice of his intention so to do to all persons appearing to him to be entitled to any interest under the easement or *profit à prendre*, or shall give at least one month's notice of his intention in the *Gazette* and in some newspaper published in the district where the land over which the easement or *profit à prendre* was granted is situated.

(2) The estate or interest of the registered proprietor of the easement or *profit à prendre* and of every person claiming through or under him shall, upon the making of the entry in the Register, cease and determine, but without releasing any person from any liability to which he may be subject at the time of the entry.

Extension of
lease by
memorandum
of extension.

4. (1) The term of any lease may from time to time be extended by a memorandum of extension in the Form M in the First Schedule to this Act signed by the lessor and the lessee for the time being and registered before the expiry of the then current term of the lease.

(2) Subject to the provisions of this section, the memorandum of extension shall have the same effect as if it were a memorandum of lease for the extended term subject to the same covenants, conditions, and restrictions, with the necessary modifications, as are

contained or implied in the lease. Upon the registration of the memorandum of extension the estate of the lessee thereunder shall be deemed to be subject to all incumbrances, liens, and interests to which the lease is subject at the time of the registration of the memorandum of extension. For the purposes of this subsection all references in any Act or in any agreement, deed, instrument, notice, or other document whatsoever to the lease or to the estate of the lessee thereunder shall, unless inconsistent with the context or with the provisions of this section, be deemed to be references to the lease as varied by the memorandum of extension or to the estate of the lessee thereunder, as the case may be.

(3) The covenants, conditions, and restrictions contained or implied in the lease may be expressly varied, negatived, or added to by the memorandum of extension.

(4) The memorandum of extension may be registered in the same manner as the original lease:

Provided that notwithstanding anything to the contrary in section three of the Land Transfer Amendment Act, 1925, a memorial of a memorandum of extension of any lease in respect of which a certificate of title has been issued under that section shall be entered on all relevant instruments and on that certificate of title, which shall have full validity and effect during the extended term.

See Reprint
of Statutes,
Vol. VII,
p. 1264

(5) If the land affected by the memorandum of extension is at the time of the registration of the memorandum subject to any mortgage, the memorandum shall not be binding on the mortgagee unless he has consented thereto in writing on the memorandum.

5. (1) Where upon the registration of a lease the Registrar is satisfied that it is in renewal of or in substitution for a lease previously registered, and that the lessee is the person registered as the proprietor of the prior lease at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier, he shall, if the lessee so requests and if the new lease is registered not later than one year after the expiry or surrender of the prior lease, state in the memorial of the new lease that it is in renewal of the prior lease or in substitution for the prior lease, as the case may be. In every such case the new lease shall be deemed to

Provision for
bringing down
incumbrances
on registration
of new leases.

be subject to all incumbrances, liens, and interests to which the prior lease is subject at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier. For the purposes of this subsection all references in any Act or in any agreement, deed, instrument, notice, or other document whatsoever to the prior lease or to the estate of the lessee thereunder shall, unless inconsistent with the context or with the provisions of this section, be deemed to be references to the new lease or to the estate of the lessee thereunder, as the case may be.

(2) Upon the registration of a new lease in any case to which the last preceding subsection applies, the Registrar shall record on the new lease all incumbrances, liens, and interests to which it is deemed to be subject as aforesaid in the order of their registered priority.

(3) The provisions of this section are in addition to and not in derogation of the provisions of section ninety-six of the Land Act, 1924, section thirty-six of the State Advances Corporation Act, 1936, and any other enactment.

6. (1) Notwithstanding anything to the contrary in section thirty-five of the principal Act, the priority between themselves of the mortgages affecting any land may from time to time be varied by a memorandum of priority in the Form N in the First Schedule to this Act and registered under the principal Act.

(2) The memorandum of priority shall be executed by the mortgagor and also by the mortgagee under every mortgage that, by the memorandum, is postponed to any mortgage over which it previously had priority.

(3) Where any mortgage so postponed is subject to a submortgage the memorandum of priority shall not be effective unless the submortgagee has consented thereto in writing on the memorandum.

(4) Upon the registration of the memorandum of priority there shall be implied in every mortgage so postponed the covenants, conditions, and powers set forth in the Second Schedule to this Act, except in so far as is otherwise expressed in the memorandum of priority.

See Reprint
of Statutes,
Vol. IV, p. 668
1936, No. 12

Variation
of priority
of mortgages.

(5) Upon the registration of a memorandum of priority the Registrar shall notify it upon the Register and upon any relevant instrument of title.

(6) For the purposes of this section the term "mortgage" shall be deemed to include any registered lien, charge, or other security for the payment of money, and the terms "mortgagor" and "mortgagee" shall have corresponding meanings.

(7) The provisions of this section are in addition to and not in derogation of the provisions of section thirty of the State Advances Corporation Act, 1934-35, section forty-one of the Native Land Amendment Act, 1936, and any other enactment.

7. Section one hundred and nine and subsection two of section one hundred and fifteen of the principal Act are hereby amended by omitting in both cases the words "registered subsequent thereto", and substituting the words "except an estate or interest created by any instrument which has priority over the mortgage or which by reason of the consent of the mortgagee is binding on him".

8. Without limiting the application of any other provisions of the Property Law Act, 1908, it is hereby declared that the provisions of sections sixty-eight, seventy, seventy-one, seventy-two, seventy-three, and seventy-four of that Act shall, with the necessary modifications, apply with respect to mortgages under the principal Act.

9. Section one hundred and thirty of the principal Act is hereby amended by adding to subsection one the following words: "For the purposes of this subsection a provision in any instrument to the effect that a person executing the instrument assumes liability only to the extent of any estate or interest of which he is a trustee shall not be deemed to be a notice of trust."

10. On the application of any person having any registered estate or interest in any land that is subject to a registered covenant or agreement relating to fencing, the Registrar, if he is satisfied that there is no person who is or may become entitled to the benefit of the covenant or agreement, or that all the persons who are or may become so entitled have consented to the cancellation of the covenant or agreement, shall

1934-35,
No. 42
1936, No. 53

Sections 109
and 115 (2)
of principal
Act amended.

Application of
provisions of
Property Law
Act, 1908, to
mortgages
under the
principal Act.
See Reprint
of Statutes,
Vol. VII,
p. 1102

Section 130
of principal
Act (as to
entry of
trusts on
Register)
amended.

Removal of
fencing
covenants
from title.

make an entry in the Register and on any relevant instrument of title noting that the covenant or agreement is cancelled, and thereupon the covenant or agreement shall cease to have any effect.

Sections
137-144 of
principal Act
(as to
registration
abstract)
repealed.

11. (1) Sections one hundred and thirty-seven to one hundred and forty-four, and Form I in the Second Schedule to the principal Act, are hereby repealed.

(2) Section one hundred and fifty of the principal Act is hereby consequentially amended by omitting the words "or issue any registration abstract in respect thereof".

(3) The Ninth Schedule to the principal Act is hereby amended by omitting so much thereof as relates to the fee for cancelling a registration abstract.

Section 152
of principal
Act (as to
removal of
caveats)
amended.

12. Section one hundred and fifty-two of the principal Act is hereby amended by inserting in subsection one, after the words "registered proprietor", the words "or any other person having any registered estate or interest in the estate or interest protected by the caveat".

Restrictions
on licensing of
land-brokers.
See Reprint
of Statutes,
Vol. I, p. 22

13. (1) No person shall be qualified to hold a license as a land-broker under the principal Act if he is the holder of a license as a land-agent under the Land Agents Act, 1921-22, or is a partner, agent, or servant of the holder of a license under that Act, or if he is a director, officer, or servant of a company carrying on business as a land-agent or of a building society incorporated under the Building Societies Act, 1908, or is a partner of any such director, officer, or servant.

(2) Nothing in the last preceding subsection shall apply to any person who at the passing of this Act is the holder of a license as a land-broker and who but for this subsection would immediately thereupon be disqualified from holding the license, unless he ceases for a period exceeding six months to be the holder of a license as a land-broker or establishes a place of business in any district in which at the passing of this Act he has no place of business.

(3) If any person being the holder of a license as a land-broker under the principal Act becomes disqualified under this section from holding the license, the license shall immediately thereupon be deemed to be revoked.

14. Any Registrar, with the express approval in every case of the Registrar-General, may, at his discretion, deliver to the person for the time being in charge of the Alexander Turnbull Library, or of any other library or museum approved for the purposes of this section by the Minister of Internal Affairs, any instruments, duplicate copies, or books that he may for the time being be authorized to destroy under section four of the Land Transfer Amendment Act, 1925.

Transfer of instruments, &c., to libraries and museums.

See Reprint of Statutes, Vol. VII, p. 1265

SCHEDULES.

Schedules.

FIRST SCHEDULE.

FORM M.

MEMORANDUM OF EXTENSION OF LEASE.

THE term of lease No. _____ is hereby extended to the day of _____, 19 _____.

[If desired, add the following:—

The covenants, conditions, and restrictions contained or implied in the said lease are hereby varied as follows (*Here state any variations agreed upon*)].

Dated this _____ day of _____, 19 _____.

Signed by A. B., as }
lessor, in the } A. B., Lessor.
presence of— }

G. H.,
[Occupation and address].

Signed by E. F., as }
lessee, in the } E. F., Lessee.
presence of— }

I. J.,
[Occupation and address].

FORM N.

MEMORANDUM OF PRIORITY OF MORTGAGES.

THE priority of the following mortgages in so far as they affect the land described in the Schedule hereto is hereby varied as follows:—

Mortgage No. _____ [or dated _____] in favour of
E. F. and securing the principal sum of £ _____ shall rank
as first mortgage.

Mortgage No. _____ [or dated _____] in favour of
C. D. and securing the principal sum of £ _____ shall rank
as second mortgage.

[Insert necessary additional particulars if there are more than two mortgages.]

SCHEDULE.

All that piece of land [*Here describe the land, referring to the existing grant, certificate, or other instrument of title*].

Dated this day of , 19 .

Signed by A. B., as }
mortgagor, in the } A. B., Mortgagor.
presence of— }
G. H.,

[*Occupation and address*].

Signed by C. D., as }
mortgagee, in the } C. D., Mortgagee.
presence of— }

I. J.,
[*Occupation and address*].

SECOND SCHEDULE.

COVENANTS, CONDITIONS, AND POWERS IMPLIED, PURSUANT TO
MEMORANDUM OF PRIORITY, IN MORTGAGES THEREBY
POSTPONED.

(1) That the mortgagor will duly and punctually pay all principal, interest, and other moneys secured by and will perform and observe all the covenants and conditions contained or implied in any mortgage having priority to the postponed mortgage.

(2) That if the mortgagor makes default in the payment of any moneys secured by or in the performance or observance of any of the covenants and conditions contained or implied in any mortgage having priority to the postponed mortgage, it shall be lawful for but not obligatory upon the mortgagee to pay those moneys and perform or observe those covenants or conditions, and the provisions of paragraph (6) of the Fourth Schedule to the principal Act shall, with the necessary modifications, apply with respect to all moneys so paid and all expenses incurred in performing or observing the covenants or conditions of the prior mortgage.

(3) That compliance with the provisions of any mortgage having priority to the postponed mortgage which relate to insurance against loss or damage by fire or earthquake shall be deemed, so far as it extends, to be compliance with any provisions as to such insurance contained or implied in the postponed mortgage.

(4) That any provisions in the postponed mortgage referring to any particular mortgage having priority thereto shall be deemed to refer to any mortgage at any time having priority to the postponed mortgage.