

LAND VENDORS (AMENDMENT) ACT, 1978,
No. 2

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 2, 1978.

An Act to amend the Land Vendors Act, 1964, so as to provide that certain offers to buy land and acceptances of offers to sell land may be rendered ineffective, and for certain other purposes. [Assented to, 20th February, 1978.]

Land Vendors (Amendment).

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 follows :—

Short
title.

1. This Act may be cited as the "Land Vendors (Amendment) Act, 1978".

Commence-
ment.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal
Act.

3. The Land Vendors Act, 1964, is referred to in this Act as the Principal Act.

Savings.

4. (1) Section 1c (2) of the Principal Act as inserted by section 5 and Schedule 1 does not apply to or in respect of an individual's execution of an instrument if the individual executed the instrument before the day appointed and notified under section 2 (2).

(2) Where the Principal Act, an instrument made under that Act, or any provision thereof is referred to in any other Act or in any instrument other than an Act (whether made under an Act or not) the reference shall be read as a reference to the Land Sales Act, 1964, an instrument made under that Act or the corresponding provision thereof.

Land Vendors (Amendment).

(3) A regulation in force under the Principal Act immediately before the day appointed and notified under section 2 (2) shall be deemed to be a regulation made under the Land Sales Act, 1964.

5. The Principal Act is amended in the manner set forth in Schedule 1. Amendment
of Act No.
12, 1964.

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Long title—

Omit “where the purchase money is payable by four or more instalments”.

(2) Part I, heading—

Before section 1, insert :—

PART I.

PRELIMINARY.

(3) Section 1 (1)—

Omit “Vendors”, insert instead “Sales”.

Land Vendors (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 1A, Part II—

After section 1, insert :—

Division
of Act.

1A. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1, 1A.

PART II.—GENERAL PROVISIONS RELATING TO
THE SALE OF LAND—ss. 1B-1E.PART III.—SALE OF LAND UNDER INSTALMENT
CONTRACTS—ss. 2-23.

PART IV.—MISCELLANEOUS—ss. 24-29.

SCHEDULES.

PART II.
GENERAL PROVISIONS RELATING TO THE SALE OF
LAND.Interpreta-
tion: Pt. II.

1B. In this Part, "land" has the meaning ascribed thereto in section 7 (1) of the Conveyancing Act, 1919, but does not include a vested or contingent estate or interest in a lease originally granted for a term that does not exceed 3 years whether or not the lease contains an option to renew it.

Certain
offers and
agreements
voidable.

1C. (1) In this section—

"business day" means any day except—

(a) a Saturday or Sunday; or

Land Vendors (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) any other day the whole or any part of which is observed as a public holiday throughout New South Wales;

“land agent” means a person who is, within the meaning of the Auctioneers and Agents Act, 1941, a real estate agent, real estate salesman, stock and station agent or stock and station salesman;

“prescribed notice” means a notice in or to the effect of the form prescribed for the purposes of this definition that contains the particulars required to be inserted in it by the regulations made under this Act.

(2) Subject to subsection (5), where an individual has executed an instrument in or by which he—

(a) offers to buy—

(i) land; or

(ii) an option to buy land,

from a person; or

(b) accepts a person's offer to sell—

(i) land; or

(ii) an option to buy land,

and the individual serves a prescribed notice in accordance with subsection (3), the instrument shall be deemed never to have been executed by the individual.

Land Vendors (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) A prescribed notice in respect of an instrument is served in accordance with this subsection if it is—

(a) served personally on the person referred to in subsection (2) (a) or (b), as the case may be, or on any land agent acting for that person; or

(b) addressed in accordance with the regulations and posted by certified or registered mail, before the expiration of the next 2 business days after the day on which the instrument was executed by the individual and before completion of the transaction to which the instrument relates.

(4) If an instrument is, under subsection (2), deemed never to have been executed by an individual by reason of his having served a notice in accordance with subsection (3), the individual may recover as a debt in a court of competent jurisdiction any amount he has paid to any person before the time when the notice was so served (whether as a price for an option, as a deposit or otherwise) in connection with the offer or acceptance to which the instrument relates.

(5) Subsection (2) does not apply to or in respect of—

(a) an individual who has executed an instrument and who is—

(i) a land agent; or

(ii) a barrister or solicitor of the Supreme Court;

Land Vendors (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) an instrument executed as a consequence of—

(i) the sale of land at an auction conducted by a person who is the holder of an auctioneer's license under the Auctioneers and Agents Act, 1941; or

(ii) where land has been offered for sale at an auction referred to in subparagraph (i) but was not sold at that auction—the sale of the land to an individual by whom, or on whose behalf, a bid for the land was made at the auction but only if the instrument is executed by that individual on the same day as the auction and the sale is at a price not exceeding the amount of the bid;

(c) an instrument—

(i) the individual's execution of which has been attested by a solicitor employed independently of the person referred to in subsection (2) (a) or (b), as the case may be, or by a clerk of petty sessions; and

(ii) that bears a certificate by that solicitor or clerk of petty sessions that he explained the effect of the instrument to the individual before it was executed by him;

Land Vendors (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) an instrument the individual's execution of which has been attested—

(i) by a person of a prescribed class; and

(ii) in or to the effect of the prescribed form; or

(e) an individual or an instrument of a class of persons or instruments prescribed for the purposes of this paragraph.

(6) An individual given rights under this section is not competent to waive those rights.

(7) Where, by reason of subsection (2), an instrument is deemed never to have been executed by an individual—

(a) section 26 of the Stamp Duties Act, 1920, shall apply as if the instrument were ineffective by reason of a failure of the necessary parties to execute it; and

(b) section 41 (7) of that Act does not apply to or in respect of the instrument.

Documents
to be
tendered
by
vendors.

1D. (1) In this section—

“land dealer” means—

(a) a person—

(i) who represents himself as involved in; or

(ii) who carries on,

the business of buying or selling land or both of those businesses; and

Land Vendors (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) an agent of a person referred to in paragraph (a);

“tender” includes a tender by post.

(2) Subject to subsections (3) and (4), when—

- (a) a land dealer tenders an instrument in writing that relates to any land (or causes any such instrument to be tendered) to another person; or

- (b) a person who owns land or intends to sell land or an option to buy land or an agent of any such person tenders an instrument in writing that relates to that land (or causes any such instrument to be tendered) to another person,

the execution of which, or any part of which, instrument by the other person would result (whether only upon or after his posting or delivering the instrument or part or communicating its contents, or not) in the other person's—

- (c) offering to buy—

(i) that land; or

(ii) an option to buy that land; or

- (d) accepting an offer to sell—

(i) that land; or

(ii) an option to buy that land,

the land dealer or person referred to in paragraph (b), as the case may be, shall also tender or cause to be tendered at the same time to the other person—

- (e) a copy of the instrument that is identical to it in all material respects; and

Land Vendors (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(f) a notice in or to the effect of the form prescribed for the purposes of this paragraph that contains the particulars required to be inserted in it by the regulations made under this Act.

(3) A person is not guilty of an offence under this Act in relation to a failure to tender a copy of an instrument or a notice in accordance with subsection (2) if he satisfies the court that the only person to whom the instrument was tendered or caused to be tendered was—

- (a) a corporation;
- (b) a land agent as defined in section 1c (1);
- (c) a barrister or solicitor of the Supreme Court;
- (d) a person who has purchased land at an auction but only if—
 - (i) the auction was conducted by a person who is the holder of an auctioneer's license under the Auctioneers and Agents Act, 1941; and
 - (ii) the copy of the instrument and the notice would, if tendered in accordance with subsection (2), relate only to the land so purchased; or

Land Vendors (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) any other person of a class prescribed for the purposes of this paragraph.

(4) Subsection (2) does not apply to or in respect of the tender of an instrument by way of an advertisement referred to in section 1E (1).

1E. (1) When a person causes to be published in a newspaper or another periodic publication any advertisement that wholly or partly takes the form of an instrument in writing the execution of which, or any part of which, instrument by another person would result (upon or after his posting or delivering the instrument or part or communicating its contents) in the other person's—

Notices to be published in certain cases.

(a) offering to buy—

(i) land; or

(ii) an option to buy land; or

(b) accepting an offer to sell—

(i) land; or

(ii) an option to buy land,

the firstmentioned person shall also cause to be published in the newspaper or other publication in a position adjacent to the advertisement a notice in or to the effect of the form prescribed for the purposes of this subsection that contains the particulars required to be inserted in it by the regulations made under this Act.

Land Vendors (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Subsection (1) does not apply to or in respect of a person who causes an advertisement referred to in that subsection to be published in the course of—

- (a) his business as a publisher; or
- (b) his acting as an agent for a publisher, of a newspaper or another periodic publication.

(5) Part III, heading—

Before section 2, insert :—

PART III.

SALE OF LAND UNDER INSTALMENT CONTRACTS.

(6) (a) Section 2—

Omit “In this Act”, insert instead “In this Part”.

(b) Section 2, definition of “instalment contract”—

- (i) Omit “this Act”, insert instead “this Part”.
- (ii) Omit paragraph (b), insert instead :—

(b) a contract for the sale of a lot within the meaning of the Strata Titles Act, 1973.

(c) Sections 2, 4, 13, 22, 23, 28—

Omit “, as amended by subsequent Acts” wherever occurring.

Land Vendors (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 2, definition of “sell”—

Omit “, and ‘sale’ and ‘sold’ have corresponding interpretations”.

(7) Sections 3, 5, 19—

Omit “this Act” wherever occurring, insert instead “this Part”.

(8) (a) Section 4—

Omit “Act” where firstly occurring, insert instead “Part”.

(b) Section 4 (c) (ii)—

Omit “Act”, insert instead “Part”.

(9) (a) Section 5 (2)—

Omit “paragraph (a) of subsection one of this section”, insert instead “subsection (1) (a)”.

(b) Section 5 (3)—

Omit “paragraph (b) of subsection one of this section”, insert instead “subsection (1) (b)”.

Land Vendors (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(10) Section 6—

Omit “paragraph (c) of section four of this Act and such other provisions of this Act”, insert instead “section 4 (c) and such other provisions of this Part”.

(11) (a) Section 7 (1)—

Omit “Act” where firstly occurring, insert instead “Part”.

(b) Section 7 (1) (a)—

Omit “paragraph (b) of section four”, insert instead “section 4 (b)”.

(c) Section 7 (1) (e)—

Omit “Act”, insert instead “Part”.

(d) Section 7 (1) (f) (ii)—

Omit “Act” wherever occurring, insert instead “Part”.

(e) Section 7 (1) (f) (v)—

Omit “subsection one of section fourteen of this Act”, insert instead “section 14 (1)”.

Land Vendors (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(f) Section 7 (2)—

Omit “paragraph (e) of subsection one of this section”, insert instead “subsection (1) (e)”.

(12) (a) Section 9 (2) (a) (i)—

Omit “Act as”, insert instead “Part as”.

(b) Section 9 (2) (b)—

Omit “subparagraph (i) of paragraph (a) of this subsection” wherever occurring, insert instead “paragraph (a) (i)”.

(c) Section 9 (2) (b)—

Omit “subsection two of section ten of this Act”, insert instead “section 10 (2)”.

(d) Section 9 (2) (b)—

Omit “paragraphs (a) and (b) of subsection two of section ten of this Act”, insert instead “section 10 (2) (a) and (b)”.

(13) (a) Section 13 (1) (b)—

Omit “subsection one of section fourteen of this Act”, insert instead “section 14 (1)”.

Land Vendors (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 13 (2) (a)—
Omit “subparagraph (i) of that subsection”,
insert instead “subsection (1) (i)”.

(c) Section 13 (3)—
Omit “subsection three of section fourteen of this
Act”, insert instead “section 14 (3)”.

(14) Part IV, heading—

After section 23, insert :—

PART IV.

MISCELLANEOUS.

(15) Sections 27, 28, 29 (1) (b)—

Omit “this Act” wherever occurring, insert instead
“Part III”.

(16) Section 29 (2), (3)—

Omit section 29 (2), insert instead :—

(2) Section 41 of the Interpretation Act,
1897, applies in respect of a regulation made
under this Act as if this Act had been passed
after the commencement of the Interpretation
(Amendment) Act, 1969.

Land Vendors (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) A regulation may apply differently according to such factors as may be specified in the regulation.

- (17) First, Second, Third, Fourth, Fifth Schedules, headings—

Omit "VENDORS" wherever occurring, insert instead "SALES".

- (18) Fifth Schedule—

From paragraph 2 (a), omit "Vendors", insert instead "Sales".

- (19) Fifth Schedule—

From paragraph 6 (c), omit "the commencement of the Land Vendors Act, 1964", insert instead "31st July, 1964".

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 20th February, 1978.*

DATE 10-15-2010 BY SP-6 [illegible]

SCIT 1041 1-1-2010

DATE 10-15-2010 BY SP-6 [illegible]

(b) (7) - Exemption from public release
pursuant to such laws as may be applicable to
the resolution.

(17) [illegible] [illegible] [illegible] [illegible]

THE VENDORS' [illegible] [illegible] [illegible]

(18) [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

(19) [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

A. R. [illegible]

[illegible]

[illegible]

2010 February 1978

BY AUTHORITY

U.S. GOVERNMENT PRINTING OFFICE: 2007-500-000