

**Reprint  
as at 1 October 2015**



## **Land Transfer Act 1952**

|                |                 |
|----------------|-----------------|
| Public Act     | 1952 No 52      |
| Date of assent | 23 October 1952 |
| Commencement   | see section 1   |

### **Contents**

|   | Page |
|---|------|
| Title   | 12   |
| 1 Short Title and commencement                    | 12   |
| 2 Interpretation                                  | 12   |
| 2AA Transitional, savings, and related provisions | 14   |
| 2A Act binds the Crown                            | 15   |

### **Part 1 Administration**

#### *Land registration districts, officers, etc*

|   |    |
|---|----|
| 3 Land registration districts   | 15 |
| 4 Registrar-General of Land   | 15 |
| 5 Delegation of Registrar's powers and duties                               | 16 |
| 6 Registrar to have seal of office  | 17 |
| 7 Barristers or solicitors only to be appointed to certain offices          | 17 |
| <i>[Repealed]</i>   |    |
| 8 Officers to be subject to regulations of Public Service <i>[Repealed]</i> | 17 |
| 9 Registrar to have and use seal of office <i>[Repealed]</i>                | 17 |

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice and Land Information New Zealand.**

## Part 2

### Land subject to this Act

|    |  |    |
|----|--|----|
| 10 | What lands subject to this Act   | 17 |
| 11 | Special provision as to land under Maori Land Act                            | 18 |
|    | <i>Title in substitution for Crown grant</i>                                 |    |
| 12 | Issue of certificate of title in lieu of Crown grant                         | 18 |
| 13 | Particulars to be specified in warrant                                       | 19 |
| 14 | Certificate may be issued to person claiming through person named in warrant | 19 |
| 15 | Certificate to issue subject to existing encumbrances                        | 19 |
| 16 | Warrant for certificate of title not required in certain cases               | 19 |
| 17 | Warrant to fix antevesting date  | 20 |
| 18 | Reservation of road by warrant   | 20 |
|    | <i>Voluntary applications to bring land under Act</i>                        |    |
| 19 | How land may be brought under Act  | 21 |
| 20 | By whom applications may be made   | 21 |
| 21 | Applicant to surrender title deeds   | 22 |
| 22 | Procedure on application [ <i>Repealed</i> ]                                 | 23 |
| 23 | Notice of application to be gazetted   | 23 |
| 24 | If applicant is original grantee, notice may be dispensed with               | 23 |
| 25 | When Registrar may reject application or order service of notices            | 23 |
| 26 | Notice of application to be posted in an appropriate office of the Registrar | 24 |
| 27 | If no caveat lodged, Registrar may bring land under Act                      | 24 |
| 28 | In case of failure to serve notice, time may be extended                     | 24 |
| 29 | Application may be withdrawn by consent of persons interested                | 25 |
| 30 | Disposition of previous title deeds on issue of certificate of title         | 25 |
| 31 | Reversion on lease not extinguished by bringing land under Act               | 25 |
| 32 | Registration of Crown grant under Deeds Registration Act not necessary       | 25 |

## Part 3

### Registration

|    |  |    |
|----|--|----|
| 33 | Registrar to keep register                                     | 26 |
| 34 | When instruments deemed registered                             | 26 |
| 35 | Registered proprietor  | 26 |
| 36 | Instruments to be in duplicate                                 | 27 |
| 37 | Priority according to time of registration                     | 27 |
| 38 | Registration procedure   | 27 |
| 39 | Contents of memorial   | 28 |
| 40 | Memorial to be recorded on duplicate grant or other instrument | 28 |
| 41 | Instruments not effectual until entry in register              | 29 |
| 42 | Informal instruments not to be registered                      | 30 |

|     |   |    |
|-----|---|----|
| 43  | Where instrument lodged not in order for registration   | 30 |
| 44  | Registrar may dispense with duplicate instruments   | 32 |
| 45  | Certified copies of register to be evidence   | 32 |
| 45A | Registrar may issue search copies   | 33 |
| 46  | Register to be open for search  | 33 |
| 47  | Presentation of instruments for registration  | 33 |
| 48  | Where boundaries of district altered, copies of original registers to be evidence <i>[Repealed]</i> | 34 |
|     | <i>District agents</i>  |    |
|     | <i>[Repealed]</i>   |    |
| 49  | Registration through district agents <i>[Repealed]</i>  | 34 |
|     | <i>Provisional registration</i>   |    |
| 50  | Until register duly constituted, land to be provisionally registered                                | 34 |
| 51  | When register duly constituted, provisional register to be closed                                   | 35 |
| 52  | Entries in provisional register to be evidence of title   | 35 |
| 53  | Special provisions as to Canterbury educational reserves  | 35 |
| 54  | Application of Act to provisional registration  | 36 |
| 55  | No dealings to be registered until payment of fees <i>[Repealed]</i>                                | 36 |
|     | <i>Lost instruments</i>   |    |
| 56  | High Court may investigate cases of lost instruments  | 36 |
| 57  | Court may order claimant to be registered as proprietor   | 37 |
|     | <i>Outstanding interests</i>  |    |
| 58  | Interests outstanding to be notified in register  | 37 |
| 59  | Interests registered under Deeds Registration Act to be recognised                                  | 38 |
| 60  | Claims for loss through neglect of claimant to register   | 38 |
|     | <i>Registered proprietors</i>   |    |
| 61  | Persons jointly registered to be joint tenants  | 38 |
| 62  | Estate of registered proprietor paramount   | 38 |
| 63  | Registered proprietor protected against ejectment   | 39 |
| 64  | Title guaranteed to registered proprietor   | 40 |
|     | <b>Part 4</b>   |    |
|     | <b>Certificate of title</b>   |    |
| 65  | Registered proprietor entitled to certificate of title  | 40 |
| 66  | Certificates of title in respect of leasehold interests   | 40 |
| 67  | Existing encumbrances to be noted in certificate  | 41 |
| 68  | Certificate, how to be dated  | 41 |
| 69  | How memorial of easement to be recorded   | 41 |
| 70  | Removal of easements and <i>profits à prendre</i> from register                                     | 42 |
| 71  | Removal of fencing covenants from title   | 42 |
| 72  | Tenants in common entitled to separate certificates   | 43 |
| 73  | Issue of certificate may be withheld in certain cases   | 43 |

|    |  |    |
|----|--|----|
| 74 | Certificate issued in name of deceased person not void             | 43 |
| 75 | Certificate to be evidence of proprietorship                       | 43 |
| 76 | Instruments executed by person not actually registered             | 44 |
| 77 | No right to public road or reserve where unauthorised registration | 44 |
| 78 | Certificate not to be impeached                                    | 44 |
| 79 | Certificate void in certain cases                                  | 44 |
| 80 | Errors in register may be corrected                                | 45 |
| 81 | Surrender of instrument obtained through fraud, etc                | 45 |
| 82 | Person failing to surrender instrument may be summoned to court    | 45 |
| 83 | Person refusing to surrender instrument may be committed to prison | 46 |
| 84 | Issue of new certificate of title, etc                             | 46 |
| 85 | Court may order former certificate of title to be cancelled        | 46 |
| 86 | Single certificate in place of several or several in place of 1    | 46 |
| 87 | Issue of provisional certificate in case of loss of original       | 47 |
| 88 | Provision in case of lost lease or mortgage                        | 47 |
| 89 | Issue of certificate of title on sale for non-payment of rates     | 48 |

#### **Part 4A**

##### **Title to access strips**

|     |   |    |
|-----|---|----|
| 89A | Application by adjoining owners for title to access strip               | 48 |
| 89B | Where proprietor of any contiguous allotment not a party to application | 49 |
| 89C | How application dealt with  | 50 |
| 89D | Issue of title to access strip  | 50 |
| 89E | Conditions applying when certificate of title issued for access strip   | 51 |

#### **Part 5**

##### **Transfers**

|     |  |    |
|-----|--|----|
| 90  | Transfers and creation of easements, etc, by registered proprietor     | 52 |
| 90A | Creation and surrender of easements by easement instrument             | 53 |
| 90B | Creation and surrender of easements on deposit of plan                 | 54 |
| 90C | Variation of easements   | 55 |
| 90D | Rights and powers implied in certain easements                         | 55 |
| 90E | General provisions relating to easements                               | 56 |
| 90F | Creating and noting land covenants                                     | 57 |
| 91  | New certificate to transferee unnecessary if whole of land transferred | 57 |
| 92  | Certificate to be cancelled on transfer of portion of land only        | 58 |
| 93  | New certificates to be issued for portion transferred and for balance  | 58 |
| 94  | Certificate for balance not transferred may remain valid               | 58 |
| 95  | Estates for life, or in reversion, or remainder                        | 58 |
| 96  | Implied covenant in transfer of equity of redemption <i>[Repealed]</i> | 59 |
| 97  | Transfer of lease or mortgage  | 59 |

|      |  |    |
|------|--|----|
| 98   | Implied covenants in transfer of lease <i>[Repealed]</i>                             | 59 |
| 99   | Memorandum of vesting order to be entered on register                                | 60 |
| 99A  | Vesting by statute   | 60 |
|      | <i>Instruments for adoption by other enactments</i>                                  |    |
| 99B  | Forms for instruments available for adoption by other enactments                     | 60 |
|      | <b>Part 6</b>  |    |
|      | <b>Mortgages</b>   |    |
| 100  | Mortgage to take effect as security only   | 61 |
| 101  | Forms of mortgage  | 61 |
| 102  | Variation of mortgage terms  | 61 |
| 103  | Variation of priority of mortgages   | 62 |
|      | <i>Sale of mortgaged land</i>  |    |
| 104  | Application of purchase money <i>[Repealed]</i>                                      | 63 |
| 105  | Transfer by mortgagee  | 63 |
|      | <i>Rights and remedies of mortgagees</i>   |    |
| 106  | Mortgagee may, after default, enter into possession <i>[Repealed]</i>                | 63 |
| 107  | Mortgagee may distrain on tenant to the amount of his rent<br><i>[Repealed]</i>      | 63 |
| 108  | Mortgagee to have remedies of a lessor for recovery of premises<br><i>[Repealed]</i> | 63 |
| 109  | Mortgagee to have custody of instrument of title                                     | 64 |
|      | <i>Liability of mortgagee in possession of leasehold</i><br><i>[Repealed]</i>        |    |
| 110  | Mortgagee of leasehold after entry liable for rent <i>[Repealed]</i>                 | 64 |
|      | <i>Discharge of mortgage</i>   |    |
| 111  | Discharge of mortgage  | 64 |
| 112  | Discharge of mortgage where remedies thereunder are statute<br>barred                | 65 |
|      | <i>Discharge of annuity</i>  |    |
| 113  | On death of annuitant, discharge of annuity may be entered                           | 65 |
|      | <i>Submortgages</i>  |    |
| 114  | Submortgages   | 66 |
|      | <b>Part 7</b>  |    |
|      | <b>Leases</b>  |    |
| 115  | Form and registration of leases  | 66 |
| 116  | Variation of lease   | 67 |
| 117  | Bringing down encumbrances on registration of new lease                              | 67 |
| 118  | Covenant for right of purchase   | 68 |
| 118A | Bringing down encumbrances when lessee acquires fee simple                           | 68 |

|     |  |    |
|-----|--|----|
| 119 | Lease not binding on mortgagee without consent | 69 |
| 120 | Surrender of lease                             | 69 |
| 121 | Re-entry by lessor                             | 70 |

### Part 7A

#### Flat and office owning companies

|      |   |    |
|------|---|----|
| 121A | Interpretation  | 70 |
| 121B | Issue of share certificates   | 71 |
| 121C | Registration of licence to occupy                                       | 72 |
| 121D | Registrar may require plan  | 72 |
| 121E | Registration of instruments against licence                             | 73 |
| 121F | Effect of registration of licence                                       | 73 |
| 121G | Mortgage of licence   | 74 |
| 121H | Mortgagee to have custody of licence and share certificate              | 75 |
| 121I | Consent of mortgagee required on disposal of licence or shares          | 75 |
| 121J | Restrictions on cancellation, etc, of licence                           | 76 |
| 121K | Registration of cancellation, etc, of licence                           | 76 |
| 121L | Bringing down of mortgage on new licence                                | 77 |
| 121M | Registration of transfer of licence or new licence                      | 78 |
| 121N | Transfer of shares on exercise of power of sale by mortgagee of licence | 78 |
| 121O | Priority of replacement mortgage over land of company                   | 79 |
| 121P | Service of notices  | 79 |

### Part 8

#### Transmissions, trusts, caveats, and powers of attorney

##### *Transmissions*

|     |   |    |
|-----|---|----|
| 122 | Person claiming under transmission may apply to have same registered                        | 80 |
| 123 | Procedure on application for transmission   | 81 |
| 124 | Caveat may be entered on behalf of beneficiaries under will or settlement <i>[Repealed]</i> | 81 |
| 125 | Transmission to mortgagee on bankruptcy of lessee   | 81 |
| 126 | Transmission to lessor in default of mortgagee applying                                     | 81 |
| 127 | Particulars of marriage of female proprietor to be registered <i>[Repealed]</i>             | 81 |

##### *Trusts*

|     |   |    |
|-----|---|----|
| 128 | No entry of trusts to be made on register except as authorised  | 81 |
| 129 | Trusts of public reserves and other public lands                | 82 |
| 130 | Transferor may apply for entry of "No survivorship" on register | 83 |
| 131 | Trustees registered as joint proprietors may similarly apply    | 83 |
| 132 | Effect of entry   | 83 |
| 133 | Procedure for obtaining order                                   | 83 |
| 134 | Registrar may be nominated trustee <i>[Repealed]</i>            | 84 |

|     |  |    |
|-----|--|----|
| 135 | Beneficiary may use name of trustee in prosecuting or defending action | 84 |
|-----|--|----|

*Caveats*

|      |   |    |
|------|---|----|
| 136  | Caveat against bringing land under Act  | 84 |
| 137  | Caveat against dealings with land under Act   | 85 |
| 138  | Particulars to be stated in caveat <i>[Repealed]</i>                                  | 85 |
| 139  | Service of notices as to caveats <i>[Repealed]</i>                                    | 86 |
| 140  | Effect of caveat against bringing land under Act                                      | 86 |
| 141  | Effect of caveat against dealings   | 86 |
| 142  | Notices to be given to persons affected   | 88 |
| 143  | Procedure for removal of caveat   | 88 |
| 144  | Lapse of caveat against bringing land under Act                                       | 88 |
| 145  | Lapse of caveat against dealings  | 89 |
| 145A | Early lapse of caveat against dealings  | 89 |
| 146  | Person entering caveat without due cause liable for damages                           | 89 |
| 147  | Caveat may be withdrawn   | 90 |
| 147A | Electronic registration with caveator's consent subject to rights of caveator         | 90 |
| 148  | No second caveat may be entered   | 90 |
| 148A | Registrar not required to verify caveator's entitlement to estate or interest claimed | 90 |
| 148B | Registrar's powers if caveat does not comply with this Act                            | 91 |

*Powers of attorney*

|     |  |    |
|-----|--|----|
| 149 | Power of attorney not invalidated by bringing land under Act | 91 |
| 150 | Registered proprietor may deal with land by attorney         | 91 |
| 151 | Power of attorney to be deposited with Registrar             | 91 |
| 152 | Revocation of power of attorney                              | 91 |
| 153 | Seal unnecessary   | 92 |

**Part 9**

**General provisions as to instruments**

*Covenants implied in instruments*

|      |  |    |
|------|--|----|
| 154  | Covenants for further assurance implied                                      | 92 |
| 155  | Short forms of covenant  | 92 |
| 155A | Incorporation of provisions contained in registered or prescribed memorandum | 93 |
| 156  | Action for breach of covenant  | 94 |

*Tax statement required for registration of instrument to transfer some estates in land*

|      |  |    |
|------|--|----|
| 156A | Interpretation   | 94 |
| 156B | Transferors and transferees must provide tax statement stating that transfer non-notifiable or providing tax information | 95 |
| 156C | Content of tax statement   | 96 |

|      |  |     |
|------|--|-----|
| 156D | Omissions and errors   | 97  |
| 156E | Offence to provide false or misleading tax information                           | 98  |
| 156F | Chief executive must supply tax information to Commissioner of Inland Revenue    | 98  |
| 156G | Other provisions concerning use of tax information                               | 99  |
| 156H | Certifier and chief executive must hold tax statement and provide copies         | 99  |
| 156I | Status of tax information  | 99  |
| 156J | Disclosure of information between authorised persons                             | 99  |
|      | <i>Execution of instruments</i>  |     |
| 157  | Paper instruments to be executed   | 100 |
| 158  | When instruments deemed to be attested <i>[Repealed]</i>                         | 101 |
| 159  | Questions to attesting witness, and certificate thereon <i>[Repealed]</i>        | 101 |
| 160  | Acknowledgment by party to instrument, and certificate thereon <i>[Repealed]</i> | 101 |
| 161  | Execution of documents by corporation <i>[Repealed]</i>                          | 101 |
| 162  | Unincorporated building societies <i>[Repealed]</i>                              | 101 |
| 163  | Instruments as evidence  | 101 |
| 164  | Correctness of instrument to be certified  | 101 |
| 164A | Certification  | 102 |
| 164B | Who may give certification   | 103 |
| 164C | Retention of evidence and audit of certifications                                | 103 |
| 164D | Requirements about execution do not apply if certification given                 | 104 |
| 164E | Effect of certification  | 104 |
|      | <i>Governments of other countries as registered proprietors</i>                  |     |
| 165  | Governments of other countries may be registered as proprietors of land          | 104 |
|      | <i>Verification of instruments</i>   |     |
| 166  | Verification of instruments executed out of New Zealand                          | 105 |
|      | <b>Part 10</b>   |     |
|      | <b>Plans and surveys</b>   |     |
| 167  | Plans to be deposited in certain cases   | 106 |
| 167A | Deposit documents  | 108 |
| 168  | Deposit not to operate as dedication of roads                                    | 109 |
| 169  | Land taken for roads to be defined on register                                   | 109 |
| 170  | Cost of survey for correction of plans, etc                                      | 109 |
| 171  | Surveyor-General or person authorised by him may enter land <i>[Repealed]</i>    | 110 |



**Part 11**  
**Guarantee of title**

*Compensation for loss or damage*

|      |   |     |
|------|---|-----|
| 172  | Compensation for mistake or misfeasance of Registrar                    | 110 |
| 172A | Compensation for loss occurring after search and before registration    | 110 |
| 173  | Notice of action to be served on Attorney-General and Registrar-General | 111 |
| 174  | Liability of plaintiff for costs  | 112 |
| 175  | Recovery of compensation paid and costs in case of fraud                | 112 |
| 176  | Judgment against absconders, etc  | 113 |
| 177  | Recovery of judgment against absconders, etc                            | 114 |
| 178  | Crown not liable in certain cases                                       | 114 |
| 179  | Measure of damages  | 114 |
| 180  | Limitation of actions against the Crown                                 | 115 |
| 181  | Plaintiffs to be nonsuited if laches proved                             | 115 |

*Protection of purchasers*

|     |   |     |
|-----|---|-----|
| 182 | Purchaser from registered proprietor not affected by notice | 115 |
| 183 | No liability on bona fide purchaser or mortgagee            | 116 |

**Part 12**  
**Compulsory registration of titles**

|     |  |     |
|-----|--|-----|
| 184 | Interpretation   | 116 |
| 185 | All private General land to be brought under this Act  | 116 |
| 186 | Application to bring land under this Act deemed to be made   | 117 |
| 187 | Applications to be dealt with as voluntary applications under this Act   | 117 |
| 188 | Special provisions as to applications under this Part  | 117 |
| 189 | Registrar may require surrender of instruments affecting title   | 118 |
| 190 | Registrar may issue ordinary or limited certificate of title   | 118 |
| 191 | Definition and form of limited certificate   | 118 |
| 192 | Notices of issue of certificate of title to be given   | 119 |
| 193 | Registrar's minutes of defects found in titles   | 119 |
| 194 | Searching of Registrar's minutes   | 119 |
| 195 | Limited certificate of title may be made ordinary  | 120 |
| 196 | Ordinary certificate of title not to issue till title good   | 120 |
| 197 | Registrar may require proof that estate of registered proprietor of limited title not extinguished                     | 120 |
| 198 | Memorials on limited certificate of title to be evidence   | 121 |
| 199 | Application of Act to limited certificate of title   | 121 |
| 200 | Applications by persons claiming title adverse to that of proprietor under limited certificate                         | 122 |
| 201 | No right of action by proprietor under limited certificate against the Crown or the Registrar-General in certain cases | 122 |

|     |   |     |
|-----|---|-----|
| 202 | No dealings to be registered in certain cases                           | 122 |
| 203 | Title to estate less than freehold evidenced by limited certificate     | 123 |
| 204 | When interests excepted from guarantee extinguished                     | 123 |
| 205 | Caveats in respect of applications under this Part                      | 124 |
| 206 | Trustees without power to sell  | 124 |
| 207 | Restrictions on issue of ordinary certificate of title                  | 125 |
| 208 | Registrar may amend description of land in limited certificate of title | 125 |
| 209 | No action against Crown in certain cases                                | 125 |
| 210 | Registration of deeds affecting land subject to this Part               | 126 |

### Part 13

#### General provisions

##### *Additional powers of Registrar*

|      |  |     |
|------|--|-----|
| 211  | Registrar may require production of instruments, etc                       | 126 |
| 212  | Not producing instruments when required by Registrar                       | 127 |
| 213  | Authority to destroy instruments of title after 20 years <i>[Repealed]</i> | 128 |
| 214  | Transfer of instruments, etc, to libraries and museums <i>[Repealed]</i>   | 128 |
| 215  | Registrar may require indemnity for costs                                  | 128 |
| 215A | Records becoming obliterated, etc  | 128 |
| 215B | Register folium lost, etc  | 129 |

##### *Rights of appeal*

|     |   |     |
|-----|---|-----|
| 216 | Review by Registrar of decision   | 129 |
| 217 | Notice to Registrar to appear   | 130 |
| 218 | Hearing of appeal   | 130 |
| 219 | Expenses of appeal  | 130 |
| 220 | Registrar-General to decide between Registrar and Examiner of Titles <i>[Repealed]</i>          | 130 |
| 221 | Primary appeal to Registrar-General if Registrar and Examiner the same person <i>[Repealed]</i> | 130 |
| 222 | Registrar-General may submit questions to Court of Appeal                                       | 130 |
| 223 | Procedure   | 131 |
| 224 | Rules of procedure  | 131 |

##### *Offences*

|      |  |     |
|------|--|-----|
| 225  | Fraudulently procuring certificate of title, etc       | 131 |
| 226  | Other offences under Act                               | 132 |
| 227  | Summary trial of indictable offences <i>[Repealed]</i> | 134 |
| 228  | Prosecution of offences                                | 134 |
| 228A | Fraudulent removal, destruction, etc, of records       | 134 |

##### *Landbrokers*

##### *[Repealed]*

|     |  |     |
|-----|--|-----|
| 229 | Power of Registrar-General to license persons as landbrokers <i>[Repealed]</i> | 135 |
|-----|--|-----|

|      |  |     |
|------|--|-----|
| 230  | Restrictions on licensing of landbrokers <i>[Repealed]</i>   | 135 |
| 231  | Bond required before grant of licence <i>[Repealed]</i>  | 135 |
| 232  | Licences may be revoked <i>[Repealed]</i>  | 135 |
| 233  | Acting without licence <i>[Repealed]</i>   | 135 |
| 234  | Making unlawful charges <i>[Repealed]</i>  | 135 |
|      | <i>Miscellaneous</i>   |     |
| 235  | Fees or charges  | 135 |
| 236  | Regulations  | 137 |
| 237  | When paper instrument is in acceptable form  | 139 |
| 238  | Content of paper forms   | 139 |
| 239  | Description of person to include personal representative   | 140 |
| 240  | How Registrar gives public notice  | 140 |
| 240A | Specifications by Registrar  | 140 |
| 240B | Notice by Registrar to particular persons  | 140 |
| 240C | Notices to Registrar   | 141 |
| 240D | When notices taken to be delivered   | 141 |
| 241  | Registrar not obliged to produce registers or attend court   | 142 |
| 242  | Persons qualified to take declarations   | 142 |
| 243  | Personal liability   | 143 |
| 244  | Property Law Act 1952 to be subject to this Act <i>[Repealed]</i>  | 143 |
| 245  | Repeals and savings  | 143 |
|      | <b>Schedule 1AA</b>  | 145 |
|      | <b>Transitional, savings, and related provisions</b>   |     |
|      | <b>Schedule 1</b>  | 146 |
|      | <b>Certificates of title</b>   |     |
|      | <b>Schedule 2</b>  | 148 |
|      | <b>Forms of documents</b>  |     |
|      | <b>Schedule 3</b>  | 154 |
|      | <b>Covenants, conditions, and powers implied, pursuant to memorandum of priority, in mortgages thereby postponed</b> |     |
|      | <b>Schedule 4</b>  | 155 |
|      | <b>Covenants implied in instruments</b>  |     |
|      | <b>Schedule 5</b>  | 158 |
|      | <b>Attestation of instruments</b>  |     |
|      | <b>Schedule 6</b>  | 160 |
|      | <b>Scale of charges for landbrokers</b>  |     |
|      | <i>[Repealed]</i>  |     |
|      | <b>Schedule 7</b>  | 160 |
|      | <b>Rights and powers of grantees implied in certain easements</b>  |     |
|      | <i>[Repealed]</i>  |     |

**Schedule 8**  
**Enactments repealed**

161

**An Act to consolidate and amend certain enactments relating to the registration and transfer of title to land****1 Short Title and commencement**

This Act may be cited as the Land Transfer Act 1952, and shall come into force on 1 January 1953.

**2 Interpretation**

In this Act, and in all instruments purporting to be made and executed under this Act, unless the context otherwise requires,—

**bankruptcy** means the vesting in any person or persons of any estate or interest of a debtor for the benefit of creditors generally, by deed of arrangement or otherwise, under authority of any court of competent jurisdiction

**computer register** has the same meaning as in the section 4 of Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

**Crown grant** means the grant of any land by the Crown, and includes certificates of title issued in lieu of grant

**dealing** means every transfer, transmission, mortgage, lease, or encumbrance of any estate or interest under this Act

**department** means Land Information New Zealand, or such other department or ministry as has, with the authority of the Prime Minister, for the time being assumed responsibility for the administration of this Act

**district** means a land registration district under this Act

**each Registrar** or **every Registrar** or **the Registrar** means the Registrar-General, acting in respect of each district

**electronic instrument** has the same meaning as in section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

**endorsement**, in addition to its ordinary meaning, includes anything written upon or at the foot of any document for giving effect to any of the purposes of this Act and any similar addition to an instrument in a medium other than paper

**estate or interest** means every estate in land, also any mortgage or charge on land under this Act

**former Land Transfer Act** means the Land Transfer Act 1915, the Land Transfer Act 1908, and the Land Transfer Act 1885, and all amendments of any of those Acts, and includes every Act repealed by those Acts

**instrument**—

- (a) means any printed or written document, map, or plan relating to the transfer of or other dealing with land, or evidencing title to land; and
- (b) includes a memorandum within the meaning of section 155A(1) and an electronic instrument

**land** includes messuages, tenements, and hereditaments, corporeal and incorporeal, of every kind and description, and every estate or interest therein, together with all paths, passages, ways, waters, watercourses, liberties, easements, and privileges thereunto appertaining, plantations, gardens, mines, minerals, and quarries, and all trees and timber thereon or thereunder lying or being, unless specially excepted

**the Land Transfer Acts** means this Act, and includes any former Land Transfer Act and the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

**medium** includes—

- (a) any electronic, electromagnetic, optical, digital, or photographic process or system; and
- (b) any paper; and
- (c) any other means of recording or storing information

**mortgage** means any charge on land created under the provisions of this Act for securing—

- (a) the repayment of a loan or satisfaction of an existing debt;
- (b) the repayment of future advances, or payment or satisfaction of any future or unascertained debt or liability, contingent or otherwise;
- (c) the payment to the holders for the time being of any bonds, debentures, promissory notes, or other securities, negotiable or otherwise, made or issued by the mortgagor before or after the creation of that charge;
- (d) the payment to any person or persons by yearly or periodical payments or otherwise of any annuity, rentcharge, or sum of money other than a debt

**mortgagee** means the proprietor of a mortgage

**mortgagor** means the proprietor of any estate or interest charged with a mortgage

**paper instrument** means an instrument that is not an electronic instrument

**practitioner** means—

- (a) a practitioner within the meaning of section 6 of the Lawyers and Conveyancers Act 2006; or
- (b) a landbroker licensed by the Registrar under section 229 of this Act

**proprietor** means any person seised or possessed of any estate or interest in land, at law or in equity, in possession or expectancy

**register** includes a computer register

**Registrar-General**, means the Registrar-General of Land appointed under section 4(1); and **Registrar** has the corresponding meaning

**Surveyor-General** means the person holding office with that title under the Cadastral Survey Act 2002 or otherwise

**transmission** means the acquirement of title to an estate or interest by operation of law

**working day** means a day on which the Land Registry Office is to be open to the public in accordance with regulations made under this Act.

Compare: 1915 No 35 s 2; 1925 No 20 s 6

Section 2 **computer register**: inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 2 **department**: inserted, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 2 **each Registrar** or **every Registrar**, or **the Registrar**: inserted, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 2 **electronic instrument**: inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 2 **endorsement**: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 2 **instrument**: replaced, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 2 **the Land Transfer Acts**: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 2 **medium**: inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 2 **paper instrument**: inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 2 **practitioner**: inserted, on 1 August 2008, by section 342 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 2 **register**: inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 2 **Registrar** and **Examiner**: repealed, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 2 **Registrar-General**: replaced, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 2 **Surveyor-General**: amended, on 1 June 2002, pursuant to section 68(2) of the Cadastral Survey Act 2002 (2002 No 12).

Section 2 **working day**: inserted, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## 2AA Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 2AA: inserted, on 1 October 2015, by section 4 of the Land Transfer Amendment Act 2015 (2015 No 82).

## **2A Act binds the Crown**

This Act binds the Crown.

Section 2A: inserted, on 1 February 1999, by section 32 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **Part 1 Administration**

### *Land registration districts, officers, etc*

## **3 Land registration districts**

- (1) The land registration districts existing at the commencement of the Land Transfer (Automation) Amendment Act 1998 continue until altered under subsection (2).
- (2) The Governor-General may from time to time, by Order in Council,—
  - (a) alter the boundaries of any district:
  - (b) amalgamate any 2 or more districts:
  - (c) create new districts:
  - (d) assign a name to any district:
  - (e) abolish all districts.
- (3) The making of an Order in Council under subsection (2) does not require any register, computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, provisional register, books, or indexes to be altered or amalgamated, but the Registrar may do so if appropriate.

Section 3: replaced, on 1 February 1999, by section 33 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 3(3): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **4 Registrar-General of Land**

- (1) There must be a Registrar-General of Land, appointed under the State Sector Act 1988.
- (2) No person may be appointed Registrar-General, and no person may be directed under section 62(1) of the State Sector Act 1988 to exercise or perform any power or duty of the Registrar-General, unless that person is a barrister and solicitor of the High Court.
- (3) In exercising or performing the powers and duties of the Registrar, the Registrar and every delegate of the Registrar must have regard to the following objectives:

- (a) ensuring an efficient and effective system for registering dealings in land:
- (b) managing the risk of fraud and improper dealings:
- (c) ensuring public confidence in the land titles system:
- (d) ensuring the maintenance of the integrity of the register and the right to claim compensation under Part 11.

Section 4: replaced, on 1 February 1999, by section 34(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 4(3): inserted, on 1 June 2002, by section 39 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **5 Delegation of Registrar's powers and duties**

- (1) The Registrar may from time to time, either generally or particularly, delegate to any employee of the chief executive of the department or any other suitable person any of the Registrar's powers or duties under this Act or any other Act other than—
  - (a) any power or duty under any of sections 172, 173, 175, 216, 217, 218, 222, 225, 226, 229, 231, 232, and 238:
  - (b) the power of delegation conferred by this section.
- (2) Any delegation may be made to a specified person or to persons of a specified class, or to the holder or holders of a specified office.
- (3) Every delegation is revocable in writing at any time.
- (4) No delegation affects or prevents the exercise of any power or the performance of any duty by the Registrar, nor does it affect the responsibility of the Registrar for the actions of any person acting under the delegation.
- (5) Any delegation continues in force according to its tenor, despite any change in the person holding office as the Registrar.
- (6) Subject to any general or special directions given by the Registrar, the person to whom any powers or duties are delegated may exercise those powers or perform those duties in the same manner and with the same effect as if they had been conferred on that person directly and not by delegation.
- (7) In the absence of proof to the contrary, an employee of the chief executive of the department purporting to act under a delegation under this section is presumed to be acting in accordance with its terms.
- (8) If any person who is not an employee of the chief executive of the department is purporting to act under a delegation under this section, that person is presumed to be acting in accordance with the terms of a delegation in the absence of proof to the contrary but must provide evidence of the delegation if so requested.

Section 5: replaced, on 1 February 1999, by section 35 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).



Section 5(1): amended, on 1 June 2002, by section 40(1)(a) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 5(1): amended, on 1 June 2002, by section 40(1)(b) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 5(8): inserted, on 1 June 2002, by section 40(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **6 Registrar to have seal of office**

- (1) The Registrar must have and use a seal of office, bearing the impression of the New Zealand Coat of Arms and having inscribed the words “Registrar-General of Land, New Zealand”.
- (2) Every instrument bearing a representation of the Registrar’s seal and purporting to be issued by or on behalf of the Registrar is, in the absence of proof to the contrary, to be treated as having been issued by or under the direction of the Registrar.
- (3) Nothing in this section affects the validity of any document signed before the commencement of the Land Transfer (Automation) Amendment Act 1998 and bearing the imprint of the seal of a District Land Registrar or bearing the impression of the Royal Arms instead of the New Zealand Arms.

Section 6: replaced, on 1 February 1999, by section 35 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **7 Barristers or solicitors only to be appointed to certain offices**

*[Repealed]*

Section 7: repealed, on 1 February 1999, by section 35 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **8 Officers to be subject to regulations of Public Service**

*[Repealed]*

Section 8: repealed, on 1 February 1999, by section 35 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **9 Registrar to have and use seal of office**

*[Repealed]*

Section 9: repealed, on 1 February 1999, by section 35 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

# **Part 2**

## **Land subject to this Act**

## **10 What lands subject to this Act**

The following land shall be subject to the provisions of this Act:

- (a) all land which has already in any manner become subject to the provisions of any former Land Transfer Act:

- (b) all land hereafter alienated or contracted to be alienated from the Crown in fee:
- (c) all land in respect of which any order is hereafter made under the provisions of any Maori Land Act in force for the time being which has the effect of vesting that land in any person in freehold tenure:
- (d) all land which hereafter becomes vested in any person for an estate in fee simple in possession by virtue of any Act of the Parliament of New Zealand.

Compare: 1915 No 35 s 10; 1947 No 59 Part 1

Section 10(d): amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

## **11 Special provision as to land under Maori Land Act**

Land over which the Maori title has been extinguished since the constitution of the district within which the same is situate, but before 31 August 1874 (being the date of the passing of the Land Transfer Act 1870 Amendment Act 1874), shall come under the provisions of this Act upon the registration of a Crown grant, or certificate of title in lieu of grant.

Compare: 1915 No 35 s 11; 1947 No 59 Part 1

### *Title in substitution for Crown grant*

## **12 Issue of certificate of title in lieu of Crown grant**

- (1) A Crown grant may not be issued for any land subject to the provisions of this Act; but in lieu of a grant the Governor-General may by warrant direct the Registrar to—
  - (a) issue a certificate of title for the land in form 1 of Schedule 1; or
  - (b) create a computer register for the land and, if the land is not electronic transactions land, issue a certificate of title accordingly.
- (2) The—
  - (a) issue of a certificate of title under subsection (1)(a), when signed and registered; or
  - (b) recording of information in the register under subsection (1)(b), when effected,—has the force and effect of a Crown grant.
- (3) This section and sections 14, 17, and 18 are subject to section 116 of the Land Act 1948, and—
  - (a) the form of a certificate of title; or
  - (b) the form in which information is recorded in the register,—may be varied as required by the operation of that section.

Section 12: replaced, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 12(1)(b): replaced, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **13 Particulars to be specified in warrant**

Every such warrant—

- (a) shall specify the name and description of the person or persons entitled to the grant, and, if more than 1, whether as joint tenants or tenants in common, and the date whereon the right to the grant accrued, together with a description of the land sufficient to identify the same, the correctness of which shall be certified by the Surveyor-General, or by some person appointed by him for the purpose; and whether the land is intended to be held in trust as a public reserve or otherwise, or is subject to any road or other reservation or restriction; and
- (b) shall be filed by the Registrar in his office for reference, and shall be conclusive evidence to the Registrar of the matters hereby required to be therein stated.

Compare: 1915 No 35 s 13

### **14 Certificate may be issued to person claiming through person named in warrant**

If it appears on the provisional register that the estate of any person named in any warrant as entitled to a Crown grant has become vested in any other person claiming through the person named in the warrant, the Registrar may issue a certificate of title direct to the person appearing to be so entitled or create an appropriate computer register.

Compare: 1915 No 35 s 14

Section 14: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **15 Certificate to issue subject to existing encumbrances**

Every certificate of title to be issued or computer register created as aforesaid shall be made subject to all encumbrances, estates, and interests appearing on the provisional register as affecting the land at the date of the issue of the certificate.

Compare: 1915 No 35 s 15

Section 15: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **16 Warrant for certificate of title not required in certain cases**

No warrant shall be necessary for the issue of a certificate of title to any person in whom any land has become vested, whether before or after the commencement of this Act, for an estate in fee simple in possession by any Act of the

Parliament of New Zealand or by any Proclamation or Order in Council or notice by any Minister of the Crown under the express provisions of any such Act since 1 March 1871.

Compare: 1915 No 35 s 16

Section 16 heading: amended, on 23 October 1963, by section 23 of the Land Transfer Amendment Act 1963 (1963 No 61).

Section 16: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

Section 16: amended, on 23 October 1963, by section 23 of the Land Transfer Amendment Act 1963 (1963 No 61).

## **17 Warrant to fix antevesting date**

- (1) The land comprised in any certificate of title issued in lieu of a Crown grant shall be deemed to have been subject to the provisions of the Land Transfer Acts as from the date fixed by the Governor-General's warrant as the date of acquisition of title thereto; and that date shall, for all purposes whatsoever, be deemed the antevesting date, in the same manner as if that antevesting date had been inserted in a Crown grant of the said land.
- (2) The reference to an antevesting date in any certificate of title purporting to be issued in pursuance of any such warrant shall be conclusive evidence of that date, and that the same was fixed by the Governor-General's warrant, as in the certificate is set forth and stated.
- (3) This section shall not be construed to validate or enable the registration under the Land Transfer Acts of any instrument executed before 16 September 1889 (being the date of the commencement of the Land Transfer Act 1885 Amendment Act 1889), by any Maori owner, so far as the instrument was not valid or capable of registration before that date.

Compare: 1915 No 35 s 17; 1947 No 59 Part 1; 1951 No 60 s 8

## **18 Reservation of road by warrant**

- (1) The reservation in any such warrant of any right of road, or right to take or lay off any road, shall, as from the date of the warrant, have the like effect as if the reservation had been contained in a Crown grant on the like date of the land the subject thereof.
- (2) Every such reservation, and all rights existing by virtue thereof, shall be deemed sufficiently protected by the general reservation in any certificate of title of the right of the Crown to take and lay off roads under the provisions of any Act of the Parliament of New Zealand, and no certificate of title shall be impeached on the ground of uncertainty or otherwise on account of any such reservation therein contained.

Compare: 1915 No 35 s 18

Section 18(2): amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

*Voluntary applications to bring land under Act*

**19 How land may be brought under Act**

Land which has not become subject to this Act in any manner under the foregoing provisions may, if the same has been alienated or contracted to be alienated from the Crown in fee, be brought under this Act in manner hereinafter provided; but no application shall be received to bring under this Act land for which no Crown grant has been issued until the application has been approved by the Surveyor-General, or by some person appointed by him for the purpose, and has been assented to by the Governor-General.

Compare: 1915 No 35 s 19

**20 By whom applications may be made**

- (1) The Registrar of each district shall receive applications for the purpose aforesaid in form A of Schedule 2 or other prescribed form, if made by any of the following persons, that is to say:
  - (a) by any person (claiming to be the person) in whom the fee simple of the land is vested in possession either at law or in equity:

provided that, wherever trustees other than trustees of public reserves have no express power to sell the land which they seek to bring under this Act, the person claiming to be beneficially entitled to the land shall concur in the application:
  - (b) by any person claiming a life estate in possession, not being a lease for a life or lives:

provided that all persons claiming to be beneficially entitled in reversion or remainder shall concur in the application:
  - (c) by any person having power legally or equitably to dispose of the fee simple in possession, but, if subject to the consent of any other person, then with that consent:
  - (d) by any person or body corporate holding any land as a public reserve, but in that case subject to the trusts affecting the reserve:
  - (e) by the guardian of any infant, making the application in the name of the infant:
  - (f) in the case of a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, being a patient within the meaning of that Act, by Public Trust or, as the case may be, the manager of his estate, making the application in the name of the mentally disordered person:
  - (g) in the case of a person in respect of whom a protection order is in force under the Protection of Personal and Property Rights Act 1988, by the manager of his estate, making the application in the name of the protected person:

- (h) by any agent holding a power of attorney authorising the sale of a freehold estate in any land of an absent proprietor, and making the application in the name of the proprietor, unless the power expressly prohibits his so doing.
- (2) No such application shall be received—
  - (a) from any person claiming to be entitled to an undivided share of any land, unless the persons who appear to be entitled to the other undivided shares of the said land join in the application with a view to bringing the entirety under this Act; nor
  - (b) from the mortgagor of any land, unless the mortgagee consents to the application; nor
  - (c) from the mortgagee of any land, except in exercise of a power of sale contained in the mortgage.
- (3) Every application to bring any land under this Act made by or on behalf of a company or other body corporate incorporated in New Zealand shall be executed in accordance with regulations made under this Act.

Compare: 1915 No 35 s 20

Section 20(1): amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 20(1)(f): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 20(1)(f): amended, on 1 November 1992, pursuant to section 137(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 20(1)(f): amended, on 1 April 1970, pursuant to section 129(4) of the Mental Health Act 1969 (1969 No 16).

Section 20(1)(f): amended, on 1 April 1970, pursuant to section 129(7) of the Mental Health Act 1969 (1969 No 16).

Section 20(1)(g): amended, on 1 October 1988, pursuant to section 113 of the Protection of Personal and Property Rights Act 1988 (1988 No 4).

Section 20(3): amended, on 17 May 2005, by section 3 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 20(3): amended, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1994 (1994 No 12).

## 21 Applicant to surrender title deeds

Every applicant shall, when making his application, surrender to the Registrar all instruments in his possession or under his control constituting or in any way affecting his title, and shall furnish a schedule of those instruments, and also, if required, an abstract of his title, and shall make and subscribe a declaration of the truth of the statements in the application, and shall supply a plan of the land applied for, showing the boundaries and relative position thereof.

Compare: 1915 No 35 s 21

## **22 Procedure on application**

*[Repealed]*

Section 22: repealed, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **23 Notice of application to be gazetted**

If it appears to the satisfaction of the Registrar that the land in respect of which the application is made is held by the applicant for the estate or interest specified in the application, and that all persons interested other than as lessees under a lease for years are parties to the application, the Registrar shall cause notice of the application to be advertised in the *Gazette* and in 1 or more newspapers published in the locality, and shall in every such advertisement limit and appoint a time, not less than the prescribed period, within which caveat may be lodged forbidding the bringing of the land under this Act.

Compare: 1915 No 35 s 23

Section 23: amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 23: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **24 If applicant is original grantee, notice may be dispensed with**

If it appears that the applicant is the original grantee from the Crown, and that no instrument, matter, or thing affecting the title to the land other than the Crown grant has been registered, the Registrar may dispense with the aforesaid advertisement, and in that case the Registrar may proceed forthwith to bring the land under this Act by issuing to the applicant, or to such person as he by writing under his hand directs, a certificate of title in form 2 of Schedule 1.

Compare: 1915 No 35 s 24

Section 24: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **25 When Registrar may reject application or order service of notices**

If it appears to the Registrar that any person interested (otherwise than as a lessee under a lease for years) is not a party to any application, or that the evidence adduced by the applicant in support of his claim or of any matters which he is required to prove is deficient in any essential particular, the Registrar may either reject the application, or at discretion may limit a time, by advertisement as aforesaid, within which caveat may be lodged forbidding the bringing of the land under this Act, and in such latter case may direct that such notices shall be served by the applicant upon such persons and in such form and manner as the Registrar deem necessary, and that, in addition to the advertisements prescribed in section 23, notice of the application be advertised at the cost of the applicant in any gazette or newspaper published in New Zealand or elsewhere.

Compare: 1915 No 35 s 25

Section 25: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **26 Notice of application to be posted in an appropriate office of the Registrar**

The Registrar shall, in addition to the notices aforesaid, cause notice of every such application as last mentioned to be posted in a conspicuous place in an appropriate office of the Registrar, and in such other places as he may deem expedient, and shall forward a copy of the notice addressed to each of the persons (if any) stated by the applicant to be in occupation of the land, or to be occupiers or proprietors of land adjoining.

Compare: 1915 No 35 s 26

Section 26 heading: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 26: amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 26: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **27 If no caveat lodged, Registrar may bring land under Act**

- (1) The Registrar must (by acting under subsection (2)) bring under this Act the land described in any application if, at the expiration of the time limited in respect of the application, it appears to the Registrar that—
  - (a) all necessary notices have been given; and
  - (b) no caveats have been lodged; and
  - (c) no sufficient cause to the contrary appears.
- (2) The Registrar must—
  - (a) issue to the applicant or a person specified in writing by the applicant, a certificate of title for the land in form 2 of Schedule 1; or
  - (b) create a computer register for the land and, if the land is not electronic transactions land, issue a certificate of title accordingly.

Section 27: replaced, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 27(2)(b): replaced, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **28 In case of failure to serve notice, time may be extended**

If it appears to the Registrar, at the expiration of the time limited as aforesaid, that there has been a failure in the service of any notice, and that service thereof is essential, the Registrar may either reject the application, or may limit and appoint a further time within which caveat may be lodged as aforesaid, and upon the expiration of that time, and upon proof of service of the notice, may, if no caveat has been lodged, bring the land under this Act by issuing a certificate in manner aforesaid.

Compare: 1915 No 35 s 28



Section 28: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**29 Application may be withdrawn by consent of persons interested**

The applicant may, with the consent of the person (if any) in whose name the certificate of title has been directed to be issued, withdraw his application at any time prior to the issuing of the certificate; and the Registrar shall in that case return to him, or to the person (if any) notified in the application as having a lien thereon, all instruments of title deposited by the applicant in support of his application.

Compare: 1915 No 35 s 29

**30 Disposition of previous title deeds on issue of certificate of title**

- (1) Upon issuing a certificate of title bringing land under this Act, the Registrar shall cancel by stamp or otherwise the conveyance or other instrument through which the applicant derives his title; but, if any such instrument relates to or includes any property other than the land included in the certificate of title, the Registrar shall, by endorsement thereon, cancel the same in so far only as relates to the land included in the certificate, and that instrument shall for all other purposes remain in full force and effect.
- (2) All instruments of title relating exclusively to the land shall be retained by the Registrar, and no person shall be entitled to the production thereof except upon the written order of the applicant, or of some person claiming through or under him, or upon the order of the High Court.

Compare: 1915 No 35 s 30

Section 30(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**31 Reversion on lease not extinguished by bringing land under Act**

The reversion expectant upon any lease shall not be deemed to have been extinguished in consequence of the land whereof that lease has been granted having been brought under this Act, and the person appearing upon the register as seised of the land described in the lease shall be held in every court of law and equity to be seised of the reversion expectant upon the lease, and to have all powers, rights, and remedies to which a reversioner is by law entitled, and shall be subject to all covenants and conditions therein expressed to be performed on the part of the lessor.

Compare: 1915 No 35 s 31

**32 Registration of Crown grant under Deeds Registration Act not necessary**

It shall not be necessary for the Registrar to register any Crown grant that may be transmitted to him for registration under the Deeds Registration Act 1908 pending an application to bring the land comprised therein under this Act.

Compare: 1915 No 35 s 32

Section 32: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **Part 3**

### **Registration**

#### **33 Registrar to keep register**

- (1) Each Registrar shall keep a register, whether in the form of a book or otherwise, and shall bind up or include therein a duplicate of every grant of land and of every certificate of title to land within his district, and each such duplicate grant or certificate of title shall constitute a separate folium of the register, and the Registrar shall record thereon the particulars of all instruments, dealings, and other matters by this Act required to be registered affecting the land included under each such grant or certificate of title.
- (2) The provisions of this Act or of any other Act or of any regulation, rule, bylaw, order, or other enactment, or of any deed, instrument, or other document whatsoever relating to the register book under this Act or to any grant or certificate of title bound in the register or in the register book or to any volume of the register or of the register book shall, in any case where the register or any part thereof is kept otherwise than in the form of a book, be read subject to such modifications as may be necessary, having regard to the form in which the register or part thereof is kept.

Section 33: replaced, on 29 September 1961, by section 2 of the Land Transfer Amendment Act 1961 (1961 No 9).

Section 33(2): amended, on 30 November 1982, by section 2 of the Land Transfer Amendment Act (No 2) 1982 (1982 No 115).

#### **34 When instruments deemed registered**

- (1) Every grant and certificate of title shall be deemed and taken to be registered under the provisions and for the purposes of this Act so soon as the same have been marked by the Registrar with the folium and volume as embodied in the register.
- (2) Every memorandum of transfer or other instrument purporting to transfer or in any way to affect land under the provisions of this Act shall be deemed to be so registered so soon as a memorial thereof as hereinafter described has been entered in the register upon the folium constituted by the existing grant or certificate of title of the land.

Compare: 1915 No 35 s 34(1), (2)

#### **35 Registered proprietor**

The person named in any grant, certificate of title, or other instrument so registered as seised of or taking any estate or interest shall be deemed to be the registered proprietor thereof.

Compare: 1915 No 35 s 34(3)

### **36 Instruments to be in duplicate**

- (1) Every instrument presented for registration shall (except in the case of a memorandum of transfer) be in duplicate, or, if the person presenting the same so requires, in triplicate, and shall be attested by a witness:  
provided that, where the instrument affects land in more than 1 district, the Registrar of each district to whom the instrument is presented for registration as to that part of the land that is situated in his district may require the presentation for filing in his office of either an additional executed copy of the instrument or a copy of the instrument certified as a true copy by the Registrar in whose district an executed copy has already been filed.
- (2) In the case of an instrument registered in triplicate one part shall be marked “Triplicate”, and it shall not be necessary to record on that part any memorial as provided by section 40.
- (3) The Registrar may waive the requirement that instruments be presented for registration in duplicate in respect of—
  - (a) any instrument:
  - (b) any class of instrument:
  - (c) any instrument of a particular class that is presented at a particular office of the Registrar.
- (4) The requirement that instruments be presented for registration in duplicate or triplicate does not apply to any instrument registered under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

Compare: 1915 No 35 s 35(1), (2)

Section 36(3): inserted, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 36(4): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **37 Priority according to time of registration**

- (1) Every instrument shall be registered in the order of time in which the same is presented for that purpose.
- (2) Instruments registered with respect to or affecting the same estate or interest shall, notwithstanding any express, implied, or constructive notice, be entitled in priority the one over the other according to the date of registration, and not according to the date of each instrument itself.

Compare: 1915 No 35 s 35(3), (4)

### **38 Registration procedure**

- (1) On registration of any instrument the Registrar shall file the same or one part thereof (if in duplicate or triplicate) in his office and deliver the other or others (if any) to the person presenting the same for registration.

- (2) So soon as registered every instrument, other than a memorandum within the meaning of section 155A(1), that is drawn in any of the forms provided in the Schedules, or in any form which for the same purpose may be authorised in conformity with the provisions of this Act or as may be prescribed by regulations made under this Act, shall, for the purposes of this Act, be deemed and taken to be embodied in the register as part and parcel thereof.

- (3) *[Repealed]*

- (4) Where there is any conflict between the part of any instrument filed in the office of the Registrar and any part delivered under subsection (1) to the person presenting the instrument for registration, the first-mentioned part shall prevail.

Compare: 1915 No 35 s 35(5)–(7)

Section 38(2): amended, on 6 November 1986, by section 3(3)(a) of the Land Transfer Amendment Act 1986 (1986 No 94).

Section 38(2): amended, on 6 November 1986, by section 3(3)(b) of the Land Transfer Amendment Act 1986 (1986 No 94).

Section 38(3): repealed, on 2 October 1958, by section 2(1)(a) of the Land Transfer Amendment Act 1958 (1958 No 75).

### **39 Contents of memorial**

- (1) Every memorial entered in the register shall state the nature of the instrument to which it relates, the day and hour of the production of the instrument for registration, and, if appropriate, the name of the person taking the benefit under the instrument, and shall refer by number or symbol to the instrument, and shall be signed by the Registrar or otherwise authenticated in a manner and by an officer of the Land Registry Office approved by the Registrar.
- (2) The fact that any memorial is authenticated by any officer other than the Registrar shall be conclusive evidence of his authority to do so and of the approval of the Registrar to the manner in which the memorial is authenticated by that officer.

Compare: 1915 No 35 s 36

Section 39(1): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 39(1): amended, on 7 October 1966, by section 3(1) of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 39(1): amended, on 23 October 1963, by section 24(1) of the Land Transfer Amendment Act 1963 (1963 No 61).

Section 39(2): inserted, on 7 October 1966, by section 3(2) of the Land Transfer Amendment Act 1966 (1966 No 37).

### **40 Memorial to be recorded on duplicate grant or other instrument**

- (1) Whenever a memorial of any instrument has been entered in the register, the Registrar shall (except in the case of a transfer or other dealing endorsed upon a memorandum of lease or mortgage, as hereinafter provided) record the like memorial on the duplicate grant, certificate of title, lease, or other instrument

evidencing title to the estate or interest intended to be dealt with or in any way affected, unless the Registrar, as hereinafter provided, dispenses with the production of the same.

- (2) The Registrar shall endorse on every instrument so registered a certificate of the date and hour on which the said memorial was entered in the register (being the day and hour of the production of the instrument for registration as specified in the memorial entered in the register pursuant to section 39 and duly authenticated in accordance with that section), and shall authenticate each such certificate by signing his name and affixing his seal thereto.
- (3) Every such certificate shall be received in all courts as conclusive evidence that the instrument has been duly registered.

Compare: 1915 No 35 s 37

Section 40(2): amended, on 7 October 1966, by section 3(3) of the Land Transfer Amendment Act 1966 (1966 No 37).

#### **41 Instruments not effectual until entry in register**

- (1) No instrument shall be effectual to pass any estate or interest in any land under the provisions of this Act, or to render any such land liable as security for the payment of money, but, upon the registration of any instrument under this Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, the estate or interest specified in the instrument shall pass, or, as the case may be, the land shall become liable as security in manner and subject to the covenants, conditions, and contingencies set forth and specified in the instrument, or by this Act declared to be implied in instruments of a like nature.
- (2) If 2 or more instruments executed by the same proprietor, and purporting to transfer or encumber the same estate or interest in any land, are at the same time presented to the Registrar for registration and endorsement, he shall register and endorse that instrument under which the person claims property, who presents to him the grant or certificate of title of the land for that purpose.
- (3) Subsection (2) does not apply to any electronic instruments intended to be registered against any electronic transactions land.
- (4) If the instrument does not contain an operative provision that gives effect to the object of the instrument, then on registration—
  - (a) the estate or interest specified in the instrument passes to the person identified as the party taking the estate or interest; or
  - (b) in the case of a mortgage, the land specified becomes liable as security; or
  - (c) in the case of a surrender, discharge, or variation of an instrument, the interest is extinguished or varied accordingly.
- (5) The provisions of subsection (4) are subject to—

- (a) the covenants, conditions, and contingencies specified or otherwise incorporated or implied in the instrument; and
  - (b) in the case of a discharge of a mortgage, the provisions of section 111 to the extent that the discharge is for the whole or part of the principal sum, annuity, or other sum.
- (6) In the absence of any provision to the contrary in the instrument, a reference in the instrument to the unique identifier of a computer register must be taken to be a reference to the entire estate or interest for which the computer register was created.

Compare: 1915 No 35 s 38

Section 41(1): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 41(1): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 41(3): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 41(4): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 41(5): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 41(6): inserted, on 17 May 2005, by section 4 of the Land Transfer Amendment Act 2005 (2005 No 58).

## **42 Informal instruments not to be registered**

No Registrar shall register any instrument purporting to transfer or otherwise to deal with or affect any estate or interest in land under the provisions of this Act, except in the manner herein provided, or as provided in any other Act authorising the registration of the instrument under this Act, nor unless the instrument is in accordance with the provisions of this Act or of that other Act, as the case may be.

Compare: 1915 No 35 s 39

Section 42: amended, on 7 October 1966, by section 4 of the Land Transfer Amendment Act 1966 (1966 No 37).

## **43 Where instrument lodged not in order for registration**

- (1) Subject to any regulations under this Act, where any instrument lodged for registration with the Registrar is found not to be in order for registration, he may—
  - (a) return the instrument and all other instruments lodged in connection therewith, or such of them as he thinks fit, to the person by whom they were lodged or, where that person is not available, to such other person as may, in the opinion of the Registrar, be entitled to receive them; or
  - (b) retain the instrument in his office pending rectification of any matter required by the Registrar to be rectified.

- (1A) Where the Registrar makes a finding under subsection (1), but has already returned the instrument lodged for registration (other than pursuant to subsection (1)(a)), the Registrar must give a notice to the person by whom the instrument was lodged specifying that—
- (a) the return of the instrument is to be regarded as having been made under subsection (1)(a); or
  - (b) the instrument is to be regarded as having been retained pursuant to subsection (1)(b),—
- and the instrument must be treated as so returned or retained for the purposes of this section.
- (2) If any requisition made by the Registrar in respect of any instrument retained for rectification as aforesaid is not complied with within such time as the Registrar may specify in that behalf in a notice forwarded to the person who lodged the instrument, or to the person entitled under the instrument, the Registrar—
- (a) may refuse to complete or proceed with the registration of the instrument or to do any act or make any entry in relation thereto; and
  - (b) may thereupon return the instrument and all other instruments lodged in connection therewith, or such of those instruments as he thinks fit, to the person by whom they were lodged or, where that person is not available, to such other person as may, in the opinion of the Registrar, be entitled to receive them.
- (3) If any instrument is returned as provided in subsection (1)(a), the Registrar may determine that either—
- (a) any fees paid to the Registrar in respect of the instrument are forfeited; or
  - (b) any fees paid to the Registrar are forfeited unless any matter required to be rectified to enable the instrument to be registered is so rectified and the instrument is again lodged with the Registrar within a period specified by the Registrar.
- (4) Where any instrument is returned as provided in paragraph (b) of subsection (2), any fees paid to the Registrar in respect of that instrument shall be forfeited.
- (5) *[Repealed]*
- (6) Where any instrument is returned pursuant to this section, it shall be deemed not to have been presented for registration.
- (7) *[Repealed]*

Section 43: replaced, on 7 October 1966, by section 5 of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 43(1A): inserted, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 43(2): amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 43(3): replaced, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 43(5): repealed, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 43(7): repealed, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

#### **44 Registrar may dispense with duplicate instruments**

- (1) The Registrar where he or she has reasonable cause for so doing, may dispense with the production of any grant, certificate of title, lease, or other instrument for the purpose of entering the memorial by this Act required to be entered upon the transfer or other dealing with land within his district and under the provisions of this Act.
- (2) Where production has been dispensed with as aforesaid, then, upon the registration of the transfer or other dealing, the Registrar shall notify in the memorial in the register book of his district that no entry of that memorial has been made on the duplicate grant or other instrument, and every such transfer or other dealing shall thereupon be as valid and effectual as if the memorial had been so entered:

provided that before registering any such transfer or other dealing the Registrar shall give at least the prescribed period of notice of his intention to register the dealing in the *Gazette* and in at least 1 newspaper published in the locality.

Compare: 1915 No 35 s 40

Section 44(1): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 44(2) proviso: amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 44(2) proviso: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

#### **45 Certified copies of register to be evidence**

The Registrar shall furnish to any person applying for the same a certified copy of any registered instrument affecting land within his district, and every such certified copy signed by him, and sealed with his seal, shall be received in evidence for all purposes for which the original instrument might be put in evidence.

Compare: 1915 No 35 s 41

Section 45: amended, on 10 December 1991, by section 2(2)(a) of the Land Transfer Amendment Act 1991 (1991 No 118).



#### **45A Registrar may issue search copies**

The Registrar may furnish to any person applying for the same a copy of any grant or certificate of title, or any lease or licence or deed forming a folio of or entered in the register under or by virtue of the Land Act 1948.

Section 45A: inserted, on 6 November 1986, by section 2 of the Land Transfer Amendment Act 1986 (1986 No 94).

Section 45A: amended, on 10 December 1991, by section 2(2)(a) of the Land Transfer Amendment Act 1991 (1991 No 118).

#### **46 Register to be open for search**

Any person may have access to the register for the purpose of inspection during the hours and upon the days appointed by regulation under this Act.

Compare: 1915 No 35 s 42

Section 46: amended, on 10 December 1991, by section 2(2)(a) of the Land Transfer Amendment Act 1991 (1991 No 118).

#### **47 Presentation of instruments for registration**

- (1) A person claiming under an instrument, or anyone acting on his or her behalf, may present the instrument at a designated land registry office—
  - (a) by hand at the public counter; or
  - (b) by depositing the instrument in a secure facility provided for that purpose; or
  - (c) by posting it to that office.
- (2) For the purpose of subsection (1), **designated land registry office** means any land registry office designated for that purpose by the Registrar.
- (3) Subject to subsections (4), (5), and (6), an instrument presented for registration under this section has priority as provided for in section 37.
- (4) An instrument presented in the manner provided for in subsection (1)(b) or (c) is deemed to have been presented for registration on the business day after the day on which it is received by the Registrar and before any other matter presented on the day of registration in relation to the same land.
- (5) Any caveat of any kind or notice of claim under the Property (Relationships) Act 1976 that is presented to the Registrar in the manner provided for in subsection (1)(b) or (c) is deemed to have been presented for entry after any other instrument presented to the Registrar in the same manner on the same day.
- (6) Except where subsection (5) applies, if 2 or more instruments are received in the manner provided for in subsection (1)(b) or (c), they have priority as between themselves,—
  - (a) if section 41(2) applies to the instruments, in accordance with that provision;
  - (b) if section 41(2) does not apply to the instruments, in the order in which they were date and time stamped as received by the Registrar.

Section 47: replaced, on 1 June 2002, by section 41 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 47(1): amended, on 17 May 2005, by section 5 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 47(2): amended, on 17 May 2005, by section 5 of the Land Transfer Amendment Act 2005 (2005 No 58).

#### **48 Where boundaries of district altered, copies of original registers to be evidence**

*[Repealed]*

Section 48: repealed, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

#### *District agents*

*[Repealed]*

Heading: repealed, on 26 August 2002, pursuant to section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **49 Registration through district agents**

*[Repealed]*

Section 49: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### *Provisional registration*

#### **50 Until register duly constituted, land to be provisionally registered**

Until a folium of the register has been duly constituted for any land under this Act, all dealings, memorials, and entries affecting that land shall be provisionally registered as hereinafter provided, that is to say,—

- (a) for the purposes of provisional registration, and for the recording of all dealings and entries, a certificate under the hand of the Director-General of Lands to the effect that the purchase money has been paid, or the order of the Maori Land Court declaring that the lands shall be held in freehold tenure, shall take the place of a Crown grant:
- (b) every such certificate or order shall be issued in duplicate, and it shall be the duty of the person issuing the same to forward 1 duplicate to the Registrar of the district in which the land is situate:
- (c) the Registrar shall embody all such duplicates in a book or other means of filing (hereinafter called the **provisional register**), and each certificate or order shall form a separate folium thereof, and shall be numbered accordingly, and when so numbered shall be deemed duly registered.

Compare: 1915 No 35 s 46; 1920 No 43 s 30; 1925 No 20 s 6; 1947 No 59 s 4

Section 50(a): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 50(c): amended, on 7 October 1966, by section 7 of the Land Transfer Amendment Act 1966 (1966 No 37).

**51 When register duly constituted, provisional register to be closed**

- (1) So soon as the register of any land is finally constituted, the Registrar shall close the provisional register as to that land, and shall transfer to the register the record of all memorials and entries affecting that land so far as may be necessary to preserve existing interests.
- (2) The Registrar shall also record the same on the duplicate grant, and all such memorials and entries and the dealings to which they relate shall thereafter take effect as if the same had been originally entered in the register.
- (3) Every dealing the memorial or entry whereof has been either originally entered on or has been transferred to the register in manner aforesaid shall be deemed to be finally registered.

Compare: 1915 No 35 s 47

**52 Entries in provisional register to be evidence of title**

So long as land remains on the provisional register, no certificate of title other than a certificate in lieu of grant shall be issued in respect thereof, but every entry on the provisional register, if purporting to be duly made and signed, shall be received in all courts of law and equity as evidence of the particulars therein set forth, and shall, as against the person named in the original certificate or order of court and all persons claiming through, under, or in trust for him, be conclusive evidence that the person named in that entry is seised or possessed of the estate or interest of which he is expressed to be the registered proprietor.

Compare: 1915 No 35 s 48; 1925 No 20 s 6

**53 Special provisions as to Canterbury educational reserves**

- (1) Every receipt issued by the Director-General of Lands for the purchase money of land contracted to be sold under the provisions of the Canterbury Educational Reserves Sale and Leasing Act 1876, or any Act in amendment thereof or substitution therefor, shall be in duplicate, and the Director-General shall transmit 1 copy thereof to the Registrar.
- (2) The Registrar shall include the receipt in the provisional register book of his district, as if the receipt was a certificate under the hand of the Director-General of Lands evidencing payment of the purchase money of Crown lands; and, until the issue of a certificate of title for the same as hereinafter mentioned, all dealings with that land by the purchaser, and by those claiming through or under him, shall be entered on the provisional register only.
- (3) Nothing in this Act shall be taken to preclude the registration in due form of any instrument requisite for giving effect to the provisions of any such Act as aforesaid and for vesting the land contracted to be sold as aforesaid in the purchaser named in the receipt; but, until the issue of a certificate of title for the

land, no other dealings whatever with the land shall be registered save and except such as are hereinbefore authorised to be entered on the provisional register.

- (4) Upon the registration of a Crown grant for the said land, or of a certificate of title issued pursuant to a warrant in lieu of grant or pursuant to a certificate of the Director-General of Lands and the Chief Surveyor, and of a duly executed transfer to the purchaser, the Registrar shall cancel that grant or certificate of title as to the land transferred, and issue a certificate of title for the land to the purchaser or to such other person or persons, and subject to such memorials and entries thereon, as are necessary for giving effect to the dealings on the provisional register.

Compare: 1880 No 8 s 10; 1915 No 35 Appendix 2; 1920 No 43 s 30; 1951 No 60 s 8

Section 53(1): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 53(1): amended, on 1 April 1987, pursuant to section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 53(2): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 53(4): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

#### **54 Application of Act to provisional registration**

Subject to any special provisions herein contained, all provisions of this Act shall, so far as the circumstances of the case will admit, apply to land on the provisional register, and to the registration of instruments and other matters affecting the same, save that the estate or interest of a proprietor of any estate or interest on the provisional register shall be indefeasible only against the person named in the original certificate or order, and all persons claiming through, under, or in trust for him.

Compare: 1915 No 35 s 49; 1925 No 20 s 6

#### **55 No dealings to be registered until payment of fees**

*[Repealed]*

Section 55: repealed, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

### *Lost instruments*

#### **56 High Court may investigate cases of lost instruments**

In case of the loss or destruction before registration thereof of any instrument executed by a registered proprietor for the purpose of creating, transferring, or otherwise dealing with any estate or interest in land under this Act, or any mortgage or encumbrance affecting land under this Act, the person claiming to be entitled to be registered as proprietor of any estate or interest by virtue of

the lost instrument may make application to the High Court to have his claim investigated and declared.

Compare: 1915 No 35 s 51

Section 56 heading: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 56: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **57 Court may order claimant to be registered as proprietor**

- (1) Upon proof to the satisfaction of the court of the fact of such loss or destruction as aforesaid, and that such instrument as aforesaid has not been wilfully destroyed by or with the connivance of the applicant, and that the applicant is entitled to be registered as aforesaid, and that due notice of the application has been given to the registered proprietor of the land, estate, or interest intended to be affected, and to all other necessary parties, the court may make an order defining and declaring the estate or interest of the applicant under the instrument, and requiring the Registrar to register him as proprietor thereof, and the Registrar shall obey the order.
- (2) Every such registration shall have the same effect as from the date thereof as if the original instrument had been duly registered; and that instrument shall for the purposes of this Act be deemed and taken to have been in the terms or to the effect set forth in the order.
- (3) The court shall, in hearing and deciding upon any case under this section and the last preceding section, be guided by the real justice of the case, and shall direct itself by such evidence as may seem to it most suitable to the circumstances of the case.

Compare: 1915 No 35 ss 52, 53

### *Outstanding interests*

## **58 Interests outstanding to be notified in register**

Leases, mortgages, encumbrances, or other estates or interests affecting the estate of the proprietor at the time of bringing land under this Act (hereinafter called **outstanding interests**), shall, so far as the same are disclosed in the application or can otherwise be ascertained, be notified on the register in such manner as to preserve their priority, and shall thereafter, notwithstanding variation in form, be dealt with as if the same or corresponding interests had been originally created under this Act, and every dealing therewith shall imply all powers, conditions, and covenants incident to dealings in the like form with land under this Act.

Compare: 1915 No 35 s 54

**59 Interests registered under Deeds Registration Act to be recognised**

- (1) Estates and interests existing by virtue of instruments registered under the Deeds Registration Act 1908 affecting land over which the Maori title has been extinguished since the constitution of the district within which the land is situate shall be deemed outstanding interests within the meaning of this Act, and shall be noted accordingly.
- (2) No such estates or interests shall be so recognised if created prior to the ante-vesting date in the grant, or subsequent to 31 August 1874.

Compare: 1915 No 35 s 55; 1947 No 59 Part 1

**60 Claims for loss through neglect of claimant to register**

No person claiming any estate or interest by virtue of any deed or instrument which might have been registered against the land under any Act for the time being in force for the registration of deeds within New Zealand shall have any claim or action against the Crown by reason of deprivation of that estate or interest consequent on bringing the land under this Act, unless that deed or instrument has been so registered, or unless the Registrar has been served personally with notice in writing of the claim, or has had actual personal knowledge thereof, and has omitted to recognise the same.

Compare: 1915 No 35 s 56; 1930 No 6 s 53; 1931 No 5 s 25

*Registered proprietors***61 Persons jointly registered to be joint tenants**

Subject to any Act of the Parliament of New Zealand for the time being in force relating to the tenure of land by persons of the Maori race, any 2 or more persons named in any Crown grant or in any instrument executed under this Act as transferees, mortgagees, or proprietors of any estate or interest, shall, unless the contrary is expressed, be deemed to be entitled as joint tenants with right of survivorship, and every such instrument, when registered, shall take effect accordingly.

Compare: 1915 No 35 s 57; 1947 No 59 Part 1

Section 61: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

**62 Estate of registered proprietor paramount**

Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority but subject to the provisions of Part 1 of the Land Transfer Amendment Act 1963, the registered proprietor of land or of any estate or interest in land under the provisions of this Act shall, except in case of fraud, hold the same subject to such encumbrances, liens, estates, or interests as may be notified on the folium of the register constituted by

the grant or certificate of title of the land, but absolutely free from all other encumbrances, liens, estates, or interests whatsoever,—

- (a) except the estate or interest of a proprietor claiming the same land under a prior certificate of title or under a prior grant registered under the provisions of this Act; and
- (b) except so far as regards the omission or misdescription of any right of way or other easement created in or existing upon any land; and
- (c) except so far as regards any portion of land that may be erroneously included in the grant, certificate of title, lease, or other instrument evidencing the title of the registered proprietor by wrong description of parcels or of boundaries.

Compare: 1915 No 35 s 58

Section 62: amended, on 23 October 1963, by section 22(a) of the Land Transfer Amendment Act 1963 (1963 No 61).

### **63 Registered proprietor protected against ejectment**

- (1) No action for possession, or other action for the recovery of any land, shall lie or be sustained against the registered proprietor under the provisions of this Act for the estate or interest in respect of which he is so registered, except in any of the following cases, that is to say:
  - (a) the case of a mortgagee as against a mortgagor in default:
  - (b) the case of a lessor as against a lessee in default:
  - (c) the case of a person deprived of any land by fraud, as against the person registered as proprietor of that land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud:
  - (d) the case of a person deprived of or claiming any land included in any grant or certificate of title of other land by misdescription of that other land, or of its boundaries, as against the registered proprietor of the other land, not being a transferee or deriving from or through a transferee thereof bona fide for value:
  - (e) the case of a registered proprietor claiming under the instrument of title prior in date of registration, under the provisions of this Act, in any case in which 2 or more grants or 2 or more certificates of title, or a grant and a certificate of title, may be registered under the provisions of this Act in respect to the same land.
- (2) In any case other than as aforesaid, the production of the register or of a certified copy thereof shall be held in every court of law or equity to be an absolute bar and estoppel to any such action against the registered proprietor or lessee of the land the subject of the action, any rule of law or equity to the contrary notwithstanding.

Compare: 1915 No 35 s 59

**64 Title guaranteed to registered proprietor**

Subject to the provisions of Part 1 of the Land Transfer Amendment Act 1963 after land has become subject to this Act, no title thereto, or to any right, privilege, or easement in, upon, or over the same, shall be acquired by possession or user adversely to or in derogation of the title of the registered proprietor.

Compare: 1915 No 35 s 60

Section 64: amended, on 23 October 1963, by section 22(b) of the Land Transfer Amendment Act 1963 (1963 No 61).

## **Part 4**

### **Certificate of title**

**65 Registered proprietor entitled to certificate of title**

- (1) Every registered proprietor of an estate of freehold in possession in land under this Act shall be entitled to a certificate of title for the same in form 2 of the said Schedule 1, or as near thereto as the nature of the interest will permit.
- (2) No certificate of title shall issue for any undefined interest.

Compare: 1915 No 35 s 61

**66 Certificates of title in respect of leasehold interests**

- (1) In the case of any lease, including a lease forming a folium of the register book in the office of the Registrar, the Registrar may, if in his opinion the number or nature of the entries thereon or in the register book renders it expedient so to do, issue to the registered proprietor a certificate of title for his leasehold interest.
- (2) The certificate of title shall refer to the lessor's certificate of title, if any, and to the lease, and shall state the date of commencement and the length of term, or the date of expiry of the term, created by the lease, and shall in all other respects be, with the necessary modifications, in form 2 of the said Schedule 1, and shall be subject to the provisions of the lease and also to the provisions of this Act affecting leases.
- (3) On the determination of the lease, otherwise than by effluxion of time, the certificate of title shall be cancelled by the Registrar by endorsement on the folium of the register book, and on the expiry of the term of the lease the certificate of title shall be deemed to be so cancelled.
- (4) The Registrar shall enter a memorial of the issue of the certificate of title upon the lease and upon the outstanding duplicate thereof, and also upon the folium of the register book of the lessor's certificate of title (if any), and thereafter all dealings with or transmissions of the lease shall be registered on the certificate of title, and not on the folium of the register book of the lessor's certificate of title nor on the folium constituted by the lease nor on the outstanding duplicate of the lease.



- (5) All the provisions of this Act with respect to certificates of title shall, with the necessary modifications, apply to a certificate of title issued under this section in respect of a leasehold interest.

- (6) *[Repealed]*

Compare: 1925 No 20 s 3

Section 66(6): repealed, on 10 December 1991, by section 2(2)(e) of the Land Transfer Amendment Act 1991 (1991 No 118).

#### **67 Existing encumbrances to be noted in certificate**

The Registrar shall note upon every certificate, in such manner as to preserve their priority, the memorials of all unsatisfied mortgages, leases, and other estates and interests, outstanding or otherwise, to which the land is subject at the time of issuing the certificate; and, in case of a certificate issued to a minor or person under other legal disability, the Registrar shall, in the certificate, state the particulars of that disability so far as he has notice or knowledge thereof.

Compare: 1915 No 35 s 62

#### **68 Certificate, how to be dated**

- (1) Every certificate issued pursuant to any dealing under this Act shall bear even date with the registration of that dealing, unless the dealing has been originally entered on the provisional register, in which case the certificate shall bear even date with the registration of the Crown grant, or with the date of receipt by the Registrar of the Governor-General's warrant for issue of a certificate in lieu of grant, or a certificate having the effect of a warrant under section 12, as the case may be.
- (2) A certificate of title issued in the name of a registered proprietor in lieu of a cancelled certificate may be expressed to take effect as from the date of the certificate originally issued to that proprietor in respect of the same estate or interest.

Compare: 1915 No 35 s 63; 1951 No 6 s 8

#### **69 How memorial of easement to be recorded**

Whenever any easement or incorporeal right, other than an annuity or rent-charge in or over any land under this Act, is created for the purpose of being annexed to, or used and enjoyed together with, other land under this Act, the Registrar shall enter a memorial of the instrument creating that easement or incorporeal right upon the grant or certificate of title of the other land, and that memorial shall, as from the date of entry thereof, have the effect of including the easement or incorporeal right in the grant or certificate of title as appurtenant to the land therein described.

Compare: 1915 No 35 s 64

**70 Removal of easements and *profits à prendre* from register**

- (1) If any easement or *profit à prendre* has been determined or extinguished, or appears to the Registrar to be redundant, the Registrar must, on proof to his or her satisfaction of the determination or extinguishment or that the easement is redundant, make an entry to that effect in the register.
- (2) For the purposes of subsection (1), an easement may be regarded as redundant if—
  - (a) the dominant tenement or any part of it has become separated from the servient tenement as a result of a subdivision or otherwise; and
  - (b) the easement no longer benefits the dominant land.
- (3) A person who wishes the Registrar to make an entry to the effect that an easement is redundant must apply to the Registrar, and give the Registrar a statutory declaration or declarations to the effect that specific circumstances exist that meet—
  - (a) the criteria set out in subsection (2); or
  - (b) any other criteria specified by the Registrar for determining that easements are redundant.
- (4) The Registrar may make an entry that an easement is determined, extinguished, or redundant if he or she—
  - (a) has given notice of his or her intention to do so to all persons appearing to him or her to be entitled to any interest under the easement; and
  - (b) has given the prescribed period of public notice of his or her intention to do so; and
  - (c) no objections have been received.
- (5) The estate or interest of the registered proprietor of the easement or *profit à prendre* and of every person claiming through or under the registered proprietor ceases and determines on the making of the entry in the register, but does not release any person from any liability to which that person is subject at the time of the entry.
- (6) The requirement to give notice under subsection (4) does not apply if the determination or extinguishment was by effluxion of time or merger.

Section 70: replaced, on 12 June 2003, by section 42 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**71 Removal of fencing covenants from title**

On the application of any person having any registered estate or interest in any land that is subject to a registered covenant or agreement relating to fencing, the Registrar, if he is satisfied that there is no person who is or may become entitled to the benefit of the covenant or agreement, or that all the persons who are or may become so entitled have consented to the cancellation of the covenant or agreement, shall make an entry in the register and on any relevant in-

strument of title noting that the covenant or agreement is cancelled, and thereupon the covenant or agreement shall cease to have any effect.

Compare: 1939 No 7 s 10

## **72 Tenants in common entitled to separate certificates**

When 2 or more persons are entitled as tenants in common to undivided shares in any land, each such person shall be entitled to receive a separate certificate for his undivided share:

provided that tenants in common shall not be bound to take separate certificates unless and until they require to make separate dealings with their respective interests and the Registrar, in his discretion, requires them to take separate certificates for those interests.

Compare: 1915 No 35 s 65; 1950 No 24 s 4

## **73 Issue of certificate may be withheld in certain cases**

The Registrar shall not be bound to issue a certificate of title upon any application in respect of which notice is hereby required to be given by advertisement until after the expiration of the prescribed period.

Compare: 1915 No 35 s 66

Section 73: amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **74 Certificate issued in name of deceased person not void**

If any certificate, whether on the first bringing of land under this Act or otherwise, is issued in the name of a person who has previously died, the certificate shall not be void, but the land comprised therein shall devolve in like manner as if the certificate had been issued immediately prior to the death.

Compare: 1915 No 35 s 67

## **75 Certificate to be evidence of proprietorship**

- (1) Every certificate of title duly authenticated under the hand and seal of the Registrar shall be received in all courts of law and equity as evidence of the particulars therein set forth or endorsed thereon, and of their being entered in the register, and shall, unless the contrary is proved by production of the register or a certified copy thereof, be conclusive evidence that the person named in that certificate of title, or in any entry thereon, as seised of or as taking estate or interest in the land therein described is seised or possessed of that land for the estate or interest therein specified as from the date of the certificate or as from the date from which the same is expressed to take effect, and that the property comprised in the certificate has been duly brought under this Act.
- (2) Nothing in this section applies to electronic transactions land.

Compare: 1915 No 35 s 68

Section 75(2): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**76 Instruments executed by person not actually registered**

- (1) No instrument purporting to deal with any land, estate, or interest under this Act shall be or be deemed to have been invalid or ineffectual by reason only that the instrument may purport to have been executed at a time when the person executing the instrument was not actually registered as the proprietor of that land, estate, or interest.
- (2) Subsection (3) of section 17 shall extend and apply to this section.

Compare: 1915 No 35 s 69

**77 No right to public road or reserve where unauthorised registration**

No right to any public road or reserve shall be acquired, or be deemed to have been acquired, by the unauthorised inclusion thereof in any certificate of title or by the registration of any instrument purporting to deal therewith otherwise than as authorised by law.

Compare: 1915 No 35 s 70

**78 Certificate not to be impeached**

No certificate of title or computer register as defined in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 shall be impeached or defeasible on the ground of want of notice or of insufficient notice of the application to bring the land therein described under this Act, or on account of any error, omission, or informality in the application or in the proceedings pursuant thereto.

Compare: 1915 No 35 s 71

Section 78: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 78: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**79 Certificate void in certain cases**

Any certificate of title issued upon the first bringing of land under this Act, whether upon application or by force of any statute or of the order of any court, and every certificate of title issued in respect of the same land, or any part thereof, to any person claiming or deriving title under or through the first registered proprietor shall be void as against the title of any person adversely in actual occupation of and rightfully entitled to that land, or any part thereof, at the time when the land was so brought under this Act, and continuing in such occupation as aforesaid at the time of any subsequent certificate of title being issued in respect of the said land; but subject to the provisions of Part 1 of the Land Transfer Amendment Act 1963 every such certificate shall be as valid and effectual against the title of any other person as if that adverse occupation did not exist.

Compare: 1915 No 35 s 72

Section 79: amended, on 23 October 1963, by section 22(c) of the Land Transfer Amendment Act 1963 (1963 No 61).

## **80 Errors in register may be corrected**

- (1) The Registrar may, upon such evidence as appears to him sufficient, subject to any regulations under this Act, correct errors and supply omissions in certificates of title or in the register, or in any entry therein, and may call in any outstanding instrument of title for that purpose.
- (2) The Registrar may cancel or correct any computer register and, if appropriate, create a new computer register in order to correct any error or supply any omission in any computer register.

Compare: 1915 No 35 s 73

Section 80(2): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **81 Surrender of instrument obtained through fraud, etc**

- (1) Where it appears to the satisfaction of the Registrar that any certificate of title or other instrument has been issued in error, or contains any misdescription of land or of boundaries, or that any entry or endorsement has been made in error, or that any grant, certificate, instrument, entry, or endorsement has been fraudulently or wrongfully obtained, or is fraudulently or wrongfully retained, he may require the person to whom that grant, certificate, or instrument has been so issued, or by whom it is retained, to deliver up the same for the purpose of being cancelled or corrected, as the case may require.
- (2) If the Registrar is satisfied as to any matter referred to in this section and there is a computer register involved, the Registrar may cancel or correct any computer register and, if appropriate, create a new computer register.
- (3) The Registrar must not take action under subsection (2) without first giving notice to any person appearing to be affected and giving a reasonable period for any response.

Compare: 1915 No 35 s 74

Section 81(2): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 81(3): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **82 Person failing to surrender instrument may be summoned to court**

- (1) In case any such person refuses or neglects to comply with that request, or cannot be found, the Registrar may apply to the High Court for an order that the grant, certificate, or other instrument be delivered up as aforesaid.
- (2) If that person when served with notice of the application neglects or refuses to attend before the court at the time therein appointed, the court may issue a war-

rant authorising and directing the person so notified to be apprehended and brought before the court for examination.

Compare: 1915 No 35 s 75

Section 82(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**83 Person refusing to surrender instrument may be committed to prison**

Upon the appearance before the court of any person notified or brought up by virtue of a warrant as aforesaid, the court may examine that person upon oath; and may order him to deliver up the grant, certificate of title, or other instrument as aforesaid; and upon his refusal or neglect to comply with the order, may commit him to any convenient prison.

Compare: 1915 No 35 s 76

**84 Issue of new certificate of title, etc**

In any such case, or in case the said person has absconded so that notice of the application cannot be served upon him, the Registrar shall, if the circumstances of the case require it, issue to the proprietor of the land such certificate of title or other instrument as is herein provided to be issued in the case of any grant or certificate of title being lost, mislaid, or destroyed, and shall enter in the register notice of the issuing of that certificate of title or other instrument, and the circumstances under which it was issued, and such other particulars as he deems necessary.

Compare: 1915 No 35 s 77

**85 Court may order former certificate of title to be cancelled**

Upon the recovery of any land, estate, or interest by any proceeding in any court from the person registered as proprietor thereof, the court may, in any case in which such a proceeding is not expressly barred, direct the Registrar to cancel any certificate of title or other instrument, or any entry or memorial in the register relating to the land, and to substitute such certificate of title or entry as the circumstances of the case require, and the Registrar shall give effect to the order accordingly.

Compare: 1915 No 35 s 78

**86 Single certificate in place of several or several in place of 1**

- (1) Upon the application or with the consent of any registered proprietor of land held under separate grants or certificates of title, or under 1 grant or certificate, the Registrar may issue to that proprietor a single certificate of title for the whole of the land, or several certificates, each comprising portion of the land, so far as the same may be done consistently with any regulations for the time being in force.

- (2) Upon issuing any such certificate the Registrar shall cancel the grant or previous certificate, and shall note thereupon a reference to the certificate of title issued in lieu thereof.

Compare: 1915 No 35 s 79

Section 86 heading: replaced, on 30 September 1959, by section 2 of the Land Transfer Amendment Act 1959 (1959 No 29).

Section 86(1): replaced, on 30 September 1959, by section 2 of the Land Transfer Amendment Act 1959 (1959 No 29).

Section 86(1): amended, on 7 October 1966, by section 8 of the Land Transfer Amendment Act 1966 (1966 No 37).

### **87 Issue of provisional certificate in case of loss of original**

- (1) In the event of any grant or certificate of title being lost, mislaid, or destroyed, the registered proprietor, together with other persons (if any) having knowledge of the circumstances, may make a statutory declaration stating the facts of the case, the names and descriptions of the registered owners, and the particulars of all mortgages, encumbrances, or other matters affecting the land and the title thereto, to the best of the declarant's knowledge and belief.
- (2) The Registrar, if satisfied as to the truth of the declaration, may issue a provisional certificate of title, which provisional certificate shall contain an exact copy of the original grant or certificate and of every memorandum and endorsement thereon, and shall also contain a statement of the circumstances under which the provisional certificate is issued.
- (3) The Registrar shall at the same time enter in the register notice of the issuing of the provisional certificate and the date thereof, and the circumstances under which it was issued.
- (4) The Registrar before issuing a provisional certificate shall give at least the prescribed period of notice of his intention so to do in the *Gazette* and in at least 1 newspaper published in New Zealand.
- (5) Every such provisional certificate shall be available for all purposes and uses for which the grant or certificate of title so lost or mislaid would have been available, and as valid to all intents as the lost grant or certificate.
- (6) Instead of issuing a provisional certificate of title as herein provided, the Registrar, after giving notice similar to that provided for in subsection (4), may cancel the certificate of title by an endorsement on the existing folium of the register book, and may issue in lieu thereof a new certificate of title for the land.

Compare: 1915 No 35 s 80

Section 87(4): amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **88 Provision in case of lost lease or mortgage**

- (1) The provisions of the last preceding section shall, as far as they are applicable and with the necessary modifications, apply to any lease or licence, or memo-

randum of lease, or memorandum of mortgage of which the outstanding duplicate has been lost, mislaid, or destroyed.

- (2) The same provisions shall, as far as they are applicable and with the necessary modifications, apply to any lease or licence, or memorandum of lease, or memorandum of mortgage of which the outstanding duplicate has become defaced or dilapidated and is surrendered to the Registrar for cancellation, but in that case the statutory declaration referred to in subsection (1) and the notices referred to in subsection (4) of the said last preceding section shall not be necessary.

Compare: 1915 No 35 s 100; 1925 No 20 s 6

### **89 Issue of certificate of title on sale for non-payment of rates**

Where a transfer has, under section 83 of the Local Government (Rating) Act 2002, been registered without production of the outstanding certificate of title, the Registrar may, if he is satisfied that the outstanding certificate cannot be got in and cancelled, issue a new certificate in the name of the purchaser without cancellation of the outstanding certificate, and for that purpose may cancel the existing folium of the register.

Compare: 1915 No 35 s 81

Section 89: amended, on 1 July 2003 (but continuing in force as if it had not been amended to the extent necessary for the levying and collection of rates made or levied for the financial year ending on 30 June 2003 or a previous financial year), by section 137(1) of the Local Government (Rating) Act 2002 (2002 No 6).

## **Part 4A**

### **Title to access strips**

Part 4A: inserted, on 7 October 1966, by section 2 of the Land Transfer Amendment Act 1966 (1966 No 37).

### **89A Application by adjoining owners for title to access strip**

- (1) Where on the subdivision of any land any separate part thereof (in this Part referred to as an **access strip**) was, in the opinion of the Registrar, laid off for the sole purpose of providing access from any of the allotments comprising the subdivision to an existing road or street, the registered proprietor or, if more than 1, the registered proprietors of the fee simple estate in all the allotments of the subdivision that are contiguous to the access strip may, subject to the provisions of this Part, make application to the Registrar to have the access strip brought under the provisions of this Act in the name of the applicant, or, if more than 1, in the names of the applicants as tenants in common (subject to the provisions of section 89E) in shares proportionate to the number of the allotments of the subdivision that are contiguous to the access strip of which they are so registered as proprietors, or, as the case may require, for the issue of a certificate of title for an estate in fee simple in the access strip in the name of



the applicant, or, if more than 1, in the names of the applicants as tenants in common (subject to the provisions of section 89E) in the shares aforesaid.

- (2) For the purposes of this Part, where before the making of an application under subsection (1) any allotment of a subdivision has been further subdivided into 2 or more allotments, each of those last-mentioned allotments that is contiguous to the access strip shall be deemed to be an allotment of the original subdivision.
- (3) Nothing in subsection (1) shall apply, unless—
  - (a) none of the proprietors of the fee simple estate in the access strip can be found after such inquiries as the Registrar considers reasonable have been made; or
  - (b) every proprietor of an estate in fee simple in the access strip who can be found consents to the granting of the application.
- (4) In subsection (3) the term **proprietor**, in relation to the fee simple of an access strip, means—
  - (a) where the access strip is subject to this Act, the registered proprietor; and includes any person entitled to be registered as proprietor through or under the registered proprietor:
  - (b) where the access strip is not subject to this Act, the person in whom the fee simple is vested pursuant to an instrument registered under the Deeds Registration Act 1908; and includes any person entitled to the fee simple estate through or under the first-mentioned person.
- (5) Nothing in subsection (1) shall apply where the access strip is acknowledged or accepted or declared to be a road or street or service lane or an access way in accordance with law by any local or controlling authority having jurisdiction over roads, streets, service lanes, or access ways in the district within which the access strip is situated.

Section 89A: inserted, on 7 October 1966, by section 2 of the Land Transfer Amendment Act 1966 (1966 No 37).

#### **89B Where proprietor of any contiguous allotment not a party to application**

Notwithstanding anything in section 89A, an application may be made under that section, notwithstanding that any 1 or more of the registered proprietors of the fee simple estate in any allotments of the subdivision that are contiguous to the access strip are not parties to the application, if that registered proprietor or those registered proprietors consent to the application in writing duly attested by a witness, which consent shall not be unreasonably withheld:

provided that if any such registered proprietor cannot be found after such inquiries as the Registrar considers reasonable have been made, the consent of that registered proprietor shall not be necessary; but no rights, express or implied, over the access strip or any part thereof in favour of his allotment shall be prejudiced by the granting of the application.

Section 89B: inserted, on 7 October 1966, by section 2 of the Land Transfer Amendment Act 1966 (1966 No 37).

### **89C How application dealt with**

- (1) Every application made under section 89A shall, except as otherwise expressly provided in this Part, be dealt with, as to notices, plans, caveats, fees, and all other matters, in accordance with the provisions of this Act relating to applications to bring land under this Act, as far as those provisions are applicable and with all necessary modifications.
- (2) In addition to those provisions, the Registrar shall cause notice in writing of the application to be given to the local or controlling authority which, if the access strip were a road or street or service lane or an access way, would have jurisdiction in respect thereof, and the notice shall appoint a time, being not less than the prescribed period of notice, during which that authority may lodge a caveat in form M of Schedule 2, modified where necessary to suit the circumstances. Where pursuant to this subsection a caveat in form M as aforesaid is lodged in respect of an access strip already under the provisions of this Act, the reference in section 144 to an order or injunction shall be deemed to extend to an order or injunction restraining the Registrar from issuing a certificate of title pursuant to the application.

Section 89C: inserted, on 7 October 1966, by section 2 of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 89C(2): amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **89D Issue of title to access strip**

- (1) Notwithstanding anything in any other Act, where the Registrar is satisfied, in respect of any application lodged under this Part, that—
  - (a) the provisions of this Part have been duly complied with; and
  - (b) all notices required to be given have been given; and
  - (c) all times required to expire have expired; and
  - (d) every caveat lodged has lapsed as provided in this Act or been withdrawn; and
  - (e) no sufficient reason to the contrary otherwise appears,—the Registrar shall issue to the applicant, or, as the case may be, to the applicants as tenants in common in the appropriate shares (subject to the provisions of section 89E), a certificate of title in form 2 of Schedule 1 for an estate in fee simple in the access strip to which the application relates, subject to any outstanding interests to which it remains subject.
- (2) Without limiting the provisions of paragraph (e) of subsection (1), the Registrar may, in his discretion, refuse the application if the access strip is not being used solely for the purpose of providing access to a road or street from the allotments of the subdivision in respect of which the application is made.

Section 89D: inserted, on 7 October 1966, by section 2 of the Land Transfer Amendment Act 1966 (1966 No 37).

**89E Conditions applying when certificate of title issued for access strip**

Where the Registrar issues a certificate of title for any access strip under section 89D, the following provisions shall apply:

- (a) no registered proprietor of the fee simple estate in the access strip may dispose of or create any charge over any allotment of the subdivision that is contiguous to the access strip to or in favour of any person, unless he simultaneously in like manner and to or in favour of the same person disposes of or creates a charge over his share in the access strip, or, as the case may be, in so much thereof as is attributable under subsection (1) of section 89A to his ownership of the contiguous allotment being so disposed of or over which he is creating a charge as aforesaid. For the purposes of this paragraph, the settlement of any such allotment as a joint family home under the provisions of the Joint Family Homes Act 1964 shall be deemed not to be a disposal of the allotment:
- (b) the Registrar shall make an entry upon the certificate of title so issued for the access strip, and on the register copy of the certificate of title for the fee simple estate in every allotment of the subdivision that is contiguous thereto and the registered proprietor of which is the registered proprietor or one of the registered proprietors named in the certificate of title so issued as aforesaid, to the effect that the contiguous land is subject to the provisions of paragraph (a):
- (c) where any other certificate of title under this Act is in existence for the fee simple estate in the access strip, the Registrar shall cancel that other certificate of title so far as it relates to the access strip, and the memorial of cancellation shall state that the cancellation is made under the authority of this section:
- (d) any fee simple estate in the access strip previously held by any person other than the persons named in the certificate of title so issued as being seised of that estate in fee simple shall cease and determine:
- (e) where any allotment of the subdivision to which any share in the access strip is attributable under subsection (1) of section 89A is owned in fee simple by 2 or more persons as joint tenants or as tenants in common, that share shall also vest in them as joint tenants or, as the case may be, as tenants in common in the shares in which that allotment is vested in them:
- (f) where any allotment of the subdivision contiguous to the access strip is at the time of the issue of the certificate of title subject to a registered mortgage, and the mortgagor thereunder is registered as the proprietor or one of the proprietors of an estate in fee simple in the access strip by virtue of his ownership of that allotment, any power expressed or implied

in the mortgage whereby the mortgagee may sell the allotment or any part thereof on default being made under the provisions of the mortgage shall be deemed to extend to and include power to sell so much of the mortgagor's estate or interest in the access strip as is attributable to his ownership of the allotment (or, as the case may be, a proportionate part thereof where the power of sale relates to part only of the allotment), as if that estate or interest were included in the mortgage as part of the security; and the Registrar shall make an entry on the register copy of the mortgage, and also on the mortgagee's copy when it is produced to him, to the effect that this paragraph applies to the mortgage:

- (g) where any allotment to which paragraph (f) applies is, after the issue of the certificate of title, settled as a joint family home under the Joint Family Homes Act 1964, the provisions of that paragraph shall apply whether the share in the access strip is owned by the husband and wife (as defined in that Act) or by either of them:
- (h) for the purposes of paragraph (f), the term **mortgage** includes any lien, charge, or other security for the payment of money; and the terms **mortgagor** and **mortgagee** have corresponding meanings; and the provisions of that paragraph, as far as they are applicable and with any necessary modifications, shall apply with respect to such liens, charges, or securities accordingly:
- (i) notwithstanding anything in section 172, no action shall lie against the Crown or the Registrar-General by any person whose estate in fee simple in the land in the certificate of title so issued has ceased or been determined under paragraph (d) by reason of that cessation or determination, except where that registered proprietor—
  - (i) has been deprived of that estate by fraud on the part of any applicant or applicants under any application under this Part or by the error, omission, or misfeasance of the Registrar or any of his officers or clerks in dealing with any application; and
  - (ii) is by this Act barred from bringing an action for possession or other action for recovery of the land or the said estate therein.

Section 89E: inserted, on 7 October 1966, by section 2 of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 89E(g): amended, on 19 August 2013, by section 9 of the Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20).

## Part 5

### Transfers

#### 90 Transfers and creation of easements, etc, by registered proprietor

- (1) A transfer instrument may be used for the purpose of registering under this Act—

- (a) the transfer of any land or estate or interest in land; or
  - (b) the creation or surrender of any easement or *profit à prendre*.
- (2) A transfer instrument must include the following information:
  - (a) the estate or interest to be transferred, created, or surrendered, which must include a reference to the register in the prescribed manner; and
  - (b) the person who is to take the interest.
- (3) A transfer instrument must be executed by—
  - (a) the registered proprietor of the estate or interest; and
  - (b) if an easement or *profit à prendre* is created or surrendered, or the transfer contains covenants binding on that party, the person who is to take the interest; and
  - (c) if an easement is reserved, the transferee.

Section 90: replaced, on 26 August 2002, by section 43 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 90(1)(b): amended, on 17 May 2005, by section 6(1) of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 90(2)(a): amended, on 17 May 2005, by section 6(2) of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 90(3)(b): amended, on 17 May 2005, by section 6(3) of the Land Transfer Amendment Act 2005 (2005 No 58).

#### **90A Creation and surrender of easements by easement instrument**

- (1) This section does not limit other provisions by which easements may be created or surrendered.
- (2) An easement that could be created or surrendered by a transfer under section 90 may be created or surrendered by an easement instrument under this section.
- (3) An easement instrument must include the following information:
  - (a) in the case of an easement not in gross, the dominant and servient tenements, which must include a reference to the register in the prescribed manner; and
  - (b) in the case of an easement in gross, the servient tenement, which must include a reference to the register in the prescribed manner, and the person to whom the easement is to be granted; and
  - (c) the nature and extent of any easement to be created; and
  - (d) the rights and powers that will apply to any easement to be created; and
  - (e) any easement to be surrendered, which must include a reference to the register in the prescribed manner.
- (4) An easement instrument must be executed by,—
  - (a) in the case of an easement not in gross, the registered proprietors of the dominant and servient tenements; and

- (b) in the case of an easement in gross, the registered proprietor of the servient tenement and the grantee.
- (5) Easements are created or surrendered under this section when the easement instrument specifying them is registered.
- (6) Section 69 of this Act and section 21 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, with any necessary modifications, apply to easements created under this section.

Section 90A: replaced, on 26 August 2002, by section 43 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **90B Creation and surrender of easements on deposit of plan**

- (1) The provisions of this section do not limit other provisions by which easements may be created or surrendered.
- (2) An easement that could be created or surrendered by transfer under section 90 may be created or surrendered under this section.
- (3) An easement may be created under this section by specifying—
  - (a) the dominant or servient tenement or both (as the case requires), which must include a reference to the register in the prescribed manner; and
  - (b) the nature and extent of the easement; and
  - (c) the rights and powers that will apply to the easement created under this section by referring without modification to applicable rights and powers—
    - (i) prescribed in regulations made under this Act; or
    - (ii) contained in a memorandum registered under section 155A.
- (4) The matters set out in subsection (3) may be specified either—
  - (a) in a deposit document specified by the Registrar under section 167A; or
  - (b) on a plan in a form specified in rules made under the Cadastral Survey Act 2002.
- (5) The consent of the following persons is required for the creation or surrender of easements under this section:
  - (a) in the case of an easement not in gross, the registered proprietors of the dominant and servient tenements; and
  - (b) in the case of an easement in gross, the registered proprietor of the servient tenement and the grantee.
- (6) Easements are created or surrendered under this section,—
  - (a) if specified in a deposit document, when the plan to which that document relates is deposited under section 167;
  - (b) if specified on a plan, when that plan is deposited under section 167.

- (7) Section 69 of this Act and sections 21 and 30 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, with any necessary modifications, apply to easements created under this section.

Section 90B: replaced, on 26 August 2002, by section 43 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **90C Variation of easements**

- (1) An easement variation instrument may be registered to effect any of the following changes to any term, covenant, or condition of any easement created or registered under this Act:
- (a) varying it:
  - (b) negating it:
  - (c) adding to it.
- (2) An easement variation instrument must specify the easement to be varied by reference to the register in the prescribed manner.
- (3) An easement instrument must be executed by,—
- (a) in the case of an easement not in gross, the registered proprietors of the dominant and servient tenements; and
  - (b) in the case of an easement in gross, the registered proprietor of the servient tenement and the grantee.

Section 90C: replaced, on 26 August 2002, by section 43 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **90D Rights and powers implied in certain easements**

- (1) Regulations made under this Act may specify, for the purposes of this section,—
- (a) different classes of easements; and
  - (b) the rights and powers that are to be implied in them.
- (2) Subject to subsection (3), when an easement of a class specified in the regulations is registered, the grantee must be regarded as having the implied rights and powers (as specified for that class of instrument by the regulations).
- (3) An instrument creating an easement may alter the rights and powers implied under subsection (1) by—
- (a) varying any implied rights and powers:
  - (b) negating any implied rights and powers:
  - (c) providing additional rights and powers:
  - (d) substituting rights and powers for any implied rights and powers.
- (4) Subsection (3) does not apply to easements created under section 90B.
- (5) The rights and powers that apply by virtue of this section become binding on the grantor and the grantee on the registration of the easement.

- (6) The provisions of this section are in addition to, and not in derogation, of the provisions of sections 26(4), 27(3), and 28(3) of the Housing Act 1955.

Section 90D: replaced, on 26 August 2002, by section 43 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### 90E General provisions relating to easements

- (1) Despite any rule of law or equity to the contrary, an easement may be created under any of sections 90, 90A, or 90B, or varied under section 90C, even though the same person is the registered proprietor of both the dominant and servient tenements or is both the grantor and grantee.
- (2) When easements are created under any of sections 90, 90A, or 90B,—
- (a) the registered proprietor of the servient tenement is the grantor:
  - (b) the registered proprietor of the dominant tenement is the grantee:
  - (c) in the case of Crown land, the registered proprietor is Her Majesty the Queen:
  - (d) if the land is land of the Crown for which there is no certificate of title or computer register, the Registrar must constitute a separate folium of the register or computer register for the easement or easements.
- (3) Consent is needed as follows:
- (a) the creation of an easement under any of sections 90, 90A, or 90B, or the variation of an easement under section 90C, needs consent by any mortgagee of the land that is to become the servient tenement:
  - (b) the variation of an easement under section 90C needs consent by any mortgagee of the easement or dominant tenement:
  - (c) the surrender of an easement under any of sections 90, 90A, or 90B needs consent by any mortgagee of the easement or dominant tenement.
- (4) If a mortgagee gives a consent under subsection (3), the mortgagee and all persons who subsequently derive any interest from the mortgagee are bound by the easement or *profit à prendre*, variation, or surrender.
- (5) Sections 90, 90A, 90B, 90C, and 90D, and subsections (1) to (4), apply as if—
- (a) **easement** includes a *profit à prendre*; and
  - (b) **rights and powers** includes terms, covenants, and conditions.

Section 90E: replaced, on 26 August 2002, by section 43 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 90E(1): amended, on 17 May 2005, by section 7(1) of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 90E(2): amended, on 17 May 2005, by section 7(2) of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 90E(3)(a): amended, on 17 May 2005, by section 7(3)(a) of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 90E(3)(c): amended, on 17 May 2005, by section 7(3)(b) of the Land Transfer Amendment Act 2005 (2005 No 58).



Section 90E(5): amended, on 17 May 2005, by section 7(4) of the Land Transfer Amendment Act 2005 (2005 No 58).

## **90F Creating and noting land covenants**

- (1) Any covenant that may be contained in an instrument to which section 307 of the Property Law Act 2007 applies—
  - (a) may also be created in the same way as an easement may be created under section 90A or section 90B; but
  - (b) subject to section 307 of the Property Law Act 2007, has effect only as a deed *inter partes*.
- (2) Sections 90A to 90E apply with any necessary modifications to covenants created under subsection (1), subject to the following exceptions:
  - (a) sections 90A(5) and 90B(6) operate only to create covenants with effect only as a deed *inter partes*:
  - (b) sections 90A(6) and 90B(7) do not apply.
- (3) Sections 4, 8(1) and (2)(c), 23(2), 275 to 279, 301 to 307, and 316 to 318 of the Property Law Act 2007 apply to covenants created under subsection (1).
- (4) A notification under section 307 of the Property Law Act 2007 does not give a covenant created under subsection (1) any greater force than it would have had if created in some other way.
- (5) Subsection (4) is for the avoidance of doubt.

Section 90F: replaced, on 26 August 2002, by section 43 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 90F(1): replaced, on 17 May 2005, by section 8 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 90F(1): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 90F(1)(b): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 90F(3): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 90F(4): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## **91 New certificate to transferee unnecessary if whole of land transferred**

If any memorandum of transfer purports to transfer the whole of the land described in a grant or certificate of title for all the estate and interest therein of any registered proprietor, it shall not be necessary for the Registrar to cancel that grant or certificate; but the memorial of the transfer endorsed on the grant or certificate shall be as good evidence that the transferee named in that memorial is seised of all the estate and interest in the said land of the person whose interest is expressed to be transferred, subject as in the grant or certifi-

cate mentioned or thereon endorsed, as if a certificate of title had been issued for the same in the name of the transferee.

Compare: 1915 No 35 s 83

## **92 Certificate to be cancelled on transfer of portion of land only**

If the transfer purports to transfer an estate of freehold in possession, not being a lease for a life or lives, in part of the land described in any grant or certificate, the transferor shall surrender that grant or certificate to the Registrar, and the endorsement thereon by the Registrar of a memorial of the transfer shall have the effect of cancelling the grant or certificate so far as relates to the land transferred.

Compare: 1915 No 35 s 84

## **93 New certificates to be issued for portion transferred and for balance**

The Registrar, upon cancelling any grant or certificate by endorsement as aforesaid, shall issue to the transferee a certificate of title to the land transferred, and shall retain the partially cancelled grant or certificate, and when required by any person entitled thereto shall issue to that person a certificate of title for the untransferred balance of the land, or for any portion thereof.

Compare: 1915 No 35 s 85

## **94 Certificate for balance not transferred may remain valid**

- (1) When any certificate of title is partially cancelled by endorsement thereon of a memorial of transfer of a portion of the land, the Registrar may, at his discretion, allow the person entitled to the untransferred balance of the land to retain the certificate, and the same shall, as to the untransferred balance, remain in full force and effect; provided that the memorial shall clearly define what portion of the land has been transferred.
- (2) In the case of a transfer of a road line to Her Majesty the Registrar may mark the road line upon the plan on the certificate, or upon a new plan upon the certificate, and endorse a description of the road line upon the said certificate; and in any such case it shall not be necessary to issue a certificate for the road line, but the old certificate, or a new one, may be reissued with the road line marked thereon, with a memorandum that the transfer has been registered.

Compare: 1915 No 35 s 86

Section 94(2): amended, on 10 December 1991, by section 2(2)(b) of the Land Transfer Amendment Act 1991 (1991 No 118).

## **95 Estates for life, or in reversion, or remainder**

- (1) The registered proprietor of land under this Act may create or execute any powers of appointment, or limit any estates, whether by remainder or in reversion or by way of executory limitation, and whether contingent or otherwise, and for that purpose may modify or alter any form of transfer hereby prescribed.

- (2) In case of the limitation of successive interests as aforesaid the Registrar shall cancel the grant or certificate evidencing the title of the transferor, and shall issue a certificate in the name of the person entitled to the freehold estate in possession for such estate as he is entitled to, and the persons successively entitled in reversion or remainder or by way of executory limitation shall be entitled to be registered by virtue of the limitations in their favour in that instrument expressed, and each such person upon his estate becoming vested in possession shall be entitled to a certificate of title for the same.

Compare: 1915 No 35 s 87; 1950 No 24 s 5

## **96 Implied covenant in transfer of equity of redemption**

*[Repealed]*

Section 96: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## **97 Transfer of lease or mortgage**

- (1) A registered mortgage or lease may be transferred by memorandum of transfer as aforesaid.
- (2) Upon registration of any such memorandum of transfer the estate or interest of the transferor as set forth in the instrument, with all rights, powers, and privileges thereto belonging or appertaining, shall pass to the transferee.
- (3) The transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which he would have been subject and liable if named in the instrument originally as mortgagee or lessee of the land, estate, or interest; and by virtue of every such transfer as is hereinbefore mentioned the right to sue upon any memorandum of mortgage or other instrument, and to recover any debt, sum of money, annuity, or damages thereunder (notwithstanding that the same may be deemed or held to constitute a chose in action), and all interest in any such debt, sum of money, annuity, or damages shall be transferred so as to vest the same at law as well as in equity in the transferee thereof:

provided that nothing in this section shall prevent a court of competent jurisdiction from giving effect to any trusts affecting the said debt, sum of money, annuity, or damages in case the transferee holds the same as a trustee for any other person.

Compare: 1915 No 35 ss 89, 90; 1925 No 20 s 6

## **98 Implied covenants in transfer of lease**

*[Repealed]*

Section 98: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**99 Memorandum of vesting order to be entered on register**

Whenever any order is made by any court of competent jurisdiction vesting any estate or interest under this Act in any person, the Registrar, upon being served with a duplicate of the order, shall enter a memorandum thereof in the register and on the outstanding instrument of title, and until such an entry is made the said order shall have no effect in vesting or transferring the said estate or interest.

Compare: 1915 No 35 s 92

**99A Vesting by statute**

Where by any enactment any estate or interest under this Act is vested in any person, then, subject to the provisions of that enactment, the Registrar, on application made to him by that person and on the registration or deposit of such documents and plans as the Registrar may require, shall make such entries in the register and generally do all such things as may be necessary to give full effect to the provisions of the enactment:

provided that where the enactment specifies the estate or interest vested by a description sufficient to identify it in the records of the Registrar, no such application shall be necessary.

Section 99A: inserted, on 7 October 1966, by section 11 of the Land Transfer Amendment Act 1966 (1966 No 37).

*Instruments for adoption by other enactments*

Heading: inserted, on 17 May 2002, by section 44 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**99B Forms for instruments available for adoption by other enactments**

- (1) Regulations made under this Act may prescribe instruments under this Act that are available for adoption (with or without modification) by any other enactment that provides for the registration or noting of any thing under this Act.
- (2) Neither this section nor any regulations made for the purposes of it affect the operation of any enactment that—
  - (a) provides for the registration or noting of any thing under this Act; but
  - (b) does not expressly adopt a form specified in regulations referred to in subsection (1).

Section 99B: inserted, on 17 May 2002, by section 44 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## Part 6

### Mortgages

#### 100 Mortgage to take effect as security only

A mortgage under this Act shall have effect as security, but shall not operate as a transfer of the estate or interest charged.

Compare: 1915 No 35 s 102

#### 101 Forms of mortgage

- (1) A mortgage instrument or an encumbrance instrument is required for the purposes of charging any land or estate or interest under this Act or making any such land or estate or interest security for payment of any money.
- (2) A mortgage instrument must contain the following information:
  - (a) the land or estate or interest to be mortgaged, which must include a reference to the register in the prescribed manner; and
  - (b) the person who is to take the mortgage; and
  - (c) the nature of the debt secured by the mortgage; and
  - (d) the covenants and conditions (if any); and
  - (e) the stated priority limit under section 92 of the Property Law Act 2007 (if any).
- (3) A mortgage instrument must be executed by the registered proprietor.
- (4) An encumbrance instrument must contain the following information:
  - (a) the land or estate or interest to be encumbered, which must include a reference to the register in the prescribed manner; and
  - (b) the person for whose benefit the land or estate or interest is to be encumbered; and
  - (c) the nature of the sum, annuity, or rentcharge secured; and
  - (d) the events (if any) on which the sum, annuity, or rentcharge becomes or ceases to be payable; and
  - (e) the covenants and conditions (if any).
- (5) An encumbrance instrument must be executed by the encumbrancer.
- (6) In this section, **debt** includes future indebtedness and interest.

Section 101: replaced, on 26 August 2002, by section 45 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 101(2)(e): replaced, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

#### 102 Variation of mortgage terms

- (1) A mortgage variation instrument is required for the purpose of varying, in respect of any mortgage registered under this Act,—

- (a) the amount secured by the mortgage; or
  - (b) the rate of interest; or
  - (c) the term or currency of the mortgage; or
  - (d) the covenants, conditions, and powers contained or implied in the mortgage.
- (2) A mortgage variation instrument must contain the following information:
- (a) the mortgage, which must include a reference to the register in the prescribed manner; and
  - (b) the nature of the variation.
- (3) A mortgage variation instrument must be executed by—
- (a) the mortgagor, except where the variation only operates to reduce the amount secured or rate of interest; and
  - (b) the mortgagee, except where the variation only operates to increase the amount secured or rate of interest.
- (4) If the land is subject to another mortgage, the consent of the mortgagee under that mortgage must be obtained.

Section 102: replaced, on 26 August 2002, by section 45 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 102(1)(d) paragraph number: replaced, on 17 May 2005, by section 9 of the Land Transfer Amendment Act 2005 (2005 No 58).

### **103 Variation of priority of mortgages**

- (1) Despite anything in section 37 or section 47, the priority between themselves of the mortgages affecting any land may, from time to time, be varied by a mortgage priority instrument.
- (2) A mortgage priority instrument must contain the following information:
- (a) each mortgage that will be affected by the change in priority, which must include a reference to the register in the prescribed manner; and
  - (b) the priority of the mortgages intended following registration.
- (3) If any mortgage so postponed is subject to a submortgage, the mortgage priority instrument is not effective unless the submortgagee has consented.
- (4) Upon the registration of the mortgage priority instrument, there is implied in every mortgage so postponed the covenants, conditions, and powers set out in Schedule 3, except as otherwise expressed in the priority instrument.
- (5) Upon the registration of a mortgage priority instrument, the Registrar must notify it on the register.
- (6) A mortgage priority instrument must be executed by—
- (a) the mortgagor; and

- (b) every mortgagee under every mortgage that, as a result of the mortgage priority instrument, will be ranked after any mortgage over which it previously had priority.
- (7) For the purposes of this section, **mortgage** includes any lien, charge, or other registered security for the payment of money.

Section 103: replaced, on 26 August 2002, by section 45 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### *Sale of mortgaged land*

#### **104 Application of purchase money**

*[Repealed]*

Section 104: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

#### **105 Transfer by mortgagee**

Upon the registration of any transfer executed by a mortgagee for the purpose of exercising a power of sale over any land, the estate or interest of the mortgagor therein expressed to be transferred shall pass to and vest in the purchaser, freed and discharged from all liability on account of the mortgage, or of any estate or interest except an estate or interest created by any instrument which has priority over the mortgage or which by reason of the consent of the mortgagee is binding on him.

Compare: 1915 No 35 s 109; 1939 No 7 s 7

Section 105: amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

### *Rights and remedies of mortgagees*

#### **106 Mortgagee may, after default, enter into possession**

*[Repealed]*

Section 106: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

#### **107 Mortgagee may distrain on tenant to the amount of his rent**

*[Repealed]*

Section 107: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

#### **108 Mortgagee to have remedies of a lessor for recovery of premises**

*[Repealed]*

Section 108: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**109 Mortgagee to have custody of instrument of title**

- (1) The mortgagee, or first mortgagee for the time being, of any estate or interest under this Act shall be entitled to the possession of the outstanding grant, certificate, or other instrument of title; or the same may by agreement be deposited with the Registrar for safe custody during the continuance of the security.
- (2) This section does not apply if the land to which the estate or interest applies is electronic transactions land.

Compare: 1915 No 35 s 121

Section 109(2): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

*Liability of mortgagee in possession of leasehold*

*[Repealed]*

Heading: repealed, on 1 January 2008, pursuant to section 364(1) of the Property Law Act 2007 (2007 No 91).

**110 Mortgage of leasehold after entry liable for rent**

*[Repealed]*

Section 110: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

*Discharge of mortgage***111 Discharge of mortgage**

- (1) A mortgage discharge instrument is required for the purpose of registering a discharge of any mortgage under this Act.
- (2) A mortgage discharge instrument must contain the following information:
  - (a) the land to be discharged from the mortgage, which must include a reference to the register in the prescribed manner; and
  - (b) the mortgage to be discharged, which must include a reference to the register in the prescribed manner; and
  - (c) the part of the principal sum, annuity, or other sum to be discharged if it is not to be fully discharged.
- (3) A mortgage discharge instrument must be executed by the mortgagee.
- (4) Upon the registration of a discharge instrument,—
  - (a) the Registrar must record the discharge in the register and on the certificate of title for the land (if any); and
  - (b) the land identified in the discharge instrument ceases to be subject to or liable for the debt or annuity secured by the mortgage.

Section 111: replaced, on 26 August 2002, by section 46 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).



**112 Discharge of mortgage where remedies thereunder are statute barred**

- (1) The High Court may make an order directing a registered mortgage to be discharged if, on an application for the purpose made to it by the registered proprietor of an estate or interest in land subject to the mortgage, it is satisfied—
  - (a) that the granting of relief in respect of a claim by the mortgagee for payment of the money secured by the mortgage would be prevented by the raising and establishment of a limitation period or other limitation defence under the Limitation Act 2010 or any other enactment; and
  - (b) that, but for section 64, the granting of relief to the mortgagee in respect of the mortgaged land would be likewise prevented.
- (1A) Subsection (1) overrides section 64.
- (1B) On production of a copy of the order, the Registrar must enter a memorandum of it in the register.
- (1C) The registered mortgage must be treated as having been discharged when the memorandum of the order is entered in the register under subsection (1B).
- (2) Before making any order under this section the court may direct such notice to be given by public advertisement or otherwise as it thinks fit, and may direct any person to be served with notice of the proceedings.
- (3) By the same or another order the court may order any person in possession of an instrument of title to the mortgaged property to deliver the title to the registered proprietor on payment of such charges as the court may, in its discretion, fix in the order.

Compare: 1936 No 58 s 43

Section 112(1): replaced, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 112(1A): inserted, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 112(1B): inserted, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 112(1C): inserted, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

*Discharge of annuity*

**113 On death of annuitant, discharge of annuity may be entered**

Upon proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of any instrument executed for the purpose of securing an annuity or continuing payment, that annuity or payment shall cease to be payable; and, upon proof that all arrears thereof have been paid, satisfied, or discharged, the Registrar shall make an entry in the register of the satisfaction or discharge, and shall endorse the same on the outstanding duplicate of title, if produced to him for that purpose, and shall,

if the same is surrendered to him, cancel the instrument creating the encumbrance.

Compare: 1915 No 35 s 122

### *Submortgages*

#### **114 Submortgages**

- (1) A mortgage subject to a submortgage shall not be discharged, nor shall the terms thereof be varied, nor shall the power of sale contained or implied therein be exercised, without the consent in writing of the submortgagee.
- (2) The consent of the submortgagee to the variation of the terms of a mortgage shall render the instrument making the variation binding on him and on all persons who may subsequently derive from him any interest in the mortgage.

Compare: 1915 No 35 s 116(4), (5)

## **Part 7 Leases**

#### **115 Form and registration of leases**

- (1) A lease instrument is required for the purposes of registering under this Act the lease or demise of any land.
- (2) A lease instrument must contain the following information:
  - (a) the land or estate or interest to be leased, which must include a reference to the register in the prescribed manner; and
  - (b) the person who is to acquire the interest as lessee; and
  - (c) the term of the lease; and
  - (d) the rent payable; and
  - (e) the terms and conditions that are to apply to the lease.
- (3) A lease instrument must be executed by—
  - (a) the registered proprietor; and
  - (b) the lessee.
- (4) If the land or estate or interest to be leased is subject to a mortgage, the consent of the mortgagee must be obtained.
- (5) *[Repealed]*

Section 115: replaced, on 26 August 2002, by section 47 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 115(1): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 115(5): repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## **116 Variation of lease**

- (1) A lease variation instrument is required for the purpose of varying, in respect of any lease registered under this Act,—
  - (a) the term of the lease by way of extension; or
  - (b) the covenants, conditions, and restrictions contained in the lease.
- (2) A lease variation instrument extending the term of a lease must be registered before the expiry of the then current term of the lease.
- (3) A lease variation instrument must contain the following information:
  - (a) the lease to be varied, which must include a reference to the register in the prescribed manner; and
  - (b) the nature of the variation.
- (4) A lease variation instrument extending the term of a lease has the same effect as if it were a lease instrument for the extended term subject to the same covenants, conditions, and restrictions, with any necessary modifications, as are contained or implied in the lease.
- (5) Upon the registration of the lease variation instrument, the estate of the lessee under the instrument is deemed to be subject to all encumbrances, liens, and interests to which the lease is subject at the time of the registration. For the purposes of this subsection, all references in any Act or in any agreement, deed, instrument, notice, or other document to the lease or to the estate of the lessee under the instrument must, unless inconsistent with the context or with the provisions of this section, be read as references to the lease as varied by the lease variation instrument or to the estate of the lessee under the instrument, as the case may be.
- (6) A lease variation instrument must be executed by the lessor and lessee.
- (7) If the land subject to the lease is subject to a mortgage, the consent of the mortgagee must be obtained.

Section 116: replaced, on 26 August 2002, by section 47 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **117 Bringing down encumbrances on registration of new lease**

- (1) Where upon the registration of a lease—
  - (a) the Registrar is satisfied that—
    - (i) it is in renewal of or in substitution for a lease previously registered; and
    - (ii) the lessee is the person registered as the proprietor of the prior lease at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier, or the personal representative of that person; and

- (b) the lessee or the registered proprietor of any encumbrance or lien or interest to which the prior lease was subject at the time of its expiry or surrender or the personal representative of the registered proprietor so requests,—

the Registrar shall state in the memorial of the new lease that it is in renewal of the prior lease or in substitution for the prior lease, as the case may be.

- (2) In every such case the new lease shall be deemed to be subject to all encumbrances, liens, and interests to which the prior lease is subject at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier.
- (3) For the purposes of the foregoing provisions of this section, all references in any Act or in any agreement, deed, instrument, notice, or other document whatsoever to the prior lease or to the estate of the lessee thereunder shall, unless inconsistent with the context or with the provisions of this section, be deemed to be references to the new lease or to the estate of the lessee thereunder, as the case may be.
- (4) Upon the registration of a new lease in any case to which subsection (1) applies, the Registrar shall record on the new lease all encumbrances, liens, and interests to which it is deemed to be subject as aforesaid in the order of their registered priority.
- (5) The provisions of this section are in addition to and not in derogation of the provisions of section 114 of the Land Act 1948, section 36 of the State Advances Corporation Act 1936, and any other enactment.

Section 117: replaced, on 23 October 1963, by section 25(1) of the Land Transfer Amendment Act 1963 (1963 No 61).

## **118 Covenant for right of purchase**

A right for or covenant by the lessee to purchase the land may be stipulated in a memorandum of lease; and in case the lessee pays the purchase money, and otherwise observes his covenants expressed and implied in the instrument, the lessor shall be bound to execute a memorandum of transfer, and to perform all other necessary acts for the purpose of transferring to the lessee the said lands and the fee simple thereof.

Compare: 1915 No 35 s 94

## **118A Bringing down encumbrances when lessee acquires fee simple**

- (1) Where the registered lessee under a lease of any land (not being a lease under the Land Act 1948 or any former Land Act) acquires the fee simple estate in that land, the Registrar, upon the registration of the memorandum of transfer of the fee simple estate to that lessee or his personal representative, and upon the request so to do by the transferee endorsed on or attached to the memorandum of transfer at the time of its registration, shall record on the title to the fee simple estate, in the order among themselves of their registered priority, all the

registered encumbrances, liens, and interests to which the lease was subject at the time of registration of that memorandum of transfer or at the time of expiry of the term of the lease, whichever is the earlier; and thereupon the fee simple estate shall be subject to those encumbrances, liens, and interests.

- (2) Notwithstanding anything in section 37, any registered encumbrances, liens, and interests to which the fee simple estate is subject at the time of registration of the transfer shall have priority over those to which the estate is subject under subsection (1).
- (3) Where the Registrar considers it expedient so to do, he may make such entries on his register and on the duplicate certificate of title as he considers necessary to evidence any such priorities.
- (4) Encumbrances, liens, and interests recorded on the title to the fee simple estate in any land pursuant to subsection (1) shall, when so recorded, no longer have effect to prevent the merger of the leasehold estate in the fee simple estate in respect of that land.

Section 118A: inserted, on 25 October 1960, by section 2 of the Land Transfer Amendment Act 1960 (1960 No 69).

Section 118A(1): amended, on 23 October 1963, by section 26 of the Land Transfer Amendment Act 1963 (1963 No 61).

## **119 Lease not binding on mortgagee without consent**

No lease of mortgaged or encumbered land shall be binding upon the mortgagee except so far as the mortgagee has consented thereto.

Compare: 1915 No 35 s 95

## **120 Surrender of lease**

- (1) A lease surrender instrument is required for the purpose of surrendering any lease registered under this Act.
- (2) A lease surrender instrument must state the lease to be surrendered, which statement must include a reference to the register in the prescribed manner.
- (3) A lease surrender instrument must be executed by the lessor and the lessee.
- (4) Upon the registration of a lease surrender instrument,—
  - (a) the Registrar must record the surrender in the register and on the certificate of title for the land (if any); and
  - (b) the estate and interest of the lessee vests in the person entitled to the reversion.
- (5) A lease subject to mortgage or underlease must not be surrendered without the consent of the mortgagee or sublessee.

Section 120: replaced, on 26 August 2002, by section 48 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**121 Re-entry by lessor**

- (1) In case of re-entry and recovery of possession of any leasehold premises, either by process of law or by exercise of any power of re-entry in the lease contained or implied, the Registrar shall, upon proof to his satisfaction of the re-entry, and of actual recovery of possession, notify the re-entry upon the register, and upon the outstanding instrument of title, if produced to him for that purpose:
- provided that, unless the re-entry and recovery of possession have been by formal process of law, the Registrar shall require notice of application to register the same to be served on all persons interested under the lease, or, failing such notice, shall give at least the prescribed period of notice of the application by publication in the *Gazette* and in some newspaper published in the locality before making any entry upon the register.
- (2) The estate of the lessee, and of every person claiming through or under him, shall thereupon cease and determine, but without releasing him or them from liability in respect of the breach or non-observance of any covenant or condition in the lease contained or implied.

Compare: 1915 No 35 s 99

Section 121(1) proviso: amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 121(1) proviso: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**Part 7A****Flat and office owning companies**

Part 7A: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

**121A Interpretation**

- (1) In this Part, unless the context otherwise requires,—
- company** has the same meaning as in section 2(1) of the Companies Act 1993, and, in relation to a licence, means the company by which the licence was issued
- constitution** has the same meaning as in section 2(1) of the Companies Act 1993
- flat or office owning company** means a company the constitution of which provides that the registered holder of specified shares in the company is entitled, by virtue of being the holder of those shares, to occupy or use a specified residential flat or office forming part of a building owned by the company
- licence to occupy** or **licence** means an instrument (not being an instrument registrable otherwise than pursuant to this Part) whether issued before or after the commencement of this Part, that is executed by a flat or office owning company and by a shareholder and that—

- (a) grants to that shareholder the right to occupy or use a specified office or residential flat by virtue of the shares of which the shareholder is the registered holder; or
- (b) is evidence of the right of that shareholder by virtue of the shares of which the shareholder is the registered holder to occupy or use a specified office or residential flat

**office** includes premises used or intended to be used for commercial, industrial, business, or professional purposes

**share certificate** means the certificate issued in respect of the shares to which a licence relates

**share register** has the same meaning as in section 2(1) of the Companies Act 1993.

- (2) *[Repealed]*
- (3) A reference in this section to a **right to occupy or use a specified office or residential flat** includes a reference to any rights conferred by the constitution of the company or the licence to use any garage, outbuilding or other structure, or any passages, stairways, or other appurtenances, services or conveniences of the building of which the flat or office forms part, or the land appurtenant to that building.

Compare: 1964 No 42 s 2

Section 121A: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

Section 121A(1) **company**: replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 121A(1) **constitution**: replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 121A(1) **share register**: replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 121A(2): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

### 121B Issue of share certificates

- (1) Every flat or office owning company must issue to every shareholder in the company a share certificate that complies with the requirements of section 95(1)(a), (b), and (c) of the Companies Act 1993.
- (2) Where a company acts in contravention of or fails to comply with subsection (1),—
  - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$5,000:
  - (b) every director of the company commits an offence, and is liable on conviction to a fine not exceeding \$5,000, unless the director shows that—

- (i) the company took all reasonable and proper steps to ensure that the requirements of that subsection would be complied with; or
- (ii) he or she took all reasonable steps to ensure that the company complied with the requirements of that subsection; or
- (iii) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirements of that subsection.

Section 121B: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

Section 121B(1): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 121B(2)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 121B(2)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **121C Registration of licence to occupy**

- (1) Subject to this Part, a licence may be registered by constituting it a folium of the register and, for that purpose, the provisions of this Act apply with any necessary modifications. The same registration fee is payable as on a memorandum of lease.
- (2) Subject to this Part or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, all the provisions of this Act which relate to leases, as far as they are applicable and with the necessary modifications, apply with respect to a licence registered under this section as if it were a lease.
- (3) Where a licence is presented for registration, and the Registrar is satisfied that, for the purposes of section 36, no duplicate of the licence is in existence or can reasonably be obtained, the Registrar may accept a copy of the licence as a duplicate if satisfied that the copy is duly authenticated as a true copy. Every such authenticated copy shall, for the purposes of Part 3, be treated as a duplicate of the licence, and shall be the copy to be constituted a folium of the register pursuant to this section.

Compare: 1964 No 42 s 3

Section 121C: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

Section 121C(2): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 121C(2): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

### **121D Registrar may require plan**

Without limiting the powers conferred on the Registrar by section 167, where application is made to the Registrar for registration of a licence, the Registrar may require the applicant to deposit in the Land Registry Office of the district,



or cause to be endorsed on or attached to the licence, a plan, authenticated as required by the Registrar, sufficient to identify—

- (a) the flat or office comprised in the licence in relation to the land in the certificate of title and to the building of which the flat or office forms part, and, if the Registrar thinks fit, in relation to other flats or offices; and
- (b) every garage, outbuilding, other structure, passageway, stairway, or other appurtenance or convenience of the building of which the office or flat forms part in respect of which the licensee has a right of use, and also any land of which the licensee has a right of use and which is appurtenant to that building.

Compare: 1964 No 42 s 4

Section 121D: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

#### **121E Registration of instruments against licence**

- (1) An instrument which could be registered against a registered lease of land may be registered against a licence that is registered under this Act in the same manner as an instrument may be registered against a lease of land.
- (2) Nothing in subsection (1) makes it necessary to record the instrument against the register constituted by any relative instrument of title in the name of the company or in the name of any person through or under whom the company obtained its instrument of title.

Compare: 1964 No 42 s 5

Section 121E: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

#### **121F Effect of registration of licence**

- (1) Subject to this Part, registration of a licence does not give the licence any greater operation or effect than it would have without registration, but otherwise every registered licence is an interest within the meaning of section 62 suitably modified.
- (2) Every entry made on a registered licence, if purporting to be duly made and signed, shall be received in all courts of law and equity as evidence of the particulars contained in it, and, as against the person named in the original licence and all persons claiming through, under, or in trust for that person, is conclusive evidence that the person named in that entry is seised or possessed of the estate or interest of which the person so named is expressed to be the registered proprietor.

Compare: 1964 No 42 s 6

Section 121F: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

**121G Mortgage of licence**

- (1) On the registration of a mortgage of a registered licence, every share certificate issued by the company in respect of the shares to which the licence relates must be produced to the Registrar who must make an entry on it that the licence is subject to the mortgage.
- (2) On the registration of a discharge of the mortgage, the Registrar must, when the share certificate is produced to the Registrar for that purpose, cancel that entry.
- (3) The Registrar must notify the company in writing of the registration of a mortgage of a licence which notice must contain particulars of the mortgage and the name, occupation, and address of the mortgagee.
- (4) The Registrar must notify the company in writing of the registration of a discharge of a mortgage of a licence.
- (5) On receiving a notice under subsection (3) or subsection (4), the company must—
  - (a) record the particulars of the mortgage or of the discharge, as the case may be, on any office copy of the share certificate and of the licence held by the company; and
  - (b) record in its share register, against the entry relating to the licence, the fact that the licence has been mortgaged, together with the registered number of the mortgage, or, as the case may be, that the mortgage has been discharged.
- (6) A company that issues a new share certificate to replace a certificate that has been lost or defaced and on which particulars of a mortgage of a licence had been recorded must record those particulars on the new certificate.
- (7) Where a company acts in contravention of or fails to comply with subsection (5) or subsection (6),—
  - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$5,000;
  - (b) every director of the company commits an offence, and is liable on conviction to a fine not exceeding \$5,000, unless the director shows that—
    - (i) the director did not know of and could not reasonably have been expected to know of the contravention or failure to comply; or
    - (ii) the director took all reasonable steps to ensure that the applicable requirements would be complied with.

Compare: 1964 No 42 s 7

Section 121G: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

Section 121G(7)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 121G(7)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **121H Mortgagee to have custody of licence and share certificate**

The mortgagee, or, if there is more than 1 mortgage, the first mortgagee for the time being, of any registered licence is entitled—

- (a) to possession of the licensee's copy of the licence and of the share certificate issued in respect of the shares to which the licence relates; and
- (b) in the case of a registered mortgage, to receive notice of any meeting of the company in respect of which the licensee is entitled to notice; and
- (c) to attend at meetings of the company as proxy of the licensee, and, if present, to vote at those meetings instead of the licensee.

Compare: 1964 No 42 s 8

Section 121H: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

### **121I Consent of mortgagee required on disposal of licence or shares**

- (1) The licensee under a licence that is subject to a registered mortgage must not sell or otherwise dispose of the licence or the shares to which the licence relates, or any of them, without the consent in writing of the mortgagee of the licence.
- (2) The consent of the mortgagee to the sale or other disposition of the licence or of any of the shares to which the licence relates, is not required under subsection (1) in any case where—
  - (a) the mortgage provides that no such consent is necessary; or
  - (b) the person acquiring the interest of the licensee continues to hold that interest under the existing licence subject to the mortgage; or
  - (c) the company cancels, revokes, rescinds, or accepts a surrender of the existing licence and issues, in its place, a new licence in the name of the person acquiring the interest of the licensee and that person requests the Registrar, in writing, to record the mortgage against the new licence under section 121L.
- (3) The company and the directors of the company must not register a transfer or other disposition of the shares to which a licence that is subject to a registered mortgage relates or any of them, unless and until—
  - (a) any consent of the mortgagee required by this section has been endorsed on or attached to the instrument of transfer or other disposition; or
  - (b) the request referred to in paragraph (c) of subsection (2) has been deposited with the company for delivery to the Registrar pursuant to paragraph (c) of subsection (2) of section 121K.
- (4) No transfer or other disposition of a licence or of the shares to which the licence relates or any of them and no new licence issued in the place of a licence

that has been cancelled, revoked, rescinded, or surrendered have any force or effect unless the applicable requirements of this section are complied with.

Compare: 1964 No 42 s 9

Section 121I: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

### **121J Restrictions on cancellation, etc, of licence**

Except with the consent of the mortgagee or, in any case to which section 121I applies, after compliance with the applicable provisions of that section, the company shall not cancel, revoke, rescind, accept the surrender of, or issue a new licence in place of a licence that is subject to a registered mortgage or forfeit the shares to which the licence relates or any of them, unless—

- (a) notice in writing is given by the company to the mortgagee specifying the matters required to be remedied in order to avoid the cancellation, revocation, rescission, acceptance of surrender, forfeiture, or issue of a new licence, and allowing a reasonable time, which must be specified in the notice, for those matters to be remedied; and
- (b) those matters have not been remedied within the time specified in the notice.

Compare: 1964 No 42 s 10

Section 121J: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

### **121K Registration of cancellation, etc, of licence**

- (1) Where the company cancels, revokes, rescinds, or accepts the surrender of a registered licence, the company must,—
  - (a) if the company is able to obtain production of the licensee's copy of the licence for the purpose, endorse on it or attach to it a memorandum executed by the company of the cancellation, revocation, rescission, or acceptance of the surrender and forward it to the Registrar, together, in the case of a surrender, with the instrument of surrender duly executed by the company and by the licensee;
  - (b) if the company is unable to obtain production of the licensee's copy of the licence for that purpose, notify the Registrar, by notice in writing executed by the company, of the cancellation, revocation, rescission, or acceptance of the surrender and of the grounds for it, together, in the case of a surrender, with the instrument of surrender duly executed by the company and by the licensee.
- (2) If the licence is subject to a registered mortgage, the company must also forward to the Registrar together with the licence or notice, as the case may be, forwarded under subsection (1)—
  - (a) a copy of the mortgagee's consent certified as a true copy by the company; or

- (b) a certificate executed by the company that the notice required by section 121J to be given to the mortgagee has been duly given and that the matters specified in the notice have not been remedied within the time specified; or
  - (c) the request deposited with the company pursuant to paragraph (c) of subsection (2) of section 121I.
- (3) On receipt of the licence or notice forwarded in accordance with paragraph (a) or paragraph (b) of subsection (1) and, where necessary, on compliance by the company with subsection (2), the Registrar must, without fee, register the cancellation or revocation or rescission or surrender of the licence.
- (4) No cancellation, revocation, rescission, or surrender to which this section applies has any force or effect until it has been registered under subsection (3).
- (5) Where a company contravenes or fails to comply with subsection (1) or subsection (2),—
  - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$5,000;
  - (b) every director of the company commits an offence, and is liable on conviction to a fine not exceeding \$5,000, unless the director shows that—
    - (i) the company took all reasonable and proper steps to ensure that the requirements of the relevant subsection would be complied with; or
    - (ii) he or she took all reasonable steps to ensure that the company complied with the requirements of the relevant subsection; or
    - (iii) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirements of the relevant subsection.

Compare: 1964 No 42 s 11

Section 121K: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

Section 121K(5)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 121K(5)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **121L Bringing down of mortgage on new licence**

- (1) Where—
  - (a) a licence is subject to a registered mortgage; and
  - (b) the licensee transfers or otherwise disposes of the shares to which the licence relates; and

- (c) the company, in consequence of the transfer or disposition, cancels or revokes or rescinds or accepts a surrender of the licence and issues a new licence for the same flat or office to the person acquiring those shares,—
- the licensee under the new licence may, on applying for registration of the new licence or for the registration of the cancellation, revocation, rescission, or surrender of the former licence, request the Registrar, in writing, to record against the new licence the mortgage registered against the former licence or, if there are more mortgages than 1, such of them as the licensee specifies.
- (2) On the registration of the new licence, the Registrar must record against it the mortgage or mortgages specified in the request in the order of their registered priority, and in that event—
- (a) the new licence shall be deemed to be subject to the mortgage or mortgages; and
- (b) subpart 8 of Part 3 of the Property Law Act 2007 applies as if the licensee had acquired the licence by conveyance or transfer subject to the mortgage or mortgages recorded against it.
- (3) References in any mortgage or mortgages recorded against a new licence pursuant to this section to the licence or to the estate or interest of the licensee under it shall be deemed to be references to the new licence or, as the case may be, to the estate or interest of the licensee under it.

Compare: 1964 No 42 s 12

Section 121L: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

Section 121L(2)(b): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

### **121M Registration of transfer of licence or new licence**

- (1) The Registrar must not register a memorandum of transfer of a registered licence unless the Registrar is satisfied that an instrument disposing of the shares to which the licence relates to the person acquiring the licence under the memorandum of transfer has been registered by the company or its directors.
- (2) The Registrar must not register a licence issued by a company in the place of any other registered licence, unless that other licence has been cancelled, revoked, rescinded, or surrendered, and the cancellation, revocation, rescission or surrender has been registered under subsection (3) of section 121K.

Section 121M: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

### **121N Transfer of shares on exercise of power of sale by mortgagee of licence**

- (1) In the event that a registered licence that is subject to a registered mortgage is transferred to the mortgagee or to any other person in the exercise of a power of sale contained or implied in the mortgage, the mortgagee is entitled to execute a transfer to itself or, as the case may be, to that other person of the shares

to which the licence relates as if the mortgagee had been appointed the attorney of the licensee for that purpose by an irrevocable power of attorney.

- (2) Subject to any provision in its constitution requiring the approval of the directors of the company or of the company to the transfer, the company must register a transfer of shares executed pursuant to subsection (1) and in the proper form on presentation of the transfer to it.
- (3) Notwithstanding anything contained in the constitution of the company, the approval of the directors of the company or of the company to the transfer of the shares must not be unreasonably withheld.

Compare: 1964 No 42 s 14

Section 121N: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

### **121O Priority of replacement mortgage over land of company**

A mortgage that—

- (a) is registered against land owned by a flat or office owning company and that secures an amount not exceeding the amount secured by a mortgage of the land that has been discharged immediately before the registration of that mortgage, whether or not the amount is secured to the same mortgagee; and
- (b) contains a statement to the effect that it is in replacement of the discharged mortgage and that the money advanced was used for the purpose of repaying the money previously secured by the discharged mortgage,—

has the same priority in relation to registered licences affecting the land or any part of it as the discharged mortgage had immediately before it was discharged.

Compare: 1964 No 42 s 15

Section 121O: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

### **121P Service of notices**

- (1) A notice that is required by this Part to be delivered or sent to any person, other than a company, may be—
  - (a) delivered by hand to that person; or
  - (b) posted or delivered to that person at the last known address of that person or delivered to a box at a document exchange which that person is then using; or
  - (c) sent by telex, facsimile machine, or other similar means of communication to the number of that person.
- (2) For the purposes of subsection (1),—

- (a) a document which is posted or delivered to a document exchange, is deemed to be received 7 days (or such shorter period as the court may determine in any particular case) after it is so posted or delivered; and
  - (b) a document sent by telex, facsimile machine, or other similar means of communication is deemed to be received on the day following the day on which it was sent.
- (3) In proving, for the purposes of subsection (1), the sending of a document to any person by post or delivery to a document exchange, it is sufficient to prove that—
  - (a) the document was properly addressed to that person; and
  - (b) all postal or delivery charges were paid; and
  - (c) the document was posted or delivered to the document exchange.
- (4) In proving, for the purposes of subsection (1), the sending of a document to any person by telex, facsimile machine, or other similar means of communication, it is sufficient, in the absence of evidence to the contrary, to prove that—
  - (a) the document was properly addressed to that person; and
  - (b) the document was sent by telex, facsimile machine, or other means of communication.
- (5) The provisions of sections 388 and 392 of the Companies Act 1993 apply in relation to a notice that is required by this Part to be given to a company.

Compare: 1964 No 42 s 16

Section 121P: inserted, on 1 July 1994, by section 2 of the Land Transfer Amendment Act 1993 (1993 No 124).

## Part 8

### Transmissions, trusts, caveats, and powers of attorney

#### *Transmissions*

#### **122 Person claiming under transmission may apply to have same registered**

- (1) Any person claiming to be entitled to any estate or interest under this Act by virtue of any transmission may make application in writing to the Registrar to have that transmission registered.
- (2) Every such application shall accurately define the estate or interest claimed by the applicant, and shall state, so far as is within the knowledge of the applicant, the nature of every estate or interest held by any other person at law or in equity affecting the same, and that he verily believes himself to be entitled to the estate or interest in respect of which he applies to be registered as proprietor; and the statements in the application shall be verified by the oath or statutory declaration of the applicant.

Compare: 1915 No 35 s 123



**123 Procedure on application for transmission**

- (1) If on any such application and upon the evidence adduced in support thereof it appears to the Registrar that the applicant is entitled to the estate or interest claimed, the Registrar shall register the applicant as proprietor thereof.
- (2) The person so registered as proprietor shall hold the estate or interest transmitted subject to all equities affecting the same, but for the purpose of any dealing therewith shall be deemed to be the absolute proprietor thereof.

Compare: 1915 No 35 s 124

Section 123(1): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**124 Caveat may be entered on behalf of beneficiaries under will or settlement**

*[Repealed]*

Section 124: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**125 Transmission to mortgagee on bankruptcy of lessee**

- (1) Upon the bankruptcy of the registered proprietor of any lease subject to mortgage under this Act, the Registrar, upon the application in writing of the mortgagee, accompanied by a statement in writing signed by the Official Assignee of the bankrupt's estate, certifying his refusal to accept the lease, shall enter in the register the particulars of the refusal.
- (2) Every such entry shall operate as a transfer on sale, and the interest of the bankrupt in the lease shall thereupon vest in the mortgagee.

Compare: 1915 No 35 ss 126, 127

**126 Transmission to lessor in default of mortgagee applying**

If the mortgagee neglects or declines to make such application as aforesaid, the Registrar, upon application by the lessor, and proof of that neglect or refusal and of the matters aforesaid, shall enter in the register notice of the refusal of the Official Assignee to accept the lease, and any such entry shall operate as a surrender of the lease.

Compare: 1915 No 35 s 128

**127 Particulars of marriage of female proprietor to be registered**

*[Repealed]*

Section 127: repealed, on 1 January 2002, by section 57 of the Human Rights Amendment Act 2001 (2001 No 96).

*Trusts*

**128 No entry of trusts to be made on register except as authorised**

- (1) Except as provided in section 129 in relation to public reserves and other public lands, no entry shall be made in the register of any notice of trusts, and no

such entry, if made, shall have any effect. For the purposes of this subsection a provision in any instrument to the effect that a person executing the instrument assumes liability only to the extent of any estate or interest of which he is a trustee shall not be deemed to be a notice of trust.

- (2) Trusts affecting land under this Act may be declared by any deed or instrument; and that deed or instrument, or a duplicate or attested copy thereof, may be deposited with the Registrar for safe custody and reference, but shall not be registered.

Compare: 1915 No 35 s 130; 1939 No 7 s 9

## **129 Trusts of public reserves and other public lands**

- (1) The grantee or other person or body corporate in whom or in which any land under this Act now is or hereafter becomes vested as a public reserve shall hold that land subject to the trusts expressed or declared of and concerning the same in the Crown grant, or warrant in lieu of grant, or a certificate having the effect of a warrant issued under section 12, or in any certificate of title following the terms of that grant, warrant, or certificate.
- (2) If, after the registration of the Crown grant or the issue of any certificate of title, any trust is legally declared under the authority of any Act of the Parliament of New Zealand of and concerning any such public reserve, either as an original trust or by way of substitution, or if any trust previously declared is by the like authority legally revoked or altered, the Director-General of Conservation shall notify to the Registrar the particulars of the trust or of the alteration, revocation, or substitution, as the case may be.
- (3) The Registrar shall thereupon enter a notification thereof in the register, and the new or altered trust or revocation, as the case may be, shall take effect, as to the land against which the entry is made, as from the date of the entry.
- (4) Where, by any Act of the Parliament of New Zealand, it is declared that land other than public reserves may be vested in any person or body corporate for any special purpose, or by virtue of any office, it shall be lawful to grant or transfer land under this Act to that person or body corporate to be held accordingly; and a reference to the first-mentioned Act in the memorial of transfer or any certificate of title issued thereupon shall be notice of the capacity in which the land is held, and of all trusts expressly affecting the land by virtue thereof.
- (5) The disclosure of any trust under the provisions aforesaid shall have the effect of a perpetual caveat to restrain any dealing with the lands affected, so far as the dealing is manifestly inconsistent with that trust.

Compare: 1880 No 8 s 10; 1915 No 35 Appendix 1; 1951 No 60 s 8

Section 129(2): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 129(2): amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

Section 129(4): amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

**130 Transferor may apply for entry of “No survivorship” on register**

Upon the transfer of any land, estate, or interest under this Act to 2 or more persons as joint proprietors, the transferor may insert in the memorandum of transfer or other instrument the words “No survivorship”, and the Registrar shall note the same in the register, and also enter the said words upon any certificate of title issued pursuant to that transfer.

Compare: 1915 No 35 s 131

**131 Trustees registered as joint proprietors may similarly apply**

Any persons registered as joint proprietors of any land, estate, or interest under this Act may, by writing under their hands, authorise the Registrar to enter the words “No survivorship” upon the grant, certificate of title, or other instrument evidencing their title to that estate or interest, and also upon the duplicate of that instrument.

Compare: 1915 No 35 s 132

**132 Effect of entry**

After any such entry has been made and signed by the Registrar in either case as aforesaid it shall not be lawful for any less number of joint proprietors than the number then registered to transfer or otherwise deal with the land, estate, or interest without obtaining the sanction of the High Court.

Compare: 1915 No 35 s 133

Section 132: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**133 Procedure for obtaining order**

- (1) Before making an order giving any such sanction, the court shall, if it seems requisite, cause notice of intention so to do to be advertised in the *Gazette* and in at least 1 newspaper published in the locality in which the land is, and shall appoint a time within which any person interested may show cause why such an order should not be issued.
- (2) Thereupon the court in such an order may give directions for the transfer of the land, estate, or interest to any new proprietor or proprietors, solely or jointly, with or in the place of any existing proprietor or proprietors and may order the removal of the words “No survivorship” from the grant, certificate of title, or other instrument evidencing the title of the registered proprietors, or may make such order in the premises as the court thinks just for the protection of the persons beneficially interested in the land, estate, or interest, or in the proceeds thereof.

- (3) Upon deposit of a duplicate of the order with the Registrar he shall make such entries and perform such acts as may be necessary for the purpose of giving effect to the order.

Compare: 1915 No 35 s 134

Section 133(1): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 133(2): amended, on 29 September 1961, by section 5 of the Land Transfer Amendment Act 1961 (1961 No 9).

### **134 Registrar may be nominated trustee**

*[Repealed]*

Section 134: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **135 Beneficiary may use name of trustee in prosecuting or defending action**

- (1) Whenever a person entitled to or interested in land as a trustee would be entitled to bring or defend any action in his own name for recovering the possession of land under this Act, that person shall be bound to allow his name to be used as a plaintiff or defendant in any such action by any beneficiary or person claiming an estate or interest in the land.
- (2) In every such case the person entitled or interested as such trustee as aforesaid shall be entitled to be indemnified in like manner as a trustee would before the commencement of the Land Transfer Act 1885 have been entitled to be indemnified in a similar case of his name being used in any such action or proceeding by his cestui que trust.

Compare: 1915 No 35 s 136

## *Caveats*

### **136 Caveat against bringing land under Act**

- (1) A person who has or claims to have an interest in any land that is the subject of an application seeking to bring the land under this Act may, within the prescribed period set out in a public notice given by the Registrar, lodge with the Registrar a caveat in the prescribed form against bringing the land under this Act.
- (2) A caveat under this section must contain the following information:
- the name of the caveator; and
  - the nature of the land or estate or interest claimed and the ground on which the claim is founded; and
  - the land subject to the claim; and
  - the date the public notice required by subsection (1) was given; and
  - an address for service for the caveator; and

- (f) any other information or evidence that may be required by regulations made under this Act.
- (3) Caveats under this section must be executed by the caveator or the caveator's attorney or agent.

Section 136: replaced, on 26 August 2002, by section 49 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 136(1): amended, on 17 May 2005, by section 10 of the Land Transfer Amendment Act 2005 (2005 No 58).

### **137 Caveat against dealings with land under Act**

- (1) Any person may lodge with the Registrar a caveat in the prescribed form against dealings in any land or estate or interest under this Act if the person—
  - (a) claims to be entitled to, or to be beneficially interested in, the land or estate or interest by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise; or
  - (b) is transferring the land or estate or interest to any other person to be held in trust.
- (2) A caveat under this section must contain the following information:
  - (a) the name of the caveator; and
  - (b) the nature of the land or estate or interest claimed by the caveator, which must be stated with sufficient certainty; and
  - (c) how the land or estate or interest claimed is derived from the registered proprietor; and
  - (d) whether or not it is intended to forbid the making of all entries that would be prevented by section 141 or a specified subset of them; and
  - (e) the land subject to the claim, which must be stated with sufficient certainty; and
  - (f) an address for service for the caveator.
- (3) Caveats under this section must be executed by the caveator or the caveator's attorney or agent.
- (4) Caveats under this section must be entered on the register as of the day and hour of their receipt by the Registrar.

Section 137: replaced, on 26 August 2002, by section 49 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 137(1): amended, on 17 May 2005, by section 11 of the Land Transfer Amendment Act 2005 (2005 No 58).

### **138 Particulars to be stated in caveat**

*[Repealed]*

Section 138: repealed, on 26 August 2002, by section 49 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**139 Service of notices as to caveats**

*[Repealed]*

Section 139: repealed, on 26 August 2002, by section 49 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**140 Effect of caveat against bringing land under Act**

So long as a caveat under section 136 remains in force the Registrar shall not proceed with the bringing under this Act of the land affected thereby, nor shall it be lawful for the person making the application to withdraw the same except with the consent of the caveator or by leave of the High Court.

Compare: 1915 No 35 s 149

Section 140: amended, on 17 May 2005, by section 12 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 140: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**141 Effect of caveat against dealings**

- (1) Subject to the succeeding provisions of this section, so long as a caveat under section 137 remains in force, the Registrar shall not make any entry on the register having the effect of charging or transferring or otherwise affecting the estate or interest protected by the caveat.
- (2) Subsection (1) shall not prevent the Registrar from making any entry necessary to complete the registration of an instrument that has been accepted for registration before the receipt of the caveat.
- (3) Except in the case of a caveat lodged by the Registrar in exercise of the powers by this Act given to him in that behalf, subsection (1) shall not prevent the Registrar from making any entry necessary to effect the registration of a transfer of any estate or interest in land where—
  - (a) the transfer is expressed to be made in pursuance of either—
    - (i) a power of sale conferred on the transferor by virtue of a registered mortgage of that estate or interest; or
    - (ii) the power conferred on the Registrar of the High Court by section 196 of the Property Law Act 2007 in respect of a registered mortgage of that estate or interest—

(in either case hereafter in this subsection referred to as the **empowering mortgage**); and
  - (b) the caveat was lodged after the registration of the empowering mortgage; and
  - (c) the estate or interest claimed by the caveator arises under an unregistered mortgage or an agreement to mortgage, dated later than the date of registration of the empowering mortgage and relating to the same estate or interest to which the empowering mortgage relates; and

- (d) *[Repealed]*
- (4) In any case to which subsection (3) applies, the caveat shall, upon the registration of the transfer, be deemed to have lapsed and the estate or interest of the mortgagor therein expressed to be transferred shall pass to and vest in the purchaser freed and discharged of the estate or interest claimed by the caveator; and the Registrar may make on the register any entry necessary to show that the caveat has lapsed.
- (5) Without limiting subsection (3), a caveat under section 137 does not prevent the Registrar making an entry to give effect to—
- (a) a transmission to an executor, administrator, or trustee in respect of the estate or interest of a deceased registered proprietor; or
  - (b) a transmission to the Official Assignee on bankruptcy of a registered proprietor; or
  - (c) dealings having the effect of discharging or extinguishing secondary interests if the caveat affects the fee simple (such as a discharge of a mortgage or surrender of a lease); or
  - (d) a change in, or a correction to, the name of a proprietor where the ownership remains the same; or
  - (e) a transfer consequent on a rating sale under the Local Government (Rating) Act 2002; or
  - (f) dealings with secondary interests if the caveat affects the fee simple (such as the transfer of a mortgage); or
  - (g) appurtenant easements; or
  - (h) an application for an amalgamated certificate of title or separate certificates of title if there is more than 1 registered proprietor for land or for an estate or interest in land; or
  - (i) further caveats, statutory land charges, or charging orders; or
  - (j) a vesting or dealing effected by an enactment or court order that expressly or by implication requires or permits a recording to be made in the register despite the presence of the caveat.

Section 141: replaced, on 4 November 1982, by section 2 of the Land Transfer Amendment Act 1982 (1982 No 22).

Section 141(1): amended, on 17 May 2005, by section 13 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 141(3)(a): replaced, on 11 June 1985, by section 2 of the Land Transfer Amendment Act 1985 (1985 No 90).

Section 141(3)(a)(ii): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 141(3)(d): repealed, on 26 August 2002, by section 50(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 141(4): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 141(5): inserted, on 26 August 2002, by section 50(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 141(5)(e): amended, on 1 July 2003 (but continuing in force to extent necessary for the levying and collection of rates made or levied for the financial year ending on 30 June 2003 or a previous financial year), pursuant to section 138(1) of the Local Government (Rating) Act 2002 (2002 No 6).

#### **142 Notices to be given to persons affected**

Upon the receipt of any caveat, the Registrar must give notice,—

- (a) in the case of a caveat under section 136, to the person against whose application to bring land under this Act the caveat has been lodged; or
- (b) in the case of a caveat under section 137, to the registered proprietor against whose title to deal with land under this Act the caveat has been lodged.

Section 142: replaced, on 26 August 2002, by section 51 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **143 Procedure for removal of caveat**

- (1) Any such applicant or registered proprietor, or any other person having any registered estate or interest in the estate or interest protected by the caveat, may, if he thinks fit, apply to the High Court for an order that the caveat be removed.
- (2) The court, upon proof that notice of the application has been served on the caveator or the person on whose behalf the caveat has been lodged, may make such order in the premises, either *ex parte* or otherwise, as to the court seems meet.

Compare: 1915 No 35 s 152; 1939 No 7 s 12

Section 143(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

#### **144 Lapse of caveat against bringing land under Act**

After the expiration of 3 months from the receipt thereof every caveat under section 136 shall be deemed to have lapsed, unless the person by whom or on whose behalf the caveat was lodged has within that time taken proceedings in some court of competent jurisdiction to establish his title to the estate, interest, lien, or charge therein specified, and has given written notice thereof to the Registrar, or has obtained from the High Court an order or injunction restraining the Registrar from bringing the land therein referred to under this Act.

Compare: 1915 No 35 s 153

Section 144: amended, on 17 May 2005, by section 14 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 144: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).



#### **145 Lapse of caveat against dealings**

- (1) Every caveat under section 137, upon the expiration of the first prescribed period after notice is given to the caveator that an application has been made for the registration of any instrument affecting the land, estate, or interest protected by the caveat, is deemed to have lapsed as to that land, estate, or interest, or so much of it as is referred to in the notice, unless—
  - (a) notice is, within the first prescribed period, given to the Registrar that an application for an order to the contrary has been made to the High Court; and
  - (b) such an order is made and served on the Registrar within the second prescribed period.
- (2) The provisions of subsection (1) do not apply in the case of a caveat lodged by the Registrar in the exercise of any of the powers conferred on the Registrar by this Act.
- (3) In this section, **first prescribed period** and **second prescribed period** are periods prescribed for the purposes of this section by regulations made under this Act.

Section 145: replaced, on 17 May 2005, by section 15 of the Land Transfer Amendment Act 2005 (2005 No 58).

#### **145A Early lapse of caveat against dealings**

- (1) The registered proprietor of any estate or interest in the land protected by a caveat against dealings (other than a caveat lodged by the Registrar) may apply to the Registrar for the caveat to lapse.
- (2) The Registrar must give the caveator notice of an application under subsection (1).
- (3) The caveat lapses with the close of the prescribed period after the date on which the notice under subsection (2) is given unless—
  - (a) the caveator has earlier given to the Registrar notice that an application for an order to the contrary has been made to the High Court; and
  - (b) an order to that effect has been made and served on the Registrar within the prescribed period after the date on which the notice under paragraph (a) is given to the Registrar.

Section 145A: inserted, on 12 June 2003, by section 52 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **146 Person entering caveat without due cause liable for damages**

- (1) Any person lodging any caveat without reasonable cause is liable to make to any person who may have sustained damage thereby such compensation as may be just.

- (2) Such compensation as aforesaid shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat.

Compare: 1915 No 35 s 155

#### **147 Caveat may be withdrawn**

Any caveat may be withdrawn by the caveator or by his attorney or agent under a written authority, and either as to the whole or any part of the land affected, or the consent of the caveator may be given for the registration of any particular dealing expressed to be made subject to the rights of the caveator:

provided that where a registrable instrument purporting to give effect to the estate or interest of the caveator is presented to the Registrar for registration immediately following a withdrawal of a caveat previously lodged to protect that estate or interest, the authority of any agent executing the withdrawal on behalf of the caveator need not be in writing.

Compare: 1915 No 35 s 156

Section 147 proviso: inserted, on 20 October 1972, by section 2 of the Land Transfer Amendment Act 1972 (1972 No 76).

#### **147A Electronic registration with caveator's consent subject to rights of caveator**

If an electronic instrument is registered with the consent of the caveator, the dealing must be regarded as having been made subject to the rights of the caveator for the purposes of section 147.

Section 147A: inserted, on 1 June 2002, by section 53 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **148 No second caveat may be entered**

- (1) If a caveat has been removed under section 143 or has lapsed, no second caveat may be lodged by or on behalf of the same person in respect of the same interest except by order of the High Court.
- (2) For the purposes of verifying that a caveat does not contravene the prohibition in subsection (1), the Registrar is not obliged to inquire further than the current folium of the register or computer register for the land.

Section 148: replaced, on 26 August 2002, by section 54 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **148A Registrar not required to verify caveator's entitlement to estate or interest claimed**

Except to the extent of ensuring that a caveat lodged under any provision of this Act complies on its face with the requirements of this Act and with the requirements of any regulations made for the purposes of this Act, the Registrar is not required to be satisfied that the caveator is in fact or at law entitled to the estate or interest claimed in the caveat.

Section 148A: inserted, on 26 August 2002, by section 54 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**148B Registrar's powers if caveat does not comply with this Act**

If a caveat does not comply with the requirements of this Act, the Registrar may deal with it under section 43 as if it were an instrument not in order for registration.

Section 148B: inserted, on 26 August 2002, by section 54 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

*Powers of attorney*

**149 Power of attorney not invalidated by bringing land under Act**

The bringing of land under this Act shall not invalidate any power of attorney previously executed, but that land may thereafter be dealt with under the power subject to the provisions hereof.

Compare: 1915 No 35 s 158

**150 Registered proprietor may deal with land by attorney**

The registered proprietor of land under this Act, or any person claiming any estate or interest under this Act, may by power of attorney in any usual form, and either in general terms or specially, authorise and appoint any person on his behalf to execute transfers or other dealings therewith, or to make any application to the Registrar or to any court or Judge in relation thereto.

Compare: 1915 No 35 s 159

Section 150: amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**151 Power of attorney to be deposited with Registrar**

Every power of attorney intended to be used under this Act, or a duplicate or attested copy thereof, verified to the satisfaction of the Registrar, shall be deposited with the Registrar in manner provided by regulations under this Act, but for the purposes of this Act it shall not be necessary to register any power of attorney.

Compare: 1915 No 35 s 160

**152 Revocation of power of attorney**

- (1) The grantor of any revocable power of attorney that has been deposited with the Registrar may, by notice to the Registrar, revoke the power of attorney in whole or in part.
- (2) No power of attorney shall be deemed to have been revoked by reason only of a subsequent power of attorney being deposited without express notice as aforesaid, nor shall any such revocation take effect as to instruments executed prior to the reception of the notice by the Registrar.

- (3) No power of attorney shall be deemed to have been or to be revoked by the bankruptcy of the grantee or by the marriage of a female grantee.

Compare: 1915 No 35 s 161

Section 152(1): replaced, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **153 Seal unnecessary**

No power of attorney made or used under this Act or any former Land Transfer Act shall be invalidated by reason of the power not having been created under seal.

Compare: 1915 No 35 s 162

## **Part 9**

### **General provisions as to instruments**

#### *Covenants implied in instruments*

### **154 Covenants for further assurance implied**

In every instrument charging, creating, or transferring any estate or interest under this Act there shall be implied the following covenants by the party charging, creating, or transferring that estate or interest to and with each and every person taking any estate or interest under that instrument—

- (a) that the (implied) covenantor will do all such acts as may be necessary on his part to give effect to all covenants, conditions, and purposes expressly set forth in the instrument or by this Act declared to be implied in instruments of a like nature:
- (b) that the (implied) covenantor will, at the request and cost of the person taking any estate or interest as aforesaid, execute all such further instruments as may be necessary for further and better assuring and perfecting the title of the last-mentioned person to the estate or interest expressed or intended to be granted, created, or transferred.

Compare: 1915 No 35 s 164

### **155 Short forms of covenant**

- (1) In the case of paper instruments, those covenants set out in full in Schedule 4 that are intended to be implied in any instrument prepared for the purpose of registration under this Act are, if expressed in the short form of words prescribed in that schedule, to be implied in that instrument as fully and effectually as if set out in full with all the modifications that may be necessary in order to adapt them to the instrument.
- (2) In the case of an electronic instrument, those covenants set out in full in Schedule 4 that are intended to be implied in any instrument prepared for the purpose of registration under this Act are to be implied in that instrument as fully and

effectually as if set out in full with all the modifications that may be necessary in order to adapt them to the instrument.

- (3) The covenant relating to insurance contained in Schedule 4 does not apply to a mortgage under this Act except as otherwise expressed in the mortgage.

Section 155: replaced, on 1 June 2002, by section 55 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **155A Incorporation of provisions contained in registered or prescribed memorandum**

- (1) In this section the term **memorandum** means a memorandum in the prescribed form setting forth provisions that are intended for inclusion in instruments of a class specified in the memorandum.
- (2) For the purposes of this section, any person may execute a memorandum for the purpose of registration, and the Registrar shall number and register any such memorandum that is executed and delivered for registration and is approved by the Registrar.
- (3) Notwithstanding anything in subsection (2), the Registrar may, for the purposes of this section, draw up, number, and register a memorandum.
- (4) A memorandum shall be deemed to be registered when a memorial of registration is endorsed upon it and signed by the Registrar.
- (5) On registration of a memorandum under subsection (2) or subsection (3), it shall be deemed for the purposes only of section 46 to be part of the register.
- (6) Without limiting anything in subsection (2) or subsection (3), the Governor-General may from time to time, by regulations made under this Act, prescribe in respect of any class of instrument a memorandum for the purposes of this section.
- (7) Where an instrument is of a class specified in a memorandum registered under subsection (2) or subsection (3), or is of a class in respect of which a memorandum has been prescribed under subsection (6), and contains a provision or reference that incorporates (with or without amendment) any or all of the provisions set out or referred to in that memorandum, those provisions or (as the case may require) those provisions as amended shall be implied in that instrument as fully and effectually as if they were set forth at length in the instrument.
- (8) Nothing in subsection (7) shall be construed as limiting the effect, if any, of a provision in an instrument that incorporates in the instrument covenants, conditions, or other provisions otherwise than as referred to in that subsection.

Section 155A: inserted, on 6 November 1986, by section 3(1) of the Land Transfer Amendment Act 1986 (1986 No 94).

Section 155A(2): amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 155A(7): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**156 Action for breach of covenant**

In any action for a breach of any implied covenant, the covenant alleged to be broken may be set forth in the statement of claim, and it may be alleged that the party against whom the action is brought did so covenant precisely in the same manner as if the covenant had been expressed in words in the instrument, any law or practice to the contrary notwithstanding.

Compare: 1915 No 35 s 167

*Tax statement required for registration of instrument to transfer some estates in land*

Heading: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

**156A Interpretation**

- (1) For the purpose of this section and sections 156B to 156J, unless the context otherwise requires,—

**certifier** means a person who provides the certification for a transferor or a transferee in accordance with section 164A for a transfer of a specified estate in land

**chief executive** means the chief executive of the department

**main home** means, for a person, the 1 dwelling—

- (a) that is mainly used as a residence by the person (a **home**); and
- (b) with which the person has the greatest connection, if they have more than 1 home

**nominee** has the meaning given to it in section YB 21(2) of the Income Tax Act 2007

**offshore person** has the meaning given to it in section 3(1) of the Tax Administration Act 1994

**specified estate in land** means—

- (a) freehold estates, including fee simple and life estates; and
- (b) leasehold estates; and
- (c) stratum estates in freehold within the meaning of the Unit Titles Act 2010; and
- (d) stratum estates in leasehold within the meaning of the Unit Titles Act 2010; and
- (e) licences to occupy (as defined in section 121A(1)); and
- (f) any other estate in land declared to be a specified estate in land by regulations made under this Act

**tax information** means the information specified in a tax statement in accordance with—

- (a) section 156C(1)(b) to (g) and (if applicable) (2); and
  - (b) if applicable, section 156D
- tax statement** means a statement that is completed and given in accordance with—
- (a) sections 156B and 156C; and
  - (b) if applicable, section 156D.
- (2) For the purpose of this section and sections 156B to 156J, **non-notifiable transfer**—
- (a) means,—
    - (i) in relation to a transferee who is a natural person, the transfer of land that is intended to be used predominantly for a dwelling that will be the transferee's main home:
    - (ii) in relation to a transferor who is a natural person, the transfer of land that has been used predominantly, for most of the time the transferor owned the land, for a dwelling that was the transferor's main home:
    - (iii) any other transfer specified in regulations made under this Act as a non-notifiable transfer; but
  - (b) does not include—
    - (i) a transfer described in paragraph (a)(i) if the transferee will own the land as a trustee:
    - (ii) a transfer described in paragraph (a)(ii) if the transferor owned the land as a trustee:
    - (iii) a transfer described in paragraph (a)(ii) if the transferor has relied on that paragraph at least 2 times within the 2 years immediately preceding the date of the transfer to claim that transfers were non-notifiable transfers:
    - (iv) any transfer, in relation to a transferee or a transferor who is an offshore person.

Section 156A: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

**156B Transferors and transferees must provide tax statement stating that transfer non-notifiable or providing tax information**

- (1) An instrument to transfer a specified estate in land is not in order for registration unless—
  - (a) each of the transferors and transferees completes a tax statement; and
  - (b) the tax information in that statement is given to the chief executive in accordance with subsection (2) or (3).
- (2) If the instrument is an electronic instrument,—

- (a) the transferor or transferee must give the tax statement to the certifier; and
  - (b) the certifier must give the tax information in that statement to the chief executive by lodging the information in an electronic workspace facility approved by the Registrar under section 22 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 when lodging the instrument for registration.
- (3) If the instrument is a paper instrument, the tax statement must be attached to the instrument when the instrument is lodged for registration in accordance with section 47.

Section 156B: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

### **156C Content of tax statement**

- (1) A tax statement completed by or on behalf of a transferor or transferee must—
- (a) be signed by the transferor or transferee; and
  - (b) be dated on the date on which it was signed; and
  - (c) state the transferor or transferee's full name; and
  - (d) state whether the transfer is of land that has a home on it; and
  - (e) state whether the transferor or, as the case may be, the transferee, or a member of that person's immediate family, is a New Zealand citizen or a holder of a resident visa, work visa, or student visa; and
  - (f) in the case of a transferee, if the transferee or a member of the transferee's immediate family is a holder of a work visa or student visa, state whether the transferee or a member of the transferee's immediate family intends living on the land; and
  - (g) either—
    - (i) state that the transfer instrument is for a non-notifiable transfer (or, as the case may be, is, in respect of the transferor or transferee making the statement, a non-notifiable transfer) and specify the category of that non-notifiable transfer; or
    - (ii) provide all of the information set out in subsection (2).
- (2) The information must include all of the following:
- (a) the transferor or transferee's IRD number; and
  - (b) whether the transferor or transferee (without taking into account any double tax agreement that would otherwise apply) is, or is not, treated as tax resident in a jurisdiction other than New Zealand as at the date of the statement; and



- (c) if the transferor or transferee is (without taking into account any double tax agreement that would otherwise apply) treated as tax resident in a jurisdiction other than New Zealand as at the date of the statement,—
    - (i) the name of that jurisdiction; and
    - (ii) the country code for that jurisdiction as prescribed by the Commissioner of Inland Revenue; and
    - (iii) the equivalent of the transferor or transferee's IRD number in that jurisdiction.
- (3) However, if a transferor or transferee is—
  - (a) acting in the capacity of the trustee of a trust, the information must relate to the trustee in that capacity; or
  - (b) acting as a nominee or under a power of attorney, the information must relate to the person who made the nomination or granted the power of attorney; or
  - (c) acting in the capacity of a partner in a partnership, the information must relate to the partnership; or
  - (d) a person acting on behalf of an unincorporated body, the information must relate to the unincorporated body.
- (4) To avoid doubt, a transferor or transferee who does not have an IRD number must request one for the purpose of providing the information required by subsection (2)(a).
- (5) In this section, **IRD number** has the meaning given to tax file number by section 3(1) of the Tax Administration Act 1994.
- (6) For the purpose of subsection (1)(d), **home** means a dwelling mainly used as a residence.

Section 156C: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

#### 156D Omissions and errors

- (1) An omission or error in any tax information provided in accordance with section 156B(2) or (3) must be corrected as follows:
  - (a) if the tax information in a tax statement was incorrect, the transferor or transferee must complete a corrected tax statement in accordance with section 156C and, if applicable, give it to the relevant certifier in accordance with section 156B(2)(a):
  - (b) if the incorrect tax information was given to the chief executive by lodging the information in an electronic workspace facility in accordance with section 156B(2)(b), the certifier must lodge the corrected tax information in an electronic workspace facility:
  - (c) if the incorrect tax information was given to the chief executive by attaching a tax statement to an instrument in accordance with section

156B(3), the corrected tax statement must be given to the chief executive.

- (2) An omission or error in any tax information provided in accordance with section 156B(2) or (3), or any other failure to comply with sections 156B and 156C, does not—
  - (a) affect the validity of any registration of an instrument to transfer a specified estate in land; or
  - (b) give rise to any liability of, or claim for compensation from, the chief executive, the Registrar-General, or the Crown.

Section 156D: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

#### **156E Offence to provide false or misleading tax information**

- (1) A person commits an offence if the person gives a tax statement to a certifier or the chief executive in accordance with section 156B(2) or (3) or section 156D that, to the person's knowledge or with intent to deceive, contains false or misleading tax information.
- (2) A person who commits an offence under subsection (1) is liable,—
  - (a) the first time the person is convicted, to a fine not exceeding \$25,000; and
  - (b) on every other occasion the person is convicted, to a fine not exceeding \$50,000.

Section 156E: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

#### **156F Chief executive must supply tax information to Commissioner of Inland Revenue**

- (1) The chief executive must supply to the Commissioner of Inland Revenue tax information and details about the transfer or transfers to which the tax information relates that are held by Land Information New Zealand.
- (2) The chief executive and the Commissioner may, for the purpose of this section, determine by written agreement between them, in relation to the information that must be supplied under subsection (1),—
  - (a) the frequency with which the information must be supplied; and
  - (b) the form in which the information must be supplied; and
  - (c) the method by which the information must be supplied.
- (3) Subsection (1) applies despite anything in the Domestic Violence Act 1995.

Section 156F: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

### **156G Other provisions concerning use of tax information**

The chief executive may release the information specified in section 156C(1)(d), (e), (f), and (g), (2)(b), and (c)(i) and (ii) that is held by Land Information New Zealand, or give that information to any person as soon as practicable after receiving a request in writing from the person, provided that information is given—

- (a) in aggregate form only; and
- (b) in a manner that prevents any particular person, estate in land, or transaction from being identified.

Section 156G: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

### **156H Certifier and chief executive must hold tax statement and provide copies**

- (1) A certifier must—
  - (a) retain each tax statement given to him or her in accordance with section 156B(2) or 156D for 10 years; and
  - (b) give a copy of that statement to the Commissioner of Inland Revenue as soon as practicable after receiving a request in writing from the Commissioner.
- (2) The chief executive must—
  - (a) retain each tax statement given to him or her in accordance with section 156B(3) or 156D for 10 years; and
  - (b) give a copy of that statement to the Commissioner of Inland Revenue as soon as practicable after receiving a request in writing from the Commissioner.

Section 156H: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

### **156I Status of tax information**

- (1) The chief executive and certifiers must not use tax information, or disclose tax information to any person, except as set out in sections 156B, 156D, 156F, 156G, 156H, and 156J, or as authorised or required by order of a court.
- (2) Tax information does not form part of the register and must not be made accessible to the public.

Section 156I: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

### **156J Disclosure of information between authorised persons**

- (1) No obligation as to secrecy or other restrictions imposed by an enactment or otherwise on the disclosure of information prevents—

- (a) an authorised person from disclosing tax information to another authorised person for the purpose of sections 156B, 156D, 156F, 156G, and 156H; or
  - (b) an authorised person from disclosing to another authorised person any information for the purpose of verifying tax information; or
  - (c) an authorised person from disclosing to another authorised person any information for the purpose of administering the Inland Revenue Acts, to the extent that the administration of those Acts concerns tax information; or
  - (d) an authorised person from disclosing to another authorised person any information for the purpose of detecting, investigating, or prosecuting a potential offence under section 156E.
- (2) In this section,—
- authorised person** means—
- (a) the Commissioner of Inland Revenue or an Inland Revenue officer who is authorised by the Commissioner to disclose and receive information under this section; or
  - (b) the chief executive, or an employee of the department who is authorised by the chief executive to disclose and receive information under this section

**Inland Revenue Acts** has the meaning given in section 3(1) of the Tax Administration Act 1994.

Section 156J: inserted, on 1 October 2015, by section 5 of the Land Transfer Amendment Act 2015 (2015 No 82).

### *Execution of instruments*

#### **157 Paper instruments to be executed**

- (1) Every paper instrument for the purpose of creating, transferring, or charging any estate or interest under this Act must be executed by the registered proprietor and any party to it specified in regulations made under this Act.
- (2) The regulations may prescribe the manner in which instruments to which subsection (1) applies must be executed, witnessed, or attested.
- (3) Every instrument executed in accordance with this section has the same effect as a deed executed by the parties signing it.
- (4) This section is subject to the provisions of section 3 of the Official Appointments and Documents Act 1919.

Section 157: replaced, on 26 August 2002, by section 56 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**158 When instruments deemed to be attested**

*[Repealed]*

Section 158: repealed, on 26 August 2002, by section 56 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**159 Questions to attesting witness, and certificate thereon**

*[Repealed]*

Section 159: repealed, on 26 August 2002, by section 56 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**160 Acknowledgment by party to instrument, and certificate thereon**

*[Repealed]*

Section 160: repealed, on 26 August 2002, by section 56 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**161 Execution of documents by corporation**

*[Repealed]*

Section 161: repealed, on 26 August 2002, by section 56 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**162 Unincorporated building societies**

*[Repealed]*

Section 162: repealed, on 26 August 2002, by section 56 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**163 Instruments as evidence**

Every paper instrument executed and registered under this Act is presumed to have been sufficiently executed in the absence of evidence to the contrary, and is sufficient evidence in any court of the matters to which it relates.

Section 163: replaced, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**164 Correctness of instrument to be certified**

- (1) No Registrar shall receive any application for bringing land under this Act, or any instrument purporting to deal with or affect any estate or interest under the provisions hereof, unless there is endorsed thereon a certificate that the same is correct for the purposes of this Act, signed by the applicant or party claiming under or in respect of the instrument, or by a practitioner employed by that applicant or party:

provided that where any instrument has not been certified as correct under the foregoing provisions of this subsection any other person who is a party to the instrument or claims any interest thereunder or in respect thereof or his legal personal representative may apply to the High Court for authority to certify that the instrument is correct for the purposes of this Act, and the court may order accordingly if it is satisfied that it is just and expedient that the authority be

granted; and, upon production of a sealed copy of the order, the Registrar may register the instrument if it is certified as correct for the purposes of this Act by the person so authorised.

- (2) A corporation may authorise any person to certify on its behalf.
- (3) Every person who falsely or negligently certifies to the correctness of any such application or other instrument commits an offence, and is liable on conviction before a District Court Judge to a fine not exceeding \$100.

Compare: 1915 No 35 s 175

Section 164(1): amended, on 1 August 2008, by section 343 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 164(1) proviso: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 164(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 164(3): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

#### **164A Certification**

- (1) Every instrument to which this subsection applies must contain a certification that complies with subsection (3).
- (2) Subsection (1) applies to—
  - (a) electronic instruments; and
  - (b) paper instruments of a class specified for the purpose by regulations made under this Act.
- (3) Certifications must specify that—
  - (a) the person giving the certification has authority to act for the party specified in regulations in relation to that class of instrument and that party has legal capacity to give such authority; and
  - (b) the person giving the certification has taken reasonable steps to confirm the identity of the person who gave the authority to act; and
  - (c) the instrument complies with any statutory requirements specified by the Registrar for that class of instrument; and
  - (d) the person giving the certification has evidence showing the truth of the certifications in paragraphs (a) to (c) and that the evidence will be retained for the period prescribed for the purpose by regulations made under this Act.
- (4) Regulations made under this Act may prescribe the form of certifications under this section.

Section 164A: inserted, on 1 June 2002, by section 57 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**164B Who may give certification**

- (1) A certification under section 164A may be given only by a practitioner.
- (2) The Registrar may revoke a person's right to give a certification under section 164A at any time if he or she believes on reasonable grounds that the person—
  - (a) has given a fraudulent certification; or
  - (b) has given a certification that is materially incorrect; or
  - (c) has failed to comply with any requirement under section 156B(2)(b), 156D(1)(b), 156H, or 164C.
- (3) The Registrar must give notice as soon as possible to any person whose ability to give certifications is removed under subsection (2).
- (4) The Registrar may reinstate the right of a person to give certifications if the Registrar is satisfied that the person will—
  - (a) give certifications that are not of the kinds referred to in subsection (2)(a) and (b); and
  - (b) comply with requirements under sections 156B(2)(b), 156D(1)(b), 156H, and 164C.

Section 164B: inserted, on 1 June 2002, by section 57 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 164B(1): amended, on 1 August 2008, by section 344 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 164B(2)(c): amended, on 1 October 2015, by section 6(1) of the Land Transfer Amendment Act 2015 (2015 No 82).

Section 164B(4)(b): amended, on 1 October 2015, by section 6(2) of the Land Transfer Amendment Act 2015 (2015 No 82).

**164C Retention of evidence and audit of certifications**

- (1) Any person who gives a certification must retain evidence showing the truth of the certification for the period prescribed for the purpose by regulations made under this Act.
- (2) Without limiting what may be considered to show the truth of certifications, the Registrar may specify requirements that, if met, must be regarded as satisfying the obligation in subsection (1).
- (3) The Registrar may require a person who has given a certification to do either or both of the following:
  - (a) produce to him or her the evidence referred to in subsection (1);
  - (b) provide a statement on oath as to—
    - (i) any further information required by the Registrar; or
    - (ii) the circumstances surrounding the preparation and electronic transmission of any instrument.

- (4) Any requirement by the Registrar under subsection (3) must be complied with within 10 working days of its receipt.

Section 164C: inserted, on 1 June 2002, by section 57 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **164D Requirements about execution do not apply if certification given**

If a certification has been given in relation to an instrument to which section 164A(1) applies, the following provisions do not apply to that instrument:

- (a) section 164 (which relates to the certification of the correctness of instruments);
- (b) section 157 (which relates to the execution of paper instruments);
- (c) any provision in any enactment or rule of law relating to the execution, signing, witnessing, or attestation of instruments.

Section 164D: inserted, on 1 June 2002, by section 57 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **164E Effect of certification**

- (1) When an instrument certified under section 164A (other than a discharge of mortgage under section 111) is registered, the instrument has the same effect as a deed executed by the parties specified in regulations made under this Act.
- (2) This section is subject to the provisions of section 3 of the Official Appointments and Documents Act 1919.
- (3) When an instrument certified under section 164A is registered, the instrument must be regarded for the purposes of every enactment and rule of law as if—
  - (a) the instrument had been made in writing; and
  - (b) the instrument had been duly executed by every party specified for the purpose in regulations made under this Act.
- (4) When an instrument certified under section 164A is registered, the provisions of section 25 of the Property Law Act 2007 must be regarded as having been fully satisfied.
- (5) Subsection (4) is for the avoidance of doubt.

Section 164E: inserted, on 1 June 2002, by section 57 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 164E(4): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

#### *Governments of other countries as registered proprietors*

#### **165 Governments of other countries may be registered as proprietors of land**

- (1) The government of any oversea country shall be deemed to be and to have always been capable of being registered as the proprietor of any estate or interest in land under this Act in the same manner as if it were a body corporate.



- (2) Any memorandum of transfer or other instrument purporting to transfer or in any way affect land under the provisions of this Act may be executed on behalf of the government of any overseas country by a representative in New Zealand of that country.
- (3) The fact that any such instrument that is presented for registration purports to have been executed on behalf of the government of any overseas country by a representative in New Zealand of that country shall, in the absence of proof to the contrary, be sufficient evidence to the Registrar that the instrument has been executed under proper authority and is binding on the government of that country.
- (4) In this section—  
**overseas country** means any country other than New Zealand  
**representative** means—
  - (a) an Ambassador, High Commissioner, Minister, or Chargé d’Affaires; or
  - (b) a Consular Officer or Trade Commissioner who is resident in New Zealand solely for the purpose of performing his official duties;—and includes any person lawfully acting for any such officer.

Compare: 1945 No 14 ss 2–4

### *Verification of instruments*

#### **166 Verification of instruments executed out of New Zealand**

- (1) Every instrument duly executed elsewhere than in New Zealand shall, as regards the execution thereof, be accepted for registration or deposit if the execution is verified in any of the following ways, that is to say:
  - (a) where the instrument is executed in any foreign country, then—
    - (i) if it purports to be executed before a Commonwealth representative exercising his functions in that country and to be sealed with his seal of office (if any), or if there is endorsed thereon or annexed thereto a declaration of the due execution thereof purporting to be made by an attesting witness thereto before any such Commonwealth representative as aforesaid, and to be sealed as aforesaid; or
    - (ii) by or before a Notary Public exercising his office in that country; or
    - (iii) in any case where the provisions of section 9 of the Evidence Amendment Act 1945 apply, in the manner provided in that section;
  - (b) where the instrument is executed in any Commonwealth country, then—
    - (i) in a manner prescribed by paragraph (a) for instruments executed in a foreign country; or

- (ii) in the manner (if any) prescribed by the law of that country for the verification of documents to be used abroad.
- (2) In the absence of proof to the contrary, it shall be presumed that any seal or signature impressed, affixed, appended, or subscribed on or to any such instrument submitted for registration or deposit, or on or to any document verifying the execution of any such instrument, is genuine, and that the person appearing to have signed or attested any such instrument or document had in fact authority to sign or attest it, and that any such document was in fact made in accordance with the law under which it purports to have been made.
- (3) In this section—

**Commonwealth country** means a country that is a member of the British Commonwealth of Nations; and includes every territory for whose international relations the government of that country is responsible; and also includes the Republic of Ireland as if that country were a member of the British Commonwealth of Nations

**Commonwealth representative** means any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d’Affaires, Head of Mission, Consular Officer, Pro-consul, Trade Commissioner, or Tourist Commissioner of a Commonwealth country (including New Zealand); and includes any person lawfully acting for any such officer; and also includes any diplomatic secretary on the staff of any such Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d’Affaires, or Head of Mission.

Compare: 1915 No 35 s 176

Section 166(3) **Commonwealth representative**: replaced, on 23 October 1963, by section 27 of the Land Transfer Amendment Act 1963 (1963 No 61).

## Part 10

### Plans and surveys

#### 167 Plans to be deposited in certain cases

- (1) On any application to bring land under the provisions of this Act, or for a new certificate on any subdivision of or other dealing with the land comprised in any certificate or other instrument of title or any part thereof or for the untransferred part of the land comprised in any such certificate or other instrument of title, or for registration of any instrument affecting part only of the land comprised in any certificate or other instrument of title, the Registrar may require the applicant to deposit in the Land Registry Office of the district a plan of the land or subdivision or part thereof, as the case may be, which plan shall be in accordance with the regulations for the time being in force in that behalf; and

until the requisition is complied with the Registrar shall not be bound to proceed with the application:

provided that, notwithstanding anything in this subsection, where the Registrar is of the opinion that a plan complying with the regulations is not warranted in the circumstances of any particular case, he may require the applicant to deposit as aforesaid such other plan as the Registrar, after consultation with the Surveyor-General under the Cadastral Survey Act 2002 for the land district in which the land is situated, considers is sufficient to define the land in relationship to existing surveys made in accordance with the regulations aforesaid.

- (2) Notwithstanding anything in the last preceding subsection, where the Registrar considers that, having regard to the value of the land to be comprised in the certificate of title or new certificate of title, as the case may be, it would be a hardship on the applicant to require him to deposit a plan of the land or subdivision or part, as the case may be, the Registrar, in his discretion, may exempt the applicant from complying with the provisions of that subsection and, where the land is comprised in an ordinary certificate of title, may, but only with the written consent of every registered mortgagee or lessee of the land, issue to the applicant a certificate of title limited as to parcels. Where in any such case an ordinary certificate of title is consequentially partially cancelled by the Registrar, he may endorse on the partially cancelled certificate a memorial that it is limited as to parcels, and it shall be deemed to be limited as to parcels accordingly.
- (3) The provisions of Part 12 relating to certificates that are limited as to parcels shall, as far as they are applicable and with the necessary modifications, apply to every limited certificate issued by the Registrar under subsection (2), and to every certificate upon which an endorsement that it is limited as to parcels is made under that subsection, as if it were a certificate limited as to parcels issued under that Part.
- (4) This section shall apply with respect to any land comprised in a certificate that is limited as to parcels pursuant to the said Part 12.
- (5) For the purposes of this Act, a plan is deemed to be deposited when the Registrar creates a record to that effect. The date of deposit is the date on which all requirements, statutory or otherwise, precedent or incidental to the deposit of the plan have been complied with to the satisfaction of the Registrar.

Compare: 1915 No 35 s 178; 1938 No 4 s 41(4); 1950 No 24 s 8

Section 167(1): amended, on 20 October 1972, by section 3(a) of the Land Transfer Amendment Act 1972 (1972 No 76).

Section 167(1) proviso: inserted, on 7 October 1966, by section 12 of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 167(1) proviso: amended, on 1 June 2002, pursuant to section 68(2) of the Cadastral Survey Act 2002 (2002 No 12).

Section 167(1) proviso: amended, on 1 June 2002, pursuant to section 69(1) of the Cadastral Survey Act 2002 (2002 No 12).

Section 167(1) proviso: amended, on 20 October 1972, by section 3(b) of the Land Transfer Amendment Act 1972 (1972 No 76).

Section 167(5): replaced, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **167A Deposit documents**

- (1) The Registrar may specify a form for any matter referred to in subsection (2) that is a prerequisite for—
  - (a) the deposit of a plan under section 167; or
  - (b) the issue of a certificate of title.
- (2) The matters referred to are—
  - (a) any consent, approval, or certification;
  - (b) any other matter that any enactment provides may be included in a deposit document under this section.
- (3) A form specified under subsection (1) may differ from any form prescribed in relation to the same matter by regulations made under this Act.
- (4) If a form is specified under subsection (1) for a consent, approval, certification, or other matter under this Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, that form must be used on all appropriate occasions.
- (5) If a form is specified under subsection (1) for a consent, approval, certification, or other matter under an enactment other than this Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, the consent, approval, certification, or other matter may be given or done—
  - (a) as provided for in the other enactment; or
  - (b) in the form or manner specified by the Registrar.
- (6) A form specified under this section must include a representation or reference—
  - (a) that links it to the plan that is allowed to be deposited; and
  - (b) gives to the person approving or consenting appropriate information about the effect of the depositing of the plan; and
  - (c) indicates that person's approval or consent to the deposit of the plan.
- (7) For the purposes of regulations made under section 236(1)(d), and for the purposes of sections 20 to 25 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, a form specified under subsection (1)—
  - (a) may take the form of an electronic instrument; but
  - (b) must not be registered.

Section 167A: inserted, on 5 December 2002, by section 58 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**168 Deposit not to operate as dedication of roads**

- (1) The deposit of a plan of subdivision of any land shall not operate as a dedication for public purposes of roads shown on that plan, but a right of way over all such roads shall be appurtenant to every portion of the land in that subdivision, unless expressly excepted and except to the extent to which the registered proprietor of any estate in fee simple in the land or any part thereof, with the consent of every person having a registered interest in the land or part, has disclaimed such a right of way by instrument in writing duly signed in the presence of a witness and lodged with the Registrar. Upon receipt of any such disclaimer, the Registrar shall record on the relevant plan and on the register copy of the relevant certificate of title that this subsection has ceased to apply to the land therein to the extent specified in the disclaimer.
- (2) Every instrument in which land is described by reference to a deposited plan shall take effect, according to the intent and meaning thereof, as if the plan was fully set out thereon.

Compare: 1915 No 35 s 179

Section 168(1): amended, on 7 October 1966, by section 13 of the Land Transfer Amendment Act 1966 (1966 No 37).

**169 Land taken for roads to be defined on register**

- (1) Where a public road is taken or laid out over any land under this Act the Surveyor-General shall forward to the Registrar the particulars of that taking and of the date thereof, together with a sufficient plan of the road so far as it affects land under this Act.
- (2) The Registrar shall thereupon proceed as may be necessary to have the road defined or appropriately referred to on the register, and on any deposited plan in his custody or under his control, and on the outstanding duplicate of title.
- (3) This section shall not apply to the case of land taken for the purpose of roads under the provisions of any Act of the Parliament of New Zealand if the mode of registration is by that Act otherwise provided for.

Compare: 1915 No 35 s 180

Section 169(2): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 169(3): amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

**170 Cost of survey for correction of plans, etc**

The cost of any survey authorised by the Surveyor-General for correction of any land transfer plan or certificate shall without further appropriation than this section be borne and be paid by a Crown Bank Account upon the certificate of the Surveyor-General that the survey has been duly made and was necessary for the purpose aforesaid.

Compare: 1915 No 35 s 181; 1930 No 6 s 53(4); 1931 No 5 s 25(2)

Section 170: amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

**171 Surveyor-General or person authorised by him may enter land**

*[Repealed]*

Section 171: repealed, on 1 April 1987, by section 81(3) of the Survey Act 1986 (1986 No 123).

**Part 11**  
**Guarantee of title**

*Compensation for loss or damage*

**172 Compensation for mistake or misfeasance of Registrar**

Any person—

- (a) who sustains loss or damage through any omission, mistake, or misfeasance in the performance of any duty, function, or power imposed or conferred under this Act on the Registrar or an employee of the chief executive of the department or person to whom a delegation has been made under section 5; or
- (b) who is deprived of any land, or of any estate or interest in land, through the bringing of the land under the Land Transfer Acts, or by the registration of any other person as proprietor of that land, or by any error, omission, or misdescription in any certificate of title, or in any entry or memorial in the register, or has sustained any loss or damage by the wrongful inclusion of land in any certificate as aforesaid, and who by this Act is barred from bringing an action for possession or other action for the recovery of that land, estate, or interest—

may bring an action against the Crown for recovery of damages.

Compare: 1915 No 35 s 186

Section 172(a): replaced, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 172(a): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**172A Compensation for loss occurring after search and before registration**

- (1) In this section, unless the context otherwise requires,—

**first operative period**, in relation to any transaction to which this section applies, means the period of 14 days commencing with the 13th day preceding the date on which the transaction is settled

**purchase money** includes, in relation to any mortgage, the amount to be advanced by the mortgagee in consideration of the grant of the mortgage

**search copy**, in relation to any grant or certificate of title, means a search copy of that grant or certificate of title prepared and issued by the Registrar under and for the purposes of this section

**second operative period**, in relation to any transaction to which this section applies, means the period of 2 months commencing with the day after the date on which the transaction is settled

**transaction to which this section applies**, means any agreement or arrangement entered into in respect of any land subject to this Act whereby one party (in this section referred to as the **purchaser**) is to acquire or has acquired from the other party (in this section referred to as the **vendor**) an estate or interest in that land for valuable consideration.

- (2) For the purposes of this section, except as the parties may expressly agree a transaction is settled when the purchaser pays, gives, or otherwise makes available to the vendor the purchase money or other consideration, either in full or to the extent necessary to entitle the purchaser, in terms of the agreement or arrangement relating to the transaction, to call upon the vendor to do everything required of him under that agreement or arrangement to enable the purchaser to register the estate or interest to which the transaction relates.
- (3) Any purchaser under a transaction to which this section applies who obtains, at any time during the first operative period, a search copy in respect of the land that is the subject of the transaction and who sustains any loss or damage through the registration or lodging under this Act of any instrument or other document relating to that land may bring an action against the Crown for the recovery of damages if—
  - (a) no entry or memorial in the register relating to that registration or lodging appears in the search copy; and
  - (b) the registration or lodging was effected at any time before the expiry of the second operative period or the sooner registration of all instruments and other documents necessary to give effect to the transaction.
- (4) For the purposes of an action under this section, the court may, on application made to it in that behalf by the purchaser (whether before or after the expiry of the second operative period), extend the second operative period for such length of time as it thinks just where it is satisfied that the registration of all instruments and other documents giving effect to the transaction have not been registered within that period and that the delay in such registration is attributable otherwise than to the fault of the purchaser, his solicitor, or agents.

Section 172A: inserted, on 1 January 1984, by section 3 of the Land Transfer Amendment Act (No 2) 1982 (1982 No 115).

### **173 Notice of action to be served on Attorney-General and Registrar-General**

- (1) Notice in writing of every action against the Crown, and of the cause thereof, and of the amount claimed, shall be served upon the Attorney-General, and al-

so upon the Registrar-General, 1 month at least before the commencement of the action.

- (2) If those officers concur that the claim ought to be admitted, as to the whole or any part thereof, without suit or action, and jointly certify to that effect, the amount of the claim may, without further appropriation than this section, be paid out of a Crown Bank Account in whole or in part to the person entitled thereto in accordance with the certificate.
- (3) If after notice of the admission has been served on the claimant, his solicitor, or agent, the claimant proceeds with his action, and recovers no more than the amount admitted, he shall not be entitled to recover any costs as against the Crown, and shall be liable to the Crown for the costs of defending the action in like manner as if judgment had been given for the defendant in the action.

Compare: 1915 No 35 s 188; 1925 No 20 s 6

Section 173(2): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

#### **174 Liability of plaintiff for costs**

If in any such action judgment is given in favour of the Crown, or the plaintiff discontinues or becomes nonsuit, the plaintiff shall be liable to pay the full costs of defending the action; and those costs, when taxed, shall be levied by the Crown by the like process of execution as in other actions.

Compare: 1915 No 35 s 189

#### **175 Recovery of compensation paid and costs in case of fraud**

- (1) Where any sum of money has been lawfully paid out of a Crown Bank Account as compensation for any loss occasioned—
  - (a) by fraud, or by fraudulent omission, misdescription, or misrepresentation of any kind on the part of any proprietor in bringing land under any of the Land Transfer Acts; or
  - (b) by fraud on the part of any person causing or procuring himself to be registered as a proprietor under any of the Land Transfer Acts by virtue of any dealing with or transmission from a registered proprietor—

the amount of that compensation, together with all costs incurred in testing or defending any claim or action in relation thereto, shall be deemed a debt due to the Crown from the person legally responsible for that fraud, fraudulent omission, misdescription, or misrepresentation, as the case may be, and may be recovered from him, or from his personal representatives, by action at law, in the name of the Registrar-General, or, in case of bankruptcy, may be proved as a debt due from his estate.

- (1A) Without limiting subsection (1), where any sum of money has been lawfully paid out of a Crown Bank Account as compensation for any loss or damage sustained in any case to which section 172A applies and that loss or damage was caused wholly or partly by the negligence of the purchaser's practitioner,



the amount of that compensation (together with all costs incurred in testing or defending any claim or action in relation to that compensation), to the extent that it may properly be attributed to that practitioner's negligence, shall be deemed a debt due to the Crown from that practitioner, and may be recovered from him, or from his personal representatives, by action at law, in the name of the Registrar-General, or, in case of bankruptcy, may be proved as a debt due from his estate.

- (1B) No practitioner shall be held for the purposes of subsection (1A) to have acted negligently merely because he relied on a search copy issued under and for the purposes of section 172A without also searching any journal or other record kept by the Registrar unless, in the special circumstances of the case, a prudent and competent practitioner would have searched that journal or other record.
- (2) A certificate signed by the Minister of Finance, verifying the fact of any payment out of a Crown Bank Account, shall be prima facie proof that such payment was made as aforesaid.
- (3) All moneys recovered in any action as aforesaid shall be paid to the credit of a Crown Bank Account.

Compare: 1915 No 35 s 190; 1930 No 6 s 53(3), (4); 1931 No 5 s 25(2)

Section 175(1): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

Section 175(1A): inserted, on 1 January 1984, by section 4 of the Land Transfer Amendment Act (No 2) 1982 (1982 No 115).

Section 175(1A): amended, on 1 August 2008, by section 345(1)(a) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 175(1A): amended, on 1 August 2008, by section 345(1)(b) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 175(1A): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

Section 175(1B): inserted, on 1 January 1984, by section 4 of the Land Transfer Amendment Act (No 2) 1982 (1982 No 115).

Section 175(1B): amended, on 1 August 2008, by section 345(1)(a) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 175(2): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

Section 175(3): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

## **176 Judgment against absconders, etc**

- (1) Where any amount has been paid out of a Crown Bank Account on account of any person who has absconded, or who cannot be found within the jurisdiction of the High Court, and may have left any real or personal estate within New Zealand, the court, upon the application of the Attorney-General, and upon the production of a certificate signed by the Minister of Finance certifying that the amount has been paid in satisfaction of a judgment against the Crown, may allow the Attorney-General to sign judgment against that person forthwith for the

amount so paid out of a Crown Bank Account, together with the costs of the application.

- (2) Such a judgment shall be final, and signed in like manner as a final judgment by confession or default in an adverse suit, and execution may issue immediately.

Compare: 1915 No 35 s 191

Section 176(1): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

Section 176(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

### **177 Recovery of judgment against absconders, etc**

If any such person has not left real or personal estate within New Zealand sufficient to satisfy the amount for which execution has been issued as aforesaid, the Crown may recover that amount, or the unrecovered balance thereof, by action against that person whenever he may be found within the jurisdiction of the High Court.

Compare: 1915 No 35 s 192

Section 177: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

### **178 Crown not liable in certain cases**

The Crown shall not under any circumstances be liable for compensation for any loss, damage, or deprivation occasioned by any of the following things, notwithstanding that effect may have been given to the same by entry on the register:

- (a) by the breach by a registered proprietor of any trust; or
- (b) by the same land having been included in 2 or more grants from the Crown; or
- (c) by the improper use of the seal of any corporation or company; or
- (d) by the registration of any instrument executed by any person under any legal disability, unless the fact of that disability was disclosed on the instrument by virtue of which that person was registered as proprietor; or
- (e) by the improper exercise of any power of sale or re-entry.

Compare: 1915 No 35 s 193; 1930 No 6 s 53(4); 1931 No 5 s 25(2)

### **179 Measure of damages**

No person shall, as against the Crown, be entitled to recover any greater amount for compensation in respect of the loss or deprivation of any land, or of any estate or interest therein, than the value of that land, estate, or interest at the time of that deprivation, together with the value of the messuages and tenements erected thereon and improvements made thereto (if any) prior to the time

of that deprivation, with interest at the rate of 5% per annum to the date of judgment recovered.

Compare: 1915 No 35 s 194; 1930 No 6 s 53(4); 1931 No 5 s 25(2)

### **180 Limitation of actions against the Crown**

- (1) No action for recovery of damages as aforesaid shall lie or be sustained against the Crown unless the action is commenced within the period of 6 years from the date when the right to bring the action accrued; but any person being under the disability of infancy or unsoundness of mind may bring such an action within 3 years from the date on which the disability ceased.
- (2) For the purposes of this section, the date when the right to bring an action accrued shall be deemed to be the date on which the plaintiff becomes aware, or but for his own default might have become aware, of the existence of his right to make a claim.

Compare: 1915 No 35 s 195; 1950 No 65 s 35(2)

Section 180 heading: amended, on 30 September 1959, by section 5 of the Land Transfer Amendment Act 1959 (1959 No 29).

Section 180(2): inserted, on 30 September 1959, by section 5 of the Land Transfer Amendment Act 1959 (1959 No 29).

### **181 Plaintiffs to be nonsuited if laches proved**

The plaintiff in any such action, or the plaintiff in an action for the recovery of land, shall be nonsuited in any case in which the loss or deprivation complained of has been occasioned through the bringing of land under any of the Land Transfer Acts, if it is made to appear to the satisfaction of the court before which the action is tried that the plaintiff, or the person through or under whom he claims title, had notice, by personal service or otherwise, or was aware that application had been made to bring the land under any of the Land Transfer Acts, and had wilfully, negligently, or collusively either omitted to lodge a caveat or allowed a caveat to lapse.

Compare: 1915 No 35 s 196

### *Protection of purchasers*

### **182 Purchaser from registered proprietor not affected by notice**

Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire into or ascertain the circumstances in or the consideration for which that registered owner or any previous registered owner of the estate or interest in question is or was registered, or to see to the application of the purchase money or of any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding,

and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

Compare: 1915 No 35 s 197

### **183 No liability on bona fide purchaser or mortgagee**

- (1) Nothing in this Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 shall be so interpreted as to render subject to action for recovery of damages, or for possession, or to deprivation of the estate or interest in respect of which he is registered as proprietor, any purchaser or mortgagee bona fide for valuable consideration of land under the provisions of this Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 on the ground that his vendor or mortgagor may have been registered as proprietor through fraud or error, or under any void or voidable instrument, or may have derived from or through a person registered as proprietor through fraud or error, or under any void or voidable instrument, and this whether the fraud or error consists in wrong description of the boundaries or of the parcels of any land, or otherwise howsoever.
- (2) This section shall be read subject to the provisions of sections 77 and 79.

Compare: 1915 No 35 s 198

Section 183(1): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 183(1): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **Part 12**

### **Compulsory registration of titles**

### **184 Interpretation**

In this Part, unless the context otherwise requires,—

**applicant** means the person deemed by section 186 to be the applicant

**application under this Part** means an application deemed to have been made as provided in section 186

**ordinary certificate of title** means a certificate of title in form 2 of Schedule 1 or an equivalent computer register

**the Registrar's minutes** means the minutes of the Registrar referred to in section 193.

Compare: 1924 No 32 s 2

Section 184 **ordinary certificate of title**: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **185 All private General land to be brought under this Act**

- (1) The Registrar shall continue with all convenient speed, but subject to the provisions of section 19 with regard to land for which no Crown grant has been is-

sued, to bring under this Act all land heretofore alienated from the Crown for an estate in fee simple and not already subject to this Act, so that all such land shall be brought under this Act as soon as may be.

- (2) This section shall not apply to land over which the Maori title has not been extinguished.

Compare: 1924 No 32 s 3; 1947 No 59 s 2

Section 185 heading: amended, on 10 October 1975, pursuant to section 16(2) of the Maori Purposes Act 1975 (1975 No 135).

### **186 Application to bring land under this Act deemed to be made**

As soon as the Registrar shall proceed, for the purposes of this Part, to examine the title to any land to which this Part applies, or the Registrar shall proceed to bring any such land under the provisions of this Act, application to bring that land under this Act shall be deemed to have been made by a person competent to make the application under this Act.

Compare: 1924 No 32 s 4

Section 186: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

### **187 Applications to be dealt with as voluntary applications under this Act**

Except as hereinafter provided, the Registrar shall deal with all such applications in accordance with sections 19 to 32 in respect of applications, and shall do all such acts in relation thereto as they, or either of them, ought to do in respect of applications under those sections.

Compare: 1924 No 32 s 5

Section 187: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

### **188 Special provisions as to applications under this Part**

- (1) In respect of any application under this Part it shall not be necessary—
- (a) that the applicant or any other person surrender the instruments of title, or furnish the schedule or abstract, or make the declaration, or supply the plan respectively referred to in section 21:
  - (b) that any persons interested be parties to the application, or that notice of the application be advertised in the *Gazette* or in any newspaper:
  - (c) that the Registrar post or forward any notice required by this Act:
  - (d) for the Registrar to await the expiration of any time before issuing a certificate of title in respect of an application under this Part, but he may delay the issue of any such certificate of title for such cause as he thinks sufficient.
- (2) An application under this Part shall not be capable of being withdrawn by the applicant.

- (3) The applicant shall not be entitled to direct the issue to any other person of a certificate of title to be issued upon an application under this Part.

Compare: 1924 No 32 s 6

### **189 Registrar may require surrender of instruments affecting title**

- (1) The Registrar may at any time require every person having possession or control of any instruments constituting or in any manner affecting the title to the land the subject of an application to surrender the same to the Registrar.
- (2) Every person who refuses or neglects to surrender any such instrument within a reasonable time after being duly required to do so commits an offence against this Act, and shall be liable on conviction to a fine not exceeding \$10 for every day during which the refusal or neglect is continued.
- (3) The Registrar shall not deliver any certificate of title under the provisions of this Part to the person entitled to that certificate until all instruments constituting or in any manner affecting the previous title of the applicant, and being in the possession or under the control of the applicant, have been surrendered to the Registrar.

Compare: 1924 No 32 s 7

Section 189(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **190 Registrar may issue ordinary or limited certificate of title**

- (1) The Registrar shall issue a certificate of title for the land the subject of any such application, in accordance with the provisions of this Act as qualified by this Part, in the name of the proprietor appearing to be entitled thereto.
- (2) If in respect of any land it appears to the Registrar that the Registrar ought to have issued an ordinary certificate of title if application to bring that land under the provisions of this Act had been made by a person competent to make the same, and if the Registrar is satisfied that the applicant is in possession of the land, and that the position and boundaries of the land are sufficiently defined by the instruments of title or by any deposited plan or plans, the certificate of title shall be an ordinary certificate of title.
- (3) Save as provided in the last preceding subsection, the certificate of title to be issued under this Part shall be a limited certificate of title as hereinafter defined.

Compare: 1924 No 32 s 8

Section 190(2): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

### **191 Definition and form of limited certificate**

- (1) A limited certificate of title may be a certificate of title limited either as to description of parcels or as to title, or limited both as to description of parcels and as to title.

- (2) A limited certificate of title shall be in form 2 of Schedule 1 or an equivalent computer register, with the addition, after the words “Certificate of Title Under Land Transfer Act”, of the words “(Limited as to parcels)”, or “(Limited as to title)”, or “(Limited as to parcels and title)”, as the case may require.

Compare: 1924 No 32 s 9

Section 191(2): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **192 Notices of issue of certificate of title to be given**

Notice of the issue of a certificate of title under the provisions of this Part shall be sent by the Registrar to every person having any estate or interest evidenced by that certificate of title or by any memorial endorsed thereon.

Compare: 1924 No 32 s 10

Section 192: amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **193 Registrar’s minutes of defects found in titles**

- (1) Before issuing a limited certificate of title the Registrar shall file with his records a minute signed by him clearly setting forth the acts or matters that ought to be done or proved, and the requisitions that ought to be complied with, in order to justify him in issuing an ordinary certificate of title. Those requisitions shall, if necessary, include a requisition for the surrender of the instruments of title referred to in section 21, and may include a requisition for the deposit of a plan of a survey of the land.
- (2) He shall thereupon send a copy of the Registrar’s minutes to the proprietor of every estate or interest in the land as evidenced by the Deeds Register or the instruments of title.
- (3) The Registrar may from time to time revise and amend the Registrar’s minutes so as to indicate which of the acts or matters or requisitions therein referred to have been done or proved or complied with, and may alter or add to those minutes, but not so as to prejudice the limited title of, or throw any onus upon, a purchaser or mortgagee, bona fide for valuable consideration, from the registered proprietor of the land, or of any estate or interest in the land, comprised in a limited certificate of title. All such revisions and additions shall be authenticated by the signature of the Registrar.

Compare: 1924 No 32 s 11

Section 193(2): amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **194 Searching of Registrar’s minutes**

The Registrar’s minutes shall not form part of the register for the purposes of section 46.

Section 194: replaced, on 1 July 1994, by section 2 of the Land Transfer Amendment Act (No 2) 1994 (1994 No 43).

**195 Limited certificate of title may be made ordinary**

- (1) Upon the doing of such acts or the proof of such matters, and on compliance with such requisition or requisitions, as are set forth in the Registrar's minutes, to the satisfaction of the Registrar, he shall, at his discretion, either cancel the limited certificate of title and issue an ordinary certificate of title, or constitute the limited certificate of title an ordinary certificate of title by the endorsement thereon of a memorial to the effect that the certificate of title has ceased to be a certificate of title limited as to parcels or limited as to title, or limited as to parcels and title, as the case may be, and the certificate of title shall thereupon take effect in all respects as an ordinary certificate of title.
- (2) If at any time it appears to the Registrar that by reason of lapse of time or for any other reason any act or proof or compliance set forth in the Registrar's minutes has become unnecessary, he may issue an ordinary certificate of title in lieu of a limited certificate of title, or may constitute a limited certificate of title an ordinary certificate of title in the manner provided in the last preceding subsection.

Compare: 1924 No 32 s 13

Section 195(1): amended, on 10 December 1991, by section 2(2)(a) of the Land Transfer Amendment Act 1991 (1991 No 118).

**196 Ordinary certificate of title not to issue till title good**

Except as otherwise provided in this Part, so long as a certificate of title continues to be limited, no new certificate of title other than a limited certificate of title shall be issued in substitution therefor, or for any part of the land comprised therein, unless in the latter case the matters in respect of which it is limited do not affect the part of the land for which the new certificate of title is issued.

Compare: 1924 No 32 s 14

**197 Registrar may require proof that estate of registered proprietor of limited title not extinguished**

The Registrar may, in his discretion, before—

- (a) issuing an ordinary certificate of title in substitution for a certificate that is limited as to parcels or as to title or as to parcels and title; or
- (b) constituting such a limited certificate of title an ordinary certificate of title; or
- (c) removing the limitations as to title of a certificate that is limited as to parcels and title; or
- (d) registering any dealing with the land comprised in a certificate that is limited as to parcels or as to title or as to parcels and title,—



require to be satisfied that the estate or interest of the registered proprietor has not become extinguished by the operation of the Limitation Act 2010 or any other enactment that prescribes a limitation period or other limitation defence.

Section 197: amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

### **198 Memorials on limited certificate of title to be evidence**

Every entry on a limited certificate of title, if purporting to be duly made and signed, shall be received in all courts of law and equity as evidence of the particulars therein set forth, and shall, as against the person named in the original limited certificate of title for any land, and all persons claiming through, under, or in trust for him, be conclusive evidence that the person named in that entry is seised or possessed of the estate or interest of which he is expressed to be the registered proprietor.

Compare: 1924 No 32 s 15

### **199 Application of Act to limited certificate of title**

- (1) Except as otherwise provided in this Part, all the provisions of this Act shall, so far as the circumstances of the case will admit, apply with respect to the land comprised in a limited certificate of title, and to the registration of instruments and other matters affecting the land, save that the title of the proprietor of an estate or interest in any land comprised in a limited certificate of title shall be indefeasible only against the person named in the original limited certificate of title for that land, and all persons claiming through, under, or in trust for him:  
provided that a limited certificate of title, and the memorials entered thereon of outstanding interests in the land comprised therein, shall be evidence or conclusive evidence, as the case may be, of the matters referred to in section 75, subject only to—
  - (a) the doing of the acts, and proof of the matters, and compliance with the requisitions set forth in the Registrar's minutes:
  - (b) the title to the land, or to any estate or interest in the land, of any person, the existence of which title, or the probable or possible existence of which, is set forth or indicated in the Registrar's minutes:
  - (c) the title of any person to or in any existing lease or agreement for a lease for a term not exceeding 7 years from the date thereof:
  - (d) the title (if any) of any person adversely in actual occupation of, and rightfully entitled to, any such land or any part thereof.
- (2) Sections 62, 63, 65, 75, 79, 182, and 183 shall, in their application to a limited certificate of title, be deemed to be modified accordingly.
- (3) Notwithstanding the provisions of section 64, the issue of a limited certificate of title for any land shall not stop the running of time in favour of any person in

adverse possession of that land at the time of the issue of the certificate, or in favour of any person claiming through or under him.

Compare: 1924 No 32 s 16

Section 199(3): amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

## **200 Applications by persons claiming title adverse to that of proprietor under limited certificate**

So long as any land continues to be comprised in a limited certificate of title any person claiming to be seised or possessed of an estate of freehold in that land or any part thereof—

- (a) by virtue of possession adverse to the title of the proprietor in whose name the certificate of title was issued; or
- (b) under any title the existence of which, or the probable or possible existence of which, is set forth in the Registrar's minutes—

may make an application under the provisions of this Act as if the Land Transfer (Compulsory Registration of Titles) Act 1924 and this Part had not been passed and the limited certificate of title had not been issued. The Registrar shall deal with every such application in the manner provided in this Act other than this Part, and if the Registrar is satisfied as to the grounds of the applicant's claim the Registrar shall in due course issue an ordinary certificate of title to the applicant, and shall call in and cancel or correct the limited certificate of title, as the case may require, under the powers conferred upon him by this Act for the correction of errors.

Compare: 1924 No 32 s 17

Section 200: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **201 No right of action by proprietor under limited certificate against the Crown or the Registrar-General in certain cases**

No action shall lie against the Crown or the Registrar-General by the registered proprietor of any land, or of any estate or interest in land, comprised in any certificate of title limited as to title by reason of the title or the priority of title of any person mentioned in paragraph (b) or paragraph (c) or paragraph (d) of the proviso to subsection (1) or in subsection (3) of section 199.

Compare: 1924 No 32 s 18

## **202 No dealings to be registered in certain cases**

Where by the Registrar's minutes the existence, or the probable or possible existence, of a title to any estate or interest in land is indicated, no dealing with that estate or interest shall be capable of being registered until the estate or interest, if capable of registration, is registered.

Compare: 1924 No 32 s 19

**203 Title to estate less than freehold evidenced by limited certificate**

The registered title to any estate or interest less than freehold evidenced by a limited certificate of title or by a memorial endorsed thereon shall be deemed to be limited to the same extent as that certificate so long as the certificate continues to be a limited certificate of title, and it shall not be necessary for the Registrar to place any notice of the limitation upon the instrument creating or evidencing that estate or interest.

Compare: 1924 No 32 s 20

**204 When interests excepted from guarantee extinguished**

- (1) After the expiration of 12 years from the date of the first certificate of title limited as to title for any land,—
- (a) any claim, estate, or interest upon or in any such land existing before that date and not evidenced by the certificate of title of the land or by a memorial endorsed thereon, including the claim of any caveator under section 205, shall, except the estate or interest of a person in actual possession of and rightfully entitled to land, and the estate or interest or claim of a person in adverse possession of land, and except as provided in section 62, be barred and extinguished:
  - (b) no action for the recovery of damages from the Crown shall lie in respect of any claim, estate, or interest referred to in the last preceding paragraph:
  - (c) no person who is deprived of any such land, or of any estate or interest in any such land, through the bringing of the same under this Act by virtue of this Part shall be entitled to bring an action against the Crown for recovery of damages:
  - (d) every such certificate of title, or any certificate of title issued in substitution therefor or for any part of the land comprised therein, shall be deemed to be no longer limited as to title, and the Registrar may, unless the certificate of title is limited also as to parcels, issue an ordinary certificate of title for that land, or may constitute the limited certificate of title an ordinary certificate of title, and it shall thereupon take effect in all respects as an ordinary certificate of title.
- (2) The foregoing provisions of this section shall not operate so as to extend any period after the expiration of which any such claim or action would have been barred, or any such estate or interest would have been extinguished, by virtue of any other Act or law.

Compare: 1924 No 32 s 21; 1930 No 6 s 53; 1931 No 5 s 25

Section 204(1)(a): amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**205 Caveats in respect of applications under this Part**

- (1) A caveat against bringing land under this Act is not capable of being lodged in respect of an application under this Part, but any person entitled to lodge a caveat against bringing land under this Act that is subject to an application under Part 2 may register under the Deeds Registration Act 1908 a caveat at any time prior to the issue of a certificate of title in respect of the land to which the application under this Part relates.
- (2) A caveat under subsection (1) must—
  - (a) specify the name of the caveator; and
  - (b) specify the land subject to the claim; and
  - (c) specify the nature of the land or estate or interest claimed by the caveator and the ground on which the claim is founded; and
  - (d) give an address for service.
- (3) When the Registrar proceeds with an application in respect of any land against which a caveat under subsection (1) has been registered, he or she must include in the Registrar's minutes a minute in respect of the claim of the caveator.
- (4) Any occupier of land that is the subject of an application under the provisions of this Part, and any adjoining occupier or proprietor, may, so long as the land is comprised in a certificate of title limited as to parcels, lodge a caveat under this section at any time after the issue of that certificate of title.
- (5) The provisions of sections 136(2) and (3), 143, and 145 to 148, with any necessary modifications, apply to caveats referred to in subsection (4). However, a caveat under this section does not prevent the registration of any dealing with the land comprised in any certificate of title limited as to title.
- (6) Notice of the issue of a certificate of title under the provisions of this Part must be given by the Registrar to the caveator of every caveat under subsection (1) that is registered against the land comprised in that certificate of title.
- (7) Subject to the provisions of this Part, the provisions of this Act relating to caveats under subsection (1), with any necessary modifications, apply to caveats referred to in subsection (4).

Section 205: replaced, on 26 August 2002, by section 59 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 205(5): amended, on 17 May 2005, by section 16 of the Land Transfer Amendment Act 2005 (2005 No 58).

**206 Trustees without power to sell**

When a certificate of title is issued under the provisions of this Part to trustees (other than trustees of public reserves) who have no express power to sell the land comprised in that certificate of title, it shall be the duty of the Registrar to register upon that certificate of title a memorial referring to this section, and to

enter a Registrar's caveat for the protection of the interests of persons beneficially interested under the trust.

Compare: 1924 No 32 s 23

**207 Restrictions on issue of ordinary certificate of title**

- (1) The Registrar shall not be bound on an application in that behalf to issue an ordinary certificate of title, or to issue an ordinary certificate of title in lieu of a certificate of title limited as to parcels, or to constitute a certificate of title limited as to parcels an ordinary certificate of title—
  - (a) unless and until he is satisfied by the deposit of a survey plan, together with such other evidence as he may deem necessary, or by some other means, that no part of the land to which the application relates is held in occupation adverse to the title of the proprietor appearing by the Deeds Register and the instruments of title, or by the certificate of title limited as to parcels, as the case may be, to be entitled thereto;
  - (b) until he has given to the persons appearing to him to be occupiers or proprietors of adjoining land such notices as he deems necessary of his intention to issue or constitute such an ordinary certificate of title, and until the expiration of the time limited in any such notice.
- (2) The Registrar shall give such notices as aforesaid in any case in which it appears to him that the land, or part of the land, in respect of which an ordinary certificate of title is proposed to be issued or constituted is included in the title of an adjoining occupier or proprietor as evidenced by the Deeds Register or by a certificate of title limited as to parcels of the land of an adjoining occupier or proprietor.

Compare: 1924 No 32 s 24(1), (2)

**208 Registrar may amend description of land in limited certificate of title**

The Registrar may from time to time, upon such evidence as he deems sufficient, amend the description of parcels in, or the plan upon or relating to, a certificate of title limited as to parcels, but not so as to exclude from that description any land of which the proprietor is in possession and to which he is rightfully entitled for the estate or interest evidenced by that certificate of title.

Compare: 1924 No 32 s 24(3)

Section 208: amended, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**209 No action against Crown in certain cases**

No action for the recovery of damages shall lie against the Crown by the registered proprietor of land comprised in any certificate of title limited as to parcels, or by any other person, by reason of any error or omission in the description of the parcels of land comprised in that certificate of title.

Compare: 1924 No 32 s 25

**210 Registration of deeds affecting land subject to this Part**

Any deed affecting any land brought under this Act in pursuance of the provisions of this Part which might have been registered under the provisions of the Deeds Registration Act 1908 if neither the Land Transfer (Compulsory Registration of Titles) Act 1924 nor this Act had been passed may, if the deed bears date prior to, or within 6 months after, the date of the first certificate of title for that land, be registered under this Act notwithstanding that it is not an instrument in one of the forms prescribed by this Act.

Compare: 1924 No 32 s 26

## **Part 13**

### **General provisions**

#### *Additional powers of Registrar*

**211 Registrar may require production of instruments, etc**

Every Registrar, in addition to the powers otherwise conferred by this or any other Act in him, may exercise all or any of the powers following, that is to say:

- (a) he may require the proprietor or other person making or concurring in any application under this Act to produce any deed or instrument in his possession or control relating to the land the subject of the application, and, if necessary, to attend and give any information or explanation concerning any such deed or instrument:
- (b) he may by notice require any person having in his possession or control any grant, certificate, or other instrument upon which any memorial or entry is required to be endorsed for the purposes of this Act to produce that instrument within a reasonable time to be fixed by the notice, and to deposit the instrument in the Land Registry Office of his district for such time as may be necessary for the making of that endorsement or entry:
- (c) he may, if in his opinion the number or nature of the entries on any folium of the register renders it expedient to close the folium, or if any document of title has become worn, defaced, or mutilated so as to justify his so doing, require the holder of the outstanding duplicate of title to surrender that duplicate for cancellation; and upon cancellation a new certificate shall be issued to the person entitled thereto:
- (ca) he may, for the purpose of preparing a copy of any original grant or certificate under section 215B, by notice require any person having in his possession or control any duplicate certificate of title, or any instrument or other document, relating to the land to which the original grant or certificate relates to produce that duplicate certificate, instrument, or other document within a reasonable time to be fixed by the notice, and to de-

posit it in the Land Registry Office of his district for such time as may be necessary for the said purposes:

- (d) he may enter caveats for the protection of any person who is under the disability of infancy or unsoundness of mind or is absent from New Zealand, or, on behalf of the Crown, to prohibit the transfer or dealing with any land within his district belonging or supposed to belong to any such person, and also to prohibit the dealing with any land within his district in any case in which it appears to him that an error has been made by misdescription of that land or otherwise in any certificate of title or other instrument, or for the prevention of any fraud or improper dealing:
- (e) he may administer oaths, or may take a statutory declaration in lieu of administering an oath.

Compare: 1915 No 35 s 183; 1936 No 31 s 13; 1950 No 65

Section 211: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 211(c): amended, on 10 December 1991, by section 2(2)(c) of the Land Transfer Amendment Act 1991 (1991 No 118).

Section 211(c) proviso: repealed, on 10 December 1991, by section 2(2)(e) of the Land Transfer Amendment Act 1991 (1991 No 118).

Section 211(ca): inserted, on 30 November 1982, by section 5 of the Land Transfer Amendment Act (No 2) 1982 (1982 No 115).

## **212 Not producing instruments when required by Registrar**

If, upon requisition in writing made by a Registrar for any purpose mentioned in the last preceding section confirming any matter entered or intended to be entered on a computer register, any proprietor or other person without reasonable cause refuses or neglects—

- (a) to produce, surrender, or deposit any instrument, or to allow the same to be inspected; or
- (b) to give any explanation which he is hereinbefore required to give—

he commits an offence and is liable on conviction before a District Court Judge to a fine not exceeding \$10 for each day during which his refusal or neglect continues; and the offender shall, in addition thereto, be liable to make compensation to any person who has sustained loss or damage by reason of his refusal or neglect.

Compare: 1915 No 35 s 184

Section 212: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 212: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 212: amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

**213 Authority to destroy instruments of title after 20 years***[Repealed]*

Section 213: repealed, on 4 October 1957, by section 26(1)(b) of the Archives Act 1957 (1957 No 13).

**214 Transfer of instruments, etc, to libraries and museums***[Repealed]*

Section 214: repealed, on 4 October 1957, by section 26(1)(b) of the Archives Act 1957 (1957 No 13).

**215 Registrar may require indemnity for costs**

Before proceeding to enforce any penalty under this Act for non-production of any deed or instrument the Registrar may require the person at whose instance the proceeding is taken to deposit with the Registrar of the court in which the proceeding is to be taken a reasonable sum as security for any costs or expenses which may be incurred by the first-mentioned Registrar in relation to the proceeding or consequent on any failure therein, and to sign an undertaking to pay those costs or expenses.

Compare: 1915 No 35 s 225

**215A Records becoming obliterated, etc**

Where any book, plan, register copy of any certificate or instrument of title or of any other instrument of any kind whatsoever forming part of the register or his records or any computer register (hereinafter in this section severally referred to as the **record**) has become or is becoming obliterated or unfit for use, or where in the opinion of the Registrar it is desirable in the interests of convenience of reference or administration, the Registrar may cause the record to be copied in the same or some other convenient form, and—

- (a) that copy, if certified by the Registrar to be a true copy of the record for the purposes of this section, shall for all purposes have the same effect as and be accepted and received as the record itself and as prima facie evidence that the entries thereon at the time of certification comprise all the entries made upon the record and are true copies of those entries, and all memorials or entries entered or made on the copy so certified subsequent to the time of certification shall be deemed to be memorials or entries duly entered or made in the record:
- (b) where any record is copied and certified as aforesaid, a copy of that certified copy, if certified by the Registrar to be a true copy for the purposes of this section, shall, for the purposes of sections 45, 48, 63, 75, and 241, be deemed to be a duly certified copy of the record.

Section 215A: inserted, on 7 October 1966, by section 14(1) of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 215A: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).



### **215B Register folium lost, etc**

Where any duplicate grant or certificate of title constituting a separate folium of the register, or any other instrument of any kind forming part of the register or his records or any computer register, is lost, misplaced, or destroyed, the Registrar may, after making all such inquiries as he considers necessary and reasonably practicable and as best he can in the light of those inquiries, prepare another copy of the original grant or certificate of title or other instrument, and record thereon the particulars of all instruments, dealings, and other matters affecting the land as those particulars were recorded on the duplicate grant or certificate of title at the time of its loss, misplacement, or destruction; and paragraphs (a) and (b) of section 215A, so far as they are applicable and with any necessary modifications, shall apply in respect of every copy prepared under this section.

Section 215B: inserted, on 30 November 1982, by section 6(1) of the Land Transfer Amendment Act (No 2) 1982 (1982 No 115).

Section 215B: amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### *Rights of appeal*

### **216 Review by Registrar of decision**

- (1) Any proprietor or claimant to any land, estate, or interest who is dissatisfied by any decision by the Registrar or a person acting under delegated authority in relation to the land, estate, or interest may refer the matter, by notice in writing, to the Registrar for reconsideration.
- (2) The Registrar may make any investigation into the matter that the Registrar sees fit.
- (3) The Registrar may require the aggrieved person to provide any evidence, information, or explanation that is relevant to the matter.
- (4) The Registrar must, if the aggrieved person so requests, give that person an opportunity of being heard by him or her.
- (5) As soon as practicable, the Registrar must decide the matter by—
  - (a) confirming the decision or the refusal to act; or
  - (b) substituting such decision as the Registrar thinks fit.
- (6) The Registrar must furnish to the aggrieved person written reasons for the Registrar's decision.
- (7) This section applies to every decision of a District Land Registrar or Assistant Land Registrar as if it were a decision of a delegate of the Registrar.

Section 216: replaced, on 1 February 1999, by section 36 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**217 Notice to Registrar to appear**

Any such person may, if he thinks fit, call upon the Registrar to appear before the High Court to substantiate and uphold the grounds of such refusal, direction, or decision as aforesaid, by a notice served upon the Registrar 6 clear days at least before the day appointed for hearing.

Compare: 1915 No 35 s 200

Section 217: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**218 Hearing of appeal**

Upon the hearing by the High Court of any proceeding under section 217, the Registrar or his counsel shall have the right of reply, and the court shall, if any question of fact is involved, direct an issue to be tried to decide that fact; and the court shall thereupon make such order in the premises as the circumstances of the case may require, which order shall be binding upon the Registrar.

Compare: 1915 No 35 s 201

Section 218: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**219 Expenses of appeal**

All expenses attendant upon any such proceedings shall be borne and paid by the person initiating the proceedings, unless the court orders that the same be paid out of a Crown Bank Account, which the court is hereby empowered to do.

Compare: 1915 No 35 s 202

Section 219: amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

**220 Registrar-General to decide between Registrar and Examiner of Titles**

*[Repealed]*

Section 220: repealed, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**221 Primary appeal to Registrar-General if Registrar and Examiner the same person**

*[Repealed]*

Section 221: repealed, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**222 Registrar-General may submit questions to Court of Appeal**

The Registrar-General may, by special case, submit for the decision of the Court of Appeal any question arising under this Act or any former Land Transfer Act which appears to him to require such a decision; and that court shall

give its judgment thereon as if the question had been raised in due form upon an appeal from the decision of the High Court.

Compare: 1915 No 35 s 205

Section 222: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **223 Procedure**

In the conduct of actions and proceedings under this Act in any court the same rules shall apply and there shall be the same rights of appeal as are in force or exist for the time being in respect of ordinary proceedings in the same court.

Compare: 1915 No 35 s 206

## **224 Rules of procedure**

Rules may be made in manner provided by the Judicature Amendment Act 1930 for regulating proceedings in the High Court under this Act.

Compare: 1915 No 35 s 207

Section 224: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## *Offences*

## **225 Fraudulently procuring certificate of title, etc**

- (1) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$1,000, who—
  - (a) fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the register, or of any erasure or alteration in any entry in the register, or in any instrument or form issued by the Registrar-General or any Registrar; or
  - (ab) fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of—
    - (i) the recording, lodgement, presentation, or registration of any information, instrument, matter or thing under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; or
    - (ii) the deletion or alteration of any information, matter, or thing recorded under that Act; or
  - (b) fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar-General; or
  - (c) knowingly misleads or deceives any person hereinbefore authorised to demand an explanation in respect of any land or the title to any land which is the subject of any application to bring the land under this Act,

- or in respect of which any dealing or transmission is proposed to be registered or recorded; or
- (d) knowingly or recklessly gives a certificate under section 164A that contains an incorrect material particular.
- (2) Any certificate of title, entry, erasure, recording, deletion, or alteration so procured or made by fraud shall be void as between all parties or privies to the fraud.

Compare: 1915 No 35 s 208

Section 225(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 225(1)(ab): inserted, on 1 February 1999, by section 37(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 225(1)(ab)(i): replaced, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 225(1)(c): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 225(1)(d): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 225(2): amended, on 1 February 1999, by section 37(2) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## 226 Other offences under Act

Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 4 years, who—

- (a) forges, or procures to be forged, or assists in forging the seal of any Registrar, or the name, signature, or handwriting of any officer of the Land Registry Office, in cases where that officer is by this Act or the Land Transfer Acts expressly or impliedly authorised to affix his signature; or
- (b) stamps, or procures to be stamped, or assists in stamping any document with any forged seal of any Registrar or fraudulently stamps or procures to be stamped or assists in stamping any document with the seal of any Registrar; or
- (c) forges, or procures to be forged, or assists in forging the name, signature, or handwriting of any person whomsoever to any instrument which is by this Act or the Land Transfer Acts, or in pursuance of any power contained in any such Act, expressly or impliedly authorised to be signed by that person; or
- (d) uses, with an intention to defraud any person whomsoever, any document upon which any impression or part of the impression of any seal of any Registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged; or

- (e) fraudulently, or with intent to defraud, uses or deposits, or seeks to use or deposit, under this Act any power of attorney, knowing the same to have been revoked, whether expressly or by the death of the grantor; or
- (f) knowingly or wilfully makes a false oath or declaration concerning any matter or procedure made and done in pursuance of this Act or the Land Transfer Acts; or
- (fa) fraudulently copies, images, records, or registers any instrument or other document or information under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; or
- (fb) fraudulently does or omits to do any act for the purpose of copying, imaging, recording or registering any instrument or other document or information under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; or
- (fc) without being authorised by the Registrar to do so,—
  - (i) connects the computer system maintained under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 to any other computer, or to any terminal or other installation connected to or forming part of any other computer; or
  - (ii) operates or attempts to operate that system (whether by means of any device or apparatus that is part of that system, or by any other means); or
  - (iii) alters that system or the programming of that system; or
  - (iv) alters any record on that system; or
- (g) fraudulently enters or authenticates in the register any memorial or any part of any memorial, or fraudulently does or omits to do any act for the purpose of entering or authenticating, or procuring the entry or authentication, on the register of any memorial or any part of any memorial; or
- (h) gives a fraudulent certificate under section 164A.

Compare: 1915 No 35 s 209

Section 226: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 226(a): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 226(b): amended, on 7 October 1966, by section 15(1) of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 226(c): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 226(f): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 226(f): amended, on 7 October 1966, by section 15(2) of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 226(fa): inserted, on 1 February 1999, by section 38 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 226(fa): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 226(fb): inserted, on 1 February 1999, by section 38 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 226(fb): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 226(fc): inserted, on 1 February 1999, by section 38 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 226(fc)(i): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 226(g): inserted, on 7 October 1966, by section 15(2) of the Land Transfer Amendment Act 1966 (1966 No 37).

Section 226(g): amended, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 226(h): inserted, on 1 June 2002, by section 65(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **227 Summary trial of indictable offences**

*[Repealed]*

Section 227: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

## **228 Prosecution of offences**

Unless otherwise expressly provided, all offences against this Act may be prosecuted, and all fines or sums of money imposed or declared to be due or owing by or under this Act may be sued for and recovered, on behalf of the Crown before any court having jurisdiction for punishment of offences of the like nature or for the recovery of fines or sums of money of the like amount.

Compare: 1915 No 35 s 224

## **228A Fraudulent removal, destruction, etc, of records**

Where any person fraudulently—

- (a) removes from any Land Registry Office any property of a Land Registry Office, including, but without limiting the meaning of the term property, any certificate or other instrument of title, plan, record, index to records, document, or instrument of any kind whatsoever; or
  - (b) destroys, conceals, cancels, obliterates, or damages any such property,—
- he shall be deemed for the purposes of the Crimes Act 1961 to have stolen that property, and shall be liable to the penalty prescribed by paragraph (b) of section 227 of that Act as if the property were an object to which that paragraph applies.

Section 228A: inserted, on 7 October 1966, by section 16 of the Land Transfer Amendment Act 1966 (1966 No 37).

*Landbrokers*

*[Repealed]*

Heading: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**229 Power of Registrar-General to license persons as landbrokers**

*[Repealed]*

Section 229: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**230 Restrictions on licensing of landbrokers**

*[Repealed]*

Section 230: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**231 Bond required before grant of licence**

*[Repealed]*

Section 231: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**232 Licences may be revoked**

*[Repealed]*

Section 232: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**233 Acting without licence**

*[Repealed]*

Section 233: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**234 Making unlawful charges**

*[Repealed]*

Section 234: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

*Miscellaneous*

**235 Fees or charges**

- (1) Without limiting section 236, regulations made under this Act may specify—
  - (a) the fees or charges payable for—
    - (i) the performance or exercise of functions, duties, or powers of the Registrar under this Act or any other enactment:

- (ii) the performance or exercise of functions, duties, or powers of the chief executive under this Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002:
  - (iii) the performance of functions of the chief executive in relation to the administration or operation of this Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, including the provision of facilities or services by the chief executive:
- (b) the amount of those fees or charges, or the method or rates by which they are to be assessed:
- (c) the persons liable to pay the fees or charges:
- (d) the circumstances in which the payment of the whole or any part of those fees or charges may be remitted or waived:
- (e) the manner in which the fees or charges are to be paid.
- (2) A Registrar may refuse to—
  - (a) register, deposit, or accept an instrument, dealing, or document for the deposit, lodging, or filing of which a fee is prescribed; or
  - (b) do any act for the doing of which a fee is prescribed,—  
unless the fee has been paid or the Registrar has approved a credit arrangement for the payment of the fee.
- (3) Regulations made under this Act may prescribe—
  - (a) that interest is payable on any unpaid fee at the rate prescribed for the time being under section 87 of the Judicature Act 1908; and
  - (b) the circumstances and manner in which that interest is to be paid.
- (4) Notwithstanding subsection (2), a Registrar may—
  - (a) dispense with the payment of all or any part of any fee payable under this Act; or
  - (b) refund all or any part of any fee paid under this Act.
- (5) Without limiting subsection (1), fees may be specified by regulations made under this Act having regard to the costs and expenses incurred by the department of State for the time being responsible for the administration of the Cadastral Survey Act 2002 in providing a national survey control system for—
  - (a) cadastral surveys supporting title to land under this Act; and
  - (b) the maintenance of cadastral survey data.
- (6) *[Repealed]*
- (7) *[Repealed]*

Section 235: replaced, on 10 December 1991, by section 2(1) of the Land Transfer Amendment Act 1991 (1991 No 118).



Section 235 heading: amended, on 17 May 2002, by section 60(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 235(1): replaced, on 17 May 2002, by section 60(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 235(2): amended, on 1 February 1999, by section 39(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 235(3): replaced, on 1 February 1999, by section 39(2) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 235(4): amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 235(5): replaced, on 17 May 2002, by section 60(3) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 235(6): repealed, on 17 May 2002, by section 60(3) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 235(7): repealed, on 17 May 2002, by section 60(3) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## 236 Regulations

- (1) The Governor-General may, by Order in Council, make regulations—
  - (a) regulating the practice and conduct of business under this Act:
  - (b) prescribing periods of time for the purposes of giving notices and other matters under this Act:
  - (c) prescribing the manner in which instruments must refer to the register:
  - (d) specifying the classes of instruments that are capable of being electronic instruments:
  - (e) specifying procedures by which mortgagees of electronic transactions land may—
    - (i) prevent electronic instruments affecting electronic transactions land over which they hold a mortgage from being registered without their consent:
    - (ii) be notified of the registration of electronic instruments:
  - (f) prescribing the form of any memorandum to be registered under section 155A and of any instrument intended for use in conjunction with a memorandum under that section:
  - (g) specifying different classes of easements, and the rights and powers to be implied in them, for the purposes of section 90D:
  - (h) specifying, for the purposes of section 99B, instruments under this Act that are available for adoption (with or without modification) by any other enactment:
  - (ha) for the purposes of sections 156A and 156B (and where the conditions in subsection (4) of this section are satisfied),—

- (i) specifying transfers of specified estates in land that are exempt from the requirements of section 156B, including by reference to the nature of the transferor, transferee, transaction, type of estate in land, class of estate in land, or otherwise:
  - (ii) specifying transfers of specified estates in land that are non-notifiable transfers (which may be non-notifiable in relation to the transferee, the transferor, or both), including by reference to the nature of the transferor, transferee, transaction, type of estate in land, class of estate in land, or otherwise:
- (hb) declaring estates in land that are specified estates in land for the purposes of section 156A:
- (i) prescribing the manner in which paper instruments must be executed, witnessed, or attested for the purposes of section 157:
  - (j) specifying classes of paper instrument that may be certified under section 164A(2)(b):
  - (k) specifying the parties for the purpose of section 164A(3)(a) (which relates to a certifier's authority to act):
  - (l) prescribing time periods for which evidence must be held under section 164A(3)(d):
  - (m) prescribing the form of certifications under section 164A:
  - (n) specifying the parties for the purpose of section 164E(1) (which provides that a certified instrument has effect as a deed executed by those parties):
  - (o) prescribing the physical properties of paper instruments:
  - (p) prescribing forms of paper instruments for the purpose of section 238(1):
  - (q) prescribing forms for notices and consents under this Act:
  - (r) providing for any other matters contemplated by this Act or the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, necessary for their administration, or necessary for giving them full effect.
- (2) Without limiting subsection (1)(d), regulations made under that provision may—
  - (a) express a specification in terms of how an instrument is associated with other instruments when presented for registration:
  - (b) specify classes of instrument by reference to—
    - (i) how instruments are dealt with:
    - (ii) how shares and interests are dealt with:
    - (iii) whether all the interests comprised and described in a certificate of title are affected by the instrument:
    - (iv) the enactment that provides for an instrument:

- (v) the purpose for which an interest is held.
- (3) In subsection (2)(b), **interest** includes land, estates, rights, covenants, and conditions.
- (4) Regulations may be made under subsection (1)(ha) only on the recommendation of the Minister for Land Information, if the Minister is satisfied that—
  - (a) requiring persons to comply with the requirements of section 156B in the case of the transfers proposed to be specified as exempt or non-notifiable would be impractical or involve high compliance costs; or
  - (b) there is a low risk of tax avoidance in relation to the transfers proposed to be specified as exempt or non-notifiable.

Section 236: replaced, on 17 May 2002, by section 61 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 236(1)(ha): inserted, on 1 October 2015, by section 7(1) of the Land Transfer Amendment Act 2015 (2015 No 82).

Section 236(1)(hb): inserted, on 1 October 2015, by section 7(1) of the Land Transfer Amendment Act 2015 (2015 No 82).

Section 236(4): inserted, on 1 October 2015, by section 7(2) of the Land Transfer Amendment Act 2015 (2015 No 82).

### **237 When paper instrument is in acceptable form**

- (1) A paper instrument is in an acceptable form if—
  - (a) it contains the information required by this Act; and
  - (b) it meets the requirements for the physical properties of paper instruments that are prescribed by regulations made under this Act.
- (2) A paper instrument must be regarded as containing the information required by this Act if—
  - (a) either—
    - (i) it is in a form prescribed by regulations made under this Act; or
    - (ii) it is in a form specified by the Registrar prior to its lodgement; and
  - (b) it is properly completed.
- (3) However, a paper instrument must be regarded as being in an acceptable form if it does not comply with subsections (1) and (2), but the non-compliance relates to a minor matter that, in the opinion of the Registrar, will not affect the operation or effect of the instrument once it is registered.

Section 237: replaced, on 26 August 2002, by section 62 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **238 Content of paper forms**

- (1) Regulations made under this Act may prescribe forms for notices and consents under this Act.

- (2) If a form for any notice or consent is not for the time being prescribed by regulations, the Registrar may specify one.
- (3) If a form is for the time being prescribed by regulations or specified under subsection (2), that form must be used on all appropriate occasions.
- (4) However, a notice or consent is not invalid because it fails to comply with the prescribed or specified form if the non-compliance relates to a minor matter that, in the opinion of the Registrar, will not affect the operation or effect of the notice or consent.

Section 238: replaced, on 26 August 2002, by section 62 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **239 Description of person to include personal representative**

In any form under this Act, the description of any person as proprietor, transferor, transferee, mortgagor, mortgagee, lessor, or lessee, or as trustee, or as seised of, having, or taking any estate or interest in any land, includes the heirs, executors, successors, and assigns of that person.

Section 239: replaced, on 1 June 2002, by section 63 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **240 How Registrar gives public notice**

If this Act requires that the Registrar give public notice of any matter but does not specify how the notice is to be given, it is sufficient that the Registrar—

- (a) publishes a notice in the *Gazette* and in 1 or more newspapers published in the area where the land affected by the matter is located; and
- (b) the notice gives sufficient information about the matter to enable persons who might respond to it to understand its effect.

Section 240: replaced, on 1 June 2002, by section 63 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **240A Specifications by Registrar**

- (1) If this Act requires or permits the Registrar to specify any matter, the specification—
  - (a) is made when it is published by notice in the *Gazette*; and
  - (b) takes effect on its publication or on a later date specified in the notice.
- (2) When the Registrar makes any specification under subsection (1), he or she must make copies of it available at every land titles office.

Section 240A: inserted, on 1 June 2002, by section 63 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **240B Notice by Registrar to particular persons**

- (1) If this Act specifies that the Registrar must give a notice to any person but does not specify how it is to be given, the notice may be given by—
  - (a) delivering it to that person; or

- (b) delivering it to that person's usual or last known place of abode or business; or
  - (c) posting it to that person or that person's place of abode or business or address; or
  - (d) sending a fax if the person has nominated a fax address; or
  - (e) electronic mail or other similar means of communication if the person has nominated an email or similar address; or
  - (f) directing it to the person at an electronic workspace facility if the instrument to which the notice relates was generated in the facility.
- (2) In subsection (1), **person** includes a person's agent.
- (3) A person is taken to have nominated an address if the person has expressly nominated it as an address to which notices for the relevant purpose may be sent.

Section 240B: inserted, on 1 June 2002, by section 63 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **240C Notices to Registrar**

If this Act specifies that a person must give a notice to the Registrar but does not specify how it is to be given, the notice may be given by—

- (a) delivering it to any Land Registry Office; or
- (b) posting it to the Registrar at any Land Registry Office; or
- (c) sending a fax if the Registrar has specified a fax address for that class of notice; or
- (d) electronic mail or other similar means of communication if the Registrar has specified an electronic mail or similar address for that class of notice; or
- (e) directing it to the Registrar from an electronic workspace facility if the Registrar has specified that means as a way of giving that class of notice.

Section 240C: inserted, on 1 June 2002, by section 63 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

#### **240D When notices taken to be delivered**

- (1) In the absence of proof to the contrary, notices are taken to be delivered,—
- (a) in the case of notices sent by post, at the time when the letter would in the ordinary course of post be delivered; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted;
  - (b) if sent by fax, at the time indicated on a record of its transmission;
  - (c) if sent by electronic mail or similar means or to or from an electronic workspace facility, at the time a record of the transmission indicates it was received in the relevant electronic communications system.

- (2) For the purposes of subsection (1)(c),—
- (a) **relevant electronic communications system** means,—
- (i) in the case of an electronic mail or similar address, the electronic communications system associated with that address; or
- (ii) in the case of an electronic workspace facility, the electronic communications system by which users of the facility can receive electronic communications;
- (b) without limiting what may constitute a record of transmission, it may, in appropriate circumstances be,—
- (i) an acknowledgement from the relevant electronic communications system; or
- (ii) the absence of a notification that the transmission has not been received into or processed by the relevant electronic communications system.
- (3) Despite subsection (1), a notice delivered to the Registrar at a land titles office is taken to be delivered at 9 am on the next day on which the office is open for business if the time at which it would be taken to be delivered under subsection (1) is outside the business hours of the office.

Section 240D: inserted, on 1 June 2002, by section 63 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **241 Registrar not obliged to produce registers or attend court**

- (1) Neither the Registrar nor any delegate of the Registrar is obliged to—
- (a) produce any register or other instrument in his or her custody as the Registrar or Registrar's delegate in any court or place other than an office of the department except by order of the High Court; or
- (b) attend any court or other hearing or proceeding, except by order of the High Court.
- (2) The High Court may not make an order under subsection (1)(a) or subsection (1)(b) unless the court is satisfied that production or personal attendance is necessary and that the required evidence cannot be given by certified copy of the register or instrument.

Section 241: replaced, on 1 February 1999, by section 41 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **242 Persons qualified to take declarations**

Any declaration made for the purposes of this Act may be made before a Justice of the Peace, or a solicitor of the High Court, or a notary public, or any other person authorised by law to take statutory declarations in New Zealand.

Compare: 1925 No 20 s 5

Section 242: amended, on 1 February 1999, by section 43(1) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 242: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**243 Personal liability**

- (1) Neither the Registrar nor any delegate of the Registrar is personally liable for any act done or omitted in the performance or exercise or intended performance or exercise of a duty or power vested in the Registrar or a duty or power that the person believes on reasonable grounds to be vested in the Registrar by this or any other Act.
- (2) No person who held an office under this Act before the commencement of the Land Transfer (Automation) Amendment Act 1998 is personally liable for any act done or omitted in the performance or exercise or intended performance or exercise of a duty or power vested in that office, or a duty or power that the person believed on reasonable grounds was vested in the office by this or any other Act.

Section 243: replaced, on 1 February 1999, by section 42 of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**244 Property Law Act 1952 to be subject to this Act**

*[Repealed]*

Section 244: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**245 Repeals and savings**

- (1) The enactments specified in Schedule 8 are hereby repealed to the extent therein indicated.
- (2) Without limiting the provisions of the Interpretation Act 1999, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.
- (3) Any provision of the Land Transfer (Hawke's Bay) Act 1931, the Maori Land Act 1931, the Land Act 1948, or any other enactment that prevailed over the provisions of any enactment hereby repealed shall in like manner prevail over the corresponding provisions of this Act.
- (4) In the case of any mortgage executed prior to 1 January 1903 (being the date of commencement of the Land Transfer Amendment Act 1902), the provisions of the Acts in force on the commencement of the Land Transfer Act 1908 in respect to that mortgage shall continue to apply to that mortgage in so far as those provisions conflict with the provisions of this Act.

- (5) In the case of any submortgage executed prior to 1 March 1914 (being the date of commencement of the Land Transfer Amendment Act 1913), the provisions of the Acts in force when that submortgage was registered shall continue to apply to that submortgage in so far as those provisions conflict with the provisions of this Act.
- (6) Where in any document made before the commencement of this Act reference is made to any former Land Transfer Act, that reference shall be construed and shall operate as if it had been made to this Act, or to such of the provisions of this Act as correspond to those of the Act so referred to.

Section 245(1): amended, on 29 September 1961, by section 4(1)(a) of the Land Transfer Amendment Act 1961 (1961 No 9).

Section 245(2): amended, on 1 November 1999, pursuant to section 38(1) of the Interpretation Act 1999 (1999 No 85).



**Schedule 1AA**  
**Transitional, savings, and related provisions**

s 2AA

Schedule 1AA: inserted, on 1 October 2015, by section 8 of the Land Transfer Amendment Act 2015 (2015 No 82).

**Part 1**  
**Provisions relating to Land Transfer Amendment Act 2015**

**1 Application of sections 156A to 156J**

Sections 156A to 156J do not apply to any transfer of land if—

- (a) the contract for the transfer of the land was entered into before 1 October 2015; and
- (b) the transfer is registered on or before 1 April 2016.

## Schedule 1

### Certificates of title

#### Form 1

#### Certificate in lieu of grant

s 12

#### *New [New Zealand Arms] Zealand*

|           |   |             |                               |
|-----------|---|-------------|-------------------------------|
| Reference | { | Warrant No: | Register book:                |
|           | } | PR Folio:   | Vol [ <i>specify</i> ], folio |

#### *Certificate of title under Land Transfer Act*

This certificate, dated [*date*], under the hand and seal of the District Land Registrar of the Land Registration District of [*specify*], being a certificate in lieu of grant under warrant of His Excellency the Governor-General in exercise of the powers enabling him in that behalf, witnesseth that [*specify*] is seised of an estate in fee simple (subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial underwritten or endorsed hereon; subject also to any existing right of the Crown to take and lay off roads under any Act of the Parliament of New Zealand) in the land hereinafter described, as the same is delineated by the plan hereon, bordered [*specify*], be the several admeasurements a little more or less, which said land is in the said warrant expressed to have been originally acquired by [*specify*] as from [*date*], under [*specify*], that is to say: All that parcel of land containing [*specify*].

[Seal]

District Land Registrar.

Schedule 1 form 1: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

Form 2  
Certificate of title (general form)

ss 24, 27, 65, 66

***New [New Zealand Arms] Zealand***

|           |                                 |                               |
|-----------|---------------------------------|-------------------------------|
| Reference | { Vol [ <i>specify</i> ], folio | Register book:                |
|           | Transfer No:                    | Vol [ <i>specify</i> ], folio |

***Certificate of title under Land Transfer Act***

This certificate, dated [*date*], under the hand and seal of the District Land Registrar of the Land Registration District of [*specify*], witnesseth that [*specify*] is seised of an estate in fee simple, subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial underwritten or endorsed hereon; subject also to any existing right of the Crown to take and lay off roads under the provisions of any Act of the Parliament of New Zealand, in the land hereinafter described, as the same is delineated by the plan hereon bordered [*specify*], be the several admeasurements a little more or less, that is to say: All that parcel of land containing [*specify*].

[Seal]

District Land Registrar.

Schedule 1 form 2: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

## Schedule 2

### Forms of documents

#### Form A

#### Application to bring land under the Act

s 20

I, AB, of *[specify]*, do declare that I am (*or on behalf of [specify], of [specify], that he is*) seised of an estate of freehold *[state whether of inheritance or of a life estate, and whether held in trust]* in all that piece of land situated in *[state the situation]*, containing *[state the area]*, be the same a little more or less (*exclusive of roads intersecting the same, if any*), with *[state rights of way and other privileges or easements appertaining, and set forth a sufficient description to identify the land]*, which piece of land is of the value of \$*[amount]* and no more, and is the town allotment (*or country section, or is part of the town allotment, country section, or reserve*) originally granted to *[specify]*, by grant dated *[date]*, numbered *[specify]* in the plan of the District (county, *or township*) of *[specify]*, as delineated on the public maps of the district deposited in the *[specify]*. And I do further declare that I am not aware of any mortgage, encumbrance, or claim affecting the said land, or that any person has any claim, estate, or interest in the said land, at law or in equity, in possession or in expectancy, other than is set forth and stated as follows—that is to say, *[state particulars of mortgages, encumbrances, or other interests to which the land may be subject]*. And I further declare that there is no person in possession or occupation of the said land adversely to my estate or interest therein; and that the said land is now *[state name and description of occupier, or that the land is unoccupied]*; and that *[state the names and addresses of owners and occupiers of lands contiguous thereto]*; and that there are no deeds or instruments of title affecting the said land in my possession or under my control other than those enumerated in the Schedule or at the foot. And I make this solemn declaration conscientiously believing the same to be true.

Dated at: *[place, date]*

*[Signature]*

AB

Made and subscribed by the above-named AB this *[date]*, in the presence of me, *[name]*, District Land Registrar (*or Justice of the Peace or Solicitor, or Notary Public, or other authorised person*).

I, AB, the above declarant, do hereby apply to have the piece of land described in the above declaration brought under the provisions of the Land Transfer Act 1952.

Dated at: *[place, date]*

[*Signature*]  
AB

Signed by the above-named AB in the presence of—

[*Signature*]  
CD  
[*Occupation and address*]

Form B  
Memorandum of transfer  
*[Repealed]*

s 90

Schedule 2 form B: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form C  
Memorandum of mortgage  
*[Repealed]*

s 101

Schedule 2 form C: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form D  
Memorandum of encumbrance for securing a sum of money  
*[Repealed]*

s 101

Schedule 2 form D: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form E  
Memorandum of mortgage  
*[Repealed]*

s 101

Schedule 2 form E: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form F  
Memorandum of increase or reduction of mortgage debt  
*[Repealed]*

s 102

Schedule 2 form F: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form G  
Memorandum of increase or reduction in rate of interest  
*[Repealed]*

s 102

Schedule 2 form G: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form H  
Memorandum of renewal, shortening, or extension of term or currency of  
mortgage  
*[Repealed]*

s 102

Schedule 2 form H: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form I  
Memorandum of variation of covenants, conditions, and powers of mortgage  
*[Repealed]*

s 102

Schedule 2 form I: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form J  
Memorandum of priority of mortgages  
*[Repealed]*

s 103

Schedule 2 form J: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form K  
Memorandum of lease  
*[Repealed]*

s 115

Schedule 2 form K: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form L  
Memorandum of extension or variation of lease  
*[Repealed]*

s 116

Schedule 2 form L: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Form M  
Caveat forbidding lands to be brought under the Act  
*[Repealed]*

s 136

Schedule 2 form M: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## Form N

## Caveat forbidding registration of dealing with estate or interest

*[Repealed]*

s 137

Schedule 2 form N: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## Form O

## Power of attorney

*[Repealed]*

s 150

Schedule 2 form O: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## Form P

## Revocation of power of attorney

*[Repealed]*

s 152

Schedule 2 form P: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## Form Q

Caveat giving notice of estate or interest in respect of application under Part 12  
of the Land Transfer Act 1952*[Repealed]*

s 205

Schedule 2 form Q: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## Form R

Caveat forbidding the issue of an ordinary certificate of title, or the  
constitution of a certificate of title limited as to parcels as an ordinary  
certificate of title*[Repealed]*

s 205

Schedule 2 form R: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## Form S

Memorandum of variation of easement or *profit à prendre**[Repealed]*

s 90A



Schedule 2 form S: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**Form T**  
**Easement certificate**

*[Repealed]*

s 90A(2)

Schedule 2 form T: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**Form U**  
**Application for certificate of title to land on ground of possession**

*[Repealed]*

Schedule 2 form U: repealed, on 26 August 2002, by section 65(2) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**Schedule 3**  
**Covenants, conditions, and powers implied, pursuant to**  
**memorandum of priority, in mortgages thereby postponed**

s 103

- (1) That the mortgagor will duly and punctually pay all principal, interest, and other moneys secured by and will perform and observe all the covenants and conditions contained or implied in any mortgage having priority to the postponed mortgage.
- (2) That if the mortgagor makes default in the payment of any moneys secured by or in the performance or observance of any of the covenants and conditions contained or implied in any mortgage having priority to the postponed mortgage, it shall be lawful for but not obligatory upon the mortgagee to pay those moneys and perform or observe those covenants or conditions, and clause 10 of Part 1 of Schedule 2 of the Property Law Act 2007 applies (with all necessary modifications) to all moneys so paid and all expenses incurred in performing or observing the covenants or conditions of the prior mortgage.
- (3) That compliance with the provisions of any mortgage having priority to the postponed mortgage which relate to insurance against loss or damage by fire or earthquake shall be deemed, so far as it extends, to be compliance with any provisions as to such insurance contained or implied in the postponed mortgage.
- (4) That any provisions in the postponed mortgage referring to any particular mortgage having priority thereto shall be deemed to refer to any mortgage at any time having priority to the postponed mortgage.

Compare: 1939 No 7 s 6, Schedule 2

Schedule 3 paragraph (2): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## Schedule 4

### Covenants implied in instruments

s 155

The words “will insure” imply that the covenantor will insure, in the joint names of the covenantor and covenantee, and, so long as the term expressed in the instrument has not expired, will keep insured in those joint names in some public insurance office, to be approved by the covenantee, against loss or damage by fire to the full amount specified in the instrument, or, if no amount is specified, then to their full insurable value, all buildings, tenements, or premises erected on the land and of a nature or kind capable of being insured against loss or damage by fire; and that the covenantor will, at the request of the covenantee, hand over to and deposit with him the policy of every such insurance, and produce to him the receipt or receipts for the annual or other premiums payable on account thereof; and also that all moneys to be received under or by virtue of any such insurance shall, in the event of loss or damage by fire, be laid out and expended in making good the loss or damage:

provided also that if default is made in the observance or performance of the last-mentioned covenant, it shall be lawful for the covenantee, without prejudice nevertheless to, and concurrently with, the powers granted him by the instrument or by this Act provided, to insure those buildings, tenements, and premises, and the costs and charges of that insurance shall, until the covenantor’s liability under the instrument is discharged, be a charge upon the said land.

The words “paint outside every alternate year” imply that the covenantor will in every alternate year during the continuance of the term mentioned in the instrument paint all the outside woodwork and ironwork belonging to the hereditaments and premises mentioned in the instrument with 2 coats of proper oil colours in a workmanlike manner.

The words “paint and paper inside every third year” imply that the covenantor will in every third year during the continuance of the term mentioned in the instrument paint the inside wood, iron, and other works, then or usually painted, with 2 coats of proper oil colours in a workmanlike manner, and also repaper with paper of equal quality such parts of the premises as are then papered, and also wash, stop, whiten, or colour such parts of the premises as are then whitened or coloured respectively.

The words “will fence” imply that the covenantor will, during the continuance of the term mentioned in the instrument, erect and put up on the boundaries of the land therein mentioned, or upon the boundaries upon which no substantial fence then exists, a good and substantial fence.

The word “cultivate” implies that the covenantor will at all times during the continuance of the term mentioned in the instrument cultivate, use, and manage, in a proper and husband-like manner, all such parts of the land therein mentioned as are or shall be broken up or converted into tillage, and will not impoverish or waste the same.

The words “that the lessee will not use the said premises as a shop” imply that the covenantor will not convert, use, or occupy the hereditaments and premises men-

tioned in the instrument, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or permit or suffer the said hereditaments and premises, or any part thereof, to be used for any such purpose, or otherwise than as a private dwellinghouse, without the consent in writing of the covenantee.

The words “will not carry on offensive trades” imply that no noxious, noisome, or offensive art, trade, business, or occupation or calling shall at any time during the said term be used, exercised, carried on, permitted, or suffered by the covenantor in or upon the hereditaments and premises mentioned in the instrument, and that no act, matter, or thing whatsoever shall at any time during the said term be done in or upon the said hereditaments and premises, or any part thereof, which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of the adjoining lands and hereditaments.

The words “will not without leave assign or sublet” imply, subject always to Part 4 of the Property Law Act 2007, that the covenantor will not, during the continuance of the term mentioned in the instrument, assign, transfer, demise, sublet, or set over, or otherwise by any act or deed procure the lands or premises therein mentioned, or any of them, or any part thereof, to be assigned, transferred, demised, sublet, or set over unto any person whomsoever without the consent in writing of the covenantee first had and obtained.

The words “will not cut timber” imply that the covenantor will not cut down, fell, injure, or destroy any growing or living timber or timberlike trees standing and being upon the hereditaments and premises mentioned in the instrument, without the consent in writing of the covenantee.

The words “will carry on the business of a publican and conduct the same in an orderly manner” imply that the covenantor will at all times during the continuance of the term mentioned in the instrument use, exercise, and carry on in and upon the premises therein mentioned the trade or business of a licensed victualler or publican and retailer of spirits, wines, ale, beer, and porter, and keep open and use the messuage, tenement, or inn and buildings standing and being upon the land mentioned in the instrument as and for an inn or publichouse for the reception, accommodation, or entertainment of travellers, guests, and other persons resorting thereto or frequenting the same, and manage and conduct that trade or business in a quiet and orderly manner; and will not do, commit, or permit, or suffer to be done or committed, any act, matter, or thing whatsoever whereby, or by means whereof, any licence shall or may be forfeited, or become void, or liable to be taken away, suppressed, or suspended in any manner howsoever.

The words “will apply for renewal of licence” imply that the covenantor will from time to time during the continuance of the term mentioned in the instrument, at the proper times for that purpose, apply for and endeavour to obtain at his own expense all such licences as are or may be necessary for carrying on the trade or business of a licensed victualler or publican in and upon the hereditaments and premises mentioned

in the instrument, and keeping the therein-mentioned messuage, tenement, or inn open as and for an inn or publichouse.

The words “will facilitate the transfer of licence” imply that the covenantor will, at the expiration or other sooner determination of the term mentioned in the instrument, sign and give such notice or notices, and allow such notice or notices of a renewal or transfer of any licence as may be required by law to be affixed to the therein-mentioned messuage, tenement, or inn, to be thereto affixed, and remain so affixed during such time or times as are necessary or expedient in that behalf; and generally will do and perform all such further acts, matters, and things as are necessary to enable the covenantee or any other person authorised by him to obtain the renewal of any licence, or any new licence, or the transfer of any licence then existing and in force.

Compare: 1915 No 35 Schedule 6

Schedule 4: amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## Schedule 5

### Attestation of instruments

#### Form 1

Certificate of District Land Registrar, Justice of the Peace, etc, taking  
declaration of attesting witness

s 159

Appeared before me at [*place*], [*date*], CD, of [*specify*], a person known to me and of good repute, attesting witness to this instrument, and acknowledged his signature to the same; and did further declare that AB, the party executing the same, was personally known to him, the said CD, and that the signature of this said instrument is in the handwriting of the said AB.

[*Signature*]

EF,

District Land Registrar

(*or* Justice of the Peace,

*or* Notary Public,

*or* Solicitor of the High Court)

Compare: 1915 No 35 Schedule 7 paragraph (1)

Schedule 5 form 1: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Form 2

Certificate of District Land Registrar, Justice of the Peace, etc, before whom  
instrument acknowledged by the party executing same

s 160

Appeared before me at [*place*], [*date*], AB, of [*specify*], the party executing the within  
instrument, and acknowledged that he did freely and voluntarily sign the same.

[*Signature*]

EF,

District Land Registrar

(*or* Justice of the Peace,

*or* Notary Public,

*or* Solicitor of the High Court)

Compare: 1915 No 35 Schedule 7 paragraph (2)

Schedule 5 form 2: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment  
Act 1979 (1979 No 124).

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**Schedule 6**  
**Scale of charges for landbrokers**

*[Repealed]*

ss 229, 234

Schedule 6: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

**Schedule 7**  
**Rights and powers of grantees implied in certain easements**

*[Repealed]*

s 90D

Schedule 7: repealed, on 26 August 2002, by section 64(1) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).



## Schedule 8

### Enactments repealed

s 245

Schedule 8 heading number: amended, on 29 September 1961, by section 4(1)(d) of the Land Transfer Amendment Act 1961 (1961 No 9).

**Finance Act 1924 (1924 No 64) (Reprint of Statutes, Vol VII, p 1254)**

*Amendment(s) incorporated in the Act(s).*

**Finance Act 1930 (1930 No 6) (Reprint of Statutes, Vol VII, p 1266)**

*Amendment(s) incorporated in the Act(s).*

**Finance Act 1931 (No 2) (1931 No 5)**

*Amendment(s) incorporated in the Act(s).*

**Land Laws Amendment Act 1920 (1920 No 43)**

*Amendment(s) incorporated in the Act(s).*

**Land Transfer Acts Compilation Act 1915 (including the Land Transfer Act 1915) (1915 No 35) (Reprint of Statutes, Vol VII, p 1161)**

**Land Transfer Amendment Act 1925 (1925 No 20) (Reprint of Statutes, Vol VII, p 1263)**

**Land Transfer Amendment Act 1939 (1939 No 7)**

**Land Transfer Amendment Act 1950 (1950 No 24)**

**Land Transfer (Compulsory Registration of Titles) Act 1924 (1924 No 32) (Reprint of Statutes, Vol VII, p 1253)**

**Land Transfer (Foreign Governments) Act 1945 (1945 No 14)**

**Statutes Amendment Act 1936 (1936 No 58)**

*Amendment(s) incorporated in the Act(s).*

**Statutes Amendment Act 1947 (1947 No 60)**

*Amendment(s) incorporated in the Act(s).*

**Statutes Amendment Act 1949 (1949 No 51)**

*Amendment(s) incorporated in the Act(s).*

Schedule 8: amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Schedule 8: amended (with effect on 1 January 1953), on 1 October 1954, by section 36 of the Finance Act 1954 (1954 No 90).

## Land Transfer (Hawke's Bay) Act 1931

|                |                  |
|----------------|------------------|
| Public Act     | 1931 No 27       |
| Date of assent | 9 November 1931  |
| Commencement   | see section 1(2) |

**An Act to authorise the making of a new land transfer register for the Land Registration District of Hawke's Bay (in replacement of the land transfer register destroyed by fire following the Hawke's Bay earthquake of 3 February 1931) and for matters incidental thereto**

### 1 Short Title and commencement

- (1) This Act may be cited as the Land Transfer (Hawke's Bay) Act 1931, and is part of the Land Transfer Act 1952 ("the principal Act").
- (2) This Act shall be deemed to have come into force on 4 February 1931.

Section 1(1): amended, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

### 2 Interpretation

In this Act, if not inconsistent with the context,—

**certificate of title** includes a folium of the provisional register

**conclusive**, used with reference to a certificate of title, or to the register copy of a certificate of title, or to a registered instrument, or to the entry of a memorial of a registered instrument, means that such certificate of title or register copy or registered instrument or entry, as the case may be, has the same effect as if the certificate of title or register copy or registered instrument or entry had been issued, made, registered, or entered under the provisions of the principal Act

**destroyed** means lost, destroyed, or rendered indecipherable by or in consequence of the Hawke's Bay earthquake

**District** means the Land Registration District of Hawke's Bay

**new register** means the register for the district made under the authority of this Act, and includes a provisional register

**old register** means the register for the district in existence immediately prior to 3 February 1931, and includes the provisional register

**Registrar** means the Registrar-General

The expressions **transfer**, **mortgage**, and **lease** mean respectively memorandum of transfer, memorandum of mortgage, and memorandum of lease

**the Hawke's Bay earthquake** or **the earthquake** means the earthquake that occurred in Hawke's Bay on 3 February 1931, and includes all fires consequent thereon or incidental thereto

**the said date** means 3 February 1931.

Section 2 **Registrar**: replaced, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

*The new register*

*[Repealed]*

Heading: repealed, on 22 December 1933, pursuant to section 3(2) of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

**3 Registrar directed to make new register**

*[Repealed]*

Section 3: repealed, on 22 December 1933, by section 3(2) of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

*Provisions applicable where outstanding duplicates of instruments extant*

**4 Provisions applicable in cases where outstanding duplicates have not been destroyed**

- (1) The provisions of this section shall apply only in cases where certificates of title or other instruments that were registered in the old register or duplicates of instruments that were embodied in the old register have not been destroyed.
- (2) In any case to which this section applies, the Registrar may cause copies of such instruments or duplicates as aforesaid to be prepared. Such copies shall, upon being duly authenticated under the hand and seal of the Registrar, and subject to the provisions of this Act, have the same force and effect as the corresponding folios of the old register, or the corresponding original instruments, as the case may be.
- (3) In the case of certificates of title, the Registrar, in lieu of making and authenticating copies as provided for in the last preceding subsection, may issue new certificates of title which shall, subject to the provisions of this Act, have the same force and effect as if they were certificates of title issued under the provisions of the principal Act. Every such certificate shall have endorsed thereon a memorandum to the effect that it is issued in lieu of a certificate of title the register copy of which has been destroyed.
- (4) In any case where an instrument was executed in triplicate, and whether or not a triplicate was presented for registration, if 2 copies of such instrument have been destroyed, the provisions of subsection (2) shall apply with respect to the remaining triplicate if the Registrar is satisfied that the same is a true triplicate of such instrument. Unless and until the Registrar endorses thereon a memorandum to the effect that it is conclusive, no such remaining triplicate or duplicate copy adopted in accordance with the next succeeding subsection shall be conclusive as to any memorials that may have been endorsed upon the triplicate that was retained by the Registrar, and the Registrar shall endorse upon it a memorandum that it is not conclusive as to such memorials (if any). Subject to

the foregoing provisions of this subsection, every such remaining triplicate or adopted duplicate shall for the purposes of this section be regarded as if it were the registered triplicate upon which memorials were or may have been endorsed by the Registrar.

- (5) On the adoption of any triplicate of any registered instrument it shall be lawful for the Registrar to receive with the adopted triplicate 2 copies thereof, and to certify one of such copies free of cost, and to issue the same in substitution for the outstanding duplicate of the instrument upon which memorials are to be endorsed under section 40 of the principal Act, and thereafter such copy shall have the same force and effect as if it were the original duplicate upon which memorials may be endorsed by the Registrar.

Section 4(4): amended, on 22 December 1933, by section 8(a) of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

Section 4(5): inserted, on 22 December 1933, by section 8(b) of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

Section 4(5): amended, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **5 Evidential value of certificates and other instruments issued or authenticated under last preceding section**

- (1) Except as provided in subsection (3), no certificate of title issued under the last preceding section, or issued in substitution for any such certificate of title, or issued in respect of any part of the land comprised in any such certificate of title, and no copy of any instrument authenticated under that section, shall, until the expiration of 1 year from the date of the issue of such certificate of title, or from the date of the issue of the first such certificate where more than 1 certificate of title has been issued, or from the date of the Registrar's authentication of such copy, as the case may be, or until the expiration of 1 year from the date of the passing of this Act, whichever period is the later to expire, be conclusive as to the proprietorship of any mortgage, lease, easement, or *profit à prendre*, or as to the non-existence on 3 February 1931 of—
- (a) any charge created otherwise than by a registered mortgage (not including a sub-mortgage); or
  - (b) any registered lien; or
  - (c) any caveat lodged to protect any estate or interest; or
  - (d) any Proclamation taking the land or any part of it; or
  - (e) any restriction or other matter in respect of which any memorial may have been registered in the old register; or
  - (f) any encumbrance upon or other dealing with any mortgage, lease, easement, or *profit à prendre* registered on or before the said date.
- (2) Any person claiming the benefit of any such charge, lien, estate or interest, encumbrance, or other dealing as is referred to in the last preceding subsection may re-register such charge or lien in the manner provided for the registration

of the same in the old register, or may lodge a caveat or a new caveat to protect such charge, lien, estate or interest, or encumbrance, or other dealing. Upon the expiration of the time limited by the said subsection every such charge or lien in respect of which a memorial has not been entered on the new register by the Registrar, or that has not been re-registered, or in respect of which a caveat has not been lodged, and every caveat lodged to protect an interest in respect of which a new caveat has not been lodged, shall, as against any person who within the time limited as aforesaid or at any time thereafter becomes a registered proprietor bona fide and for value, be deemed never to have been registered or lodged, as the case may be.

- (3) If the Registrar is satisfied, upon such evidence as may seem to him to be sufficient, that the land comprised in any certificate of title or dealt with by any other instrument referred to in the last preceding section was not on the said date subject to any such charge, lien, estate or interest, encumbrance, or other dealing as is mentioned in subsection (1), the Registrar may endorse upon the copy prepared and authenticated, or upon the new certificate of title issued, as respectively provided for in the last preceding section, a memorandum to the effect that it is conclusive as to such matters, or as to any 1 or more of them, and it shall thereupon be conclusive accordingly.

Section 5(1)(c): replaced, on 22 December 1933, by section 9 of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

Section 5(2): amended, on 22 December 1933, by section 10 of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

*Provisions applicable where registered instruments and outstanding duplicates destroyed*

**6 Where outstanding copy of certificate of title destroyed new certificate may be issued on application of registered proprietor or mortgagee**

- (1) Any person claiming to have been on the said date the registered proprietor, or a mortgagee under a registered mortgage, of an estate of freehold, evidenced by any certificate of title, in any land, if he knows or believes that such certificate of title was destroyed, may make application to the Registrar, in the form in the Schedule or in such other form as may be prescribed, for the issue of a new certificate of title for such land. Such application shall have endorsed thereon or shall be accompanied by a plan of the land of which the applicant claims to have been the registered proprietor or mortgagee, and shall include a statement of the registered encumbrances, liens, and interests, statutory and other charges, restrictions, and caveats to which, within the knowledge or belief of the applicant, the land was subject; and the statements contained in such application shall be verified by the statutory declaration of the applicant. The plan shall be as full and accurate as the circumstances of each case will permit without the making of a new survey of the land.

- (2) The Registrar, if he is satisfied, after the making of such inquiries and the sending of such notices, if any, as he may deem necessary or advisable, that the certificate of title was destroyed, and that the applicant was the registered proprietor or a mortgagee as aforesaid, may issue a new certificate of title for the land the subject of the application.

#### **7 Memorandum of interests admitted by proprietor or mortgagee**

- (1) The Registrar shall endorse on every such new certificate of title a memorandum setting forth the encumbrances, liens, and interests, statutory and other charges, restrictions, and caveats to which the land appears to him to be subject.
- (2) In any case in which it seems to him proper so to do, the Registrar may at any time cancel any such memorandum, or he may add to or amend the statements contained in any such memorandum, by a further memorandum:  
provided that in any case where by any such addition or amendment it is shown that any interest in the land is subject to any further encumbrance, lien, interest, charge, restriction, or caveat, the Registrar shall forthwith send by registered letter to every registered proprietor adversely affected by such addition or amendment a notice that such addition or amendment has been made.
- (3) Every such memorandum shall be prima facie proof of the existence of the estates or interests or of the matters referred to in it.

#### **8 Where outstanding copy of certificate of title destroyed Registrar may issue new one**

The Registrar, in any case where he knows or believes that the certificate of title for any land was destroyed, may, if it seems to him proper so to do, of his own motion or at the instance of any person claiming an estate or interest in the land, issue a new certificate of title for such land. The provisions of the last preceding section shall, with the necessary modifications, apply to every such certificate of title.

#### *Interim certificates of title*

#### **9 Interim certificate of title**

Every certificate of title issued pursuant to section 6 or section 8 shall have endorsed thereon a memorandum to the effect that it is an interim certificate of title.

#### **10 Effect of interim certificate of title**

- (1) Except as provided in the next succeeding subsection, or in section 11 or section 12, an interim certificate of title shall not be conclusive.
- (2) The Registrar may at any time, on such evidence as seems to him to be sufficient, endorse upon an interim certificate of title a memorandum to the effect

that it is conclusive as to all estates and interests evidenced thereby, or that it is conclusive as to any 1 or more of such estates and interests, or that it is conclusive as to the description and delineation of the land comprised therein, and the said certificate of title shall thereupon be conclusive according to the tenor of such memorandum.

- (3) Any certificate of title issued in substitution for an interim certificate of title or issued for any part of the land comprised in an interim certificate shall be an interim certificate, with respect to which the provisions of the last preceding subsection shall apply.

## **11 Application to make interim certificate conclusive**

- (1) The registered proprietor, or a mortgagee, of land comprised in an interim certificate of title may at any time make application in writing to the Registrar, to endorse upon such certificate a memorandum that it is conclusive. Such application shall be accompanied by such evidence as may be necessary to establish, without reasonable doubt, the ownership of the land comprised in the certificate of title, and the encumbrances, liens, interests, charges, and restrictions (if any) to which the land is subject.
- (2) Upon receipt of any such application the Registrar shall consider the evidence submitted in support thereof, and may require the production of further evidence in support thereof.
- (3) If the Registrar is satisfied with any such evidence or further evidence, he shall endorse upon the interim certificate of title a memorandum as provided for by the last preceding section.
- (4) If the Registrar is not satisfied with such evidence or further evidence, he may, at the expense of the applicant, publish notice of the application once in the *Gazette* and twice at an interval of not less than 2 weeks in some newspaper or newspapers published and circulating in the district. Such notice shall limit and appoint a time, not less than the prescribed period, within which any person claiming to have been the registered proprietor of, or claiming to be entitled to the benefit of any encumbrance, lien, or interest upon or in, the land may present for registration an appropriate instrument, in the same manner as if the old register had not been destroyed, for the purpose of re-evidencing such encumbrance, lien, or interest, or may lodge a caveat in the form required by section 137 of the principal Act to protect the same, whether such encumbrance, lien, or interest was registered in the old register or not.
- (5) After the expiration of the time limited in any such notice, the Registrar shall, unless in his opinion there is good and sufficient reason to the contrary, endorse upon the interim certificate of title for the land referred to in such notice a memorandum to the effect that it is conclusive, or that it is conclusive except as to the description and delineation of the land comprised therein, as to him shall seem proper in the circumstances, and the certificate of title shall thereupon be conclusive according to the tenor of such memorandum; but subject, neverthe-

less, to the rights, if any, of any person who shall theretofore have lodged a caveat.

- (6) The Registrar may at any time thereafter, if he is reasonably satisfied that the interim certificate correctly sets forth the description and delineation of the land comprised therein, endorse a further memorandum to the effect that such certificate of title is conclusive as to the description and delineation of the land, and the certificate shall thereupon be conclusive according to the tenor of such memorandum.

Section 11(4): amended, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 11(4): amended, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **12 Interim certificates of title to become conclusive after 6 years**

Every interim certificate shall, after the expiration of 6 years from the date of its issue, be conclusive as to all matters except the description and delineation of the land comprised therein, whether or not the Registrar has endorsed thereon a memorandum to that effect. For the purposes of this section, in cases when an interim certificate has been issued in substitution for an interim certificate or in respect of part of the land comprised in a former interim certificate, the period of 6 years aforesaid shall begin to run on the date of the issue of the original interim certificate.

### *Leasehold interests in Crown lands or other lands administered by the Hawke's Bay Land Board*

## **13 Where outstanding copy of lease or licence lost or destroyed**

- (1) Where, with respect to Crown land or other land administered by the Commissioner of Crown Lands (appointed under section 12A(1) of the Survey Act 1986), a lease or licence a duplicate of which was embodied in the old register as a folium has been cancelled, the Commissioner shall, on application by the lessee or licensee or by a mortgagee, prepare and execute and shall present for registration a new lease or licence of the land for the unexpired residue of the term, and subject to the terms and conditions, as nearly as they can be ascertained, of the destroyed lease or licence. The Registrar shall thereupon register such new lease or licence in the new register in the manner in which the destroyed lease or licence was registered. Every lease or licence issued under this section shall have endorsed thereon a memorandum to the effect that it is an interim lease or licence.
- (2) The provisions of sections 7, 9, 10, 11, and 12 shall apply, with the necessary modifications, to every interim lease or licence issued under this section in the same manner as they apply to interim certificates of title.

Section 13(1): amended, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).



*Other interests*

**14 Establishing interests other than freeholds and certain leaseholds**

- (1) Any person claiming to have been the registered proprietor on the said date of any estate or interest in or of any charge or lien upon any land, other than an estate of freehold in respect of which a certificate of title existed on the said date, or other than a leasehold interest under a lease or licence embodied in the old register as a folium thereof, and knowing or believing that the instrument under which he claims has been destroyed may, without payment of any fee, lodge a caveat in the form required by section 137 of the principal Act to protect such estate or interest, charge, or lien. Every such caveat shall operate to preserve for all purposes the priority of the estate or interest, charge, or lien to protect which such caveat was lodged:

provided that where pursuant to this section a caveat affecting the land comprised in any certificate of title or in any lease or licence is lodged at any time after an interim certificate of title or an interim lease or licence comprising such land has been made or has become conclusive, in accordance with the foregoing provisions of this Act, such caveat shall not operate to affect any estate or interest in such land that may have been acquired for valuable consideration, without notice of the estate or interest, charge, or lien of the caveator:

provided also that in the case of the land comprised in any certificate of title or other instrument to which section 5 applies, a caveat lodged in accordance with this section shall not affect the estate or interest of a registered proprietor whose right or interest is protected by subsection (2) of that section.

- (2) Upon the registration of an instrument for the purpose of evidencing any such estate or interest, charge, or lien, such caveat shall be deemed to have lapsed.
- (3) No such caveat shall prevent the registration of any instrument in which, or by endorsement on which, the rights of the caveator are admitted. The consent of the caveator to the registration of any such instrument shall not be necessary.

Section 14(1): amended, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 14(1) first proviso: amended, on 22 December 1933, by section 11(a) of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

Section 14(1) second proviso: inserted, on 22 December 1933, by section 11(b) of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

**15 Registered proprietor bound to execute new instruments where originals destroyed**

- (1) Every proprietor whose estate or interest is subject to an encumbrance, lien, or interest acquired under or by virtue of an instrument that was destroyed, upon being requested so to do by the person who was on the said date the proprietor of such encumbrance, lien, or interest, or by the successor in title of such person, shall be bound, in the same manner as if he had contracted so to do, but

without cost to himself, to execute an appropriate instrument having as nearly as possible the same effect, after registration, as the destroyed instrument had.

- (2) No instrument so executed by any such person shall, unless therein expressed or necessarily implied to the contrary as regards the person executing the same, have any greater effect as against any person or any estate or interest than the destroyed instrument had, and no such instrument shall, unless therein expressed or necessarily implied to the contrary, operate so as to relieve any person, other than any party to it, from the obligation to perform any covenant that may have been expressed or implied in any destroyed instrument.
- (3) Notwithstanding anything to the contrary in the principal Act, every new instrument executed and registered to replace a destroyed instrument shall have the same priority over any other instrument as the destroyed instrument had, notwithstanding that such new instrument may be registered subsequently to the registration of such other instrument. Where a new instrument has such priority the Registrar shall add to the memorial of such new instrument a memorandum indicating the priority.

### *Maori freehold land*

Heading: amended, on 27 November 1947, pursuant to section 2 of the Maori Purposes Act 1947 (1947 No 59).

## **16 Partition orders of Maori freehold land**

- (1) Notwithstanding anything to the contrary in the Native Land Act 1909, or in any other Act, the Registrar shall not be bound to register any partition order affecting any Maori freehold land or any other land that is or was subject to the jurisdiction of the Native Land Court, or to register any other order having the effect of vesting in any person an estate of freehold in any such land, unless and until he is reasonably satisfied either—
  - (a) that on the said date there was no interest of any kind and no caveat registered in the old register or under the Deeds Registration Act 1908, as the case may be, affecting the land comprised in such partition order or other order; or
  - (b) that every such interest or caveat has been re-registered or otherwise protected in accordance with the provisions of this Act.
- (2) For the purposes of this section the expression **Maori freehold land** has the same meaning as in the Native Land Act 1909.

Section 16 heading: amended, on 27 November 1947, pursuant to section 2 of the Maori Purposes Act 1947 (1947 No 59).

Section 16(1): amended, on 27 November 1947, pursuant to section 2 of the Maori Purposes Act 1947 (1947 No 59).

Section 16(2) : amended, on 27 November 1947, pursuant to section 2 of the Maori Purposes Act 1947 (1947 No 59).

*Miscellaneous*

**17 Power to compel production of instruments, etc**

- (1) In addition to the powers conferred on him by the principal Act, the Registrar may, in respect of land in the district, exercise all or any of the powers conferred by the following provisions of this section.
- (2) He may require any person having in his possession or under his control any grant, certificate, or other instrument of title, or any plan, search notes, report on title, or other written or printed document evidencing or tending to evidence in any manner the boundaries, extent, or position of, or the state of the title to, or the encumbrances upon, any parcel of land in the district, to produce the same within a reasonable time to be fixed by a notice requiring such production and indicating the particular documents or kind of documents required, and to deposit the same in any land registry office for such time as may be necessary to enable the Registrar to examine or make copies of the same.
- (3) He may make such copies or records of, or such extracts from, any such plans or documents as he thinks fit.
- (4) He may require any person of any of the classes hereinafter mentioned to give any information, explanation, or evidence, in writing upon oath or otherwise, concerning the subject matter of such application, title, or claim, or, except in the case of a solicitor or agent acting as hereinafter mentioned, to attend before him at any land registry office and give such information, explanation, or evidence orally upon oath or otherwise. The classes of persons herein referred to are the following:
  - (a) any person making an application under the provisions of this Act; or
  - (b) any person being, or claiming to be entitled as, a registered proprietor on the old register; or
  - (c) any person claiming to become the registered proprietor of any estate or interest in any land in the district; or
  - (d) any person being the solicitor or agent of, and acting on behalf of, any of the aforesaid persons.
- (5) If the proprietor of any easement, or *profit à prendre*, or other encumbrance which had been registered, neglects to furnish such particulars of his easement, or *profit à prendre*, or other encumbrance, as the Registrar may require by notice in writing, directed to the usual or last known address of such proprietor, the Registrar may, at his discretion, at any time after the expiration of the prescribed period, remove any entry of such easement, *profit à prendre*, or other encumbrance from the register, or from any certificate of title, or other outstanding duplicate of the register, by marking the memorial thereof in the register with the words “Removed.—See K No . . . ([date]) . . . Registrar”, and a like entry shall be made or noted on every servient title or tenement against which the easement or *profit à prendre*, or encumbrance has been registered.

From the date of such removal being noted by the Registrar such easement, or *profit à prendre*, or encumbrance shall cease and determine.

Section 17(2): amended, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 17(4): amended, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 17(5): inserted, on 22 December 1933, by section 12 of the Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39).

Section 17(5): amended, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 17(5): amended, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **18 Penalty for not producing documents or attending to give information**

If upon a requisition in writing made by the Registrar for any purpose mentioned in the last preceding section any person without reasonable cause refuses or neglects to comply with such requisition, he shall be liable to the penalties provided for by section 212 of the principal Act.

Section 18: amended, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **19 Instruments may be lodged although relative folium of register not reconstructed**

Until a folium of the new register is made in respect of any parcel of land the Registrar shall accept for registration or lodgment every instrument or document relating to such parcel of land that appears to be in order and that could have been registered or lodged if the old register had not been destroyed. He shall file and index every such instrument or document, and upon the making of a folium of the new register for such parcel of land he shall deal in the usual manner with all such instruments or documents that are then found to be in order affecting such parcel of land, in such a manner as to preserve their relative priorities in accordance with the provisions of the principal Act and of this Act.

## **20 Providing for copies of plans to be filed, without fees**

- (1) The Registrar may acquire and file as records of his office such plans or copies of plans as shall appear to him to be desirable as evidencing or tending to evidence the boundaries of any land in the district comprised in any certificate of title or in any destroyed deposited plan, and no fee shall be payable for the checking or deposit of any such plan or copy of plan.
- (2) The provisions of this section shall extend and apply to plans of surveys made since the said date for the purpose of replacing deposited plans that were destroyed, or for the purpose only of fixing the boundaries of the land comprised in any certificate of title existing on the said date.

- (3) Except in the case of plans referred to in subsection (2), the Registrar shall endorse on every plan or copy of plan filed as aforesaid a memorandum showing from whom the plan or copy was acquired, and, if possible and necessary, by whom and under whose authority it was made.

## **21 Conditions as to compensation for mistake of Registrar**

- (1) No person having or claiming any estate or interest in or any charge or lien upon any land who had notice by personal service or otherwise, or was aware of any proposed act of the Registrar, shall be entitled to commence any action for the recovery of damages under the provisions of the principal Act in respect of any loss he may have sustained by reason of such act of the Registrar unless, within a reasonable time after receiving such notice or becoming aware of such proposed act, he has taken the appropriate steps in accordance with the provisions of this Act or the principal Act to protect his estate or interest, charge, or lien.
- (2) No person shall be entitled to commence any action for the recovery of damages under the provisions of the principal Act in respect of any loss he may have sustained by reason of an interim certificate of title or interim lease or licence becoming or being made conclusive as against any estate or interest, charge, or lien he may have had in or over the land comprised in such certificate of title, lease, or licence unless action to recover the same is commenced within 6 years from the date when such certificate of title or such lease or licence has become or been made conclusive:

provided that any person being under the disability of infancy, unsoundness of mind, or absence from New Zealand may bring any action as aforesaid after the expiration of the aforesaid period of 6 years but within 3 years from the date on which such disability ceases.

## **22 No fee for certificate of title or for provisional lease or mortgage issued in lieu of destroyed one**

No fee shall be payable to the Registrar for a provisional or new certificate of title or for a provisional lease or licence or mortgage of any land, wheresoever situated, issued in lieu of a destroyed certificate of title, lease, licence, or mortgage, and it shall not be necessary for the Registrar to advertise notice of his intention to issue any such certificate, lease, licence, or mortgage if he is reasonably satisfied that the certificate, lease, licence, or mortgage in lieu of which it is to be issued was destroyed by the earthquake:

provided that nothing in this section shall affect the liability of any person to pay any fee outstanding and unpaid in respect of any destroyed certificate of title or other instrument.

Section 22: amended, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**23 Exemption from stamp duty and fees**

The following instruments shall be exempt from stamp duty or registration fees, as the case may be, namely:

- (a) every instrument executed or registered in substitution for a registered instrument that has been destroyed, if the Registrar is satisfied that such new instrument is substantially to the same effect as the destroyed instrument:
- (b) *[Repealed]*
- (c) *[Repealed]*
- (d) every caveat lodged under the provisions of this Act, and every withdrawal of any such caveat.

Section 23(b): repealed, on 1 December 1953, by section 7(2) of the Stamp Duties Amendment Act 1953 (1953 No 54).

Section 23(c): repealed, on 1 December 1953, by section 7(2) of the Stamp Duties Amendment Act 1953 (1953 No 54).

**24 Registrations may be effected in City of Wellington**

*[Repealed]*

Section 24: repealed, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

## Land Transfer (Hawke's Bay) Amendment Act 1933

|                |                  |
|----------------|------------------|
| Public Act     | 1933 No 39       |
| Date of assent | 22 December 1933 |
| Commencement   | 22 December 1933 |

### An Act to amend the Land Transfer (Hawke's Bay) Act 1931

#### 1 Short Title

This Act may be cited as the Land Transfer (Hawke's Bay) Amendment Act 1933, and is part of the Land Transfer Act 1952 ("the principal Act").

Section 1: amended, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

#### 2 Interpretation

In this Act—

**adopted** means used for the purpose of making a copy under section 4 of the special Act, and **adoption** has a corresponding meaning

**the special Act** means the Land Transfer (Hawke's Bay) Act 1931.

Section 2 **the principal Act**: repealed, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

#### 3 Registrar to make a new register for district

- (1) The Registrar is hereby directed to make a new register for the district, and for that purpose is hereby given all such necessary authority as is not expressly conferred by the special Act or this Act.
- (2) This section is in substitution for section 3 of the special Act, and that section is hereby repealed accordingly.

#### 4 Registrar may apply to Hawke's Bay Adjustment Court for declaratory order in respect of matters concerning the new register

- (1) The Registrar may at his discretion at any time apply to the Hawke's Bay Adjustment Court for an order under section 12 of the Hawke's Bay Earthquake Act 1931 to define the rights and liabilities of any person or persons in or in relation to any land or interest in land within the district, if the definition of such right or liability by that court would facilitate the making of the new register for the district.
- (2) Notice of every such application shall be given by the Registrar by registered letter to every person known or believed by him to be entitled to any right or to be subject to any liability in respect of any land the subject matter of the application.

- (3) Every such application, until disposed of by the court, shall be effective as a caveat by the Registrar, and he shall make an entry in the register that such application has been made.

**5 Modification of section 44 of principal Act for purposes of special Act**

The Registrar shall have power, and from the passing of the special Act shall be deemed to have had power, to act under the provisions of section 44 of the principal Act without the necessity of complying with the proviso to subsection (2) of that Act; and he may dispense with copying any outstanding duplicate of any instrument.

Section 5 heading: amended, on 1 February 1999, pursuant to section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 5: amended, on 1 February 1999, by section 43(3) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

**6 Registrar may decline to issue certificates or to register certain instruments until prescribed conditions satisfied**

- (1) Notwithstanding any enactment or rule of law to the contrary, the Registrar shall not be bound to issue any certificate of title upon a warrant, or to embody in the provisional register as a folium thereof any certificate under the hand of the Commissioner of Crown Lands to the effect that any purchase money has been paid, or to register any lease or licence issued under the Land Act 1924, or the Land for Settlements Act 1925 or any other Act, or to register any vesting of any estate or interest in any person whomsoever under a statute which does not expressly direct that the estate or interest shall vest free from all encumbrances, restrictions, liens, and interests, unless and until he is informed under the hand of the Commissioner of Crown Lands, or until he is reasonably satisfied, either—
- (a) that on the said date (as defined by the special Act) no caveat was noted and no interest of any kind was registered in the old register or under the Deeds Registration Act 1908, as the case may be, affecting the land comprised in such warrant, certificate under the hand of the Commissioner of Crown Lands, lease, or licence, or statute, as the case may be; or
  - (b) if a caveat had been noted or an instrument had existed on the said date, then that such interest or caveat has been re-registered or disclosed in writing to the Registrar in such a manner as to enable him to bring forward a memorial of it, or that it has been otherwise protected in accordance with the provisions of this Act or the special Act.
- (2) The Registrar on being satisfied of the existence of such a caveat or interest on the said date shall bring forward a memorial thereof on any certificate of title, provisional register, lease, or licence, which he shall issue or register.



**7      New instruments executed under section 15 not dependent on any confirmation or approval that may have been required in respect of destroyed instruments**

Where pursuant to section 15 of the special Act any person is required to execute an instrument in replacement of a destroyed instrument, it shall not be necessary to obtain in respect of the new instrument any consent, approval, or confirmation that may have been required in respect of the destroyed instrument, but unless and until the contrary is proved, every such consent, approval, or confirmation shall be deemed to have been duly given in respect of the destroyed instrument on or before its registration.

## Land Transfer Amendment Act 1963

|                |                 |
|----------------|-----------------|
| Public Act     | 1963 No 61      |
| Date of assent | 23 October 1963 |
| Commencement   | 23 October 1963 |

### An Act to amend the Land Transfer Act 1952

#### 1 Short Title

This Act may be cited as the Land Transfer Amendment Act 1963, and shall be read together with and deemed part of the Land Transfer Act 1952 (hereinafter referred to as “the principal Act”).

### Part 1 Prescriptive title to land

#### 3 Application for certificate of title based on possession

(1) Where—

- (a) any person has been in possession of any land which is subject to the principal Act, being land for which a certificate of title has been issued or a Crown grant has been registered under that Act, for a continuous period of not less than 20 years, and continues in possession of the land; and
- (b) that possession was such that he would have been entitled to apply for a title to the land on the ground of possession if the land had not been subject to the principal Act,—

he may, in accordance with the provisions of this Part, apply to the Registrar in the prescribed form for the issue to him of a certificate of title for an estate in fee simple in the land.

- (2) For the purposes of this Part, possession of any land by any person through or under whom the applicant claims shall be deemed to be possession by the applicant.
- (3) For the purposes of this Part, possession of any land by 1 or more joint tenants or tenants in common at any time (whether after or before the commencement of the Land Transfer Amendment Act 1995)—
  - (a) shall not of itself be (or be deemed to have been) possession of the land by the other tenant or tenants; and
  - (b) shall be (or be deemed to have been) capable of being adverse possession as against the other tenant or tenants.

Section 3(1): amended, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 3(3): inserted, on 30 March 1995 (but not imposing on any person any liability for any action, or failure or refusal to act, occurring before 30 March 1995), by section 2(1) of the Land Transfer Amendment Act 1995 (1995 No 11).

#### **4 Person with registered interest under disability**

- (1) Where the registered proprietor of, or any person shown by the register to be entitled to the benefit of, any estate or interest in any land is under any disability at the expiration of the period of 20 years after the date on which the possession of the land by any other person commenced, the last-mentioned person, or any person claiming through or under him, shall not be entitled to make an application in respect of that land or any part thereof until that registered proprietor or person shown by the register to be entitled as aforesaid has ceased to be under a disability or has died, whichever event first occurs:

provided that nothing in this subsection shall apply in any case where at the date of any application under this Part the applicant has been in possession of the land for a period of not less than 30 years.

- (2) For the purposes of this section, a person shall be deemed to be under a disability while he is an infant or of unsound mind.
- (3) For the purposes of subsection (2), but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is an inmate (otherwise than as a voluntary inpatient) in a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Section 4(3): amended, on 1 November 1992, pursuant to section 137(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 4(3): amended, on 1 April 1970, pursuant to section 129(5) of the Mental Health Act 1969 (1969 No 16).

#### **5 Examination of application by Registrar and Examiner of Titles**

- (1) *[Repealed]*
- (2) The Registrar may, if the Registrar thinks fit, dispense with any of the information required to be supplied in the prescribed form of application, if the Registrar is satisfied that that information cannot reasonably be ascertained and supplied by the applicant.
- (3) The Registrar may by notice to the applicant require the applicant to furnish him with any additional information or documents relating to his application within a reasonable time specified in the notice.

Section 5(1): repealed, on 1 February 1999, by section 43(2) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 5(2): replaced, on 1 February 1999, by section 43(2) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

#### **6 Registrar to refuse application if evidence insufficient**

Where—

- (a) the Registrar is not satisfied on the evidence produced with any application or supplied pursuant to a requisition under subsection (3) of section 5 that the applicant has been in possession of the land in the manner and for the period specified in section 3 or where the Registrar is satisfied on that evidence that the applicant has been in possession of only part of the land; or
- (b) the applicant fails to comply with any requisition of the Registrar under subsection (3) of section 5 within the time specified in the notice given to the applicant under that subsection, or within such extended time as the Registrar, in his discretion, may allow,—

the Registrar shall refuse the application, either wholly or, as the case may be, as to the part thereof in respect of which he and the Examiner are not satisfied as aforesaid.

Section 6(a): amended, on 1 February 1999, by section 43(2) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **7 Notice of application**

- (1) Where the Registrar is satisfied that the applicant has been in possession of the land or of any part thereof in the manner and for the period prescribed in section 3, the Registrar shall cause notice of the application in such form as he thinks fit—
  - (a) to be published at least twice on dates specified or approved by the Registrar in such 1 or more newspapers as he thinks fit, including at least 1 newspaper circulating in the locality in which the land is situated; and
  - (b) to be given to any person who is shown by the register to have or who in the Registrar's opinion has or may have any estate or interest or any claim to any estate or interest in the land or any part thereof, and the notice shall advise that person that any such estate or interest will lapse in respect of any land in the application for which a certificate of title may be issued under this Part unless a caveat is lodged as hereinafter provided; and
  - (c) to be published in such other way (if any) or to be given to such other person (if any) as he thinks expedient in the circumstances.
- (2) Where an application has been refused as to part of the land to which it relates, the notice required by this section shall be given only in respect of the remaining part of the land.
- (3) The notice shall fix a date, within the limits prescribed, after which the Registrar may, unless on or before that date a caveat has been lodged as hereinafter provided against the land concerned, proceed with the application.
- (4) The Registrar may, at any time before the granting of the application, extend for such period as he thinks fit the time fixed by any notice given pursuant to this section.

- (5) For every notice given to any person pursuant to this section the Registrar may charge the same fee as is prescribed for a notice relating to any caveat.

Section 7(1): amended, on 1 February 1999, by section 43(2) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

Section 7(3): amended, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **8 Person claiming interest in land may lodge caveat**

- (1) Any person claiming any estate or interest, whether legal or equitable or beneficial, in the land or any part of the land to which any application relates may, before the expiration of the time fixed or extended pursuant to section 7, lodge a caveat in the prescribed form suitably altered to refer to and forbid the granting of the application in respect of that land or part thereof, as the case may be.
- (2) Nothing in section 143 or section 144 of the principal Act shall apply to any caveat lodged pursuant to subsection (1), but, except to the extent that they are inconsistent with the provisions of sections 9 to 12 of this Act, sections 136(2) and (3), 137(4), 142, 146, and 148 of the principal Act shall, with any necessary modifications, apply to such a caveat.
- (3) Any caveat under this section may be withdrawn by the caveator or by his attorney or agent under a written authority, and either as to the whole or any part of the land to which it relates.

Section 8(1): amended, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

Section 8(2): amended, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

## **9 Caveat by registered proprietor of fee simple or estate for life, etc**

- (1) Where the Registrar is satisfied that the person executing a caveat lodged pursuant to section 8 is the registered proprietor of an estate in fee simple or an estate for life or in remainder, contingent or otherwise, or an estate by way of executory limitation that has not lapsed in the land to which the application relates or in any part of that land, the Registrar shall refuse the application in respect of the land to which the caveat relates.
- (2) Where a caveat lodged pursuant to section 8 is executed by any person purporting to be the agent of the caveator thereunder, and the caveator is the registered proprietor of any of the estates referred to in subsection (1), then, unless the Registrar is satisfied by evidence produced to him at the time of the lodging of the caveat that the person executing it has been duly authorised to do so, the Registrar shall give notice to him requiring him to satisfy the Registrar, before a date fixed in the notice, by confirmation of the registered proprietor or otherwise, that he has been duly authorised as aforesaid.
- (3) If the Registrar is not so satisfied within the time fixed in the notice given under subsection (2), or within such extended time as the Registrar, in his discretion, may allow, the caveat shall be deemed to have lapsed at the expiration

of that time or extended time, and the Registrar shall mark it as having lapsed under this subsection.

- (4) Where the Registrar is satisfied that the person executing any caveat to which subsection (2) applies has been duly authorised to do so, he shall refuse the application in respect of the land to which the caveat relates.

**10 Caveat by person claiming as beneficial or equitable owner of fee simple or estate for life, etc**

- (1) Where—

- (a) the caveator under a caveat lodged pursuant to section 8 claims to be the beneficial or equitable owner of an estate in fee simple or an estate for life or in remainder, contingent or otherwise, or an estate by way of executory limitation that has not lapsed in the land to which the application relates or in any part of that land; and
- (b) the application has not been refused as to the whole of the land or as to that part pursuant to any other provision of this Part,—

the Registrar shall, unless he is of the opinion that the estate or interest claimed is sufficiently evidenced by the register, give notice to the caveator requiring him, within a time fixed in the notice, being not less than the prescribed period, to either—

- (c) establish that claim in law and cause himself to be registered as the proprietor of the estate or interest claimed; or
- (d) satisfy the Registrar that the claim to that estate or interest is valid but is of such a nature that it is not capable of being converted into a registered estate or interest.
- (2) If, within the time fixed by any notice given under subsection (1), or within such extended time as the Registrar, in his discretion, may allow, the caveator neither causes himself to be registered as the proprietor of the estate or interest claimed nor satisfies the Registrar as aforesaid, the caveat shall be deemed to have lapsed, and the Registrar shall mark it as having lapsed under this subsection.
- (3) If—
- (a) the Registrar is of the opinion that the estate or interest claimed is sufficiently evidenced by the register; or
- (b) within the time fixed or extended as aforesaid, the caveator causes himself to be registered as the proprietor of the estate or interest claimed in the land or in part thereof, or satisfies the Registrar as aforesaid,—

the Registrar shall refuse the application in respect of the land or of that part, as the case may be.

Section 10(1): amended, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **11 Caveat by person entitled to other estate or interest**

- (1) Where the Registrar is satisfied that the caveator under a caveat lodged pursuant to section 8 is the registered proprietor of, or a person shown by the register to be entitled to the benefit of, any estate or interest in the land to which the application relates or in any part thereof (not being an estate in fee simple nor an estate for life or in remainder, contingent or otherwise, nor an estate by way of executory limitation), and the application has not been refused as to the whole of the land or as to that part pursuant to any other provision of this Part,—
  - (a) the Registrar shall notify the applicant that he will proceed with the application if the applicant agrees in writing to accept a certificate of title subject, to the same extent as the existing title, to that estate or interest and to every estate or interest (not being any estate in fee simple or other estate excepted as aforesaid) through or under which the caveator derives his title; and
  - (b) the Registrar shall take no further action in respect of the application until the applicant so agrees or until the estate or interest of the caveator is discharged, surrendered, or otherwise extinguished; and
  - (c) if the applicant so agrees, the caveat shall be deemed to have lapsed and the Registrar shall mark it as having lapsed under this subsection; and any certificate of title issued to the applicant shall be made subject to every such estate or interest as aforesaid.
- (2) Where any land in respect of which an application has been lodged is subject to a registered mortgage, the applicant shall be deemed to be the registered proprietor of the land for the purposes of section 112 of the principal Act and to be the owner of the land and the mortgagor for the purposes of subpart 5 of Part 3 of the Property Law Act 2007.
- (3) Where under this section the applicant agrees to take title subject to any mortgage and a certificate of title is issued to him under section 15 subject to that mortgage, the provisions of section 96 of the principal Act and of subpart 8 of Part 3 of the Property Law Act 2007 shall not, in relation to that mortgage, apply with respect to any transfer of the land, whether by the applicant or by any person deriving title through or under him.

Section 11(2): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 11(3): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## **12 Caveat by person claiming beneficial or equitable estate less than fee simple**

- (1) Where—
  - (a) the caveator under a caveat lodged pursuant to section 8 claims to be the beneficial or equitable owner of any estate or interest in the land to

which the application relates or in any part of that land, not being an estate in fee simple nor an estate for life or in remainder, contingent or otherwise, nor an estate by way of executory limitation; and

- (b) the application has not been refused as to the whole of the land or as to that part pursuant to any other provision of this Part,—

the Registrar shall, unless he is of the opinion that the estate or interest claimed is sufficiently evidenced by the register, give notice to the caveator requiring him, within a time fixed in the notice, being not less than the prescribed period, to either—

- (c) establish that claim in law and cause himself to be registered as the proprietor of the estate or interest claimed; or
  - (d) satisfy the Registrar that the claim to that estate or interest is valid but is of such a nature that it is not capable of being converted into a registered estate or interest.
- (2) If, within the time fixed by any notice given under subsection (1), or within such extended time as the Registrar, in his discretion, may allow, the caveator neither causes himself to be registered as the proprietor of the estate or interest claimed nor satisfies the Registrar as aforesaid, the caveat shall be deemed to have lapsed, and the Registrar shall mark it as having lapsed under this subsection.
  - (3) If, within the time fixed or extended as aforesaid, the caveator causes himself to be registered as the proprietor of the estate or interest claimed, the provisions of section 11, as far as they are applicable and with any necessary modifications, shall apply as if the caveator had been the registered proprietor of that estate or interest at the date of the lodging of the caveat.
  - (4) If—
    - (a) the Registrar is of the opinion that the estate or interest claimed is sufficiently evidenced by the register; or
    - (b) within the time fixed by any notice given under subsection (1), or within such extended time as the Registrar, in his discretion, may allow, the caveator satisfies the Registrar as aforesaid,—

the provisions of section 11, as far as they are applicable and with any necessary modifications, shall apply as if the registered proprietor of, or, as the case may be, the person shown by the register to be entitled to the benefit of, the estate or interest claimed were the caveator.

Section 12(1): amended, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

### **13 Notice of refusal of application to be given to applicant**

Where pursuant to any provision of this Part the Registrar refuses any application as to the whole or any part of the land to which it relates, the Registrar shall give notice of the refusal to the applicant, unless notice has previously



been given to the applicant of the refusal of the application as to the land or as to that part, as the case may be, under any other provision of this Part.

**14 Definition of land for which certificate of title may be issued**

(1) In this section—

**occupation boundary**, in relation to any land, means any fence, wall, hedge, building, ditch, or other artificial means, or any natural feature of the land, by which the land actually occupied by the applicant is limited or defined

**title boundary**, in relation to any land, means the boundaries of the land as shown on the certificate of title or Crown grant relative to that land, or on the latest plan of survey approved by the Surveyor-General of the land district in which the land is situated and held in his office or in the office of the Registrar, as the case may be.

(2) Where the Registrar is satisfied that all notices required by this Part to be advertised or given have been advertised or given and that all times required by this Part to expire have expired, and that—

- (a) no caveat has been lodged pursuant to section 8 against the granting of the application; or
- (b) every caveat so lodged has lapsed or been withdrawn as to all the land to which the application relates or as to any part of that land; or
- (c) all caveats so lodged that have neither lapsed nor been withdrawn as aforesaid affect part only of the land to which the application relates,—

the Registrar shall give notice to the applicant requiring him to either—

- (d) supply a certificate by a licensed cadastral surveyor that the occupation boundaries, or such of the occupation boundaries as exist, of the land remaining subject to the application, or, as the case may be, of such part of that land as is not affected by or has ceased to be affected by any caveat lodged as aforesaid, coincide with the title boundaries of the land or of that part, as the case may be; or
- (e) deposit under subsections (1) and (5) of section 167 of the principal Act a plan of survey of so much of that land or of the part thereof as aforesaid as is contained within the boundaries specified in subsection (3) of this section.

(3) The boundaries on any such plan of survey shall be drawn as follows:

- (a) where the title boundary of the land or any part of that title boundary is the common boundary between that land or any part thereof and land owned by the Crown or by any local authority or held for any public purpose, the plan shall to that extent be drawn in terms of that title boundary or of that part thereof;
- (b) where the occupation boundary of the land or any part of that occupation boundary is outside the title boundary of that land or any part thereof,

the plan shall to that extent be drawn in terms of the title boundary or of that part thereof:

- (c) where the occupation boundary of the land or any part of that occupation boundary, while purporting to be on the title boundary of the land, is on the inside of that title boundary or the corresponding part thereof, and the land adjoining that title boundary or part thereof on the other side is not owned by the Crown or a local authority and is not held for a public purpose, the plan shall to that extent be drawn in terms of the occupation boundary:
  - (d) where the occupation boundary of the land or any part of that occupation boundary does not purport to be on any title boundary of the land or any part thereof, the plan shall to that extent be drawn in terms of the occupation boundary:
  - (e) in any case to which the foregoing provisions of this subsection do not apply, and to the extent to which they do not apply, the plan shall be drawn in terms of the title boundaries of the land or in terms of any new survey boundaries necessary for the definition of the land or to complete that definition, as the case may require.
- (4) For the purpose of approving any plan required to be deposited pursuant to this section, the applicant shall be deemed to be the owner of the land.

Section 14(1) **title boundary**: amended, on 1 June 2002, pursuant to section 69(1) of the Cadastral Survey Act 2002 (2002 No 12).

Section 14(2)(d): amended, on 1 June 2002, by section 68(1) of the Cadastral Survey Act 2002 (2002 No 12).

## **15 Issue of certificate of title to applicant**

- (1) Where—
- (a) the applicant has supplied the Registrar with the certificate or deposited the plan required by section 14; and
  - (b) the Registrar is satisfied that the applicant would, if the land had not been subject to the principal Act, have been entitled on the grounds of possession to the issue to him of a certificate of title under that Act on application made under section 19 thereof; and
  - (c) if no sufficient reason to the contrary otherwise appears;—

then, notwithstanding anything in any other Act, the Registrar shall issue to the applicant a certificate of title in form 2 of Schedule 1 of the principal Act for an estate in fee simple in the land remaining subject to the application or, as the case may be, the land in the plan, freed of all registered encumbrances, liens, and interests previously affecting the land, except those to which the title is to be subject pursuant to an agreement by the applicant under subsection (1) of section 11.

- (2) Where any land in respect of which the application was lodged is comprised in a certificate of title that is limited as to parcels, any certificate of title issued under this section may, if the Registrar thinks fit, be similarly limited as to parcels.

Section 15(1)(b): amended, on 1 February 1999, by section 43(2) of the Land Transfer (Automation) Amendment Act 1998 (1998 No 123).

## **16 Title to intervening land where fence, etc, not on boundary**

- (1) In this section the terms **title boundary** and **occupation boundary** have the same meanings as in section 14.

- (2) Where—

- (a) a plan of survey prepared by a licensed cadastral surveyor and deposited pursuant to section 14 discloses that any occupation boundary is within the title boundary and the plan is made in accordance with the occupation boundary; and
- (b) for that reason the certificate of title issued to the applicant under that section does not include the land between the occupation boundary and the title boundary (in this section referred to as the **intervening land**); and
- (c) the Registrar is satisfied, from the particulars shown on the plan of survey or otherwise, that—
  - (i) the fence, wall, hedge, building, ditch, or other artificial means of marking the occupation boundary was intended to coincide with or to represent the title boundary; or
  - (ii) where the occupation boundary is a natural feature of the land, that feature is in close proximity to the title boundary; and
- (d) the Registrar is satisfied that the intervening land or any part thereof is occupied together with other land adjoining the title boundary by the registered proprietor of the fee simple estate in that other land or by some person authorised by him,—

the Registrar may notify the registered proprietor of that other land that he may apply to have the intervening land, or, as the case may be, so much thereof as is occupied by him or by any person authorised by him as aforesaid, amalgamated with that other land; and, notwithstanding anything in any other Act, if that registered proprietor so applies, the Registrar may issue to him a certificate of title accordingly (in this section referred to as the **amalgamated certificate of title**).

- (3) Any intervening land that is amalgamated with other land pursuant to subsection (2) shall cease to be subject to any registered encumbrances, liens, interests, and burdens previously affecting that intervening land, and shall cease to have the benefit of any rights, privileges, benefits, or easements previously attached thereto, but shall become subject to the same encumbrances, liens, inter-

ests, and burdens and shall have attached thereto the same rights, privileges, benefits, and easements as the land with which it has been amalgamated.

- (4) Where the Registrar issues an amalgamated certificate of title under this section, any disposition of, or any application for a separate certificate of title for, any part of the land in that certificate of title shall be deemed to be a subdivision of the land for the purposes of the Resource Management Act 1991. The Registrar shall make an entry on every such amalgamated certificate of title that it is subject to the provisions of this subsection.

Section 16(2): amended, on 10 December 1991, by section 2(3) of the Land Transfer Amendment Act 1991 (1991 No 118).

Section 16(2)(a): amended, on 1 June 2002, by section 68(1) of the Cadastral Survey Act 2002 (2002 No 12).

Section 16(4): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

## **17 Application in respect of land of dissolved company or other corporate body**

Where any application relates to land the registered proprietor of the fee simple of which is a company or other corporate body that has been dissolved and the property of which has vested in the Crown as *bona vacantia*,—

- (a) the Registrar shall not proceed with the application until—
  - (i) where there is provision in any Act authorising the Crown to disclaim the land, the land has been disclaimed by the Crown in manner provided by that Act and the applicant has satisfied the Registrar that no proceedings have been commenced in any court by any person under that Act to become the registered proprietor of the land; or
  - (ii) where there is no such provision in any Act, the application is consented to in writing by the Secretary to the Treasury; and
- (b) where in any case to which subparagraph (i) of paragraph (a) applies the Registrar is aware that any person intends to commence such proceedings, he shall serve notice on that person that an application has been lodged under this Part and that he will proceed with the application unless the proceedings are commenced within a time specified in the notice and are duly proceeded with; and
- (c) where any such proceedings have been commenced, the Registrar shall not proceed further with the application unless and until the proceedings have failed or been discontinued; and
- (d) if such proceedings have not been commenced within the time fixed in the notice given under paragraph (b), or within such further time as the Registrar, in his discretion, may allow, and duly proceeded with, the Registrar shall proceed with the application.

**18 Cancellation of certificate of title**

- (1) Where the Registrar issues a certificate of title to any applicant under the provisions of section 15, he shall cancel any other certificate of title for that land or, as the case may be, shall partially cancel any other certificate of title so far as it relates to that land. The memorial of cancellation shall state that the cancellation was made under the authority of this section.
- (2) Upon the cancellation of any certificate of title as aforesaid, the estate or interest evidenced thereby and the estate or interest evidenced by any instrument, entry, or memorial shown thereon which has not been required to be brought forward on to the new certificate of title pursuant to subsection (1) of section 11 shall cease and determine in respect of the land as to which the certificate has been so cancelled.

**19 No action against the Crown or Registrar-General of Land except in certain cases**

Notwithstanding anything in section 172 of the principal Act, no action shall lie against the Crown or the Registrar-General of Land by the registered proprietor of any land or of any estate or interest in any land by reason of the cancellation, in whole or in part, of any certificate of title to that land or any part thereof and the issue of a new certificate of title therefor under this Part, except where the registered proprietor—

- (a) is deprived of that land, estate, or interest or any part thereof by fraud on the part of any applicant or by the error, omission, or misfeasance of the Registrar or of any of his officers or clerks in dealing with any application; and
- (b) is by the principal Act barred from bringing an action for possession or other action for recovery of the land, estate, or interest.

**20 Notices**

The provisions of sections 239 to 240D of the principal Act apply in relation to notices under this Act.

Section 20: replaced, on 17 May 2005, by section 18 of the Land Transfer Amendment Act 2005 (2005 No 58).

**21 This Part not to apply in certain cases**

No application shall be made under section 3—

- (a) with respect to any land owned by the Crown, except as provided in section 17;
- (b) with respect to any Maori land within the meaning of Te Ture Whenua Maori Act 1993;
- (c) with respect to any land the registered proprietor of the fee simple of which is a local authority:

- (d) with respect to any land held in trust for any public purpose, being a trust noted or deemed to be noted on the register pursuant to section 129 of the principal Act:
- (e) with respect to any land occupied together with any adjoining land by the owner of that adjoining land or by any other person by virtue of the fact that any fence, wall, hedge, building, ditch, or other artificial means of marking the boundary purporting to be on the common boundary between that land and the adjoining land is not on that common boundary:
- (f) with respect to any land occupied together with any adjoining land by the owner of that adjoining land or by any other person by virtue of a change of course of any river, creek, or stream, or by virtue of the isolation of that land from any other land in the same ownership by any river, creek, or stream or by any other natural feature of the land or of adjoining land or by any road.

Section 21(b): amended, on 1 July 1993, pursuant to section 362(2) of Te Ture Whenua Maori Act 1993 (1993 No 4).

## Part 2

### Miscellaneous amendments of principal Act

#### 24 Contents of memorial

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Every memorial entered in the register before the passing of this Act which would have been valid if this section had been in force when the memorial was entered is hereby declared to have been validly entered, and the instrument to which it relates is hereby declared to have been duly registered.

## **Land Transfer Amendment Act 1966**

|                |                |
|----------------|----------------|
| Public Act     | 1966 No 37     |
| Date of assent | 7 October 1966 |
| Commencement   | 7 October 1966 |

### **An Act to amend the Land Transfer Act 1952**

#### **1 Short Title**

This Act may be cited as the Land Transfer Amendment Act 1966, and shall be read together with and deemed part of the Land Transfer Act 1952 (hereinafter referred to as “the principal Act”).

### **Part 2**

#### **Miscellaneous amendments to principal Act**

#### **14 Records becoming obliterated, etc**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) The provisions of section 215A of the principal Act (as inserted by subsection (1)) shall apply and be deemed always to have applied with respect to every copy of a record (as defined in that section) which, before the passing of this Act, has been made by the Registrar and certified by him to be a true copy of the original record, where that copy has been made and so certified for use in place of the original record; and all memorials or entries entered or made on that copy subsequent to the time of its certification by the Registrar shall be deemed accordingly to be memorials or entries duly entered or made in the original record.

## Land Transfer Amendment Act (No 2) 1982

|                |                  |
|----------------|------------------|
| Public Act     | 1982 No 115      |
| Date of assent | 30 November 1982 |
| Commencement   | see section 1    |

**An Act to amend the Land Transfer Act 1952 to provide compensation for persons suffering loss from reliance on official search copies, and to authorise the preparation of fresh duplicate grants or certificates of title where the originals have been lost**

### 1 Short Title and commencement

- (1) This Act may be cited as the Land Transfer Amendment Act (No 2) 1982, and shall be read together with and deemed part of the Land Transfer Act 1952 (hereinafter referred to as “the principal Act”).
- (2) Sections 3 and 4 shall come into force on a date to be appointed by the Governor-General by Order in Council.
- (3) Except as provided in subsection (2), this Act shall come into force on the date of its passing.

Section 1(2): sections 3 and 4 brought into force, on 1 January 1984, by the Land Transfer Amendment Act Commencement Order 1983 (SR 1983/284).

### 6 Register folium lost, etc

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Where, before the commencement of this section, the Registrar has prepared a copy of the original grant or certificate of title or other instrument relating to any land in circumstances in which he would have been authorised to do so by section 215B of the principal Act (as inserted by subsection (1)) if that section had then been in force, that copy shall be deemed to have and to have always had the same effect as it would have had if that section had been in force at the date of the preparation of that copy.



## Land Transfer Amendment Act 1991

|                |                  |
|----------------|------------------|
| Public Act     | 1991 No 118      |
| Date of assent | 9 December 1991  |
| Commencement   | see section 1(2) |

### **1 Short Title and commencement**

- (1) This Act may be cited as the Land Transfer Amendment Act 1991, and shall be read together with and deemed part of the Land Transfer Act 1952 (hereinafter referred to as “the principal Act”).
- (2) This Act shall come into force on the day after the day on which it receives the Royal assent.

### **2 Fees**

- (1)–(4) *Amendment(s) incorporated in the Act(s).*
- (5) For the avoidance of doubt, it is hereby declared that the prescription, demanding, payment, or receipt, before the commencement of this Act, of any fee was as valid and effectual as if subsections (1) and (2) had come into force on the commencement of the principal Act.

## Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

|                |               |
|----------------|---------------|
| Public Act     | 2002 No 11    |
| Date of assent | 16 May 2002   |
| Commencement   | see section 2 |

### 1 Title

- (1) This Act is the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (2) In this Act, the Land Transfer Act 1952 is called “the principal Act”.

## Part 1 Preliminary provisions

### 2 Commencement

- (1) Except as provided in subsections (2) and (3), this Act and Schedules 1, 3, and 4 come into force on 1 June 2002.
- (2) Sections 44, 60, and 61 come into force on the day after the date on which this Act receives the Royal assent.
- (3) Sections 42, 43, 45 to 52, 54, 56, 58, 59, 62, 64(1), 65(2), 66, and 67, and Schedule 2 come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made bringing different provisions into force on different dates.

Section 2(3): sections 43, 45–51, 54, 56, 59, 62, 64(1), 65(2), 66, 67, and Schedule 2 brought into force, on 26 August 2002, by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act Commencement Order 2002 (SR 2002/216).

Section 2(3): section 58 brought into force, on 5 December 2002, by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 Commencement Order (No 2) 2002 (SR 2002/355).

Section 2(3): sections 42 and 52 brought into force, on 12 June 2003, by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act Commencement Order 2003 (SR 2003/103).

### 3 Purposes of this Act

The purposes of this Act are—

- (a) to enable information technology to be used for the following purposes:
  - (i) registering instruments, dealings, and other matters under the principal Act:
  - (ii) recording and storing particulars of instruments, dealings, and other matters relating to land and title to land registered under the principal Act:

- (iii) preparing and lodging electronic instruments; and
- (b) to enable the things referred to in paragraph (a) to be done in a manner that—
  - (i) preserves the integrity and underlying purposes and principles of the principal Act; and
  - (ii) does not affect the right to claim compensation under Part 11 of the principal Act; and
- (c) otherwise to provide for the more efficient operation of the principal Act.

## Part 2

### Computer registers and electronic instruments

#### **5 Registrar may authorise registration in any medium**

The Registrar may authorise the registration or deposit of instruments, and the recording of information, in any medium.

#### **6 Recording and registration of certain matters to be effected under this Act**

If land is subject to this Act,—

- (a) that land does not cease to be subject to the principal Act; and
- (b) every matter required by the principal Act, or any other enactment, to be entered, noted, deposited, recorded, registered, or specified in respect of the land under the principal Act must instead be done under this Act; and
- (c) in the case of electronic instruments, every matter required by the principal Act must, if provision is made for it in this Act, instead be done under this Act; and
- (d) the principal Act and every other enactment has effect accordingly.

#### *Creation of computer registers*

#### **7 Creation of computer freehold registers for freehold land**

- (1) The Registrar may create a computer freehold register for any freehold interest in land that is subject to the principal Act.
- (2) If a computer freehold register is created for any land, the land becomes subject to this Act and remains subject to the principal Act.
- (3) If a computer freehold register for any land is created under this section,—
  - (a) the relevant folium established under section 33 of the principal Act is closed; and
  - (b) if the land is not electronic transactions land, a certificate of title must be issued under section 15, but, until that occurs, the certificate of title issued under the principal Act remains in force; and

- (c) if any instrument has been registered or deposited under the principal Act in respect of that land, or is subsequently lodged for registration or deposit, the instrument may be held in its definitive form as determined by the Registrar.
- (4) The Registrar need not create a computer freehold register for any land in any particular case if, in his or her opinion, it is not expedient to do so.

## 8 Content of computer freehold registers

Each computer freehold register must comprise—

- (a) the unique identifier for that computer freehold register; and
- (b) a description of the land in a form determined by the Registrar from time to time; and
- (c) the unique identifier for each instrument relevant to the land and the information necessary to enable its priority to be determined; and
- (d) the name of the registered proprietor of the freehold interest in the land; and
- (e) any minority or other restriction on the legal capacity of the registered proprietor that is known to the Registrar; and
- (f) any other information or matter—
  - (i) that is required to be included by any Act or regulations; or
  - (ii) that is set out in any form prescribed by the principal Act for certificates of title and that the Registrar considers appropriate to include; or
  - (iii) that the Registrar considers appropriate to give effect to the requirements of any Act or regulations.

## 9 Creation of computer interest registers

- (1) In this section and in section 10, **interest** means—
  - (a) a lease registered or to be registered under the principal Act; or
  - (b) any matter or interest less than the freehold incorporated or embodied as a folium of the register under the principal Act; or
  - (c) any matter or interest embodied as a folium of the provisional register; or
  - (d) any other matter incorporated or embodied in any other register in a Land Registry Office; or
  - (e) any proclamation or notice published in the *Gazette* and registered or to be registered in a Land Registry Office.
- (2) The Registrar may create a computer interest register for any interest that is required or permitted to be registered.

- (3) If a computer interest register is created for any interest, the interest becomes subject to this Act and, if subject to the principal Act, remains subject to the principal Act.
- (4) The Registrar need not create a computer interest register for any interest in any particular case if, in his or her opinion, it is not expedient to do so.
- (5) If the principal Act or any other enactment directs or empowers the Registrar to incorporate or embody any registered interest or any other matter as a folium of the register or provisional register, or in any other register in a Land Registry Office, it is sufficient if the Registrar instead creates a computer interest register for that interest.
- (6) A requirement in any enactment to certify, endorse, note, notify, or record any matter, information, or thing against, in, or on any instrument for which the Registrar has created a computer interest register is satisfied if the Registrar records the matter, information, or thing in the computer interest register.

#### **10 Content of computer interest registers**

- (1) Each computer interest register must comprise—
  - (a) the unique identifier for that computer interest register; and
  - (b) a general description of the interest; and
  - (c) a reference to the instrument that creates the interest; and
  - (d) the unique identifier for each instrument relevant to the interest and the information necessary to enable its priority to be determined; and
  - (e) the date on which the interest was registered; and
  - (f) the name of the registered proprietor of the interest or a reference to the instrument stating that name; and
  - (g) any minority or other restriction on the legal capacity of the registered proprietor that is known to the Registrar; and
  - (h) any other information—
    - (i) that is required to be included by any Act or regulations; or
    - (ii) that the Registrar considers appropriate to give effect to the requirements of any Act or regulations.
- (2) If the interest to which the computer interest register relates is a lease registered or to be registered under the principal Act, the register may also include any provisions set out in any form prescribed by the principal Act for certificates of title that the Registrar considers appropriate to include.
- (3) A reference in the computer interest register to the instrument creating the interest to which the register relates takes effect as if the instrument were fully set out in the register.

**11 Creation of computer unit title registers**

- (1) The Registrar may create a computer unit title register for a stratum estate in freehold or a stratum estate in leasehold, within the meaning of the Unit Titles Act 2010.
- (2) If a computer unit title register is created in respect of any principal unit (and any associated accessory units) and any future development units under the Unit Titles Act 2010,—
  - (a) the unit or units become subject to this Act and remain subject to the Unit Titles Act 2010 and the principal Act; and
  - (b) the relevant folium established under section 33 of the principal Act is closed; and
  - (c) if the unit is not electronic transactions land, a certificate of title must be issued under section 15, but, until that occurs, the certificate of title issued under the principal Act remains in force; and
  - (d) if any instrument has been registered or deposited under the principal Act in respect of the unit or units, or is subsequently lodged for registration or deposit, the Registrar may determine, for the purposes of section 27, the definitive form in which the instrument may be held.
- (3) The provisions of this Part apply, to the extent that they are applicable, and with any necessary modifications, to any unit or units in respect of which a computer unit title register has been created as if that register were a computer freehold register.
- (4) On or after creating a computer unit title register in respect of a unit, the Registrar may also create, in any medium determined by the Registrar, a register—
  - (a) that must be treated as the supplementary record sheet kept for the relevant unit plan in accordance with section 47 of the Unit Titles Act 2010; and
  - (b) that includes every entry on any supplementary record sheet kept in accordance with section 47 of the Unit Titles Act 2010 at the time the register is created; and
  - (c) that has a unique identifier determined by the Registrar.
- (5) The Registrar need not create a computer unit title register in respect of any unit in any particular case if, in his or her opinion, it is not expedient to do so.

Section 11(1): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Section 11(2): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Section 11(2)(a): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Section 11(4)(a): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Section 11(4)(b): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

## **12 Content of computer unit title register**

Each computer unit title register must comprise—

- (a) the unique identifier for that computer unit title register; and
- (b) the number of the principal unit on the relevant unit plan and the letter allotted to any associated accessory unit and any future development unit on that plan; and
- (c) the unique identifier for each instrument relevant to the principal unit and any associated accessory unit, and the information necessary to enable the priority of the instrument to be determined; and
- (d) a statement that the stratum estate concerned is subject to the reservations, restrictions, encumbrances, liens, and interests that are notified by memorial or by a unique identifier on the computer unit title register and on the relevant unit plan and the supplementary record sheet for the plan kept in accordance with section 47 of the Unit Titles Act 2010; and
- (e) the name of the registered proprietor of the stratum estate concerned; and
- (f) any minority or other legal restriction on the legal capacity of the registered proprietor that is known to the Registrar; and
- (g) any other information that is required to be included by any Act or regulations, or that the Registrar considers appropriate to give effect to the requirements of any Act or regulations.

Section 12(d): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

## **13 Composite computer registers**

- (1) If the Registrar considers it appropriate, he or she may create a composite computer register comprising all or any of a computer freehold register, computer interest register, and computer unit title register.
- (2) Composite certificates of title for land that is not electronic transactions land may be issued accordingly.

## **14 Format of computer registers**

A computer register may be held or stored in any medium or combination of media that will enable it to be maintained or accessed for the purposes of this Act and the principal Act, or for any other lawful purpose.

*Certificates of title for land that is not electronic transactions land***15 Issue of certificates of title for land that is not electronic transactions land**

- (1) This section applies to land subject to this Act that is not electronic transactions land.
- (2) When acting under section 16(2), (3), (4)(a), or (4)(b), the Registrar must—
  - (a) prepare a new certificate of title; and
  - (b) cancel any other relevant certificate of title relating to the land that is in the Registrar's custody and issue the new certificate in its place; and
  - (c) give the new certificate to the person who would otherwise be entitled to receive the certificate of title.
- (3) The Registrar may not issue a certificate of title under subsection (2) unless any previous relevant certificate of title has been produced and cancelled or unless the Registrar has dispensed with production of the previous relevant certificate of title and that dispensation is recorded in the new certificate of title.
- (4) The format of the certificate of title issued under this section must be determined by the Registrar and must include a representation of the New Zealand Coat of Arms and the seal of the Registrar.
- (5) When creating a computer interest register for a lease registered under this Act, the Registrar must issue a leasehold certificate of title, and the provisions of subsection (2) apply with any necessary modifications.

**16 Directions and authorisations for land that is not electronic transactions land**

- (1) This section applies to land subject to this Act that is not electronic transactions land.
- (2) When an application or request is made for a certificate of title under any enactment for any purpose, including any amalgamation, subdivision, or separation, the Registrar may instead create the appropriate computer register and issue a certificate of title under section 15.
- (3) If the Registrar is authorised or directed by any enactment to issue a certificate of title, the Registrar may instead create a computer register and issue a certificate of title under section 15.
- (4) If any enactment contains an authorisation or direction of a type described in subsection (5), the Registrar may instead do either or both of the following:
  - (a) make an equivalent entry in a computer register;
  - (b) create an appropriate computer register.
- (5) Subsection (4) refers to an authorisation or direction to—
  - (a) make an entry in the register; or



- (b) enter a memorandum in the register or endorse one on a certificate of title or on a duplicate certificate of title; or
  - (c) amend a certificate of title; or
  - (d) make any other entry or endorsement or notation in the register or on a certificate of title or on a duplicate certificate of title; or
  - (e) file or deposit any instrument or covenant, notice, or resolution in a Land Registry Office.
- (6) If any enactment contains an authorisation or direction to certify, endorse, note, notify, or record any matter, information, or thing against, in, or on a document held in any Land Registry Office, the Registrar may instead make an appropriate entry in a computer register.
- (7) If the Registrar takes action under subsection (4) or subsection (6) in relation to an authorisation or direction, a requirement under any enactment that the Registrar take action in relation to a duplicate or triplicate of a document affected by that authorisation or direction does not apply.

**17 References to certificates of title for land that is not electronic transactions land**

- (1) This section applies to references to certificates of title in relation to land subject to this Act that is not electronic transactions land.
- (2) A reference in the principal Act to a certificate of title that is a reference to a folium of the register must be read as a reference to the appropriate computer register.
- (3) A reference in the principal Act to a certificate of title or duplicate certificate of title that is a reference to a certificate of title issued or capable of being issued to the registered proprietor of an estate or interest in any land must be read in relation to an estate or interest for which a certificate of title has been issued under section 15 as a reference to that certificate of title.
- (4) A reference in any enactment to the issue of a certificate of title must be read as a reference to the creation of a computer register and the issue of a certificate of title.
- (5) *[Repealed]*

Section 17(2): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Section 17(3): amended, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

Section 17(5): repealed, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

*No certificates of title for electronic transactions land***18 No certificates of title for electronic transactions land**

- (1) The Registrar must not issue a certificate of title for electronic transactions land.
- (2) If land is declared under section 25 to be electronic transactions land, all certificates of title (whether referred to as certificates of title or outstanding duplicate certificates of title) for the land are cancelled as from the date on which the declaration takes effect.

**19 Directions and requirements for electronic transactions land**

- (1) This section applies to land subject to this Act that is electronic transactions land.
- (2) A requirement or authorisation for the Registrar to issue a certificate of title is satisfied by creating an appropriate computer register.
- (3) A requirement that any person produce or deliver a certificate of title does not apply.
- (4) A requirement or authorisation for the Registrar to cancel a certificate of title is satisfied by doing an act in relation to a computer register that has the same effect.
- (5) A reference in any enactment for the purpose of describing a parcel of land must be read as a reference with equivalent effect to a computer register.
- (6) If any enactment contains an authorisation or direction of a type described in subsection (7), the Registrar may instead do either or both of the following:
  - (a) make an equivalent entry in a computer register:
  - (b) create an appropriate computer register.
- (7) Subsection (6) refers to an authorisation or direction to—
  - (a) make an entry in the register; or
  - (b) enter a memorandum in the register or endorse one on a certificate of title or on a duplicate certificate of title; or
  - (c) amend a certificate of title; or
  - (d) make any other entry or endorsement or notation in the register or on a certificate of title or on a duplicate certificate of title; or
  - (e) file or deposit any instrument or covenant, notice, or resolution in a Land Registry Office.
- (8) If any enactment contains an authorisation or direction to certify, endorse, note, notify, or record, any matter, information, or thing against, in, or on a document held in any Land Registry Office, the Registrar may instead make an appropriate entry in a computer register.

- (9) If the Registrar takes action under subsection (6) or subsection (8) in relation to an authorisation or direction, any requirement under any enactment that the Registrar take action in relation to a duplicate or triplicate of a document affected by that authorisation or direction does not apply.

## **20 References to certificates of title for electronic transactions land**

- (1) This section applies to references in any enactment to certificates of title in relation to land subject to this Act that is electronic transactions land.
- (2) A reference to a folium of the register must be read as a reference to the appropriate computer register.
- (3) A reference to a certificate of title or duplicate certificate issued or capable of being issued to the registered proprietor of an estate or interest in any land must be read as a reference to the appropriate computer register.

- (4) *[Repealed]*

Section 20(4): repealed, on 20 June 2011, by section 233(1) of the Unit Titles Act 2010 (2010 No 22).

## *Easements*

## **21 How easement recorded**

- (1) Whenever any easement or incorporeal right (other than an annuity or rent-charge) in or over any land under this Act or the principal Act is created for the purpose of being annexed to, or used and enjoyed together with, other land under this Act or the principal Act, the Registrar must enter a unique identifier or a memorial of the instrument creating that easement or incorporeal right on the computer register and any certificate of title for the other land.
- (2) That memorial or unique identifier has, as from the date of its entry, the effect of including the easement or incorporeal right in the computer register and certificate of title (if any).

## *Electronic instruments*

## **22 Electronic workspace facilities**

- (1) The Registrar may approve 1 or more electronic workspace facilities for use in the preparation of electronic instruments for presentation to the Registrar.
- (2) The Registrar must not approve an electronic workspace facility unless he or she is satisfied that adequate provision is made to ensure that—
- (a) instruments prepared in the facility comply with the requirements of this Act and the principal Act when lodged; and
  - (b) the Registrar is able to carry out his or her functions under this Act.
- (3) The Registrar may monitor activities in any electronic workspace facility for the purpose of detecting fraud or improper dealings.

- (4) The Registrar may withdraw approval of any electronic workspace facility at any time if the facility fails to meet the requirements referred to in subsection (2).
- (5) The chief executive may (but is not required to) provide an approved electronic workspace facility.
- (6) If the chief executive does provide an electronic workspace facility, he or she may—
  - (a) set conditions for its use, including his or her right to carry out audits to ensure a person's compliance with the conditions, and prevent its use by persons who do not comply with the conditions; and
  - (b) monitor activities in it for the purpose of maintaining its effectiveness and efficiency.

### **23 When electronic instruments are in order for registration**

- (1) An electronic instrument is in order for registration if—
  - (a) the instrument has been prepared in an electronic workspace facility approved by the Registrar; and
  - (b) the instrument is in an acceptable form; and
  - (ba) the instrument is associated with the information required under section 156B(2) of the principal Act; and
  - (c) the instrument contains or is associated with a certification under section 164A of the principal Act; and
  - (d) in respect of any matter not provided for in this Act, the instrument is in order for registration under the principal Act.
- (2) If an electronic instrument is not in order for registration,—
  - (a) the Registrar must notify the person who submitted the instrument, and that notification constitutes an effective return of the instrument under section 43(1)(a) of the principal Act; and
  - (b) section 43 of the principal Act applies with any necessary modifications.

Section 23(1)(ba): inserted, on 1 October 2015, by section 9(2) of the Land Transfer Amendment Act 2015 (2015 No 82).

### **24 Electronic lodgement may be made compulsory for practitioners**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, apply this section to practitioners.
- (2) The Minister must not make a recommendation under subsection (1) unless—
  - (a) he or she is satisfied that the organisations that he or she considers are representative of practitioners have been consulted; and
  - (b) an electronic workspace is available.

- (3) If this section applies, practitioners may only lodge instruments of a specified class electronically and not otherwise unless—
- (a) the practitioner has been barred from giving certifications under section 164B of the principal Act; or
  - (b) the Registrar has determined that it is impractical or inappropriate to present an instrument electronically.
- (4) The Registrar may refuse to accept a paper instrument presented by any person if he or she believes on reasonable grounds that acceptance of the paper instrument would defeat the purpose of an Order in Council made under subsection (1).

Section 24 heading: amended, on 1 August 2008, by section 347(1) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 24(1): amended, on 1 August 2008, by section 347(2)(a) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 24(2)(a): amended, on 1 August 2008, by section 347(2)(a) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 24(3): amended, on 1 August 2008, by section 347(2)(a) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 24(3)(a): amended, on 1 August 2008, by section 347(2)(b) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

## **25 Electronic transactions land**

- (1) Land is electronic transactions land if it is subject to this Act and—
- (a) the Registrar makes an entry on a computer register to the effect that the land is electronic transactions land; or
  - (b) the Registrar has, by notice in the *Gazette*, declared the land to be electronic transactions land; or
  - (c) the land forms part of an area of land that the Registrar has, by notice in the *Gazette*, declared to be electronic transactions land.
- (2) Land ceases to be electronic transactions land if—
- (a) the Registrar makes an entry to that effect on a computer register; or
  - (b) the Registrar has, by notice in the *Gazette*, declared that the land is no longer to be regarded as electronic transactions land; or
  - (c) the land forms part of an area of land that the Registrar has, by notice in the *Gazette*, declared no longer to be electronic transactions land.

## **26 Acceptable forms for electronic instruments**

- (1) An electronic instrument is in an acceptable form only if it is in a form specified by the Registrar.
- (2) Without limiting subsection (1), a specification under that subsection may relate to—
- (a) the information contained in the form:

- (b) the electronic format to be used;
  - (c) the way a certification is included in, or associated with, the form.
- (3) Despite any rule of law to the contrary, an electronic instrument need not contain an operative provision that gives effect to the object of the instrument.

*Registration and access to register*

**27 Registrar's copy of instrument to be definitive**

- (1) Whenever, after the commencement of this Act, an instrument or other document is presented to the Registrar under the principal Act, this Act, or any other Act, the Registrar may—
- (a) produce, as often as the Registrar thinks necessary, a record or copy or image of the instrument or document in any medium determined by the Registrar; and
  - (b) return the instrument or document (and any extra copies presented) to the person who presented it with an indication that it has been copied or imaged under this subsection unless the instrument or document needs to be retained to enable the copy or image to be understood.
- (2) When the Registrar produces, under subsection (1), a record or copy or image of an instrument or other document and accepts the record or copy or image for the purposes of registration under section 30 or the performance of any other statutory function, the record or copy or image must be taken to be the definitive form of the instrument or document on and from the day on which it was presented to the Registrar.
- (3) The Registrar may produce a record or copy or image of—
- (a) any instrument in respect of which registration has been completed under the principal Act; or
  - (b) any other document that has been deposited under the principal Act.
- (4) When the Registrar produces, under subsection (3), a record or copy or image of an instrument or other document, the record or copy or image must be taken to be the definitive form of the instrument or other document.
- (5) In the absence of proof to the contrary, every matter arising under the principal Act or this Act relating to an instrument or other document recorded or copied or imaged under this section must, for all purposes, be effected and determined as if the instrument or other document had been presented in that form.
- (6) If the Registrar acts under subsection (1), section 38(1) of the principal Act does not apply.

**28 Instrument presented but copying, imaging, or data capture defective**

- (1) In addition to the powers under section 43 of the principal Act, the Registrar may refuse to complete or to proceed with the registration of an instrument, to

do any act, or to make any entry if, after the instrument has been presented, for any reason it is impracticable,—

- (a) in the case of a paper instrument, to properly copy or image it; or
  - (b) in the case of an electronic instrument, to properly capture the data in it.
- (2) If subsection (1) applies, the Registrar must notify the person from whom the instrument was received and arrange for it to be resubmitted.
- (3) If subsection (1) applies,—
- (a) the priority of the instrument is not affected so long as the instrument is resubmitted within 2 months or any other period that the Registrar may allow; and
  - (b) the Registrar must contribute, to the extent prescribed, to the costs or expenses incurred in resubmitting the instrument; and
  - (c) if any instrument is not resubmitted in accordance with this section within the period applicable under paragraph (a), it must be treated as not having been presented for registration.

## **29 Unique identifiers**

The Registrar may assign a unique identifier—

- (a) for every instrument or other document presented to, deposited with, or registered by the Registrar; and
- (b) for every computer register created by the Registrar.

## **30 How registration effected**

- (1) The registration of an instrument or other matter under this Act is effected when a unique identifier for the instrument or matter is entered in the relevant computer register.
- (2) Section 34 of the principal Act does not apply if registration is effected under this Act.

## **31 Information to become part of register**

- (1) All information at any time registered under this Act is part of the register.
- (2) This section does not affect the limitation imposed by section 155A(5) of the principal Act.
- (3) This section does not apply to any information if any other enactment expressly provides that the information does not form part of the register.

## **32 Information to be retained**

All information at any time recorded in a computer register must be retained by the Registrar either in the computer system or elsewhere, even if—

- (a) the information was erroneous and has been corrected; or

- (b) the information is an old description that has been superseded; or
- (c) the information was, but is no longer, current information; or
- (d) the computer system is no longer being maintained.

### **33 Rights to search and copy information**

- (1) The right to have access to the register for the purpose of inspection under section 46 of the principal Act does not apply to computer registers.
- (2) The following have effect as provided for in subsections (3) to (6):
  - (a) the power of the Registrar to provide a search copy under section 45A of the principal Act:
  - (b) the power of the Registrar to provide a copy of an instrument under any other enactment:
  - (c) the right of a person to receive a copy of an instrument under any enactment.
- (3) The right and the powers referred to in subsection (2) have effect individually as a right to receive and a power to provide,—
  - (a) in the case of an instrument recorded or registered in the medium of paper, a paper document that is a copy of that instrument; or
  - (b) in the case of an instrument recorded in a medium other than paper, a paper document that records the content of the instrument and complies with section 35(a) and (b).
- (4) In addition, the right and the powers referred to in subsection (2) have effect individually as a right to receive and a power to provide information in forms other than in paper document form if the chief executive so determines.
- (5) The chief executive may make a determination under subsection (4) subject to conditions specified by him or her.
- (6) The exercise of the right or of any power referred to in subsection (2) is subject to the payment of any fee or charge prescribed in regulations.

### *Evidentiary provisions*

### **34 Evidentiary effect of certificates of title and computer registers**

- (1) This section applies to a document or instrument that—
  - (a) either—
    - (i) appears to record the contents of a computer register under this Act; or
    - (ii) if the land is not electronic transactions land, appears to be in the form prescribed for a certificate of title; and
  - (b) does not appear to have been altered in any way.
- (2) The document or instrument—



- (a) must be received in all courts as evidence of—
    - (i) the information it contains; and
    - (ii) the recording of that information in the register; and
  - (b) is conclusive evidence that, at the time it was issued, the information shown on it identified all of the interests and other matters in the computer register concerned; and
  - (c) unless the contrary is proved by the production of a statement by the Registrar under subsection (3), is conclusive evidence that—
    - (i) the person named in the certificate or computer register (or in any information forming part of it) as holding an estate or interest in land to which it relates holds that estate or interest as from the date of the certificate or as from the date from which it is expressed to take effect; and
    - (ii) the land to which it relates is subject to the principal Act and this Act.
- (3) In the absence of proof to the contrary, a statement certified by or on behalf of the Registrar as to any matters recorded under this Act is conclusive evidence of those matters.
- (4) In the absence of proof to the contrary, the fact that a statement relating to any matter referred to in subsection (3) purports to be certified by or on behalf of the Registrar is conclusive evidence that it is certified by or on behalf of the Registrar.

**35 Computer printout, etc, admissible in evidence**

If an instrument is recorded or registered in any medium other than paper, a document that records the contents of the instrument is admissible in evidence if the document—

- (a) is generated by or produced from the computer system; and
- (b) is in a readily understandable form; and
- (c) is certified by or on behalf of the Registrar as a true representation of the instrument.

*Sections 65 to 69 of principal Act excluded*

**36 Certain provisions of principal Act not to apply to certificates of title issued under this Act**

Sections 65 to 69 of the principal Act do not apply in relation to any land or interest if a computer register has been created under this Act for the land or interest.

*Administration***37 Abolition of offices of Registrar of Deeds and Deputy Registrar of Deeds**

- (1) The offices of Registrar of Deeds and Deputy Registrar of Deeds under the Deeds Registration Act 1908 are abolished.
- (2) No compensation is payable to any holder of the office of Registrar of Deeds or Deputy Registrar of Deeds by reason of the abolition of the offices in subsection (1).

**38 Statutory references to District Land Registrars**

- (1) This section applies to every reference in any enactment other than this Act to—
  - (a) a District Land Registrar generally; or
  - (b) the District Land Registrar of a specified district; or
  - (c) the District Land Registrar of the district in which any land is situated.
- (2) Every reference to which this section applies must be read as a reference to the Registrar.
- (3) The references to a Registrar in sections 225 and 226 of the principal Act include District Land Registrars.

**Part 3****Amendments to Land Transfer Act 1952****66 Transitional provisions relating to easements**

- (1) Despite the repeal of sections 90A to 90F of the principal Act by section 43, but subject to subsections (2), (3), and (4), those sections of the principal Act (as they read immediately before the commencement of section 43) continue to apply to any easement certificate registered or executed before the commencement of this Act.
- (2) Despite anything contained in sections 90A to 90D of the principal Act (as they read immediately before the commencement of section 43) or any other rule of law to the contrary, on the date of the coming into force of this section, any easement specified in an easement certificate registered under the former section 90A that has not previously been created by registration of an instrument of disposition is deemed to have been created under this subsection as if an instrument of disposition of the land had been registered.
- (3) All covenants and conditions contained or implied in any easement certificate referred to in subsection (2) apply to an easement created under subsection (2) as if an instrument of disposition had created the easement.

- (4) The provisions of section 90E of the principal Act (as substituted by section 43), so far as they are applicable, apply to any easement created under this section.
- (5) Despite section 21 of this Act and section 69 of the principal Act, the recording of an easement certificate specifying any easement to be created under this section must be regarded as complying with those sections (so far as they are applicable).

**67 Transitional provisions relating to landbrokers**

- (1) This section applies to persons who, immediately before the commencement of this section, held a licence as a landbroker under section 229 of the principal Act.
- (2) Despite the repeal of sections 229 to 234 and Schedule 6 of the principal Act by section 64(1), those sections of the principal Act continue to apply to persons to whom this section applies until the close of the appointed date.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare the appointed date for the purposes of subsection (2).
- (4) The Minister must not make a recommendation under subsection (3) unless he or she is satisfied that persons to whom this section applies are eligible to be licensed under an enactment providing for the licensing of conveyancers.

## Reprints notes

### 1 *General*

This is a reprint of the Land Transfer Act 1952 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Land Transfer Amendment Act 2015 (2015 No 82)  
Companies Amendment Act 2013 (2013 No 111): section 14  
Marriage (Definition of Marriage) Amendment Act 2013 (2013 No 20): section 9  
Criminal Procedure Act 2011 (2011 No 81): section 413  
Limitation Act 2010 (2010 No 110): section 58  
Property Law Act 2007 (2007 No 91): section 364(1)  
Lawyers and Conveyancers Act 2006 (2006 No 1): sections 342–345  
Land Transfer Amendment Act 2005 (2005 No 58)  
Cadastral Survey Act 2002 (2002 No 12): sections 68(2), 69(1)  
Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11)  
Local Government (Rating) Act 2002 (2002 No 6): section 137(1)  
Public Trust Act 2001 (2001 No 100): section 170(1)  
Human Rights Amendment Act 2001 (2001 No 96): section 57  
Interpretation Act 1999 (1999 No 85): section 38(1)  
Land Transfer (Automation) Amendment Act 1998 (1998 No 123)  
Land Transfer Amendment Act (No 2) 1994 (1994 No 43)  
Land Transfer Amendment Act 1994 (1994 No 12)  
Land Transfer Amendment Act 1993 (1993 No 124)  
Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46): section 137(1)  
Land Transfer Amendment Act 1991 (1991 No 118)  
Public Finance Act 1989 (1989 No 44): section 83(7)  
Protection of Personal and Property Rights Act 1988 (1988 No 4): section 113

Conservation Act 1987 (1987 No 65): section 65(1)  
Survey Act 1986 (1986 No 123): section 81(3)  
Constitution Act 1986 (1986 No 114): section 29(2)  
Land Transfer Amendment Act 1986 (1986 No 94)  
Land Transfer Amendment Act 1985 (1985 No 90)  
Land Transfer Amendment Act (No 2) 1982 (1982 No 115)  
Land Transfer Amendment Act 1982 (1982 No 22)  
District Courts Amendment Act 1979 (1979 No 125): section 18(2)  
Judicature Amendment Act 1979 (1979 No 124): section 12  
Maori Purposes Act 1975 (1975 No 135): section 16(2)  
Land Transfer Amendment Act 1972 (1972 No 76)  
Mental Health Act 1969 (1969 No 16): section 129(4), (7)  
Land Transfer Amendment Act 1966 (1966 No 37)  
Land Transfer Amendment Act 1963 (1963 No 61)  
Land Transfer Amendment Act 1961 (1961 No 9)  
Land Transfer Amendment Act 1960 (1960 No 69)  
Land Transfer Amendment Act 1959 (1959 No 29)  
Land Transfer Amendment Act 1958 (1958 No 75)  
Summary Proceedings Act 1957 (1957 No 87): section 214(1)  
Archives Act 1957 (1957 No 13): section 26(1)(b)  
Finance Act 1954 (1954 No 90): section 36  
Stamp Duties Amendment Act 1953 (1953 No 54): section 7(2)  
Maori Purposes Act 1947 (1947 No 59): section 2  
Land Transfer (Hawke's Bay) Amendment Act 1933 (1933 No 39)