



## ANALYSIS

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 1982, No. 22

**An Act to amend the law relating to caveats and the registration of transfers pursuant to mortgagees' sales**

[7 October 1982]

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

**1. Short Title and commencement**—(1) This Act may be cited as the Land Transfer Amendment Act 1982, and shall be read together with and deemed part of the Land Transfer Act 1952 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

**2. Effect of caveat against dealings**—The principal Act is hereby amended by repealing section 141, and substituting the following section:

“141. (1) Subject to the succeeding provisions of this section, so long as a caveat in form N remains in force, the Registrar shall not make any entry on the register having the effect of charging or transferring or otherwise affecting the estate or interest protected by the caveat.

“(2) Subsection (1) of this section shall not prevent the Registrar from making any entry necessary to complete the registration of an instrument that has been accepted for registration before the receipt of the caveat.

“(3) Except in the case of a caveat lodged by the Registrar in exercise of the powers by this Act given to him in that behalf, subsection (1) of this section shall not prevent the Registrar from making any entry necessary to effect the registration of a transfer of any estate or interest in land where—

“(a) The transfer is expressed to be made in pursuance of a power of sale conferred on the transferor by virtue of a registered mortgage of that estate or interest (hereafter in this subsection referred to as the empowering mortgage); and

“(b) The caveat was lodged after the registration of the empowering mortgage; and

“(c) The estate or interest claimed by the caveator arises under an unregistered mortgage or an agreement to mortgage, dated later than the date of registration of the empowering mortgage and relating to the same estate or interest to which the empowering mortgage relates; and

“(d) The Registrar is not satisfied from the particulars stated in the caveat that, on the assumption that the caveator is able to prove his claim, the caveator would be entitled to—

“(i) An order of the Court that the registration of the empowering mortgage be cancelled; or

“(ii) The registration of any instrument that would have the effect of making the mortgagee’s estate or interest under the empowering mortgage subject to the estate or interest claimed by the caveator.

“(4) In any case to which subsection (3) of this section applies, the caveat shall, upon the registration of the transfer, be deemed to have lapsed and the estate or interest of the mortgagor therein expressed to be transferred shall pass to and vest in the purchaser freed and discharged of the estate or interest claimed by the caveator; and the District Land Registrar may make on the register any entry necessary to show that the caveat has lapsed.”

**3. Notice of interest under Matrimonial Property Act 1976**—Section 42 (3) of the Matrimonial Property Act 1976 is hereby amended by omitting the words “shall apply accordingly except that—”, and substituting the words “, except subsections (3) and (4) of section 141, shall apply subject to the following modifications:”.

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This Act is administered in the Department of Justice.

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