



Australian Capital Territory

# **Conveyancing Act 1919**

**A1919-6**

**Republication No 3**

**Effective: 1 October 2005 – 27 March 2007**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Conveyancing Act 1919* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 October 2005. It also includes any amendment, repeal or expiry affecting the republished law to 1 October 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

# Conveyancing Act 1919

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An Act about the law of property and the practice of conveyancing

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Conveyancing Act 1919*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary defines certain words and expressions, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*interested person*, for division 4.6 (Partition)—see section 66F.' means that the expression *interested person* is defined in section 66F, and the definition applies to division 4.6.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

### 6 Application of Act

- (1) Subject to this Act, this Act does not apply to leasehold land under the *Land Titles Act 1925*, if there is an inconsistency with that Act.
- (2) If a provision of this Act is stated to apply to land under the *Land Titles Act 1925* or an instrument under that Act, the provision is not taken (unless the contrary intention appears) to apply exclusively to land or instruments of that kind.



**7        What is a settlement?**

- (1) A *settlement* is an instrument, or a number of instruments, under which land is for the time being—
  - (a) limited to or in trust for people by way of succession; or
  - (b) vested in or limited in trust for a child in possession.
- (2) If a child is beneficially entitled to land, and because of an intestacy or otherwise there is no instrument under which the interest of the child arises or is acquired, a *settlement* is taken to have been made by the intestate or the person whose interest the child has acquired.
- (3) An estate or interest not disposed of by a settlement, and remaining in or reverting to the settlor (or someone deriving title through the settlor), is an estate or interest included in the settlement and coming to the settlor (or other person) under the settlement.

## **Part 2                      General rules about property**

### **Division 2.1              Rules of law on certain points**

#### **9                      Equitable waste**

An estate for life without impeachment of waste does not give the tenant for life a legal right to commit equitable waste, unless an intention to give the tenant for life that right expressly appears in the instrument creating the estate.

#### **10                    Merger**

An estate in land is merged in another estate by operation of law only if the beneficial interest in the estate is merged or extinguished in equity.

#### **12                    Assignment of debts and things in action**

- (1) An absolute assignment, by instrument signed by the assignor, of a debt or thing in action (other than an assignment expressed to be by way of charge only) is effective at law to transfer the right to the debt or thing in action if written notice of the assignment is given to the debtor, trustee, or other person, (the *liable person*) from whom the assignor would have been entitled to receive or claim the debt or thing in action.
- (2) The transfer takes effect on the day the notice is given.
- (3) Without limiting subsection (1), the assignee may recover or otherwise enforce the debt or thing in action, and give a good discharge for it, without involving the assignor.
- (4) However, the transfer is subject to all equities that would have been entitled to priority over the right of the assignee apart from this section.

- (5) If the liable person has notice that the assignment is disputed, or of any conflicting or disputed claims to the debt or thing in action, the liable person may—
- (a) call on anyone claiming the debt or thing in action to interplead; or
  - (b) pay any amount in dispute into court.

## **Division 2.4                      Property generally**

### **24                      Person may assure property to self or to self and others**

A person may assure property to—

- (a) himself or herself; or
- (b) himself or herself and anyone else.

### **25                      Power for corporations to hold property as joint tenants**

- (1) A corporation may acquire and hold property in joint tenancy in the same way as if it were an individual.
- (2) Without limiting subsection (1), if a corporation and an individual become entitled to property under circumstances or an instrument that would have created a joint tenancy if the corporation were an individual, the corporation and individual are entitled to the property as joint tenants.
- (3) However, the acquisition and holding of property by a corporation in joint tenancy is subject to the conditions and restrictions that apply to the acquisition and holding of property by a corporation in severalty.
- (4) If a corporation that is a joint tenant of property is dissolved, the property devolves on the other joint tenant.

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**26 Interpretation of conveyance etc of property to 2 or more people together**

- (1) A disposition of the beneficial interest in property (whether or not with the legal estate) to or for 2 or more people together beneficially is taken to be made to or for them as tenants in common, and not as joint tenants.
- (2) This section applies to the interpretation of an instrument commencing after 8 May 1958.
- (3) However, this section does not apply—
  - (a) to people who, by the terms or tenor of the instrument, are executors, administrators, trustees or mortgagees; or
  - (b) if the instrument expressly provides that they are to take as joint tenants.

**27 Tenants in common of equitable estate acquiring legal estate**

- (1) This section applies if—
  - (a) 2 or more people are beneficially entitled as tenants in common to an equitable estate in property; and
  - (b) they are or become entitled in their own right (whether as joint tenants or tenants in common) to the legal estate in the property; and
  - (c) their legal estate in the property is equal to, and coextensive with, their equitable estate in the property.
- (2) If this section applies, the legal and equitable estates in the property are both to be held by them as tenants in common unless they otherwise agree.

**36C People taking who are not parties**

- (1) A person may take an immediate or other interest in land or other property, or the benefit of a condition, right of entry, covenant or

agreement over or in relation to land or other property, even though the person is not named as party to the assurance or other instrument.

- (2) The person may sue, and is entitled to all rights and remedies, in relation to the land or other property as if the person had been named as a party to the assurance or other instrument.

### **36D Provisions about supplemental instruments**

- (1) An instrument (the *supplemental instrument*) expressed to be supplemental to a previous instrument is, as far as practicable, to be read, and has effect, as if the supplemental instrument contained a full recital of the previous instrument.
- (2) This section does not operate to give a right to an abstract or production of the previous instrument.
- (3) A purchaser may accept the same evidence that the previous instrument does not affect the title as the purchaser could have accepted if it had only been mentioned in the supplemental instrument.

## **Part 3                      General rules about deeds**

### **Division 3.1              Deeds and their effect**

#### **38                      Signature and attestation**

- (1) A deed (whether or not it affects property) must be—
  - (a) signed and sealed; and
  - (b) attested by at least 1 witness who is not a party to the deed, using any form of words.
- (2) Indenting is not necessary.
- (3) An instrument executed after 1 July 1920 that is signed and attested in accordance with this section is taken to be sealed if the instrument is expressed to be an indenture or deed or to be sealed.
- (4) A deed executed and attested in accordance with this section may be proved in the same way that a deed not required by law to be attested might have been proved before 1 November 1951.
- (5) This section does not affect—
  - (a) the execution of a deed by a corporation; or
  - (b) a deed executed before 1 November 1951.

#### **39                      Receipt in deed sufficient**

A receipt for consideration money or securities in the body of a deed is a discharge for the money or securities to the person paying the money or delivering the securities, even though a receipt is not endorsed on the deed.

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**40      Receipt in deed or endorsed evidence for subsequent purchaser**

A receipt for consideration money or other consideration in the body of a deed (or endorsed on it) is, for a subsequent purchaser without notice that all or part of the money or other consideration has not been paid or given, is evidence of the payment or giving of all of the money or other consideration.

**41      How powers of appointment are to be exercised**

- (1) This section applies if a power of appointment by an instrument other than a will is exercised by—
  - (a) a deed executed and attested in accordance with this Act; or
  - (b) an instrument under the *Land Titles Act 1925* executed and attested in accordance with that Act.
- (2) The deed or instrument is, in relation to the execution and attestation, a valid exercise of the power, even though the instrument that creates the power requires an additional or another form of execution, attestation or solemnity.

**Division 3.3              Operation of deeds**

**44      Limitations may be made by direct conveyance without uses**

A limitation that may be made by use operating under the Statute of Uses or this Act may be made by direct conveyance without the intervention of uses.

**46      In conveyance use of word grant unnecessary**

- (1) In a conveyance it is not necessary to use the word grant to convey land.
- (2) Any words that indicate an intention to convey the land are sufficient.

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**50 Rights of entry etc**

- (1) The following interests in property may be conveyed by deed:
  - (a) a right of entry;
  - (b) a contingent remainder;
  - (c) a contingent, executory, or future estate, right or interest;
  - (d) a possibility coupled with an interest.
- (2) The following are void as against the person in possession of land (the *first person*) or those claiming under that person unless the person (the *second person*) conveying (or covenanting, agreeing, or promising to convey), or the person through whom the second person claims, has been in possession of the land within 1 year from the date of the conveyance (or covenant, agreement or promise):
  - (a) a conveyance of a present right of entry in the land (other than to the first person );
  - (b) a covenant or agreement for, or promise of, a conveyance (other than to the first person).

**Division 3.4 Corporation instruments**

**51A Execution of instruments by or on behalf of corporations**

- (1) In favour of an honest purchaser—
  - (a) a deed is taken to have been duly executed by a corporation aggregate if its seal is attached to the deed in the presence of and attested by its clerk, secretary, or other permanent officer or his or her deputy, and a member of the board of directors, council, or other governing body of the corporation; and
  - (b) if a seal purporting to be the seal of a corporation has been attached to a deed attested by persons purporting to be persons holding offices mentioned in paragraph (a)—the deed is taken



to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

- (2) The board of directors, council, or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation or any registration copy of any instruments to which the corporation is a party.
- (3) If a person is authorised under a power of attorney or under any statutory or other power to assure any property in the name or on behalf of a corporation sole or aggregate, the person may as attorney execute the assurance by signing his or her name in such way as to show that he or she does so as attorney of the corporation in the presence of at least 1 witness, and for a deed by executing the same in accordance with section 38, and such execution shall take effect and be valid in like manner as if the corporation had executed the assurance.
- (4) If a corporation aggregate is authorised under a power of attorney or under any statutory or other power to assure any property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose, either generally or in the particular instance, by the board of directors, council, or other governing body of the corporation by resolution or otherwise, may execute the assurance in the name of the other person.
- (5) If an instrument is executed by an officer who purports to be appointed as mentioned in subsection (4), the instrument is taken, in favour of an honest purchaser, to have been executed by a properly authorised officer.
- (6) This section only applies to deeds and other instruments executed after 8 May 1958.
- (7) Notwithstanding anything contained in this section, any method of execution or attestation authorised by law or by practice, or by the

law, charter, memorandum or articles, deed of settlement, or other instrument constituting the corporation or regulating the affairs of the corporation, shall (in addition to the methods authorised by this section) be as effective as if this section had not been passed.

## **Part 4                      Sales and other transactions**

### **Division 4.5              Dispositions on trust for sale or with power of sale**

#### **66                      Meaning of *purchaser* for div 4.5**

In this division:

*purchaser* means a person who acquires an interest in or charge on property for money or money's worth.

#### **66A                      Consents to execution of trust for sale**

- (1) If the consent or request of more than 2 persons is by the disposition required for the execution of a trust for sale or the exercise of a power of sale of any property, then, in favour of a purchaser, the consent of any 2 of such persons to the execution of the trust or the exercise of the power or to the exercise of any statutory or other powers vested in the trustees is sufficient.
- (2) If the person whose consent to or request for the execution of any such trust or exercise of any such power is expressed to be required in a disposition is a person with a legal disability, his or her consent is not, in favour of a purchaser, taken to be a requirement to the execution of the trust or the exercise of the power, but the trustees shall, in any such case, obtain the consent of the parent or testamentary or other guardian of the child or of the manager of the person's property under the *Guardianship and Management of Property Act 1991*, or if there is no such guardian or manager, the consent of the Supreme Court.

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**66B Purchaser not to be concerned with trusts of proceeds of sale to be paid to 2 or more trustees or to trust corporation**

- (1) A purchaser of property from trustees for sale or having power of sale shall not be concerned with the trusts affecting the proceeds of sale of the property (whether made to attach to the proceeds because of this Act or otherwise), or affecting the income of the property until sale, whether or not those trusts are declared by the same instrument by which the trust for sale or power of sale is created.
- (2) Notwithstanding anything to the contrary in the instrument (if any) creating a trust for sale or power of sale of property or in the settlement of the net proceeds, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than 2 persons as trustees, except if the trustee is a trust corporation, or he or she was appointed as a sole trustee by the instrument creating the trust or power, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, the proceeds of sale or other capital money, nor, except if capital money arises on the transaction, render it necessary to have more than 1 trustee.

**66C Implied trust for sale in personalty settlements**

- (1) If an instrument contains a power to invest money in the purchase of land, the land shall, unless the instrument otherwise provides, be held by the trustees on trust for sale, and the net rents and profits until sale, after keeping down costs of repairs properly payable out of income, insurance, and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested otherwise than in the purchase of land.
- (2) This section applies only to instruments commencing after 1 December 1957.

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**66D Powers of management etc given to trustees for sale**

- (1) Subject to any direction to the contrary in the disposition on trust for sale, trustees for sale shall, in relation to land during postponement of sale, have the powers of management given by section 151C during childhood, but without the restriction relating to waste and the cutting of timber.
- (2) Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs properly payable out of income, insurance, and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested.
- (3) If the net proceeds of sale have under the trusts affecting the sale become absolutely vested in possession in 2 or more persons as joint tenants or tenants in common, the trustees for sale may, with the consent of the people (if any) who are adults and not annuitants and who are, interested in possession in the net rents and profits of the land until sale—
  - (a) partition the land remaining unsold or any part of it; and
  - (b) provide (by way of mortgage or otherwise) for the payment of any equality money;and, on such partition being arranged, the trustees for sale shall give effect to the partition by conveying the land so partitioned in severalty (subject or not to any mortgage created for raising equality money) to the persons entitled under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent has been given.
- (4) If a share in the net proceeds belongs to a person who has a physical, mental, psychological or intellectual condition relevant to the *Guardianship and Management of Property Act 1991*, section 8, the consent of—

- (a) the manager of the person's property under that Act; or
  - (b) if there is no such manager—the Supreme Court;
- shall be sufficient to protect the trustees for sale.
- (5) If a share in the net proceeds is affected by an incumbrance, the trustees for sale may either—
- (a) give effect to the incumbrance; or
  - (b) provide for the discharge of the incumbrance out of the property allotted in relation to the share;
- as the trustees consider expedient.
- (6) If a share in the net proceeds is absolutely vested in a child, or in a person who cannot be found or ascertained, or about whom it is uncertain whether he or she is living or dead, the trustees for sale may act on behalf of the child or person, and keep land or other property to represent his or her share.

**66E Powers of Supreme Court if trustees for sale refuse to exercise powers**

- (1) If trustees for sale refuse to sell or exercise any of the powers given by section 66D, or any necessary consent cannot be obtained, any interested person may apply to the Supreme Court for—
- (a) a vesting or other order to give effect to the proposed transaction; or
  - (b) an order directing the trustees for sale to exercise any of their powers.
- (2) The court may make any order it considers appropriate.

## **Division 4.6                      Partition**

### **66F                      Definitions for div 4.6**

In this division:

*action*, for the partition of property—see section 66G (4) (Power of Supreme Court to order sale instead of partition).

*interested person*, in relation to property, means a person with an interest in the property.

### **66G                      Power of Supreme Court to order sale instead of partition**

- (1) In an action for partition of property, instead of ordering partition—
  - (a) the Supreme Court may, on the application of an interested person, order the sale of the property if the court considers that sale (and a distribution of the proceeds) would be more beneficial than partition because of—
    - (i) the nature of the property; or
    - (ii) the number of interested people; or
    - (iii) the absence or disability of an interested person; or
    - (iv) any other circumstances; and
  - (b) the court must (unless it sees good reason not to), on the application of interested people with a collective interest in the property of at least a half share in the property, order the sale of the property; and
  - (c) the court may, on the application of an interested person, order the sale of the property unless other interested people agree to buy the share of the applying person.
- (2) The power of the Supreme Court to order the sale of property includes the power to order the sale of a part of the property and the partition of the rest of the property.

- (3) If the Supreme Court orders the sale of property, it may—
  - (a) appoint trustees to receive and apply proceeds of the sale; or
  - (b) give any consequential directions it considers appropriate, including, for example, directions about—
    - (i) the valuation of an interested person's share in the property; and
    - (ii) the application, investment and distribution of proceeds of sale.
- (4) For this division, an action for partition of property includes an action for sale of the property and distribution of the proceeds.
- (5) In an action for partition of property, it is sufficient to claim sale and distribution of the proceeds and it is not necessary to claim a partition.

**66H Authority for interested person to bid**

- (1) The Supreme Court may allow an interested person in relation to property to bid at the sale of the property under this division on the conditions that the court considers appropriate, including, for example, conditions about—
  - (a) nonpayment of deposit; or
  - (b) setting off or accounting for the purchase money or any part instead of paying it; or
  - (c) anything else.
- (2) This section does not limit section 66G (3).

**66I Parties to partition actions**

- (1) A person who, apart from this division, might have brought an action for partition may bring the action against any interested person without serving any other interested person.
- (2) A defendant in an action cannot object for want of parties.



**66J      Several sales in same partition action**

- (1) This section applies if, in an action for partition—
  - (a) 2 or more sales are made; and
  - (b) a person (the *excluded person*) is excluded from participation in the proceeds of any of the sales (the *excluded sale*).
- (2) If the excluded person establishes the person's claim to take part in the proceeds of another of those sales, the shares of the other people interested in the proceeds of that sale must be reduced to the extent that their share of the proceeds of the excluded sale were increased by the exclusion of the excluded person from the proceeds of that sale.
- (3) The amount mentioned in subsection (2) must be put towards payment to the excluded person of the share of the proceeds of the excluded sale that the person would have been entitled to if the person had not been excluded.

## **Part 6                      Covenants and powers**

### **Division 6.2              Covenants for title**

#### **78AA      Meaning of *conveyance* for div 6.2**

In this division:

*conveyance* does not include a demise by way of lease at a rent.

#### **78              Covenants for title to be implied on conveyances**

- (1) If a conveyance mentioned in another section of this division is made, the covenant mentioned in the section is taken to be implied.
- (2) The covenant is a covenant by the person or each of the people who convey the property.
- (3) The covenant is a covenant in relation to the property or the share in the property expressed to be conveyed by the person.
- (4) The covenant is a covenant with—
  - (a) the person to whom the conveyance is made; or
  - (b) if the conveyance is made to 2 or more people jointly—they jointly; or
  - (c) if the conveyance is made to 2 or more people as tenants in common—each of them.
- (5) However, this division does not imply a covenant in a conveyance by a person in which the person is not expressed in the conveyance to be conveying—
  - (a) as beneficial owner, settlor, trustee or mortgagee; or
  - (b) as the executor or administrator of a dead person; or
  - (c) as a manager under the *Guardianship and Management of Property Act 1991*; or

- (d) under an order of the Supreme Court; or
- (e) by direction of a person as beneficial owner.

**78A      On conveyance for value (other than a mortgage) by  
             beneficial owner**

- (1) In a conveyance for valuable consideration other than a mortgage the following covenant, by a person who conveys and is expressed to convey as beneficial owner:

**Right to convey**

That, notwithstanding anything by the person who so conveys, or anyone through whom he or she derives title otherwise than by purchase for value made, done, executed, or omitted, or knowingly suffered the person who so conveys, has with the concurrence of every other person (if any) conveying by his or her direction, full power to convey the subject matter expressed to be conveyed, subject as, if so expressed, and in the way in which, it is expressed to be conveyed;

**Quiet enjoyment**

AND that, notwithstanding anything as, that subject matter shall remain to and be quietly entered on, received, and held, occupied, enjoyed, and taken by the person to whom the conveyance is expressed to be made, and any person deriving title under him or her, and the benefit shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his or her direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his or her direction, or by, through, or under anyone, other than a person claiming in relation to an estate or interest subject to which the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value;

### **Freedom from incumbrance**

AND that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his or her direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his or her direction, or by, through, or under anyone through whom the person who so conveys, derives title, otherwise than by purchase for value;

### **Further assurance**

AND further, that the person who so conveys, and any person conveying by his or her direction, and every other person having or rightfully claiming any estate or interest in the subject matter of conveyance, other than an estate or interest subject to which the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his or her direction, or by, through, or under anyone through whom the person who so conveys, derives title, otherwise than by purchase for value, will from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him or her, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him or her, subject as, if so expressed, and in the way in which, the conveyance is expressed to be made, as by him, her or them, or any of them, is reasonably required.

(2) In this section:

***purchase for value*** does not include a conveyance in consideration of marriage.

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**78B      On conveyance of leaseholds for value by beneficial owner**

- (1) In a conveyance of leasehold property for valuable consideration other than a mortgage the following further covenant, by a person who conveys and is expressed to convey as beneficial owner:

**Validity of lease**

That, notwithstanding anything by the person who so conveys or anyone through whom he or she derives title otherwise than by purchase for value made, done, executed, or omitted or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed, is at the time of conveyance a good, valid, and effective lease or grant of the property conveyed, and is in full force unforfeited, unsurrendered, and is not void or voidable;

AND that, despite this, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him or her, to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance.

- (2) In this section:

*purchase for value* does not include a conveyance in consideration of marriage.

**78C      On mortgage by beneficial owner**

In a deed by way of mortgage the following covenant, by a person who conveys and is expressed to convey as beneficial owner:

**Right to convey**

That the person who so conveys has, with the concurrence of every other person (if any) conveying by his or her direction, full power to convey the subject matter expressed to be conveyed by him or her, subject as, if so expressed, and in the way in which it is expressed to be conveyed;

**Quiet enjoyment**

AND also that, if default is made in payment of the money intended to be secured by the conveyance or any interest on the money, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made and the persons deriving title under him or her, to enter into and on or receive and from then on quietly hold, occupy, and enjoy, or take, and have the subject-matter expressed to be conveyed, or any part of it, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his or her direction, or any other person other than a person claiming in relation to an estate or interest subject to which the conveyance is expressly made;

**Freedom from incumbrance**

AND that, freed and discharged from or otherwise by the person who so conveys sufficiently indemnified against, all estate, incumbrances, claims, and demands whatever, other than those subject to which the conveyance is expressly made;

**Further assurance**

AND further, that the person who so conveys, and every person conveying by his or her direction, and every person deriving title under any of them, and every other person having or rightfully

claiming any estate or interest in the subject matter of conveyance or any part of it, other than an estate or interest subject to which the conveyance is expressly made, will from time to time and at all times on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him or her, but as long as any right of redemption exists under the conveyance, at the cost of the person so conveying or of those deriving title under him or her, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of conveyance and every part of it to the person to whom the conveyance is made and to those deriving title under him or her, subject as, if so expressed and in the way in which, the conveyance is expressed to be made, as by him, her or them or any of them shall be reasonably required.

## **78D On mortgage of leaseholds by beneficial owner**

In a conveyance by way of mortgage of leasehold property the following further covenant, by a person who conveys and who is expressed to convey as beneficial owner:

### **Validity of lease**

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good valid and effective lease or grant of the land conveyed and is in full force, unforfeited and unsurrendered, and is not void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him or her to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance;

### **Payment of rent and performance of covenants**

AND also that the person so conveying, or the persons deriving title under him or her will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause

to be paid, observed, and performed all the rents reserved by, and all covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him or her to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him or her, indemnified against all actions, proceedings, costs, charges, damages, claims, and demands (if any) to be incurred or sustained by him, her or them because of the nonpayment of such rent or the nonobservance or nonperformance of such covenants, conditions, and agreements, or any of them.

**78E      On settlement**

In a conveyance by way of settlement the following covenant by a person who conveys and is expressed to convey as settlor:

**For further assurance limited**

That the person so conveying and every person deriving title under him or her by deed or act or operation of law, in his or her lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his or her death, will, from time to time and at all times after the date of that conveyance, at the request and cost of any person deriving the title under the conveyance, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the way in which, the conveyance is expressed to be made, as by them or any of them shall be reasonably required.



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**78F      On conveyance by trustee or mortgagee etc**

- (1) In any conveyance the following covenant by every person who conveys, and is expressed to convey, as trustee, or mortgagee, or as the executor or administrator of a deceased person, or as a manager under the *Guardianship and Management of Property Act 1991*, or under an order of the Supreme Court:

**Against incumbrances**

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, under or by means of which the subject matter of the conveyance, or any part of it, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise.

- (2) The covenant extends only to the acts of the person who conveys.
- (3) This covenant is taken to be implied in every memorandum of discharge indorsed on or annexed to a conveyance by way of mortgage in the same way as if the memorandum were a deed of conveyance by the mortgagee.

**78G      Covenant implied on conveyance by direction of beneficial owner**

- (1) If a conveyance is expressed to be made at the direction of the beneficial owner, a covenant by the beneficial owner is taken to be implied in the conveyance.
- (2) The covenant is the covenant that would have been implied if—
- (a) the conveyance had been made by the beneficial owner; and
  - (b) the beneficial owner had expressed to convey as beneficial owner.

## Part 11                      Apportionment

### 142            Definitions for pt 11

In this part:

*annuity* includes salary and pension.

*dividend* includes—

- (a) a payment made by the name of dividend or bonus; or
- (b) a payment otherwise made out of the revenue of a trading or other public company that is divisible between members of the company, whether or not a payment of that kind is usually made or declared at fixed times;

but does not include a payment in the nature of a return or reimbursement of capital.

*rent* includes—

- (a) rent charge, rent seck and rent service; and
- (b) a periodical payment or rendering instead of, or in the nature of, rent.

### 143            Application of pt 11 to dividends of companies

For this part, revenue mentioned in section 142, definition of *dividend*, paragraph (b) is taken to have accrued by equal daily increments during the period in relation to which the payment of the revenue is declared or expressed to be made.

### 144            Rents and periodical payments

- (1) All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument or otherwise) are, like interest on an amount lent, taken

to accrue from day-to-day, and must be apportioned in relation to time accordingly.

- (2) The apportioned part of the rent, annuity, dividend or other periodical payment is payable or recoverable—
  - (a) for a continuing payment—when the entire payment of which the apportioned part forms part becomes payable, and not before; and
  - (b) for a payment determined by re-entry, death or otherwise—when the next entire payment would have been payable if it had not been determined, and not before.
- (3) A person has, and the executors, administrators and assigns of a person (including a person whose interest ends on the person's death) have, the same rights, at law and in equity, for recovering the apportioned parts of periodical payments when payable (allowing proportionate parts of all just allowances) as they would have had for recovering the entire payments if they were entitled to them.
- (4) However, if a person is liable to pay rent in relation to an interest in land, the person and the interest must not be resorted to specifically for any apportioned part of an entire or continuing rent.
- (5) The entire or continuing rent, including any apportioned part, may instead be recovered by the person who, if the rent had not been apportionable under this section or otherwise, would have been entitled to the entire or continuing rent.
- (6) The apportioned part of the entire or continuing rent is then recoverable from the person mentioned in subsection (5) by a person entitled to it under this section.
- (7) This section does not make apportionable an annual amount payable under a policy of assurance.
- (8) This section does not apply to any case in which it is expressly stipulated that apportionment is not to take place.

## Part 14A Children and children's property

### 151A Children not to be appointed trustees

- (1) The appointment of a child as trustee is void.
- (2) This section does not affect the power to appoint a new trustee to fill the vacancy.

### 151B Receipts by married children

A married child has power to give valid receipts for all income (including statutory accumulations of income made during childhood) to which the child may be entitled as if the child were an adult.

### 151C Management of land during childhood

- (1) If and as long as any person who is entitled to a beneficial interest in possession affecting land is a child, the trustees appointed for this purpose by the settlement, or if there are none so appointed, then the trustees of the settlement, unless the settlement or the order of the Supreme Court by which they or their predecessors in office were appointed to be trustees expressly provides to the contrary, or if there are none, then any persons appointed as trustees for this purpose by the court on the application of a guardian or next friend of the child may enter into and continue in possession of the land on behalf of the child.
- (2) The trustees shall manage or superintend the management of the land, with full power—
  - (a) to fell timber from time to time in the usual course for sale, or for repairs or otherwise; and
  - (b) to erect, alter, pull down, rebuild, and repair houses, and other buildings, dams, fences, and other erections; and

- (c) to continue the working of mines, minerals, and quarries that have usually been worked; and
- (d) to drain or otherwise improve the land or any part of it; and
- (e) to insure against any insurable risk; and
- (f) to grant leases for any term not exceeding 3 years; and
- (g) to make allowances to and arrangements with tenants and others; and
- (h) to determine tenancies, and to accept surrenders of leases and tenancies; and
- (i) generally to deal with the land in a proper and due course of management;

but so that, if the child is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the child could, if an adult, cut the same.

- (3) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber, pay the expenses (including any commission to which they are entitled) incurred in the management or in the exercise of any power given by this section or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum and the interest of any principal sum charged on the land.
- (4) This section applies in relation to a child except so far as the contrary intention appears in the instrument (if any) under which the child's interest arises.

### **151D Power to appoint trustees of child's property**

- (1) If a child is absolutely entitled under the will or on the intestacy of a person (the *deceased*), to a devise or legacy, or to the residue of the estate of the deceased, or any share in the estate, and the devise,

legacy, residue, or share is not under the will (if any) of the deceased, devised or bequeathed to trustees for the child, the personal representatives of the deceased may by registered deed appoint a trust corporation or 2 or more individuals not exceeding 4 (whether or not including the personal representatives or 1 or more of the personal representatives) to be the trustee or trustees of the devise, legacy, residue, or share for the child, and to be trustees of any land devised or any land being or forming part of the residue or share for section 151C.

- (2) If a trust corporation, or a trust corporation and 1 or more individuals are the personal representatives of the deceased, the personal representatives may by registered deed appoint the trust corporation either alone or with 1 or 2 individuals (whether or not including 1 or both the individual personal representatives) to be trustees for the child.
- (3) On the appointment the provisions of the *Trustee Act 1925*, section 9 (Vesting on appointment and retirement), shall apply to the vesting in the trustees of the devise, legacy, residue, or share.
- (4) On the appointment—
  - (a) the personal representatives, as such, shall be discharged from all further liability in relation to the devise, legacy, residue or share; and
  - (b) the rights to which the child is entitled in virtue of the devise, legacy, residue or share shall be restricted to the property that, by the operation of this section and the *Trustee Act 1925*, section 9 (Vesting on appointment and retirement), is vested in the trustees for the child and shall not extend to any other property; and
  - (c) the devise, legacy, residue or share may be kept in its existing condition or state of investment or may be converted into money and the money may be invested in any authorised investment.

- (5) If land that is subject to the provisions of the *Land Titles Act 1925* is affected by a registered deed, the registrar-general shall, subject to subsection (6), make an entry of the vesting of the land or enter, vary or withdraw the caveats the registrar-general considers proper in the circumstances.
- (6) The registrar-general is not bound to act under subsection (5) unless the person in whom the land is to be vested—
- (a) requests, in writing, that the entry be made; and
  - (b) gives any evidence in support of the request that the registrar-general may reasonably require; and
  - (c) gives the notice (if any) of the request to the persons that the registrar-general may reasonably require.

- (7) In this section:

***registered deed*** means a deed registered under the *Registration of Deeds Act 1957*.

***trust corporation*** does not include the public trustee.

## Part 22                      Miscellaneous

### 178              No right-of-way by user against Territory etc

- (1) No dedication or grant of a right-of-way is to be presumed, or allowed to be asserted or established, only because of user as against—
  - (a) the Territory or the Commonwealth; or
  - (b) a person who holds land in trust for a public purpose.
- (2) This section applies—
  - (a) to all proceedings, whether or not they are begun by the Territory, the Commonwealth or a person mentioned in subsection (1) (b); and
  - (b) whether the user began before or after the commencement of the *Dedication by User Limitation Act 1902* (NSW).



## Dictionary

(see s 2)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- corporation
- instrument
- person
- provision
- registrar-general.

***action***, for the partition of property, for division 4.6 (Partition)—see section 66G (4) (Power of Supreme Court to order sale instead of partition).

***administrator*** includes anyone to whom administration of the estate of a dead person is granted, and includes the public trustee acting under the *Administration and Probate Act 1929*, part 6.

***annuity***, for part 11 (Apportionment)—see section 142.

***assurance*** includes a conveyance and a disposition made otherwise than by will.

***bankruptcy*** includes any act or proceeding in law having effects or results similar to those of bankruptcy.

### Example

Winding-up of a company.

***conveyance***—

- (a) includes an assignment, appointment, lease, settlement or other assurance by deed of any property; and
- (b) for division 6.2 (Covenants for title)—see section 78AA.

**deed**, in relation to land under the *Land Titles Act 1925*, includes an instrument that has the effect of a deed under that Act.

**disposition** includes—

- (a) a conveyance; and
- (b) an acknowledgment under the *Administration and Probate Act 1929*, section 56 (Executor may sign acknowledgment in lieu of conveyance); and
- (c) a vesting instrument, declaration of trust, disclaimer, release or any other assurance of property by an instrument other than a will; and
- (d) a release, devise, bequest or appointment of property in a will.

**dividend**, for part 11 (Apportionment)—see section 142.

**executor** means the executor to whom probate has been granted, and includes an executor by right of representation.

**income**, in relation to land, includes rents and profits.

**incumbrance** includes—

- (a) a mortgage; and
- (b) a trust for securing money; and
- (c) a lien or charge of a portion, annuity, or other capital or annual sum.

**instrument** includes a deed, a will, an agreement for settlement, and a law of the Territory, the Commonwealth or a State.

**interested person**, for division 4.6 (Partition)—see section 66F.

**mortgage**—

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes a charge on property for securing money or money's worth.

***mortgagee—***

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes a person taking title to the mortgage under the original mortgagee.

***mortgagor—***

- (a) for land under the *Land Titles Act 1925*—see that Act, section 6 (1); and
- (b) for other property—includes any of the following:
  - (i) a person taking title to the equity of redemption under the original mortgagor;
  - (ii) a person entitled to redeem a mortgage, according to his or her interest in the mortgaged property.

***personal representative*** means the executor or administrator for the time being of a dead person.

***person with a legal disability*** means—

- (a) a child; or
- (b) a person with a mental disability.

***person with a mental disability*** means—

- (a) in relation to a proceeding—a person (other than a child) who is not legally competent to be a party to the proceeding; and
- (b) in relation to the doing of something—a person (other than a child) who is not legally competent to do the thing;

and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

***possession***, of land, includes receipt of income from the land.

***purchaser***—

- (a) for division 4.5 (Dispositions on trust for sale or with power of sale)—see section 66; and
- (b) for any other provision—means a purchaser for valuable consideration, and includes—
  - (i) a lessee or mortgagee; and
  - (ii) anyone else who acquires an interest in property for valuable consideration.

***registered*** means registered in the appropriate register kept by the registrar-general.

***rent***—

- (a) includes yearly or other rent; and
- (b) for part 11 (Apportionment)—see section 142.

***securities*** includes stocks, funds and shares.

***settlement***—see section 7 (What is a settlement?).

***trust corporation*** means—

- (a) the public trustee or a trustee company; or
- (b) the Official Trustee in Bankruptcy under the *Bankruptcy Act 1966* (Cwlth); or
- (c) the trustee in whom the property of a bankrupt is vested.

***trust for sale*** means a binding trust for sale, whether or not exercisable at the request or with the consent of anyone, and with or without a discretionary power to postpone sale.

***trustee company***, means a trustee company under the *Trustee Companies Act 1947*.

***trustees for sale*** means the people holding property on trust for sale.

***valuable consideration*** includes marriage, but does not include a nominal consideration in money.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a NSW Act—the *Conveyancing Act 1919* No 6 (NSW).

Provisions of the *Conveyancing Act 1919* (NSW) were applied, in a modified form, as ACT laws by the following Acts (now repealed):

- the *Conveyancing Act 1951*
- the *Trustee Act 1957*
- the *Law of Property (Miscellaneous Provisions) Act 1958*.

Under the *Interpretation Act 1967* (repealed), s 65 all former NSW Acts in force in the ACT immediately before 10 November 1999 (including the provisions of this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making the former NSW Act fully into an ACT law.

It also made the provisions of the *Conveyancing Act 1919* (NSW) in force in the ACT immediately before 10 November 1999 a single ACT law (the consolidated 1919 Act). This republication is a republication of the consolidated 1919 Act.

The provisions of the following former NSW Acts were also remade by the *Statute Law Amendment Act 2001* (No 2) as part of the consolidated 1919 Act:

- the *Partition Act 1900*
- the *Apportionment Act 1905*
- the *Dedication by User Limitation Act 1902*.

These Acts had been repealed in NSW and their provisions included (in a remade form) in the *Conveyancing Act 1919* (NSW).

#### New South Wales legislation

##### **Conveyancing Act 1919 No 6 (NSW)**

assented to 13 November 1919

commenced 1 July 1920 (s 1)

as amended by

##### **Conveyancing (Amendment) Act 1920 No 23 (NSW)**

assented to 23 December 1920

commenced 23 December 1920

**Conveyancing (Amendment) Act 1923 No 15 (NSW)**

assented to 25 October 1923  
commenced 25 October 1923

**Conveyancing (Amendment) Act 1927 No 56 (NSW)**

assented to 13 December 1927  
commenced 1 July 1920 (s 2 (2))

**Conveyancing (Amendment) Act 1930 No 44 (NSW)**

assented to 27 June 1930  
commenced 1 January 1931 (s 1 (1) and NSW Gov Gaz No 139)

**Conveyancing (Amendment) Act 1932 No 65 (NSW)**

assented to 30 December 1932  
commenced 30 December 1932

**Conveyancing, Trustee and Probate (Amendment) Act 1938 No 30 (NSW)**

assented to 14 December 1938  
commenced 1 January 1939 (s 1 (2) and NSW Gov Gaz No 188)

**Conveyancing (Amendment) Act 1939 No 18 (NSW)**

assented to 24 October 1939  
commenced 24 October 1939

**Rural Bank (Agency) Soldiers Families Housing Act 1941 No 21 (NSW)**

assented to 9 April 1941  
commenced 9 April 1941

**Money-lenders and Infants Loans Act 1941 No 67 (NSW)**

assented to 25 November 1941  
commenced 1 January 1942 (s 1 (2) and NSW Gov Gaz No 156)

**Conveyancing (Amendment) Act 1942 No 1 (NSW)**

assented to 6 May 1942  
s 2 (1) commenced 1 January 1942 (s 2 (2))  
remainder commenced 6 May 1942

**Conveyancing (Amendment) Act 1943 No 8 (NSW)**

assented to 31 May 1943  
commenced 31 May 1943

**Conveyancing (Further Amendment) Act 1943 No 29 (NSW)**

assented to 2 November 1943  
commenced 2 November 1943

**Commonwealth legislation**

as applied and modified by

**Conveyancing Act 1951 No 10**

notified 1 November 1951  
commenced 1 November 1951

**Trustee Act 1957 No 14, pt 3 div 1, sch 3**

notified 21 November 1957  
commenced 1 December 1957 (s 2)

**Law of Property (Miscellaneous Provisions) Act 1958 No 7**

notified 8 May 1958  
commenced 8 May 1958

as amended by

**Ordinance Revision Ordinance 1978 No 46**

notified 28 December 1978  
commenced 28 December 1978

**Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9**

notified 8 March 1985  
commenced 28 October 1985 (Cwlth Gaz 1985 No G42)

**Legislation after becoming Territory enactment****Sex Discrimination (Miscellaneous Amendments) Act 1986 No 31**

notified 31 July 1986  
commenced 1 August 1986

**Mental Health (Consequential Provisions) Act 1994 No 45 sch**

notified 7 September 1994 (Gaz 1994 No S177)  
s 1, s 2 commenced 7 September 1994 (s 2 (1))  
sch commenced 6 February 1995 (s 2 (2) and see Gaz 1995 No S33)



**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
 s 1, s 2 commenced 15 December 1994 (s 2 (1))  
 sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994  
 No S293)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
 amdt commenced 18 December 1995 (s 2)

**Land Titles (Consequential Amendments) Act 1995 No 54 sch pt 1**

notified 20 December 1995 (Gaz 1995 No S313)  
 sch pt 1 commenced 20 June 1996 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 80**

notified 26 July 2001 (Gaz 2001 No 30)  
 s 1, s 2 commenced 26 July 2001 (IA s 10B)  
 pt 80 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) No 56 pt 3.9**

notified 5 September 2001 (Gaz 2001 No S65)  
 pt 3.9 commenced 5 September 2001 (s 2 (1))

**Statute Law Amendment Act 2002 No 30 pt 3.9**

notified LR 16 September 2002  
 s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
 pt 3.9 commenced 17 September 2002 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2005  
(No 3) A2005-43 sch 1 pt 1.4**

notified LR 30 August 2005  
 s 1, s 2 commenced 30 August 2005 (LA s 75 (1))  
 sch 1 pt 1. 4 commenced 1 October 2005 (s 2 (3) and CN2005-18)

**4 Amendment history****Title**

title ins 2001 No 56 amdt 3.13

**Preliminary**

pt 1 hdg (prev applied by *Conveyancing Act 1951*, *Trustee Act 1957*  
 and *Law of Property (Miscellaneous Provisions) Act 1958*)  
 om 2001 No 56 amdt 3.15  
 sub 2001 No 56 amdt 3.14

**Name of Act**

s 1 ins 2001 No 56 amdt 3.14

**Dictionary**

s 2 ins 2001 No 56 amdt 3.14

**Notes**

s 3 ins 2001 No 56 amdt 3.14

**Application of Act**

s 6 (prev applied by *Conveyancing Act 1951*)  
 mod 1951 No 10 sch  
 am 1995 No 54  
 sub 2001 No 56 amdt 3.14

**What is a settlement?**

s 7 (prev s 7 (2) and s 8) (prev applied by *Conveyancing Act 1951*,  
*Trustee Act 1957* and *Law of Property (Miscellaneous Provisions) Act 1958*)  
 am NSW 1930 No 44 s 3; NSW 1942 No 1 s 2 (1)  
 mod 1951 No 10 sch; 1957 No 14 sch 2; 1958 No 7 sch  
 am 1994 No 45; 1995 No 46; 1995 No 54; LRA  
 om 2001 No 56 amdt 3.15  
 sub 2001 No 56 amdt 3.14

**General rules about property**

pt 2 hdg (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 om 2001 No 56 amdt 3.16  
 ins 2001 No 56 amdt 3.17

**Rules of law on certain points**

div 2.1 hdg (prev pt 2 div 1 hdg) (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 om 2001 No 56 amdt 3.18  
 ins 2001 No 56 amdt 3.19

**Equitable waste**

s 9 (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 sub 2001 No 56 amdt 3.20

**Merger**

s 10 (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 mod 1958 No 7 sch  
 sub 2001 No 56 amdt 3.21

**Mortgagor**

s 11 (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 om 2001 No 56 amdt 3.22

**Assignment of debts and things in action**

s 12 (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 mod 1958 No 7 sch  
 sub 2001 No 56 amdt 3.23

**Property generally**

div 2.4 hdg (prev pt 2 div 4 hdg) (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 renum 2001 No 56 amdt 3.24

**Person may assure property to self or to self and others**

s 24 (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 sub NSW 1930 No 44 s 6 (b)  
 sub 2001 No 56 amdt 3.25

**Power for corporations to hold property as joint tenants**

s 25 (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 sub 2001 No 56 amdt 3.26

**Interpretation of conveyance etc of property to 2 or more people together**

s 26 (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 mod 1958 No 7 sch  
 sub 2001 No 56 amdt 3.27

**Tenants in common of equitable estate acquiring legal estate**

s 27 (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 sub 2001 No 56 amdt 3.28

**People taking who are not parties**

s 36C ins 2001 No 56 amdt 3.29

**Provisions about supplemental instruments**

s 36D ins 2001 No 56 amdt 3.29

**General rules about deeds**

pt 3 hdg (prev applied by *Conveyancing Act 1951, Law of Property (Miscellaneous Provisions) Act 1958*)  
 om 2001 No 56 amdt 3.30  
 ins 2001 No 56 amdt 3.31

**Deeds and their effect**

div 3.1 hdg (prev pt 3 div 1 hdg) (prev applied by *Conveyancing Act 1951*)  
 sub 2001 No 56 amdt 3.32

**Signature and attestation**

s 38 (prev applied by *Conveyancing Act 1951*)  
mod 1951 No 10 sch  
sub 2001 No 56 amdt 3.32

**Receipt in deed sufficient**

s 39 (prev applied by *Conveyancing Act 1951*)  
sub 2001 No 56 amdt 3.32  
am 2002 No 30 amdt 3.73

**Receipt in deed or endorsed evidence for subsequent purchaser**

s 40 (prev applied by *Conveyancing Act 1951*)  
sub 2001 No 56 amdt 3.32

**How powers of appointment are to be exercised**

s 41 (prev applied by *Conveyancing Act 1951*)  
mod 1951 No 10 sch  
am 1995 No 54  
sub 2001 No 56 amdt 3.32

**Operation of deeds**

div 3.3 hdg (prev pt 3 div 3 hdg) (prev applied by *Conveyancing Act 1951*)  
sub 2001 No 56 amdt 3.32

**Form of deed—Schedule**

s 43 (prev applied by *Conveyancing Act 1951*)  
om 2001 No 44 amdt 1.859

**Limitations may be made by direct conveyance without uses**

s 44 (prev applied by *Conveyancing Act 1951*)  
am NSW 1930 No 44 s 11 (b)  
sub 2001 No 56 amdt 3.32

**Grants of easements etc by way of use**

s 45 (prev applied by *Conveyancing Act 1951*)  
om 2001 No 56 amdt 3.32

**In conveyance use of word grant unnecessary**

s 46 (prev applied by *Conveyancing Act 1951*)  
sub 2001 No 56 amdt 3.32

**Words of limitation in fee**

s 47 (prev applied by *Conveyancing Act 1951*)  
om 2001 No 56 amdt 3.32

**Person not named as a party to a deed may take benefit hereunder**

s 48 (prev applied by *Conveyancing Act 1951*)  
om 2001 No 56 amdt 3.32  
(but already om NSW 1930 No 46 s 11 (d))

**Construction of supplemental or annexed deed**

s 49 (prev applied by *Conveyancing Act 1951*)  
om 2001 No 56 amdt 3.32  
(but already om NSW 1930 No 46 s 11 (d))

**Rights of entry etc**

s 50 (prev applied by *Conveyancing Act 1951*)  
mod 1951 No 10 sch  
sub 2001 No 56 amdt 3.32

**Validation of certain acknowledgments taken before deputy registrar of deeds**

s 51 (prev applied by *Conveyancing Act 1951*)  
om 2001 No 56 amdt 3.32

**Corporation instruments**

div 3.4 hdg (prev pt 3 div 4 hdg) (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
ins NSW 1930 No 44 s 12  
om 2001 No 56 amdt 3.33  
ins 2001 No 56 amdt 3.34

**Execution of instruments by or on behalf of corporations**

s 51A (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
mod 1958 No 7 sch  
am 2001 No 56 amdt 3.35-3.44; 2002 No 30 amdt 3.74-3.80

**Sales and other transactions**

pt 4 hdg (prev applied by *Trustee Act 1957*)  
om 2001 No 56 amdt 3.45  
ins 2001 No 56 amdt 3.46

**Dispositions on trust for sale or with power for sale**

div 4.5 hdg (prev pt 4 div 5 hdg) (prev applied by *Trustee Act 1957*)  
om 2001 No 56 amdt 3.47  
ins 2001 No 56 amdt 3.48

**Meaning of purchaser for div 4.5**

s 66 ins 2001 No 56 amdt 3.48

**Consents to execution of trust for sale**

s 66A (prev applied by *Trustee Act 1957*)  
ins NSW 1930 No 44 s 16  
mod 1957 No 14 sch 3  
am 1994 No 45; 2001 No 56 amdt 3.49-3.52; 2002 No 30  
amdt 3.81-3.83

**Purchaser not to be concerned with trusts of proceeds of sale to be paid to 2 or more trustees or to trust corporation**

s 66B (prev applied by *Trustee Act 1957*)  
ins NSW 1930 No 44 s 16

**Implied trust for sale in personalty settlements**

s 66C (prev applied by *Trustee Act 1957*)  
 ins NSW 1930 No 44 s 16  
 am 2001 No 56 amdt 3.53

**Powers of management etc given to trustees for sale**

s 66D (prev applied by *Trustee Act 1957*)  
 ins NSW 1930 No 44 s 16  
 mod 1957 No 14 sch 3  
 am 1994 No 45; 2001 No 56 amdt 3.54-3.62; 2002 No 30  
 amdt 3.84

**Powers of Supreme Court if trustees for sale refuse to exercise powers**

s 66E (prev applied by *Trustee Act 1957*)  
 ins NSW 1930 No 44 s 16  
 sub 2001 No 56 amdt 3.63

**Partition**

div 4.6 hdg ins 2001 No 56 amdt 3.64

**Definitions for div 4.6**

s 66F ins 2001 No 56 amdt 3.64  
 sub 2002 No 30 amdt 3.85

**Power of Supreme Court to order sale instead of partition**

s 66G ins 2001 No 56 amdt 3.64

**Authority for interested person to bid**

s 66H ins 2001 No 56 amdt 3.64

**Parties to partition actions**

s 66I ins 2001 No 56 amdt 3.64

**Several sales in same partition action**

s 66J ins 2001 No 56 amdt 3.64

**Covenants and powers**

pt 6 hdg (prev applied by *Conveyancing Act 1951*)  
 om 2001 No 56 amdt 3.65  
 ins 2001 No 56 amdt 3.66

**Covenants for title**

div 6.2 hdg (prev pt 6 div 2 hdg) (prev applied by *Conveyancing Act 1951*)  
 om 2001 No 56 amdt 3.67  
 ins 2001 No 56 amdt 3.68

**Meaning of conveyance for div 6.2**

s 78AA ins 2001 No 56 amdt 3.69

**Covenants for title to be implied on conveyances**

s 78 (prev s 78 (1)) (prev applied by *Conveyancing Act 1951*)  
 am 1986 No 31; 1994 No 45; ss renum LRA; 2001 No 56  
 amdts 3.69-3.82

**On conveyance for value (other than a mortgage) by beneficial owner**  
 s 78A (orig s 78 (1) (A)) (prev applied by *Conveyancing Act 1951*)  
 renum as s 78 (2) R2 LRA  
 am 2001 No 56 amdt 3.70  
 renum 2001 No 56 amdt 3.71  
 am 2002 No 30 amds 3.86-3.89

**On conveyance of leaseholds for value by beneficial owner**  
 s 78B (orig s 78 (1) (B)) (prev applied by *Conveyancing Act 1951*)  
 renum as s 78 (3) R2 LRA  
 am 2001 No 56 amds 3.70, 3.72-3.73  
 renum 2001 No 56 amdt 3.75  
 am 2002 No 30 amds 3.90-3.92

**On mortgage by beneficial owner**  
 s 78C (orig s 78 (1) (C)) (prev applied by *Conveyancing Act 1951*)  
 renum as s 78 (4) R2 LRA  
 am 2001 No 56 amdt 3.70  
 renum 2001 No 56 amdt 3.75  
 am 2002 No 30 amds 3.93-3.98

**On mortgage of leaseholds by beneficial owner**  
 s 78D (orig s 78 (1) (D)) (prev applied by *Conveyancing Act 1951*)  
 renum as s 78 (5) R2 LRA  
 am 2001 No 56 amdt 3.70  
 renum 2001 No 56 amdt 3.75  
 am 2002 No 30 amdt 3.99, amdt 3.100

**On settlement**  
 s 78E (orig s 78 (1) (E)) (prev applied by *Conveyancing Act 1951*)  
 renum as s 78 (6) R2 LRA  
 am 2001 No 56 amdt 3.70  
 renum 2001 No 56 amdt 3.75  
 am 2002 No 30 amdt 3.101

**On conveyance by trustee or mortgagee etc**  
 s 78F (orig s 78 (1) (F)) (prev applied by *Conveyancing Act 1951*)  
 renum as s 78 (7) R2 LRA  
 am 2001 No 56 amds 3.70, 3.74, 3.76-3.79  
 renum 2001 No 56 amdt 3.75  
 am 2002 No 30 amds 3.102-3.105

**Covenant implied on conveyance by direction of beneficial owner**  
 s 78G (orig s 78 (2)) (prev applied by *Conveyancing Act 1951*)  
 renum as s 78 (8) R2 LRA  
 sub 2001 No 56 amdt 3.80

**Apportionment**  
 pt 11 hdg ins 2001 No 56 amdt 3.83

**Definitions for pt 11**  
 s 142 ins 2001 No 56 amdt 3.83

**Application of pt 11 to dividends of companies**

s 143 ins 2001 No 56 amdt 3.83

**Rents and periodical payments**

s 144 ins 2001 No 56 amdt 3.83

**Children and children's property**

pt 14A hdg (prev applied by *Trustee Act 1957* and *Law of Property (Miscellaneous Provisions) Act 1958*)  
 ins NSW 1930 No 44 s 26  
 om 2001 No 56 amdt 3.84  
 ins 2001 No 56 amdt 3.85

**Children not to be appointed trustees**

s 151A (prev applied by *Trustee Act 1957*)  
 ins NSW 1930 No 44 s 26  
 sub 2001 No 56 amdt 3.86

**Receipts by married children**

s 151B (prev applied by *Law of Property (Miscellaneous Provisions) Act 1958*)  
 ins NSW 1930 No 44 s 26  
 mod 1958 No 7 sch  
 sub 2001 No 56 amdt 3.87

**Management of land during childhood**

s 151C hdg (prev applied by *Trustee Act 1957*)  
 sub 2001 No 56 amdt 3.87  
 s 151C (prev applied by *Trustee Act 1957*)  
 ins NSW 1930 No 44 s 26  
 am 2001 No 56 amds 3.87-3.96

**Power to appoint trustees of child's property**

s 151D hdg (prev applied by *Trustee Act 1957*)  
 sub 2001 No 56 amdt 3.97  
 s 151D (prev applied by *Trustee Act 1957*)  
 ins NSW 1930 No 44 s 26  
 am NSW 1938 No 30 s 4 (f)  
 mod 1957 No 14 sch 3  
 am 1995 No 54; 2001 No 56 amds 3.98-3.116; 2002 No 30  
 amdt 3.106

**Miscellaneous**

pt 22 hdg ins 2001 No 56 amdt 3.117

**No right-of-way by user against Territory etc**

s 178 ins 2001 No 56 amdt 3.117

**Conveyance of old system land**

Schedule (prev sch 2) (prev applied by *Conveyancing Act 1951*)  
 renum R 2 LRA  
 om 2001 No 44 amdt 1.859



**Dictionary**

dict

ins 2001 No 56 amdt 3.118

am 2002 No 30 amdt 3.107

def **action** ins 2002 No 30 amdt 3.108def **trustee company** sub A2005-43 amdt 1.11**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

**Provisions previously applied by Conveyancing Act 1951**

Republication No	Amendments to	Republication date
1	Act 1986 No 31	31 August 1992
2	Act 1995 No 54	31 January 1998

**Provisions previously applied by Trustee Act 1957**

Republication No	Amendments to	Republication date
1	Act 1957 No 14	31 August 1992
2	Act 1995 No 54	31 January 1998

**Provisions previously applied by Law of Property (Miscellaneous Provisions) Act 1958**

Republication No	Amendments to	Republication date
1	Act 1958 No 7	31 August 1992

**Conveyancing Act 1919**

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 2001 No 56	12 September 2001
2	A2002-30	3 October 2002

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