

LAND VENDORS BILL, 1961.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to prohibit the sale of land by instalments where the land is one of more than five lots comprised in a plan of subdivision unless the subdivision complies with the provisions of the Local Government Act, 1919, and, except where a licensed real estate agent approved by the Minister, has control of the sale of lots in the subdivision, a trustee has been appointed to protect the interests of purchasers of the lots;
- (b) to deem the contract (referred to as an instalment contract) in respect of any such sale to contain certain undertakings by the vendor relating to the procuring of the registration of the plan of subdivision;
- (c) to empower the Minister to grant exemptions from the provisions referred to in paragraph (a) above;
- (d) to specify the matters which the trust deed appointing the trustee referred to in paragraph (a) above is to contain;
- (e) to require certain notices containing information as to land sold under an instalment contract, and as to the rights of purchasers of such land, to be given by the vendor to such purchasers;
- (f) to deem every instalment contract to contain provisions entitling the purchaser to obtain an assurance of the land sold after payment of ten per centum of the purchase money subject to his granting a mortgage back to the vendor in respect of the balance of the purchase money;
- (g) to invalidate certain stipulations and provisions in instalment contracts;
- (h) to impose on a vendor under an instalment contract certain duties relating to the procuring of the registration of the assurance referred to in paragraph (f) above;
- (i) to make other provisions of a machinery or ancillary character.

No. , 1961.

A BILL

To safeguard the interests of purchasers of land in subdivisions under instalment contracts; for this purpose to amend the Conveyancing Act, 1919, and certain other Acts in certain respects; and and for purposes connected therewith.

[MR. MANNIX;—30 *November*, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same. as
5 follows:—

1. (1) This Act may be cited as the "Land Vendors Act, 1961".

(2) Short title
and com-
mencement.

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(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act, unless the context or subject matter otherwise indicates or requires— Interpretation.

10 “Agent” means any person (other than a solicitor acting as solicitor for a vendor) who as servant of, agent for, or otherwise on behalf of a vendor effects or purports to effect a sale of land by instalment contract.

15 “Instalment contract” means a contract entered into for the sale of a lot or lots in a subdivision comprising five or more lots (and whether such subdivision is illustrated by a single plan or by more than one plan) where such contract provides for payment of the purchase money by three or more part payments thereof (whether called deposit or otherwise) and includes any instrument which determines or regulates the method of payment of purchase money by instalments, whether periodical or otherwise, but does not include—

- 20 (a) a contract effecting a re-sale without re-subdivision by a vendor who purchased less than five lots in an existing subdivision; or
- 25 (b) an option to purchase unless by its terms all or part of the consideration for the granting of such option (whether or not such consideration is to be applied to the purchase price) is payable by three or more part payments.

30 “Land” has the meaning ascribed thereto in the Conveyancing Act, 1919, as amended by subsequent Acts.

35 “Licensed Estate Agent” means an estate agent licensed under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941, as amended by subsequent Acts. “Subdivision”

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“Subdivision” has the meaning ascribed thereto in the Local Government Act, 1919, as amended by subsequent Acts.

3. No vendor or agent shall—

- 5 (a) sell or offer for sale under an instalment contract; or
- (b) induce any person to enter into an instalment contract to purchase,

Sale of land in unapproved subdivisions prohibited.

any land unless the subdivision is an approved subdivision.

10 4. For the purposes of this Act, a subdivision is an approved subdivision if—

Approved subdivisions.

- 15 (a) the town or shire clerk of the council of the city, municipality or shire in which the land in such subdivision is situated has certified that the requirements of the Local Government Act, 1919, as amended by subsequent Acts, relating to the subdivision, other than the requirement for the registration of plans, have been complied with; and
- 20 (b) subject to the provisions of section five of this Act, the subdivision plan has been lodged for registration with the Registrar-General;
- 25 (c) subject to the provisions of section six of this Act, a trustee approved by the Minister has been appointed to protect the rights and interests of purchasers of lots in the subdivision by a trust deed which complies with the provisions of this Act and such trustee has not ceased to hold office other than upon determination of the trust by effluxion of time.

30 5. Where a plan of subdivision has not been lodged in the office of the Registrar-General, any instalment contract relating to a lot or lots in the subdivision shall be deemed to include an undertaking by the vendor that he will—

Implied undertakings by vendor where plan of subdivision not lodged for registration.

- 35 (a) within twenty-eight days from the date of the certificate of the town or shire clerk referred to in paragraph (a) of section four of this Act, cause a plan

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plan of such subdivision to be lodged in the office of the Registrar-General for registration as a deposited plan; and

- 5 (b) thereafter do all things required of him to procure prompt registration of that plan.

6. (1) A vendor may give an undertaking to the Minister that a licensed estate agent, nominated in such undertaking, shall have exclusive conduct of the sale of all lots in a subdivision.

Appoint-
ment of
trustee not
required
in certain
cases.

- 10 (2) The Minister may, at his discretion and upon such terms and subject to such conditions as he thinks fit, approve of the form of the undertaking and of the licensed estate agent nominated therein.

- 15 (3) So long as the terms of an undertaking so approved by the Minister are observed the vendor shall not be required to comply with the provisions of paragraph (c) of section four of this Act.

- 20 7. The Minister may at his discretion certify that the requirements of paragraph (c) of section four and of section six of this Act have been dispensed with in the case of any subdivision and in such case the vendor shall not be required to comply with the provisions thereof.

Minister
may grant
exemption
from
sections 4
(c) and 6.

8. Every deed referred to in paragraph (c) of section four of this Act shall—

Trust
deeds.

- 25 (a) make provision for the appointment for a period of five years after the council's approval referred to in paragraph (a) of that section of a person as trustee for purchasers of lots in the subdivision proposed to be sold;
- 30 (b) make provision for the re-appointment of the trustee and the re-execution of the trust deed for an additional period if the duties of the trustee have not been discharged within the said period of five years and for the trustee and for the vendor to notify
- 35 the Minister within seven days after the expiration of

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- of the said period of five years of the re-appointment of the trustee and the period for which the trust has been extended;
- 5 (c) make provision for the appointment of a new trustee by the vendor with the approval of the Minister if the trustee ceases to hold office during the period of operation of the trust or any extension thereof, and for the disposal of any moneys held by the trustee at the time of his ceasing to hold office;
- 10 (d) have annexed thereto a copy of the form of instalment contract to be used in connection with the sale of the land comprised in the subdivision which form shall provide that all moneys payable thereunder as the initial payment whether by way of deposit or otherwise shall be paid to the trustee;
- 15 (e) contain a provision that all such moneys shall be received by the trustee and shall be retained by him until—
- 20 (i) the trustee has satisfied himself that the purchaser or prospective purchaser has been given the notices prescribed in section ten of this Act; and
- 25 (ii) an instalment contract signed by both vendor and purchaser or their properly constituted attorneys has been presented to him for inspection and the written authorities of both vendor and purchaser to account for such moneys have been furnished to him;
- 30 (f) contain covenants binding the vendor that he will—
- 35 (i) register the plan of subdivision and comply with all requirements of the council or any other competent authority in regard to the subdivision and comply with any obligations to which the vendor has committed himself under the instalment contract;
- (ii)

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- 5 (ii) make available to the trustee or to any registered public accountant appointed by him, for inspection, the whole of the books of the vendor relating to the subdivision to which the deed relates; and
- 10 (iii) give to the trustee or to any such registered public accountant such oral or written information as he requires with respect to the subdivision to which the deed relates where inspection of such books of account or such information is necessary for the proper and effective carrying out of the trustee's duties and functions under the Act; and
- 15 (g) contain covenants binding the trustee that he will—
 - (i) exercise all due diligence and vigilance in carrying out his functions and duties in watching the rights and interests of the purchasers of lots in the subdivision to which the deed relates;
 - 20 (ii) punctually account for all moneys paid to him in pursuance of this section in terms of the authorities of the vendor and of the purchaser; and
 - 25 (iii) keep or cause to be kept proper books of account with respect to all moneys paid to him as aforesaid.

9. Where any document referring to an approved sub-
 30 division contains a statement that the trust deed referred to in paragraph (c) of section four of this Act has been approved by the Minister or under this Act, the document shall immediately after the statement contain a further statement that the Minister takes no responsibility as to the contents of the deed.

Responsibility for contents of trust deed not taken by Minister.

10. (1) No person shall receive an initial payment
 35 (whether by way of deposit, part deposit or otherwise) in connection with an instalment contract unless, before he receives

Notices to be given to purchasers.

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receives such payment, he gives or causes to be given to the prospective purchaser notices in writing in or to the effect of the forms in the First and Second Schedules to this Act.

(2) Any person receiving such an initial payment
5 shall within fourteen days after such receipt (unless within that period he has refunded such initial payment with a notification that the vendor is unable or unwilling to execute the instalment contract) deliver or cause to be delivered to the purchaser a counterpart of the contract duly executed by the
10 vendor or his properly constituted attorney if the original contract duly executed by the purchaser has been or is at the same time as the delivery of the counterpart delivered to the vendor or to such person.

(3) The notices prescribed by subsection one of this
15 section shall be signed by the vendor whose signatures shall be attested by a witness, or where the vendor is a company shall be under the common seal of the company duly affixed.

(4) It shall be a failure to comply with the requirements of subsection one of this section if any document
20 delivered to the prospective purchaser in pursuance thereof—

(a) is in handwriting which is not clear and legible; or

(b) is printed in type of a size smaller than that known as ten point Times; or

(c) contains a material mis-statement or inaccuracy,

25 but no such document shall be deemed insufficient if the Court before which the enforceability of any instalment contract comes in question, or before which proceedings for an offence under this Act are heard, is satisfied that such failure was accidental or due to inadvertence and was not of
30 such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, or that the prospective purchaser was not in fact so misled or deceived.

(5) Any person other than a licensed estate agent receiving any payment of the kind referred to in this section
35 shall as soon as practicable, but not later than seven days, thereafter, forward to the trustee appointed under the trust deed

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deed relating to the subdivision the amount of such payment together with particulars sufficient to enable the trustee to account for the same.

(6) Any failure to comply with the provisions of this section by any person acting on behalf of a vendor shall be deemed to be also a failure by the vendor to comply with such provisions, unless such vendor proves that having taken all reasonable precautions against committing an offence under this section he had reasonable grounds to believe and did believe that the requirements of this section had been complied with.

11. Notwithstanding any stipulation to the contrary, any instalment contract shall be deemed as between the vendor and purchaser to be an agreement entitling the purchaser to require the vendor to do all things and to execute all such instruments as may be necessary effectively to assure to the purchaser the land comprised in the instalment contract provided that at the time of the execution of any such instrument the purchaser shall have paid not less than ten per centum of the purchase money and shall execute a mortgage back to the vendor which shall—

Instalment contracts to contain implied term for assurance of land to purchaser.

- (a) secure payment of the purchase money owing under the contract at the date of the mortgage; and
- (b) contain an express covenant or agreement for payment of such money in the same manner and upon the same conditions as set out in the instalment contract;
- (c) have written or endorsed thereon a certificate in the appropriate form prescribed by section thirty-four of the Moratorium Act, 1932, as amended by subsequent Acts, evidencing the knowledge and approval of the mortgagor of the insertion of such covenant or agreement;
- (d) be prepared by or on behalf of the mortgagee at the expense of the mortgagor.

12.

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12. (1) Before charging land the subject of an instalment contract with any form of security which could enable the interest of the purchaser to be overreached by a creditor directly or indirectly, the vendor shall furnish to the purchaser
5 twenty-eight days notice in the form prescribed by regulations made under this Act of his intention so to charge the land.

Notice of intention to charge land to be given to purchaser.

(2) In this section, "vendor" includes not only the person named or described as such in an instalment contract, but also any assignee or other person for the time being
10 entitled to receive instalments under the instalment contract :

Provided that such other person has also acquired in the land the subject of the instalment contract an interest capable of being the subject of such a charge as is referred to in subsection one of this section.

15 (3) If within the period of twenty-eight days referred to in subsection one of this section a purchaser entitled to do so requires a vendor to execute an assurance pursuant to section eleven of this Act, it shall be an offence for such vendor to execute a mortgage of the land the subject of the
20 instalment contract.

13. Any stipulation in an instalment contract entered into before registration of a plan of the subdivision shall be void to the extent to which it could have the effect of depriving the purchaser of any remedy (including any right to make
25 time of the essence of the contract) in the event of undue delay by the vendor in procuring registration of such plan.

Stipulations in instalment contracts depriving purchasers of certain remedies to be void.

14. Any provision in a trust deed or in any instalment contract shall be void to the extent that it would have the effect of exempting a trustee under the deed from, or indemnifying him against, liability for breach of trust should he fail
30 to show the degree of care and diligence required of him as trustee having regard to the provisions of the deed conferring on him any powers, authorities or discretions.

Provisions in trust deeds and instalment contracts avoiding trustees' liabilities to be void.

15. Any provision in an instalment contract shall be void to the extent that it would entitle the vendor to recover or obtain or seek to recover or obtain from the purchaser payment of the costs charges and expenses of the trustee in performing his duties and functions under this Act, or any part of those costs charges and expenses.
16.

Provisions in instalment contracts for payment of trustees' expenses by purchaser to be void.

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16. Any stipulation in an instalment contract to the effect that the conveyance or transfer to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor or conveyancer appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor or conveyancer to act on his behalf in relation to any interest in land agreed to be purchased, shall be void.

Provisions in instalment contracts for employment of specified solicitor, etc., by purchaser to be void.

17. Notwithstanding any stipulation to the contrary, a deposit under an instalment contract paid to a licensed estate agent shall be held by him as stakeholder and not otherwise.

Deposits paid to licensed real estate agents.

18. Notwithstanding any stipulation to the contrary, any money paid by a purchaser to an agent other than a licensed estate agent in connection with an instalment contract, whether by way of deposit or otherwise, shall be deemed to have been paid to the vendor, but this section shall not affect any proceedings which may be taken against the agent for an offence under this or any other Act.

Payments to licensed real estate agent deemed to be payments to vendor.

19. Notwithstanding any stipulation to the contrary, where a duly stamped assurance to a purchaser, executed pursuant to section eleven of this Act, is held by or on behalf of a vendor, it shall be the duty of such vendor by himself or his agent—

Duties of vendors.

(a) forthwith to produce to the proper officer at the office of the Registrar-General such assurance accompanied by the prescribed fees necessary to procure registration of such assurance;

(b) within seven days after receiving such assurance, to give notice to the purchaser or his solicitor that the vendor or his agent holds—

(i) where the land the subject of the sale is under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, —the receipt issued by the Registrar-General upon lodgment of the transfer;

(ii)

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- (ii) in all other cases—the conveyance duly endorsed with the appropriate certificate that such conveyance has been received for registration in the register of deeds,
- 5 and in such notice shall indicate a time and place for the purchaser or his solicitor to inspect such receipt or registered conveyance as the case may be;
- (c) promptly to attend to all matters reasonably necessary to procure registration of such assurance;
- 10 (d) in the case of a transfer of land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, to notify the purchaser or his solicitor, when such transfer has been registered.

20. Any—

Penalty.

- 15 (a) contravention of, or failure to comply with, a provision of this Act; or
- (b) failure to comply with a covenant contained in a deed approved for the purposes of this Act,

shall be an offence under this Act and the person guilty of
20 such offence shall be liable to a penalty not exceeding five hundred pounds or to imprisonment for a period not exceeding six months.

21. Where an offence under this Act has been committed by a company, each director of the company at the time when
25 the offence was committed and each person holding a managerial position or concerned with the management of the company at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that the
30 act or omission constituting the offence took place without his approval, authority, concurrence or knowledge.

Liability of directors of corporations.

22.

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22. Proceedings for an offence against this Act shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone. Procedure on offences.

Any prosecution for an offence against this Act may be commenced at any time within one year after the commission of the offence.

23. Nothing in this Act shall—

- 10 (a) affect the liability of any person for an offence with which he might be charged otherwise than under this Act; or Act not to affect criminal or civil liability.
- (b) limit any rights and remedies, whether at law or in equity, to which a purchaser or a vendor might otherwise have been entitled.

24. The provisions of the Conveyancing Act, 1919, relating to the service of notices shall apply to this Act, unless the context otherwise requires. Notices.

25. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) Without prejudice to the generality of the provisions of subsection one of this section the Governor may make regulations :—

- 25 (a) varying any of the Schedules to this Act, or substituting any form contained therein with a form prescribed by such regulations;
 - 30 (b) exempting from the provisions of this Act any particular class or group of vendors and any particular class or group of instalment contracts.
- (3) All regulations shall—
- (a) be published in the Gazette;

(b)

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- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

FIRST SCHEDULE.

LAND VENDORS ACT, 1961.

Particulars of Title

in respect of lot number in a plan of subdivision which has been registered in the office of the Registrar-General as (quote registered number. If the plan is unregistered this fact must be stated) which said plan was approved by the Council of (name of city, municipality or shire) on the day of19...., as certified by town/shire clerk's certificate number of 19.....

The vendor of the said land is (state full name and address of vendor).

The legal owner of the said land is (state full name and address of legal owner) whose title is evidenced by (state volume and folium of the certificate of title or crown grant or book and number of the registered deed).

There

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There is no outstanding equitable interest in the said land which could prevent the vendor passing to a purchaser thereof a good legal title OTHER THAN (delete the words "other than" if inappropriate)

5 There is no form of security charged on the land within described which would enable the interest of a purchaser to be overreached by a creditor either directly or indirectly by sale, foreclosure, entry into possession, rescission of contract or otherwise EXCEPT (delete the word "except" if inappropriate).

10 The name and address of the trustee for purchasers is

OR

The name and address of the licensed real estate agent in control of the subdivision is

15 Signed in my presence by the vendor }
who is personally known to me, }

(Where the vendor is a company, the common seal of the company should be duly affixed.)

SECOND SCHEDULE.

20 ADVICE TO PURCHASERS.

1. The purchaser of land under an instalment contract obtains what is known as an equitable interest in the land. If and when he has paid all instalments due under the contract, or in the circumstances mentioned in paragraph 4 hereof, he becomes entitled to obtain from the vendor a transfer or conveyance of the legal estate, which requires to be registered. The purchaser then becomes the legal owner.

2. A contract may become binding on the purchaser from the moment he signs it, regardless of whether or not a deposit has been paid. A contract is not necessarily a formal printed document. A memorandum, a series of letters, or even a receipt for a deposit, if it contains certain elementary ingredients, may evidence a binding contract.

3. In determining whether or not to enter into an instalment contract, a purchaser should consider the following points—

- (a) whether the land described in the contract (usually by a lot number) is in fact the land which the purchaser thinks he is buying;

(b)

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- (b) whether roads shown in plans of the estate are actually constructed and afford a trafficable access to a main road ;
- (c) whether water, gas, electricity, sewerage, or other services are available ;
- 5 (d) whether the vendor has a title to the land which would enable him to transfer the legal estate to the purchaser on completion of payments, and whether such title is subject to any mortgage or other prior encumbrance or liability. A vendor whose title is an equitable one only, or is subject
- 10 to a prior encumbrance or other liability, is required to disclose such fact to every purchaser under an instalment contract.
4. (a) An instalment contract is deemed to be an agreement between the vendor and purchaser entitling the purchaser to an
- 15 immediate transfer after he has paid at least 10 per centum of the purchase money subject to his giving a mortgage back to the vendor to secure the balance of the purchase money, such mortgage providing for payment in identical terms to those governing instalments under the contract. This places a purchaser on terms in the same position
- 20 as a purchaser for cash. He can withhold settlement until he or his solicitor is satisfied with the vendor's title, and should the vendor fail to prove title within a reasonable time, the purchaser can serve notice to complete, and if still dissatisfied, rescind the contract.
- (b) Subdivisions must be approved by the local council prior
- 25 to the vendor or his agent accepting any payment from the purchaser of a lot, and a deposit, if paid, must be retained by a trustee appointed to protect the interests of purchasers until an instalment contract has been executed and the vendor and purchaser have authorised disbursement to the person entitled to such money under the instal-
- 30 ment contract or under any agreement between the vendor and purchaser in that behalf. If the trustee is not appointed, a licensed estate agent, as nominated under the Land Vendors Act, 1961, holds such deposit as stakeholder only.
5. A purchaser can protect his equitable interest in land if the land
- 35 is under the Old System Title by registering the contract ; or if the land is under the Real Property Act, by lodging a caveat. In either of these events, the assistance of a solicitor is usually advisable.
6. Where a purchaser under an instalment contract is unable to ascertain from the vendor or his agent information relating to his
- 40 purchase, or is dissatisfied with the information given by a vendor or his agent, the purchaser may seek such information from the trustee appointed under the Land Vendors Act, 1961, in respect of the subdivision concerned, or from the licensed estate agent nominated under the said Act.

