

This Public Bill originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

*Legislative Council,
18th June, 1880.*

Hon. Mr. Whitaker.

LAND TRANSFER ACT AMENDMENT.

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A BILL INTITULED

AN ACT to amend "The Land Transfer Act, 1870."

Title.

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

1. The Short Title of this Act is "The Land Transfer Act Amendment Act, 1880."

Short Title.

2. In this Act—

Interpretation.

"The Act" means "The Land Transfer Act, 1870;"

"The said Acts" means and includes "The Land Transfer Act, 1870," "The Land Transfer Act 1870 Amendment Act, 1871," "The Land Transfer Act 1870 Amendment Act, 1874," and "The Land Transfer Act 1870 Amendment Act, 1876."

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3. In addition to the meanings assigned to them in the Act, the following terms shall have and shall be deemed and construed to have had, as from the passing of the Act, the extended meanings hereinafter assigned to them respectively, that is to say,—

Additional meanings to "encumbrance."

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The term "encumbrance" includes any charge on land for securing the repayment of future advances, balances of accounts current, or other debts not actually existing or ascertained prior to the creation of such encumbrance; also any charge on land for securing the payment to the holders for the time being of any bonds, debentures, promissory notes, or other securities (negotiable or otherwise), made or issued by the encumbrancer to any person or persons, whether before or after the creation of the encumbrance:

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"Encumbrancer" includes the proprietor of any land, or of any estate or interest in land, charged with any encumbrance as hereinbefore defined:

“Encumbrancee” includes any person in whose favour such encumbrance is created.

Informal mortgage to take effect as an encumbrance.

4. Every charge heretofore created in the form of mortgage for effecting any security to which the form of encumbrance is hereinbefore made applicable, shall, so far as the same shall be inoperative as a mortgage, take effect as an encumbrance.

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Repeal.

5. The fourth section of “The Land Transfer Act 1870 Amendment Act, 1876,” is hereby repealed.

Act to be read as part of Land Transfer Acts.

6. This Act shall be read with and as a part of the said Acts.

Mortgagee or encumbrancee may apply to Registrar to conduct sale.

7. Any present or future mortgagee or encumbrancee who shall have become entitled under the provisions of the Act to exercise any power of sale by virtue thereof, may apply to the Registrar or Deputy-Registrar of the Supreme Court, who shall be resident nearest to the land intended to be sold, to conduct such sale.

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Registrar shall fix a convenient time and place.

Such Registrar or Deputy Registrar shall thereupon fix a convenient time (being within three months of such application), and a convenient place, for such sale, and shall approve proper conditions of sale, and employ an auctioneer, and shall do all other necessary acts for effectuating such sale, without being entitled to any percentage or other remuneration: Provided that no sale shall be made under the provisions of this Act until such Registrar or Deputy Registrar shall have been satisfied that all demands and notices required by the Act, or by the terms of such mortgage or encumbrance, have been given and made.

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Mortgagee or encumbrancee may be a bidder.

It shall be lawful for the mortgagee or encumbrancee to be a bidder at any such sale, and to become the purchaser of the land or any part thereof.

If a purchaser, Registrar to execute transfer.

In the event of the mortgagee or encumbrancee being declared the purchaser, the Registrar or Deputy Registrar who shall have conducted such sale, or his successor in office shall, on being required so to do, execute a transfer to such mortgagee or encumbrancee of the land sold; and such transfer shall be expressed to be made in exercise of such power of sale, and of the provisions of this Act, and shall be signed by such Registrar or Deputy Registrar in his own proper name, with the addition of his official description.

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Transfer may be registered.

Every transfer executed as aforesaid may be registered under the provisions of the Act; and upon such registration the estate and interest of the mortgagor or encumbrancer in the land transferred shall vest in the mortgagee or encumbrancee absolutely.

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Certain land may be brought under provisions of Act.

8. Land in respect of which any person is entitled to a grant from the Crown may, if the person entitled to such grant became so entitled prior to the constitution of the land registration district within which such land is situate, be brought under the provisions of the said Act by application in manner hereafter provided.

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Application, by whom to be made. Form of application.

9. Every such application shall be made by the person or persons entitled to an equitable estate in fee-simple in possession in entirety in such land, and shall be authorized by the Governor in manner hereinafter provided; and such applications shall be in the like form and shall be dealt with in the like manner in every respect as if a Crown grant for such land had actually issued, except that from such applications the words having reference to the land the subject thereof having been granted shall be omitted.

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Other land may be brought under Acts.

10. The District Land Registrar may, on the application of any person who shall have become entitled since the constitution of any land registration district to a Crown grant of land within such district, or on the application of any person entitled, under the provisions of the said Acts or either of them, to be registered as proprietor of such land for an estate of inheritance in fee-simple in posses-

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sion, issue to such applicant a certificate of title for such land subject to all such estates and interests as ought to be notified on the Crown grant in case the same had been issued and registered. And every certificate so issued shall be as valid as if issued immediately after the registration of a Crown grant for the land included in such certificate: Provided that no application shall be received for the issue of a certificate as aforesaid unless authorized by the Governor in manner hereinafter mentioned.

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11. Every authority to be given by the Governor for the purposes of the foregoing clauses or either of them shall be in writing, signed by him, and shall specify the name and description of the person or persons entitled to such grant, and, if more than one, whether as joint tenants or tenants in common, and the date whereon the right to such grant accrued, together with a description of the land sufficient to identify the same, the correctness of which shall be certified by the Surveyor-General of the colony or by a deputy appointed by him for the purpose; and such authority shall also state whether such land is intended to be held in trust as a public reserve or otherwise, or is subject to any road or other reservation or restriction, and such authority shall be conclusive evidence to the District Land Registrar of the matters hereby required to be therein stated.

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Governor's authority, what to contain.

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12. The provisions of section thirty-five of the Act shall extend and apply to land brought under the Act under the provisions hereof; and all land for which a certificate of title in lieu of grant shall be issued as aforesaid shall be deemed to have been brought under the provisions of the Act by grant.

Liability to roads to be subscribed or indorsed on certificate.

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If, under any Act of the General Assembly, or by any other lawful authority, the land comprised in any certificate issued under the provisions of this Act or of the said Acts, or either of them, is liable to have a road or railroad taken and laid out thereon for public use, a memorandum to that effect shall be subscribed or indorsed on the said certificate by the said Registrar, and the said land shall be held subject to such liability: Provided that this clause shall not apply to certificates already issued under the said Acts.

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13. When the said road or railroad is taken and laid off, a new certificate may be issued by the said Registrar, on which such road or railroad shall be delineated; and the same shall thereupon and thereby be and be deemed to be excluded from the said certificate, and shall thenceforth be a road or railroad for public use.

When road taken, to be deemed excluded from certificate.

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14. It shall be lawful for the Governor in Council from time to time to fix the fees to be charged under this Act, and to vary and alter the same, and also to declare when such fees shall be payable and by whom they shall be received.

Fees.