



Australian Capital Territory

Conveyancing and Law of Property Act 1898 (repealed)

A1898-17

Republication No 5

Effective: 28 March 2007

Republication date: 28 March 2007

As repealed by A2006-38 s 507

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Conveyancing and Law of Property Act 1898* (repealed) (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)). It also includes any commencement, amendment, repeal or expiry affecting the republished law to 28 March 2007.

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

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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.

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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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Conveyancing and Law of Property Act 1898 (repealed)

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Australian Capital Territory

Conveyancing and Law of Property Act 1898 (repealed)

An Act to consolidate the statutes relating to conveyances, assignments and titles to lands

Part 1 **Preliminary**

1 **Name of Act**

This Act is the *Conveyancing and Law of Property Act 1898*.

Part 3 Conveyance and assignment of property

29 Voluntary settlement of land not taken to be fraudulent

- (1) A settlement of land properly registered under the *Registration of Deeds Act 1957* or the *Land Titles Act 1925* must not, in favour of a purchaser taking under a contract, deed or other instrument made after that registration, be taken to be fraudulent only because the settlement was not made for valuable consideration.
- (2) Subsection (1) applies despite the provisions of the *Law Reform (Miscellaneous Provisions) Act 1955*, division 12.5 (Alienation of property to defraud creditors).
- (3) In this section:

settlement includes a conveyance, assignment, lease, mortgage, charge, limitation of uses, declaration of trust, transfer, and any other instrument creating or transferring an interest in land, whether under the *Land Titles Act 1925* or otherwise.

30 Honest purchase of reversionary interest not to be set aside etc only for under value

- (1) A purchase made honestly and without fraud or unfair dealing of any reversionary interest in real or personal property must not be opened or set aside only on the ground of under value.
- (2) In this section:

purchase includes every kind of contract, conveyance, or assignment under or by which any beneficial interest in any kind of property may be acquired.

reversionary interest includes an interest in property in remainder or expectancy.

36 Sale under power not to be avoided for mistaken payment to tenant for life

- (1) If, under a power of sale, a genuine sale is made of an estate with the timber on it, or any other articles attached to it, and the tenant for life, or any other party to the transaction, is by mistake allowed to receive for his or her own benefit a part of the purchase money as the value of the timber or other articles, the Supreme Court may declare that, on payment by the purchaser or the claimant under him or her of the full value of the timber and articles at the time of sale, with the interest on it that the court directs, and the settlement of the principal, moneys, and interest under the direction of the court on the parties that in the opinion of the court are entitled to them, the sale ought to be established.
- (2) If payment and settlement are made in accordance with the Supreme Court's declaration, the court may declare that the sale is valid.
- (3) On the making of the declaration under subsection (2), the legal estate vests as if the power had been properly executed.

Part 4 Leases and sales of settled estates and estates of children

37 Interpretation for pt 4

- (1) In this part:

settled estate means a hereditament, or an interest in a hereditament, that is the subject of a settlement, and includes a leasehold interest in land held by a child in his or her own right.

settled land means land, or an interest in land, that is the subject of a settlement.

settlement means any Act, Commonwealth Act, deed, agreement, will, or other instrument, or any number of such instruments, under which any hereditaments or any interest in land stand for the time being limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any 1 or more of them exclusively.

- (2) All estates or interests in remainder or reversion not disposed of by the settlement and reverting to the settlor or descending to the heir of a testator or passing to his or her personal representatives or next of kin under the law relating to the descent and distribution of the real estate of intestates are taken to be estates coming to the settlor, heir, personal representative, or next of kin under the settlement.
- (3) In determining what are settled estates within the meaning of this part, the Supreme Court shall be governed by the state of facts and by the trusts or limitations of the settlement at the time of the settlement taking effect.
- (4) For this part, a person is taken to be entitled to the possession or to the receipt of the rents and profits of settled land, although his or her estate may be charged or encumbered either by himself or herself or by the settlor or otherwise to any extent, but the estates or interests of the parties entitled to the charge or encumbrance shall not be

affected by the acts of the persons entitled to the possession or to the receipt of the rents and profits of the settled land unless they agree to them.

38 Power of Supreme Court to authorise leases of settled estates

- (1) The Supreme Court may, for any purpose, authorise, by order, a lease of a settled estate, or of any right or privilege over or affecting a settled estate, if the court considers it consistent with a proper regard for the interests of everyone entitled under the settlement and otherwise appropriate.
- (2) The Supreme Court may give directions about the exercise of an authority given under this section.

39 Exercise of power to authorise leases

- (1) Without limiting section 38, the Supreme Court's power under that section to authorise a lease of a settled estate may be exercised either—
 - (a) by approving a particular lease (or a particular contract for a lease); or
 - (b) by ordering that powers of leasing are vested in a nominated trustee.
- (2) The Supreme Court may, under subsection (1) (b), vest powers of leasing either in the existing trustee of the settlement or anyone else.
- (3) If the Supreme Court orders that powers of leasing are vested in a trustee, the power has effect when exercised by the trustee as if the power had been originally contained in the settlement.
- (4) If the Supreme Court approves a particular lease (or a particular contract for a lease), the court may nominate the person who is to execute the lease as lessor (the *nominated person*).
- (5) The lease or contract executed by the nominated person has effect as if—

- (a) the person were, at the time of execution, absolutely entitled to the entire settled estate; and
- (b) the person had immediately afterwards settled according to the settlement.

48 Power of Supreme Court to authorise sale of settled estates

- (1) The Supreme Court may, on the conditions it considers appropriate, authorise, by order, the sale of all or any part of a settled estate if the court considers it consistent with a proper regard for the interests of everyone entitled under the settlement and otherwise appropriate.
- (2) The Supreme Court may give directions about the exercise of an authority given under this section.

53 Execution of documents to give effect to sale

- (1) Without limiting section 48, the Supreme Court may, for the sale of all or any part of a settled estate under that section, nominate the person who is to execute any document for the sale (the *nominated person*).
- (2) A document executed by the nominated person for the sale has effect as if the settlement had contained a power authorising the person to make the sale.

54 Application to Supreme Court for exercise of powers under pt 4

Any of the following may apply to the Supreme Court for an order under section 38 (Power of Supreme Court to authorise leases of settled estates), or section 48 (Power of Supreme Court to authorise sale of settled estates), in relation to a settled estate:

- (a) a person with an interest in the settled estate for a term of years ending on the person's death;
- (b) a person with a life interest in the settled estate;

- (c) an assignee of a person mentioned in paragraph (a) or (b).

55 Consents required for exercise of power under pt 4

- (1) An application to the Supreme Court for an order under section 38 (Power of Supreme Court to authorise leases of settled estates), or section 48 (Power of Supreme Court to authorise sale of settled estates), in relation to a settled estate must be made with the consent of the following people (the *interested people*):
- (a) everyone with a beneficial estate or interest under the settlement;
 - (b) all trustees with an estate or interest under the settlement on behalf of any unborn child.
- (2) However, the Supreme Court may make an order under section 38 or 48 even though the consent of 1 or more interested people to the application has not been obtained or has been refused.
- (3) In considering whether to make the order, the Supreme Court must have regard to the following:
- (a) the number of interested people who have consented to the application;
 - (b) the number of interested people whose consent has not been obtained;
 - (c) the number of interested people whose consent has been refused;
 - (d) the number of interested people who enter an appearance and submit to the orders of the court, except as to costs;
 - (e) the estates or interests that each of the interested people have, or claim to have, in the settled estate.
- (4) If the Supreme Court makes an order under section 38 or 48 even though the consent of 1 or more interested people to the application had not been obtained or had been refused, the order has effect as if all interested people had consented to the application.

- (5) However, the Supreme Court may, by order, exempt from an order under section 38 or 48 the rights, estate or interest of 1 or more interested people whose consent to the application was not obtained or was refused.

63 Application of proceeds of sale

- (1) The amount received from a sale under section 48 (Power of Supreme Court to authorise sale of settled estates) must be applied as follows:
- (a) first, in discharge of all mortgages and other encumbrances and in payment of expenses incidental to the sale or incurred in any attempted sale;
 - (b) second, in payment of the balance to a trustee nominated by the Supreme Court or as the court otherwise directs.
- (2) The Supreme Court may give directions about the application, accumulation and investment of an amount received from a sale under section 48.

64 Transmission and devolution of capital

Capital money arising under this part while remaining uninvested or unapplied, and securities on which an investment of the capital money is made shall, for all purposes of disposition, transmission, and devolution be considered as land, and the same shall be held for and go to the same persons successively in the same way and for and on the same estates, interests, and trusts as the land from which the money arises would, if not disposed of, have been held and have gone under the settlement, and the income of the capital money and securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

65 Application of certain money without Supreme Court order

The application of money mentioned in section 63 (Application of proceeds of sale) may, if the Supreme Court so directs, be made by the trustees (if any) without any application to the court, or otherwise on an order of the court on the application of the person who would have been entitled to the possession or the receipt of the rents and profits of the settled estates.

68 Leases by tenants for life etc of settled estates

- (1) This section applies to a person with—
 - (a) an interest in a settled estate for a term of years ending on the person's death; or
 - (b) a life interest in a settled estate.
- (2) The person may, without an application to the Supreme Court, lease the interest (or any part of it) for a term of not longer than 10 years, to take effect in possession not later than 1 year after entering the lease.
- (3) The lease must—
 - (a) be for the best rent that can reasonably be obtained; and
 - (b) contain the usual and proper provisions that the person considers appropriate, including provisions for payment of rent and re-entry for nonpayment of rent.
- (4) A lease under this section is valid against the person giving it, and everyone entitled to estates subsequent to that person under the settlement if the estates are settled.

Part 5 Renewable leaseholds of children

82 Surrender and renewal of children's leaseholds

If a child is entitled to a lease made or granted for a life or for any term of years, either absolute or determinable on a death or otherwise, the child, or the guardian of the child, or some other person on behalf of the child, may apply to the Supreme Court, and by the order and direction of the court the child or guardian, or any person appointed in the place of the child by the court, may be authorised to surrender the lease, and accept and take in the place and for the benefit of the child a new lease of the premises in the surrendered lease for and during the number of lives, or for the term of years either absolute or determinable that was mentioned in the surrendered lease, or otherwise that the court directs.

83 Charges for renewal to be charged on estates

Every sum of money and other consideration paid by any guardian, trustee, or other person as or in the nature of a fine, premium or income, for the renewal of any such lease, and all reasonable charges incidental to the lease are payable out of the estate or effects of the child for whose benefit the lease is renewed, or shall be a charge on the leasehold premises, together with the interest that the Supreme Court directs.

84 New leases to be to same uses

Every lease so renewed shall operate and be to the same uses, and be liable to the same trusts, charges, encumbrances, dispositions, devices, and conditions, as the surrendered lease was or would have been subject to if the surrender had not been made.

85 Grants of renewals by children

If a child might, under any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life of any person or for any term of years absolute or determinable on a death, the child, or his or her guardian in the child's name, may by the direction of the Supreme Court, made on the application of the child, or his or her guardian, or of any person entitled to the renewal, from time to time accept a surrender of the lease, and make and execute a new lease of the premises comprised in the lease for and during the number of lives, or for the term of years determinable on the number of lives, or for the term of years absolute, that was mentioned in the lease so surrendered or otherwise that the Supreme Court directs.

86 Persons out of jurisdiction

- (1) If any person who, under any covenant or agreement in writing, might, if within the jurisdiction and amenable to the process of the Supreme Court, be compelled to execute any lease by way of renewal, is not within the jurisdiction or not amenable to the process of the court, the court may, by an order to be made on the application of any of the persons entitled to the renewal (whether the person is or is not under any disability), direct the person as the court considers proper to appoint for that purpose, to accept a surrender of the subsisting lease, and make and execute a new lease in the name of the person who ought to have renewed it.
- (2) A lease executed by a person appointed under subsection (1) is as valid as if the person in whose name the lease is executed had executed the lease, and had been alive and not under a disability.

87 Fines to be paid before renewal

- (1) No renewed lease shall be executed under this part, under any covenant or agreement, unless the fine (if any) or the other sum (if any) that ought to be paid on the renewal, and the things (if any) that

ought to be performed under the covenant or agreement by the lessee or tenant, be first paid and performed.

- (2) A renewed lease to be executed under this part must be properly executed by the lessee.

88 How amounts are to be applied

An amount paid in relation to the renewal of a lease under this part is, after deducting any necessary incidental charges and expenses, to be applied as the Supreme Court directs.

89 Validity of surrenders and leases

Every surrender, lease, or other disposition granted, accepted, executed, or made under this part shall be as valid to all intents and purposes as if the person by whom, or in whose place, or on whose behalf it is granted, accepted, executed, or made had been an adult, and had granted, accepted, executed, and made it.

90 Costs

The Supreme Court may order the costs and expenses of and relating to the applications, orders, directions, and transfers made under this part, or any of them, to be paid and raised out of or from the lands or the rents in relation to which they are made, in the way the Supreme Court considers appropriate.

Part 6 Mortgages

90A Application of s 91 to s 103

- (1) Sections 91 to 103 apply to mortgages and charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.
- (2) The powers given under sections 91 to 103 are subject to anything provided in the mortgage or charge.
- (3) The powers given under sections 91 to 103 have the same effect as express powers to the same effect in the mortgage or charge would have had and no more.

91 Powers incidental to mortgages

If any principal money is secured or charged by deed on any hereditaments of any tenure or on any interest in a hereditament of any tenure, the person to whom the money is for the time being payable, his or her executors, administrators, and assigns, shall at any time after the end of 1 year from the time when the principal money has become payable according to the terms of the deed, or after any interest on the principal money has been in arrear for 6 months, or after any omission to pay any premium on any insurance, that by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms given by the person creating the charge:

- (a) a power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract subject to any reasonable conditions he or she may consider appropriate to make, and to rescind or vary contracts for sale, or buy in and resell the property from time to time in like manner;

- (b) a power to insure and keep insured from loss or damage by fire, the whole or any part of the property (whether attached to the freehold or not) which is in its nature insurable, and to add the premiums paid for the insurance to the principal money secured at the same rate of interest;
- (c) a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in accordance with this part.

92 Receipt for purchase money sufficient discharge

Receipts for purchase money given by the person exercising the power of sale given under this part shall be sufficient discharges to the purchasers, who shall not be bound to see the application of the purchase money.

93 Notice of sale

A sale of property under this part must not be made unless the person, or 1 of the people, entitled to the property has been given 6 months written notice.

93A Purported exercise of power of sale

- (1) If a sale is purportedly made under this part, the buyer's title must not be called into question on the ground that—
 - (a) no case had arisen to authorise the sale; or
 - (b) the notice required by section 93 had not been given.
- (2) If a person suffers loss because of an unauthorised sale under this part, the person has his or her remedy in damages against the seller.

94 Application of purchase money

The amount received from a sale under this part must be applied by the person receiving the amount as follows:

- (a) first, in payment of expenses incidental to the sale or incurred in any attempted sale;
- (b) second, in discharge of the interest and costs then owing in relation to the mortgage or charge because of which the sale was made;
- (c) third, in discharge of the principal then owing in relation to the mortgage or charge;
- (d) fourth, in payment of the balance to or on behalf of the person entitled to the property subject to the mortgage or charge.

95 Property that may be conveyed etc to purchaser

The person exercising a power of sale over property under this part has power to convey or assign to the purchaser, by deed or other instrument, all the interest in the property that the mortgagor or person who created the charge had power to dispose of.

96 Owner of charge may call for deeds etc

At any time after the power of sale under this part has become exercisable, the person entitled to exercise the power is entitled to demand and recover from the person entitled to the property subject to the charge all the deeds and documents in his or her possession or power relating to the property or its title that he or she would have been entitled to demand and recover if the same property had been conveyed, appointed, surrendered, or assigned to and were then vested in him or her for all the estate and interest that the person creating the charge had the power to dispose of.

97 Appointment of receiver

Any person entitled to appoint or obtain the appointment of a receiver under this part may from time to time, if any person has been named in the deed of charge for that purpose, appoint the person to be receiver, or if no person be so named then may by writing delivered to the person or any 1 of the persons entitled to the

property subject to the charge, or attached on some conspicuous part of the property, require such lastmentioned person to appoint a fit and proper person as receiver, and if no appointment is made within 10 days after the requisition then may in writing appoint as receiver any person he or she considers appropriate.

98 Receiver taken to be agent of mortgagor etc

A receiver appointed under this part is taken to be the agent of the mortgagor or person whose property is subject to the charge, and that mortgagor or person is solely responsible for the receiver's acts or omissions, unless the instrument creating the mortgage or under which the charge arose provides otherwise.

99 Powers of receiver

A receiver appointed under this part has power to demand and recover and give effective receipts for all the rents, issues, and profits of the property of which he or she is appointed receiver, by action, suit, distress, or otherwise in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest that the person who created the charge had power to dispose of.

100 Ending appointment of receiver etc

- (1) The power under this part to appoint a receiver includes power to end the appointment and appoint someone else as receiver.
- (2) The power to end the appointment of a receiver is exercisable in the same way, and subject to the same conditions, as the power to make the appointment.

101 Commission to receiver

A receiver appointed under this part is entitled to keep out of any money received by the receiver, instead of costs, charges, and expenses, a commission, not exceeding 8% on the gross amount of

all money received, specified in his or her appointment, and if no amount is so specified then 4% on the gross amount.

102 Receiver to insure if required

A receiver appointed under this part must, if so directed in writing by the person entitled to the money secured by the mortgage or charge, insure and keep insured from loss or damage by fire, out of money received by him or her the whole or any part of the property included in the mortgage or charge (whether or not a fixture) that is in its nature insurable.

103 Application of amounts received by receiver

Amounts received by a receiver appointed under this part must be applied as follows:

- (a) first, in discharge of all taxes, rates and assessments, in payment of the receiver's commission, and in payment of insurance premiums;
- (b) second, in discharge of the interest then owing in relation to the mortgage or charge because of which the receiver was appointed;
- (c) third, in discharge of the principal then owing in relation to the mortgage or charge;
- (d) fourth, in payment of the balance to or on behalf of the person entitled to the property subject to the mortgage or charge.

106 Effect of repayment on ejectment by mortgagee

If an action of ejectment is brought by any mortgagee, his or her heirs, executors, administrators, or assignees for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit is then depending for or touching the foreclosing or redeeming of the mortgaged premises if the person having right to redeem, and who appears and becomes defendant in the action, pays to the mortgagee at any time pending the action, or in case of his or

her refusal brings into court all the principal money, and interest due on the mortgage, and also all costs that have been expended in any suit on the mortgage (such money for principal, interest, and costs to be ascertained and computed by the court or the proper officer in that behalf), the money so paid to the mortgagee or brought into court are taken to be in full satisfaction and discharge of the mortgage, and the court shall discharge every mortgagor or defendant of and from the same accordingly, and shall, by order, compel the mortgagee at the costs and charges of the mortgagor to assign, surrender, or reconvey the mortgaged premises and the estate and interest as the mortgagee has in the mortgaged premises, and deliver up all deeds, evidences, and writings in his or her custody relating to the title of the mortgaged premises to the mortgagor who has paid or brought the money into court, his or her heirs, executors, or administrators, or to the other person or persons that he or she or they shall for that purpose nominate or appoint.

107 Section 106 not to apply to certain cases

- (1) Nothing in section 106 shall extend to any case where—
 - (a) the person against whom the redemption is prayed shall (by writing signed personally or by agent or lawyer, to be delivered before the money is brought into court to the lawyer for the other side) insist either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or are admitted on the other side; or
 - (b) the right of redemption to the mortgaged lands and premises in question in any cause or suit is controverted or questioned by or between different defendants in the same cause or suit.
- (2) Nothing in section 106 shall prejudice any subsequent mortgage or subsequent encumbrance.

108 Redemption if mortgagee absent or unknown

- (1) When any person entitled to receive payment of the whole or part of any debt secured by mortgage is out of the jurisdiction, cannot be found, or is unknown, or it is uncertain who is so entitled, the Supreme Court, on application by the person entitled to redeem the mortgaged premises, may order the amount of the debt or a part of it to be ascertained in the way the court directs, and direct the amount so ascertained to be paid into court.
- (2) A certificate of the registrar of the Supreme Court that the payment was allowed and has been made may be registered in the office of the registrar-general, and on registration the amount so paid into court shall be a discharge of the mortgage debt, or the part of it, to the extent of the money paid in, but any amount that is eventually shown by the person entitled to the mortgage debt, or a part of it, to have been in fact due or payable over and above the amount so paid into court shall continue to be a debt due on the mortgage.
- (3) The Supreme Court may order the amount so paid into court to be paid to the person entitled, on application by the person, but no amount shall be so paid until the registrar of the Supreme Court is satisfied that the deed or instrument of mortgage, and all the title deeds that were delivered by the mortgagor to the mortgagee on executing the deed or instrument, or in connection with the execution, have been delivered up to the person by whom the amount was so paid into court, or his or her executors, administrators, or assigns.
- (4) If the amount of principal and interest due on any mortgage is paid into court under this section, and is afterwards paid under the order of the Supreme Court to the person mentioned in the order, the payment shall operate as a reconveyance of the land comprised in the mortgage to the person who at the time of the payment is entitled to the equity of redemption.
- (5) An order under subsection (4) takes effect only when it has been registered with the registrar-general.

109 Mortgaged land primarily liable for mortgage debts of deceased person

- (1) If anyone dies entitled to any estate or interest in any land or other hereditaments that, at the time of his or her death, are charged with the payment of any sum of money by way of mortgage, and the person has not by his or her will or deed or other document signified any contrary or other intention, the devisee to whom the land or hereditaments are devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of the person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of the mortgage debts with which the same are charged, every part of them according to its value bearing a proportionate part of the mortgage debts charged on the whole of them.
- (2) This section does not affect or diminish any right of the mortgagee on the lands or hereditaments to obtain full payment or satisfaction of his or her mortgage debt either out of the personal estate of the dead person or otherwise.
- (3) This section does not affect the right of any person claiming under or because of any will, deed, or document made before 1 January 1856.

Part 7 Covenants to insure

110 Application of pt 7

This part applies to a lease for—

- (a) a term of years absolute or ending on a life or otherwise; or
- (b) the life of the lessee or someone else.

111 Relief against forfeiture for breach of covenant to insure

The Supreme Court may, on any conditions it considers appropriate, relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire if no loss or damage by fire has happened, and the breach has in the opinion of the court been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure.

112 Record of relief granted

If the Supreme Court grants relief under section 111 in relation to a lease, the court may order that a record of the relief having been granted is to be made by endorsement on the lease or otherwise.

113 Limit on relief

The Supreme Court must not grant relief under this part to a person if—

- (a) the court has already granted relief to the person in relation to the same covenant or condition; or
- (b) a forfeiture under the covenant or condition in relation to which relief is sought has already been waived out of court in favour of the person.

114 Lessor to have benefit of informal insurance

The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance, relating to the building or other property covenanted to be insured, effected by the lessee or mortgagor in relation to his or her interest under the lease or in the property, or by any person claiming under him or her, but not effected in conformity with the covenant, as he or she would have from an insurance effected in conformity with the covenant.

115 Protection of purchase against forfeiture

- (1) If, on the genuine purchase of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is given the written receipt of the person entitled to receive the rent, or his or her agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser, or any person claiming under him or her, shall not be subject to any liability by way of forfeiture or damages or otherwise in relation to any breach of the covenant committed at any time before the completion of the purchase of which the purchaser had not notice before the completion of the purchase.
- (2) This provision is not to take away any remedy that the lessor or his or her legal representatives may have against the lessee or his or her legal representatives for breach of covenant.

Part 8 Miscellaneous provisions

118 **Covenant to produce deeds**

A covenant or undertaking to produce to any purchaser, lessee, or mortgagee of land, or his or her assigns, any deed of or relating to the land, shall be satisfied by a deposit of the deed permanently in the office of the registrar-general who shall give a receipt for and keep in his or her office a list of all deeds so deposited, and shall permit any person to inspect and obtain copies of every such deed.

119 **Presumption of survivorship**

If 2 or more persons have died, under circumstances rendering it uncertain which of them survived, the deaths shall for all purposes affecting the title to land be presumed to have taken place in order of seniority, and the younger is taken to have survived the elder.

120 **Release of part of land not to extinguish whole rent charge**

The release from a rent charge of part of the hereditaments charged with the rent charge does not extinguish the whole rent charge, but shall operate only to bar the right to recover any part of the rent charge out of the hereditaments released without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release.

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 and Law of Property Act 1898* No 17 (NSW).

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4 the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former NSW laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

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

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

New South Wales legislation

Conveyancing and Law of Property Act 1898 No 17 (NSW)

assented to 27 July 1898

commenced 27 July 1898

as amended by

Conveyancing and Law of Property (Supplemental) Act 1901 No 37 (NSW)

assented to 1 November 1901

commenced 1 November 1901

Commonwealth legislation

Law of Property (Miscellaneous Provisions) Act 1958 No 7

notified 8 May 1958

commenced 8 May 1958

New South Wales Acts Application Act 1984 No 41 sch 2 pt 7

notified 10 August 1984

sch 2 pt 7 commenced 10 August 1984

Self-Government (Consequential Amendments) Act 1989 No 38 sch 2 pt 1

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 2 pt 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

Legislation after becoming Territory enactment**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23 sch 1**

notified 4 June 1992 (Gaz 1992 S71)

sch 1 commenced 4 June 1992

Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1

notified 6 September 1993 (Gaz 1993 No S172)

s 1, s 2 commenced 6 September 1993 (s 2 (1))

sch 1 commenced 1 October 1993 (s 2 (2) and see Gaz 1993 No S207)

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)

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)

Financial Institutions (Removal of Discrimination) Act 1997 No 88 sch

notified 1 December 1997 (Gaz 1997 No S380)

s 1, s 2 commenced 1 December 1997 (s 2 (1))

sch commenced 31 December 1997 (s 2 (2) and Gaz 1997 No S442)

Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1

notified 1 December 1997 (Gaz 1997 No S380)

s 1, s 2 commenced 1 December 1997 (s 2 (1))

sch 1 commenced 1 June 1998 (s 2 (2))

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
 s 1, s 2 commenced 27 November 1998 (s 2 (1))
 sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3

notified 10 November 1999 (Gaz 1999 No 45)
 sch 3 commenced 10 November 1999 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 81

notified 26 July 2001 (Gaz 2001 No 30)
 s 1, s 2 commenced 26 July 2001 (IA s 10B)
 pt 81 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Statute Law Amendment Act 2001 (No 2) No 56 pt 3.10

notified 5 September 2001 (Gaz 2001 No S65)
 pt 3.10 commenced 5 September 2001 (s 2 (1))

Statute Law Amendment Act 2002 No 30 pt 3.10

notified LR 16 September 2002
 s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
 pt 3.10 commenced 17 September 2002 (s 2 (1))

as repealed by

Civil Law (Property) Act 2006 A2006-38 s 507

notified LR 28 September 2006
 s 1, s 2 commenced 28 September 2006 (LA s 75 (1))
 s 507 commenced 28 March 2007 (s 2 and LA s 79)

4 Amendment history

The *New South Wales Acts Application Act 1984*, sch 2, pt 7 sets out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT. This endnote, therefore, only details amendments made after the enactment of the 1984 Act.

Preliminary

pt 1 hdg ins 2001 No 56 amdt 3.119

Name of Act

s 1 am 1992 No 23
 sub 2001 No 56 amdt 3.119

Conveyance and assignment of property

pt 3 hdg ins 2001 No 56 amdt 3.119

Voluntary settlement of land not taken to be fraudulents 29 am 1995 No 54
sub 2001 No 56 amdt 3.120**Honest purchase of reversionary interest not to be set aside etc only for under value**

s 30 sub 2001 No 56 amdt 3.121

Registration of deed of feoffment equivalent to livery of seisins 31 am 1993 No 64
om 1999 No 66 sch 3**Release equivalent to lease and release**

s 32 om 1999 No 66 sch 3

Provision for cases of future and contingent uses

s 33 om 1999 No 66 sch 3

Assignment of personalty to self and other

s 34 om 1999 No 66 sch 3

Sale under power not to be avoided for mistaken payment to tenant for lifes 36 am 1999 No 66 sch 3; 2001 No 56 amdts 3.122-3.127; 2002
No 30 amdt 3.109, amdt 3.110**Leases and sales of settled estates and estates of children**

pt 4 hdg sub 2002 No 30 amdt 3.111

Interpretation for pt 4s 37 am 1989 No 38; 2001 No 56 amdts 3.128-3.134; R 3 LA (see
2001 No 56 amdt 3.135); 2002 No 30 amdts 3.112-3.117**Power of Supreme Court to authorise leases of settled estates**

s 38 sub 2001 No 56 amdt 3.136

Exercise of power to authorise leasess 39 om 1999 No 66 sch 3
ins 2001 No 56 amdt 3.137**Leases of settled land**

s 40 om 1999 No 66 sch 3

Surrender and renewal of leases

s 41 om 1999 No 66 sch 3

Authorisation of preliminary contracts

s 42 om 1999 No 66 sch 3

Modes of authorisation

s 43 om 2001 No 56 amdt 3.137

Evidence

s 44 om 1999 No 66 sch 3

Court to direct who shall be lessor

s 45 om 2001 No 56 amdt 3.137

Powers of leasing may be vested in trustees

s 46 am 1999 No 66 sch 3
om 2001 No 56 amdt 3.137

Exception of minerals

s 47 om 1999 No 66 sch 3

Power of Supreme Court to authorise sale of settled estates

s 48 sub 2001 No 56 amdt 3.138

Consideration for sale of land for building

s 49 om 1999 No 66 sch 3

Minerals to be excepted

s 50 om 1999 No 66 sch 3

Dedication of land for streets etc

s 51 om 1999 No 66 sch 3

Laying out and maintenance of streets etc

s 52 om 1999 No 66 sch 3

Execution of documents to give effect to sale

s 53 sub 2001 No 56 amdt 3.139

Application to Supreme Court for exercise of powers under pt 4

s 54 sub 2001 No 56 amdt 3.140

Consents required for exercise of power under pt 4

s 55 sub 2001 No 56 amdt 3.141

Dispensing with certain consents

s 56 om 2001 No 56 amdt 3.142

Notice of application

s 57 om 2001 No 56 amdt 3.143

Dispensing with notice

s 58 om 2001 No 56 amdt 3.143

Dispensing with consent in view of number of parties etc

s 59 om 2001 No 56 amdt 3.144

Petition may be granted without consent

s 60 om 2001 No 56 amdt 3.144

Notice of application to be served on trustees

s 61 om 2001 No 56 amdt 3.145

Publication of notice of application

s 62 om 2001 No 56 amdt 3.145

Application of proceeds of sale

s 63 am 1997 No 88; 1999 No 66 sch 3
sub 2001 No 56 amdt 3.146

Transmission and devolution of capital

s 64 am 2001 No 56 amdt 3.147

Application of certain money without Supreme Court order

s 65 hdg sub 2001 No 56 amdt 3.148
s 65 am 2001 No 56 amdts 3.149-3.151

Interim investment of moneys

s 66 om 1999 No 66 sch 3

Court may direct application of moneys in respect of leases etc

s 67 om 2001 No 56 amdt 3.152

Leases by tenants for life etc of settled estates

s 68 sub 2001 No 56 amdt 3.153

Effect of leases

s 69 om 2001 No 56 amdt 3.153

Provisions as to persons under disability

s 70 am 1994 No 45
om 1999 No 66 sch 3

No person obliged to apply or consent

s 74 om 1999 No 66 sch 3

Evidence of execution of counterpart lease by lessee

s 75 om 1999 No 66 sch 3

Record of exercise powers

s 76 om 1999 No 66 sch 3

Court may exercise powers repeatedly

s 77 om 1999 No 66 sch 3

Court not to authorise act beyond power of settlor to authorise

s 78 om 1999 No 66 sch 3

Acts of court not to be called in question

s 79 om 1999 No 66 sch 3

Costs

s 80 om 1999 No 66 sch 3

Renewable leaseholds of children

pt 5 hdg sub 2002 No 30 amdt 3.118

Surrender and renewal of children's leaseholds

s 82 hdg sub 2001 No 56 amdt 3.154
s 82 am 2001 No 56 amdts 3.155-3.161

Charges for renewal to be charged on estates

s 83 am 2001 No 56 amdts 3.162-3.164

New leases to be to same uses

s 84 am 2001 No 56 amdt 3.165, amdt 3.166

Grants of renewals by children

s 85 hdg sub 2001 No 56 amdt 3.167
s 85 am 2001 No 56 amdts 3.168-3.175

Persons out of jurisdiction

s 86 am 2001 No 56 amdts 3.176-3.181

Fines to be paid before renewal

s 87 am 2001 No 56 amdt 3.182

How amounts are to be applied

s 88 sub 2001 No 56 amdt 3.183

Validity of surrenders and leases

s 89 hdg sub 2002 No 30 amdt 3.119

Costs

s 90 am 2001 No 56 amdts 3.184-3.186

Application of s 91 to s 103

s 90A ins 2001 No 56 amdt 3.187

Powers incidental to mortgages

s 91 am 2001 No 56 amdt 3.188, amdt 3.189

Receipt for purchase money a sufficient discharge

s 92 am 2001 No 56 amdt 3.190

Notice of sale

s 93 sub 2001 No 56 amdt 3.191

Purported exercise of power of sale

s 93A ins 2001 No 56 amdt 3.191

Application of purchase money

s 94 sub 2001 No 56 amdt 3.192

Property that may be conveyed etc to purchaser

s 95 sub 2001 No 56 amdt 3.192

Owner of charge may call for deeds etc

s 96 am 2001 No 56 amdts 3.193-3.197

Appointment of receiver

s 97 am 2001 No 56 amdt 3.198

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- Receiver taken to be agent of mortgagor etc**
s 98 sub 2001 No 56 amdt 3.199
- Powers of receiver**
s 99 am 2001 No 56 amdt 3.200; 2002 No 30 amdt 3.120
- Ending appointment of receiver etc**
s 100 sub 2001 No 56 amdt 3.201
- Commission to receiver**
s 101 am 2001 No 56 amdt 3.202; 2002 No 30 amdt 3.121
- Receiver to insure if required**
s 102 am 2001 No 56 amdt 3.203-3.205
- Application of amounts received by receiver**
s 103 sub 2001 No 56 amdt 3.206
- Interpretation**
s 104 om 2001 No 56 amdt 3.207
- Effect of acknowledgment endorsed on mortgage**
s 105 am 1993 No 64; 1995 No 54; 1999 No 66 sch 3
om 2001 No 56 amdt 3.208
- Effect of repayment on ejection by mortgagee**
s 106 am 2001 No 56 amdt 3.209; 2002 No 30 amdt 3.122-3.124
- Section 106 not to apply to certain cases**
s 107 am 1997 No 96; 2001 No 56 amdt 3.210
- Redemption if mortgagee absent or unknown**
s 108 am 1993 No 64; 1999 No 66 sch 3; 2001 No 56 amdt 3.211-
3.222; 2002 No 30 amdt 3.125
- Mortgaged land primarily liable for mortgage debts of deceased person**
s 109 am 2001 No 56 amdt 3.223-3.228
- Application of pt 7**
s 110 ins 2001 No 56 amdt 3.229
- Relief against forfeiture for breach of covenant to insure**
s 111 am 2001 No 56 amdt 3.230
- Record of relief granted**
s 112 sub 2001 No 56 amdt 3.231
- Limit on relief**
s 113 sub 2001 No 56 amdt 3.232
- Protection of purchase against forfeiture**
s 115 am 2001 No 56 amdt 3.233; 2002 No 30 amdt 3.126
- Application of part to lease for term**
s 116 om 2001 No 56 amdt 3.234

Liability of vendor for fraudulent concealment

s 117 am 1989 No 38; 1997 No 96; 1998 No 54
om 1999 No 66 sch 3

Covenant to produce deeds

s 118 am 1993 No 64; 2001 No 44 amdt 1.860; 2001 No 56
amdt 3.235

Presumption of survivorship

s 119 am 2002 No 30 amdt 3.127

Release of part of land not to extinguish whole rent charge

s 120 am 2001 No 56 amdt 3.236

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.

Republication No	Amendments to	Republication date
1	Act 1992 No 23	31 July 1992
2	Act 1993 No 64	31 January 1994
3	Act 2001 No 56	16 November 2001
3 (RI)	A2001-56	14 March 2007
4	A2002-30	3 October 2002
4 (RI)	A2002-30	14 March 2007

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