



ANALYSIS

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1971, No. 121

An Act to amend the Property Law Act 1952

[8 December 1971

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—This Act may be cited as the Property Law Amendment Act 1971, and shall be read together with and deemed part of the Property Law Act 1952 (hereinafter referred to as the principal Act).

2. Alienation of property may be restricted—(1) Section 33 of the principal Act is hereby amended by repealing the proviso to subsection (2).

(2) This section shall be deemed to have come into force on the 1st day of January 1970 (being the date of the commencement of the Status of Children Act 1969).

(3) All instruments executed before the 1st day of January 1970 shall be governed by the enactments and the rules of construction and law which would have applied to them if the Status of Children Act 1969 and this Act had not been passed.

3. Payment of surplus money after sale when mortgagor cannot be found—(1) The principal Act is hereby amended by inserting, after section 102, the following section:

“102A. (1) Notwithstanding anything in section 78 of this Act, or in the Fourth Schedule to this Act, or in any other provision of that Act or any other Act, or in any mortgage or other instrument, the provisions of this section shall apply to every sale of mortgaged property by the mortgagee of the property in exercise of his power of sale if any surplus money arising from the sale of the property cannot be paid to the mortgagor by reason of his not being found after reasonable inquiry by the mortgagee as to his whereabouts.

“(2) After any sale to which this section applies, the mortgagee may, on filing in the Court nearest to which he resides an affidavit giving to the best of his knowledge and belief particulars of the mortgagor, the mortgaged property, and the sale, and on serving a copy of the affidavit on the Secretary to the Treasury, pay the surplus money to the Crown by remitting it to the Secretary to the Treasury.

“(3) All money paid to the Crown under this section shall be credited by the Secretary to the Treasury to the Trust Account established under section 38 of the Public Revenues Act 1953 (as substituted by section 3 of the Public Revenues Amendment Act 1963); and sections 78 and 79 of the Trustee Act 1956 shall apply to all such money in every way as if the money were held by the Crown under section 77 of the Trustee Act 1956.

“(4) The receipt of the Secretary to the Treasury shall be a sufficient discharge to the mortgagee for any money paid to the Crown under this section.

“(5) If any mortgagee has obtained or is seeking a discharge in respect of any money under this section, the Secretary to the Treasury may at any time require the mortgagee to give such information in his possession or control as he may require in relation to the persons beneficially entitled to the money, including information as to the steps taken to trace those persons; and if any person refuses or wilfully neglects to give any such information that is in his possession or control when so required, or wilfully gives any false information in answer to any such requisition, he commits an offence and shall be liable on summary conviction to a fine not exceeding \$200.”

(2) Section 104 of the Land Transfer Act 1952 is hereby amended by adding, as subsection (2), the following subsection:

“(2) Where the surplus cannot be paid to the mortgagor by reason of his not being found after reasonable inquiry by the mortgagee as to his whereabouts, the surplus may be paid to the Secretary to the Treasury in accordance with section 102A of the Property Law Act 1952, and the provisions of that section shall apply accordingly.”

This Act is administered in the Department of Justice.
