

LAWS OF DOMINICA

LAW OF PROPERTY AMENDMENT ACT

CHAPTER 54:03

Act
13 of 1887
Amended by
19 of 1939
23 of 1958

Current Authorised Pages
Pages *Authorised*
(inclusive) *by L.R.O.*
1-12 *1/1991*

L.R.O. 1/1991

**Note
on
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

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LAW OF PROPERTY AMENDMENT ACT

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CHAPTER 54:03

LAW OF PROPERTY AMENDMENT ACT

AN ACT relating to the law of property.

1961 Ed.
Cap. 216.
13 of 1877.

[31st December 1877]

Commencement.

1. This Act may be cited as the –

Short title.

LAW OF PROPERTY AMENDMENT ACT.

2. In this Act –

Interpretation.

“judgment” shall be taken to include registered decrees, orders of Courts of Equity and Bankruptcy, and other orders having the operation of judgments;

“land” shall be taken to include all tenements and hereditaments, and any part or share of, or estate or interest in, any tenements or hereditaments, of whatsoever tenure or kind.

PART I

LEASES

3. Where any licence to do any act which, without the licence, would create a forfeiture, or give a right to re-enter under a condition or power reserved in any lease heretofore granted or to be hereafter granted, is given at any time after the passing of this Act to any lessee or his assigns, the licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, underlease, or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in the licence); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, underlease or other matter not specifically authorised or made punishable by the licence, in the same manner as if no licence had been given; and the condition or right of re-entry shall be and remain in all respects as if the licence had not been given, except in respect to the particular matter authorised to be done.

Restriction on effect of licence.

Restricted operation of partial licences.

4. Where, in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or underletting, or doing any other specified act without licence, and a licence, at any time after the passing of this Act, is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or is given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of the property, the licence shall not operate to destroy or extinguish the right of re-entry over or in respect of the shares or interest or remaining property, in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property (as the case may be), but the right of re-entry shall remain in full force over or in respect of the shares or interest or property not the subject of the licence.

Apportionment of conditions of re-entry.

5. Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Rent and benefit of lessee's covenants to run with reversion.

6. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to, and shall go with, the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2) This section applies only to leases made after the commencement of this Act.

7. (1) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to, and shall go with that reversionary estate or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Obligation of lessor's covenants to run with reversion.

(2) This section applies only to leases made after the commencement of this Act.

8. (1) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease shall be apportioned, and shall remain annexed to the several parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

Apportionment of conditions on severance, etc.

(2) This section applies only to leases made after the commencement of this Act.

9. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

Restrictions on, and relief against, forfeitures of leases.

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and, in case of relief, may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

(3) For the purposes of this section, a lease includes an original or derivative underlease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative underlessee, and the heirs, executors, administrators and assigns of a lessee, also a grantee under such grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative underlessor, and the heirs, executors, administrators and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of the State.

(5) For the purposes of this section, a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6) This section does not extend –

(a) to a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(b) in case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter or inspect the mine or the workings thereof.

(7) This section shall not affect the law relating to re-entry, or forfeiture, or relief in case of non-payment of rent.

(8) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

PART II RENT CHARGES

10. The release from a rent charge of part of the hereditaments charged therewith shall 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.

Release of part of land charged not to be an extinguishment.

PART III JUDGMENTS

11. The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice nevertheless to the rights of all persons interested in the hereditaments or property remaining unreleased, and not concurring in or confirming the release.

Release of part of land charged not to affect judgment

PART IV POWERS

12. Where under a power of sale a *bonafide* sale is made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life or any other party to the transaction is, by mistake, allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, the High Court may, upon any action brought or application made in a summary way, as the case may require or permit, declare that, upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with such interest thereon as the Court shall direct, and the settlement of the said principal moneys and interest under the direction of the Court, upon such parties as in the opinion of the Court are entitled thereto, the said sale ought to be established; and upon such payment and settlement being made accordingly, the Court may declare that the said

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

sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

Devisee in trust may raise money by sale, notwithstanding want of express power in the will.

13. Where, by any will which comes into operation after the passing of this Act, the testator has charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and has devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and has not made any express provision for the raising of the debt, legacy, or sum of money out of the estate, the devisee or devisees in trust may, notwithstanding any trusts actually declared by the testator, raise the debts, legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract, of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same thinks proper.

Power given by last section extended to survivors, devisees, etc.

14. The powers conferred by section 13 shall extend to all and every person or persons in whom the estate devised shall, for the time being, be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in the devisee or devisees in trust as aforesaid.

Executors to have power of raising money when there is no sufficient devise.

15. If any testator who has created such a charge as is described in section 13 has not devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein becomes vested in any trustee or trustees, the executor or executors for the time being named in the will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship is for the time being vested; but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

16. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections 13, 14 and 15, or either of them, have been duly and correctly exercised by the person or persons acting in virtue thereof.

Purchasers, etc., not bound to inquire as to power.

17. The provisions contained in sections 13, 14 and 15 shall not in any way prejudice or affect any sale or mortgage already made, or hereafter to be made, under or in pursuance of any will coming into operation before the passing of this Act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not been passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.

Sections 13, 14 and 15 not to affect certain sales, etc.

PART V

TRUST AND MORTGAGE ESTATE ON DEATH

18. (1) Where an estate or interest of inheritance in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him. And for the purposes of this section, the personal representatives for the time being of the deceased, shall be deemed in law his heirs and assigns within the meaning of all trusts and powers.

Devolution of trust and mortgage estate on death. 23 of 1958.

(2) This section applies only in cases of death after the commencement of this Act.

PART VI

ASSIGNMENT OF PERSONALTY

Assignment to
self and others.

19. Any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

PART VII

PURCHASERS

Purchaser not
bound to see to
the application of
purchase money.

20. The *bona fide* payment to, and the receipt of, any person to whom any purchase or mortgage money is payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust or security.

Punishment of
vendor, etc., for
fraudulent
concealment of
deeds, etc., or
falsifying
pedigree.

21. Any vendor or mortgagor of land, or of any chattels real or personal, or chases in action conveyed or assigned to a purchaser, or the solicitor or agent of any such vendor or mortgagor who, after the passing of this Act, conceals any settlement, deed, will or other instrument material to the title, or any incumbrance, from the purchaser, or falsifies any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, is guilty of an offence and is liable to a fine and to imprisonment for two years and to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee for any loss sustained by them, or either or any of them, in consequence of the settlement, deed, will or other instrument or incumbrance so concealed, or in consequence of any claim made by any person under the pedigree, but whose right was concealed by the falsification of the pedigree; and in estimating the damages, where the estate is recovered from the purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them, or either or any of them in improvements on the land; but no prosecution for any offence included in this section against any vendor or mortgagor, or any solicitor or agent, shall be commenced without the sanction of the Director of Public Prosecutions; and no such sanction shall be given without such previous notice of the application for leave to prosecute the person intended to be prosecuted as the Director of Public Prosecutions shall direct.