



ANNO VICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 57 of 1975

An Act to amend the Property Law Act 1974 in certain particulars

[ASSENTED TO 27TH NOVEMBER, 1975]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Property Law Act Amendment Act 1975*.

(2) In this Act the *Property Law Act 1974* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Property Law Act 1974–1975*.

2. Amendment of s. 2. Section 2 of the Principal Act is amended by inserting after the expression—

“ *Division 2—Improvements under mistake of title, ss. 195–198;*”
the following expression:—

“ **PART XIA—RIGHTS OF WAY, s. 198A;**”.

3. Amendment of s. 4. Section 4 of the Principal Act is amended by, in subsection (1), adding at the end of the definition “bank” the words “or under an Act of the State to carry on banking business in Queensland”.

4. Amendment of s. 55. Section 55 of the Principal Act is amended by omitting from subsection (3) the expression “, the promisee.” where it occurs in provision (d).

5. Amendment of s. 69. Section 69 of the Principal Act is amended by omitting from subsection (1) the words “ whether at law or in equity ”.

6. Amendment of s. 80. Section 80 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:—

“(4) The execution or attempted execution of a second or subsequent mortgage shall not—

- (a) constitute a breach of any term, covenant, condition or proviso for re-entry contained in the mortgage;
- (b) occasion any forfeiture or penalty; or
- (c) render payable or accelerate the time for payment of any sum or sums which, if such mortgage had not been executed or if the attempt to execute such mortgage had not been made, would not have been payable or would not have been payable at that time.”.

7. Amendment of s. 82. Section 82 of the Principal Act is amended by—

(a) in subsection (1), adding after subparagraph (b) the following words and subparagraph:—

“ ; or

(c) if his mortgage imposes on him an obligation to make such further advances ”;

(b) omitting from subsection (3) the words “ date of the original advance ” and substituting the words “ time when the original mortgage was created ”.

8. Amendment of s. 87. Section 87 of the Principal Act is amended by—

(a) omitting subsection (2);

(b) renumbering subsection (3) as subsection (2) and omitting from that subsection the words “ The preceding provisions of this section ” and substituting the words “ This section ”.

9. Amendment of s. 105. Section 105 of the Principal Act is amended by omitting from paragraph (b) of subsection (1) the words “ for any lesser period ” and substituting the words “ for any less period of premises for the purpose or principally for the purpose of human habitation ”.

10. Amendment of s. 106. Section 106 of the Principal Act is amended by—

(a) omitting the note appearing in and at the beginning of the section and substituting the note “ **Obligations in short leases** ”;

(b) omitting from subsection (1) the words “ for any lesser period ” and substituting the words “ for any less period ”;

(c) omitting from subsection (1) paragraph (a) and substituting the following paragraph:—

“(a) on the part of the lessor, in the case of a lease of premises for the purpose or principally for the purpose of human habitation, to provide and maintain the premises or such part as is let for such purpose in a condition reasonably fit for human habitation;”.

11. Amendment of s. 124. Section 124 of the Principal Act is amended by omitting subsection (7) and substituting the following subsection:—

“(7) The rights and powers conferred by this section are in addition to and not in derogation of any right to relief or power to grant relief had apart from this section.”.

12. Amendment of s. 127. Section 127 of the Principal Act is amended by adding at the end of the section the following subsection:—

“(4) The rights and powers conferred by this section are in addition to and not in derogation of any right to relief or power to grant relief had apart from this section.”.

13. Amendment of s. 144. Section 144 of the Principal Act is amended by omitting from subsection (3) the words “those Acts” and substituting the words “that Act”.

14. Amendment of s. 169. Section 169 of the Principal Act is amended by—

(a) omitting from subsection (2) the expression “(3)” and substituting the expression “(4)”;

(b) inserting after subsection (2) the following subsection:—

“(3) The provisions of subsection (1) do not apply to a power of attorney created by and contained in an instrument of mortgage which is signed by or by direction of the donor of the power.”;

(c) renumbering subsection (3) as subsection (4).

15. Amendment of s. 174. Section 174 of the Principal Act is amended by omitting from subsection (4) the words “, subject to paragraph (a) of subsection (5)”.

16. Amendment of s. 175. Section 175 of the Principal Act is amended by, in subsection (1), inserting after the words “a conveyancer,” where they occur in subparagraph (b) the words “a notary public,”.

17. New Part XIA. Rights of way. The Principal Act is amended by inserting after section 198 the following heading and section:—

“PART XIA—RIGHTS OF WAY

198A. Prescriptive right of way not acquired by user. (1) User after the commencement of this Act of a way over land shall not of itself be sufficient evidence of an easement of way or a right of way having been acquired by prescription or by the fiction of a lost grant.

(2) If at any time it is established that an easement of way or right of way over land existed at the commencement of this Act the existence and continuance thereof shall not be affected by subsection (1).

(3) For the purpose of establishing the existence at the commencement of this Act of an easement of way or right of way over land user after such commencement of a way over that land shall be disregarded.”.

18. Amendment of s. 228. Section 228 of the Principal Act is amended by omitting from subsection (3) the words “or upon good consideration and in good faith”.

19. Amendment of s. 260. Section 260 of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:—

“(c) by Order in Council, amend the Second Schedule by prescribing therein additional forms for use in connexion with this Act or by omitting therefrom or varying or modifying any form provided therein for use in connexion with this Act.”.

20. Amendment of Third Schedule. The Third Schedule to the Principal Act is amended by omitting from Covenant 5 in Column Two the words “twice in every year”.

21. Amendment of Sixth Schedule. The Sixth Schedule to the Principal Act is amended by—

(a) omitting from Part I the reference “1570” where it occurs in the column headed “Year and Number” and substituting the reference “1571”;

(b) in Part III, adding at the end of the words appearing in the column headed “Extent of Repeal” opposite the words “*Equity Act of 1867 as amended*” the words “and 74”.