



## ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p>2. Property agreements between persons cohabiting as husband and wife</p> <p>3. Covenants to run with land</p> <p>4. New heading and sections (relating to easements and covenants) substituted in principal Act</p> <p style="text-align: center;"><i>Easements and Covenants</i></p> <p>126. Interpretation</p> <p>126A. Notification of covenants</p>	<p>126B. Rights implied in easements of vehicular right of way</p> <p>126C. Occupier may give notice of work required</p> <p>126D. Recipient of notice may serve counter-notice</p> <p>126E. Effect of change of occupier</p> <p>126F. Jurisdiction of Court</p> <p>126G. Power for Court to modify or extinguish easements and covenants</p> <p>5. Fourth Schedule amended</p> <p>6. New Ninth Schedule added to principal Act Schedule</p>
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1986, No. 106

### An Act to amend the Property Law Act 1952

[6 November 1986]

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 1986, and shall be read together with and deemed part of the Property Law Act 1952 (hereinafter referred to as the principal Act).

**2. Property agreements between persons cohabiting as husband and wife**—The principal Act is hereby amended by inserting, after section 40, the following section:

“40A. No agreement between a man and a woman who are cohabiting as husband and wife although not legally married to each other, and no agreement made in contemplation of such cohabitation, with respect to the status, ownership, or division of any property owned by them or either of them at the date of the agreement or that may be acquired by them or either of them thereafter, shall be void or illegal as being

contrary to public policy or founded upon an illegal consideration; and every such agreement, if otherwise valid, may be enforced according to its tenor.”

**3. Covenants to run with land**—The principal Act is hereby amended by inserting, after section 64, the following section:

“64A. (1) Subject to subsection (6) of this section, this section applies to every covenant, whether express or implied under this or any other Act, and whether positive or restrictive in effect, where—

“(a) The covenant relates to any land of the covenantor and is intended to benefit the owner for the time being of the covenantee’s land; and

“(b) There is no privity of estate between the covenantor and the covenantee.

“(2) Notwithstanding any rule of law or equity to the contrary, but subject to subsections (3) to (5) of this section, every covenant to which this section applies shall, unless the contrary is expressed,—

“(a) Be binding in equity on—

“(i) Every person who acquires a fee simple estate in the land (whether from the covenantor or any of the covenantor’s successors in title, and whether for valuable consideration or not, and whether by operation of law or otherwise); and

“(ii) Every other person who is for the time being the occupier of the land within the meaning of section 126 of this Act; and

“(b) Cease to be binding on any such person when that person ceases to hold a fee simple estate in the land, or ceases to be the occupier of the land, as the case may require, but without prejudice to that person’s liability for any breach of the covenant arising before that person ceases to hold that estate or to occupy the land.

“(3) The administrator of the estate of any person who, at the date of that person’s death was bound by a covenant to which this section applies shall, if the covenant is positive in effect, be bound by the covenant only to the extent of the assets of the estate in the administrator’s hands and available for the meeting of any obligation under the covenant.

“(4) The rights under a covenant to which this section applies shall rank in relation to all other unregistered interests

affecting the same land as if it were an equitable and not a legal interest, but subject to the effect of notification under the Land Transfer Act 1952 pursuant to section 126A of this Act.

“(5) Nothing in this section shall limit or affect—

“(a) The duty to observe the terms of any restrictive covenant affecting any land owned by any person holding any interest in the land (other than the occupier within the meaning of section 126 of this Act); or

“(b) The law relating to restrictive covenants in gross.

“(6) Nothing in this section shall apply to any covenant entered into, or implied in respect of any particular land or any particular owners or occupiers of any land, before the 1st day of January 1987.”

**4. New heading and sections (relating to easements and covenants) substituted in principal Act**—The principal Act is hereby amended by repealing sections 126 and 127, and the heading above those sections, and substituting the following heading and sections:

*“Easements and Covenants*

“126. **Interpretation**—In sections 126A to 126G of this Act and the Ninth Schedule to this Act, unless the context otherwise requires,—

“‘Court’ means a District Court:

“‘Easement of vehicular right of way’ means a right of way entitling the occupier of the dominant tenement to pass with vehicles over the servient tenement, such easement being created by—

“(a) An instrument registered under the Land Transfer Act 1952; or

“(b) A contract or arrangement that is enforceable at law or in equity against the occupier for the time being of the servient tenement:

“‘Notice’ means a notice given under section 126C of this Act concerning work required in terms of a positive covenant or an easement of vehicular right of way:

“‘Occupier’,—

“(a) In relation to any land other than a public reserve, means the owner of the land, except that,—

“(i) Where another person is in occupation of the land under a tenancy granted for a term of not less than 10 years certain or continues to be in occupation of it under

such a tenancy, that other person shall be the occupier of the land for the purposes of those sections:

“(ii) Where no person is the occupier of the land by virtue of subparagraph (i) of this paragraph, but a person is in occupation of the land as mortgagee in possession, that mortgagee shall be the occupier of the land for the purposes of those sections:

“(b) In relation to any public reserve, means the local authority, trustees, or persons in which or whom control of the reserve is vested:

“ ‘Positive covenant’ means a covenant whereby the covenantor undertakes to do something in relation to the covenantor’s land that would beneficially affect the value of the covenantee’s land or the enjoyment of that land by any person occupying it.

“126A. **Notification of covenants**—(1) Where a positive covenant or a restrictive covenant relating to any land under the Land Transfer Act 1952, the benefit of which is intended to be annexed to other land, is contained in an instrument coming into operation after the operative date, the following provisions shall apply:

“(a) The District Land Registrar shall have power to enter in the appropriate folium of the register book relating to the land subject to the burden of the covenant a notification of the covenant, and a notification of any instrument purporting to affect the operation of the covenant of which a notification has been so entered, and, if the covenant is revoked or modified, to cancel or alter the notification:

“(b) A notification in the register book of any such covenant shall not give the covenant any greater operation than it has under the instrument creating it:

“(c) Every such covenant notified on the appropriate folium of the register book shall be an interest within the meaning of section 62 of the Land Transfer Act 1952.

“(2) For the purposes of subsection (1) of this section, the term ‘the operative date’,—

“(a) In relation to positive covenants, means the 1st day of January 1987:

“(b) In relation to restrictive covenants, means the 1st day of January 1953.

“126B. **Rights implied in easements of vehicular right of way**—(1) In every grant of an easement of vehicular right of way there shall be implied the rights set out in the Ninth Schedule to this Act.

“(2) To the extent that any such rights may be exercised by an occupier in respect of the occupier’s own land, those rights shall be in addition to and not in limitation of the occupier’s rights as occupier of the land.

“(3) Subsection (1) of this section applies only in so far as a contrary intention is not expressed in the instrument, contract, or arrangement creating the easement, and shall have effect subject to the provisions thereof.

“(4) Where the instrument, contract, or arrangement creating the easement was executed, entered into, or made before the date of the commencement of this section, no provision of that instrument, contract, or arrangement shall be taken for the purposes of subsection (3) of this section to express a contrary intention unless that provision is for the time being legally enforceable.

“(5) The provisions of this section shall be in addition to and not in derogation of the provisions of section 90D of the Land Transfer Act 1952 and section 27 (3) of the Housing Act 1955.

“126C. **Occupier may give notice of work required**—(1) Where the occupier of any land seeks to require any occupier of any other land to undertake or contribute to the cost of undertaking any work required in terms of any positive covenant, or of any easement of vehicular right of way, that occupier may serve on that other occupier a notice—

“(a) Specifying the work required to be carried out, with sufficient particularity to enable the recipient to comprehend the nature of the work required and to estimate the cost of the work; and

“(b) Identifying the positive covenant or easement of vehicular right of way under which it is claimed the work is required and the recipient of the notice is obliged to undertake or contribute to the cost of undertaking the work; and

“(c) Setting out the consequences of failure to comply with the notice.

“(2) If it is proposed that the cost of the work shall be borne by two or more occupiers (whether or not including the sender

of the notice), the notice shall state the shares that are proposed.

“(3) If it is considered by the sender of the notice that it will be necessary for the purposes of undertaking the work or any part of it to enter upon the recipient’s land, not being, in the case of an easement of vehicular right of way, the portion of that land actually comprised in the right of way, the notice shall include a statement to that effect, indicating the intended purpose, extent, and duration of the proposed entry.

“(4) In the absence of agreement to the contrary, an occupier of land shall not be liable to contribute to the cost of any part of the work that is done—

“(a) After the due service of such a notice and before due service of a cross-notice on the occupier who gave the notice or the expiration of 21 days from the date of the service of the notice, whichever first happens:

“(b) After the due service of such a notice and cross-notice, and while differences between the parties remain to be resolved either by agreement or by the Court.

**“126D. Recipient of notice may serve counter-notice—**

(1) If the recipient of a notice disputes the nature or extent of the work required, or the apportionment of the cost of the work, or any matter relating to entry onto the recipient’s land, as specified in the notice, the recipient may, within 21 days after the date of the service of the notice, serve on the occupier who sent the notice a cross-notice signifying the recipient’s objection, and may make counter-proposals in that cross-notice.

“(2) Any counter-proposal proposed in a cross-notice shall be specified with the same particularity as is required in the case of a notice by section 126C of this Act.

**“126E. Effect of change of occupier—**Where a notice or cross-notice is duly given by the occupier of any land to the occupier of any other land in accordance with section 126C or section 126D of this Act, but, before the matter is settled (whether by agreement or order of the Court), one of the parties disposes of his or her interest in either of the parcels of land concerned, the notice or cross-notice shall cease to have effect.

**“126F. Jurisdiction of Court—**(1) Notwithstanding that a question of title may be involved, a Court shall have

jurisdiction to hear and determine all questions and disputes arising in relation to the following matters:

- “(a) Whether any positive covenant or restrictive covenant—
    - “(i) Does or does not relate to, or beneficially affect, any land; or
    - “(ii) Is or is not enforceable, whether under this Act or otherwise, by or against any person:
  - “(b) Whether any easement is or is not an easement of vehicular right of way within the meaning of section 126 of this Act:
  - “(c) Whether any work is or is not required in accordance with any such covenant or easement, and the extent and nature of that work:
  - “(d) The reasonable and proper cost of any such work, including interest on outlay and reasonable remuneration for the superintendence and labour of an occupier (or of any person acting on an occupier’s behalf) when the occupier is or has been personally engaged on the work:
  - “(e) The person or persons by whom the cost of any such work is to be borne; and, if the cost is to be borne by 2 or more persons, the proportion of the cost that each of them shall bear:
  - “(f) The date on or before which, and the manner in which, any such work is to be done:
  - “(g) The use on any land of animals, vehicles, aircraft, hovercraft, or any other mode of conveyance, and any equipment, for the purpose of carrying out any such work:
  - “(h) Any other question or dispute arising in respect of any such covenant, easement, or work:
  - “(i) The costs of any proceedings (including such expenses of survey as the Court thinks fit), and the parties by whom and to whom costs are to be paid.
- “(2) In determining under subsection (1) (e) of this section the proportion of the cost of any work required in respect of any easement of vehicular right of way that is to be borne by any occupiers, the Court shall have regard to the respective benefit derived from the easement by each of the occupiers assuming full and reasonable use by each of them in terms of the easement; but, in any case where the Court is satisfied that there clearly has been or clearly will be a disproportionate (although still reasonable) use by any of the occupiers, the

Court may vary their respective contributions so as to reflect fairly that disproportionate use.

“(3) In any case where—

“(a) A notice has been given under subsection (1) of section 126C of this Act; and

“(b) That notice stipulates, in accordance with subsection (3) of that section, that entry onto any part of the recipient’s land is considered necessary for the purposes of the proposed work; and

“(c) Any matter relating to such entry is in dispute between the parties,—

the Court may, by order, authorise entry onto the land, on such terms and subject to such conditions as it thinks fit, if it is satisfied that it would not be reasonably practicable to undertake any necessary work without such entry.

“(4) In any case where a Court has jurisdiction under this section, it may—

“(a) Make such consequential order as it thinks fit:

“(b) Enter judgment for such sum of money as it thinks fit.

“(5) In such case,—

“(a) The Court may make or enter an interim order or judgment:

“(b) The order or judgment shall be deemed to be final unless it expressly states that it is an interim order or judgment.

**“126G. Power for Court to modify or extinguish easements and covenants—**(1) Where land is subject to an easement or a positive covenant or a restrictive covenant, a Court may from time to time, on the application of the occupier of the land, by order, modify or wholly or partially extinguish the easement or covenant upon being satisfied—

“(a) That, by reason of any change since the creation of the easement or covenant—

“(i) In the nature or extent of the user of the land to which the benefit of the easement or covenant is annexed or of the user of the land subject to the easement or covenant; or

“(ii) In the character of the neighbourhood; or

“(iii) In any other circumstances of the case that the Court considers relevant,—

the easement or covenant ought to be modified or wholly or partially extinguished; or

“(b) That the continued existence of the easement or covenant in its present form would impede the

reasonable user of the land subject to the easement or covenant in a different manner or to a different extent from that which could have been reasonably foreseen by the original parties at the time of the creation of the easement or covenant; or

“(c) That every occupier of full age and capacity of the land to which the benefit of the easement or covenant is annexed has agreed to the easement or covenant being modified or wholly or partially extinguished, or by his or her acts or omissions may reasonably be considered to have abandoned or waived the easement or covenant wholly or in part; or

“(d) That the proposed modification or extinguishment will not substantially injure the persons entitled to the benefit of the easement or covenant.

“(2) Without limiting subsection (1) of this section, on an application under that subsection in relation to an easement of vehicular right of way, a Court may make an order modifying or excluding the operation of any of the provisions of the Ninth Schedule to this Act.

“(3) Where any proceedings are instituted to enforce an easement or a positive covenant or a restrictive covenant, or to enforce any rights arising out of a breach of any such covenant, any person against whom the proceedings are instituted may, in those proceedings, apply to the Court for an order under this section.

“(4) Notice of any application made under this section shall, if the Court so directs, be given to the territorial authority (within the meaning of the Local Government Act 1974) of the district in which the land is situated, and to such other persons and in such manner, whether by advertisement or otherwise, as the Court may direct.

“(5) An order under this section shall, when registered in accordance with the succeeding provisions of this section, be binding on all persons, whether of full age or capacity or not, then entitled or thereafter becoming entitled to the benefit of the easement or covenant, and whether or not those persons are parties to the proceedings or have been served with notice.

“(6) In the case of land under the Land Transfer Act 1952, the District Land Registrar may of his or her own motion, and on the application of any person interested in the land shall, make all necessary amendments and entries in the register book for giving effect to the order in respect of all grants,

certificates of title, and other instruments affected thereby and the duplicates thereof, if and when available.

“(7) In the case of other land, a memorandum of the order shall be endorsed on such of the instruments of title as the Court directs.”

**5. Fourth Schedule amended**—(1) The Fourth Schedule to the principal Act is hereby amended by inserting, after clause (4), the following clause:

“(4A) That the mortgagor will during the continuance of the mortgage do all things and pay all sums that may be required to be paid or done by the occupier of the land under any covenant to which section 64A of the Property Law Act 1952 applies that is positive in effect and to which the land is subject.”

(2) The Fourth Schedule to the principal Act is hereby further amended—

- (a) By inserting in clause (5), after the words “good and substantial repair and condition as aforesaid,” the words “or to do all things and pay all sums that may be required to be done and paid under any such covenant as aforesaid,”;
- (b) By adding to that clause the words “, or to do all things and pay all sums that may be required to be done and paid under any such covenant as aforesaid”.

**6. New Ninth Schedule added to principal Act**—The principal Act (as amended by section 13 (2) of the Property Law Amendment Act 1975) is hereby amended by adding the Ninth Schedule set out in the Schedule to this Act.

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## Section 6

## SCHEDULE

## NEW NINTH SCHEDULE TO PROPERTY LAW ACT 1952

## "NINTH SCHEDULE

## RIGHTS IMPLIED IN EASEMENTS OF VEHICULAR RIGHT OF WAY

1. The right of the grantee, the grantee's servants, tenants, agents, workmen, licensees, and invitees (in common with the grantor, the grantor's tenants, and any other person lawfully entitled) at all times by day and by night to go, pass, and repass, with or without vehicles, machinery, and implements of any kind, over and along the land over which the easement is granted.

2. The following rights of the occupiers of the land for the benefit of which, and the land over which, the easement is granted:

- (a) The right to establish a driveway, and to effect necessary repairs to any existing driveway, and to carry out any necessary maintenance and upkeep, where necessary altering the state of the land over which the easement is granted; and any necessary rights of entry on the land over which the easement is granted with or without machinery, plant, and equipment:
- (b) The right to have that land over which the easement is granted kept clear at all times of obstructions whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway:
- (c) The right to a reasonable contribution from other occupiers towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard:
- (d) The right to recover from the other occupiers the cost of repairs to the driveway occasioned by any wilful or negligent act, and all such costs occasioned by them, their agents, servants, contractors, permitted occupants, residents, or invitees arising out of the use of the driveway:
- (e) Where work is carried out by one occupier on the land of an adjoining owner pursuant to paragraph (b) of this clause or to any order of a Court, the right of the latter owner or occupier to have the land restored as far as possible to its former condition after the completion of the work, subject to the right of contribution described in paragraph (c) of this clause."

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This Act is administered in the Department of Justice.

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