

Current Act

(5) Any question as to the sufficiency of any instrument of mortgage tendered pursuant to this section shall in the absence of agreement between the parties be determined by an arbitrator.

Sale of land subdivided into not more than two allotments.

8A. (1) Where—

S. 8A inserted by
No. 7898 s. 2.

(a) a notice of intention to subdivide land into not more than two allotments in the form of the Thirtieth Schedule to the *Local Government Act 1958* has been given (whether before or after the commencement of the *Sale of Land (Amendment) Act 1969*); or

(b) in respect of any land such a notice is required to be given—
and neither of the allotments has been sold before the said commencement, no person shall sell either of those allotments before a plan of subdivision on which each of the allotments is shown as an allotment has been sealed with the seal of the municipality and, where any part of the land is under the operation of the *Transfer of Land Act 1958*, the plan has been approved by the Registrar pursuant to section 97 of that Act unless the contract provides that the deposit and all other moneys payable by the purchaser are to be paid to a solicitor or to a licensed estate agent who shall be named or specified in the contract to be held by the solicitor or licensed estate agent on trust for the purchaser until the plan has been so sealed and, where any part of the land is under the operation of the *Transfer of Land Act 1958*, so approved.

(2) Where a contract provides, pursuant to the provisions of the last preceding sub-section, for the payment of the deposit and all other moneys to a solicitor or licensed estate agent, the deposit and all other moneys payable by the purchaser under the contract before the sealing and (where required by sub-section (1)) the approval of the plan shall be paid to the solicitor or licensed estate agent named or specified in the contract.

(3) Where there has been any contravention of sub-section (1) or sub-section (2), the purchaser may at any time before the plan has been sealed and (where required by sub-section (1)) approved, avoid the sale.

(4) If the plan is not so sealed and (where required by sub-section (1)) approved within six months after any such sale, the purchaser may at any time after the expiration of the said period of six months but before the plan is so sealed and (where so required) approved, avoid the sale.

(5) Where a purchaser avoids a sale pursuant to this section all moneys (including the deposit) shall be recoverable by him from the solicitor or licensed estate agent or other person to whom they were paid: Provided that the purchaser shall be liable to pay an occupation rent for the period (if any) during which he was in actual occupation of the allotment or entitled to the receipt of the rents and profits thereof.

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Ss. (1) amended
by No. 7052 s. 2
(g) (i), substituted
by No. 10216 s. 4
(a).

9. (1) If—

(a) a notice of intention to subdivide land into three or more allotments in the form of the Thirtieth Schedule to the *Local Government Act 1958* has been given (whether before or after the commencement of the *Sale of Land (Allotments) Act 1985*); or

(b) in respect of any land such a notice is required to be given—
a person shall not sell such an allotment unless—

(c) the land—

(i) is under the operation of the *Transfer of Land Act 1958*;
or

(ii) is the subject of an application to bring the land under the operation of the *Transfer of Land Act 1958* and the conditions and requirements relating to the making of the application and to the lodging of the plan of subdivision in the Office of Titles prescribed by the regulations have been complied with; and

(d) the allotment is on a plan of subdivision which has been—

(i) sealed by the council of the municipality concerned;
and

(ii) approved by the Registrar pursuant to section 97 of the *Transfer of Land Act 1958*.

Ss. (1A) inserted
by No. 8661 s. 40
(a), amended by
No. 9128 s. 8 (2)
(a).

(1A) Except as provided in section 9A, where a notice of intention to subdivide any land in cluster form or to effect a redevelopment in the form of the First Schedule to the *Cluster Titles Act 1974* has been given or where in respect of any land such a notice is required to be given, no person shall sell a lot a new lot or an enlarged lot on any part of the land proposed to be subdivided or redeveloped (as the case may be) unless the lot new lot or enlarged lot is shown on a plan of cluster subdivision that has been registered or a plan of cluster redevelopment that has been approved under the said Act.

Ss. (1B) inserted
by No. 8661 s. 40
(a), amended by
No. 9128 s. 8 (2)
(b) (c).

(1B) Except as provided in section 9A, where any land to be subdivided in cluster form is to be developed in stages, no person shall sell a lot in any stage in respect of which a council requirement is made unless the lot is shown on a plan of cluster subdivision that has been registered or a plan of cluster redevelopment that has been approved and a clearing statement is lodged with respect to every council requirement made in relation to that stage.

Ss. (1C) inserted
by No. 8661 s. 40
(a).

(1C) Words and expressions used in sub-sections (1A) and (1B) have the same meanings as in the *Cluster Titles Act 1974* and Part IV. thereof respectively.

Ss. (2) amended
by No. 8661 s. 40
(b).

(2) Any agreement for sale entered into in contravention of sub-section (1) sub-section (1A) or sub-section (1B) shall be absolutely

void and of no effect and any person who has paid any money under such agreement shall be entitled to recover the same.

(3) For the purposes of section 29 of the *Cluster Titles Act 1974*, the Registrar may accept a statutory declaration made by the person giving or required to give notice of intention as aforesaid or by some other competent person as conclusive evidence that there has been no contravention of the provisions of this section.

Ss. (3) amended
by No. 10216 s. 4
(b).

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Ss. (4) amended
by No. 7052 s. 2
(g) (ii), repealed
by No. 10216 s. 4
(c).

Ss. (5) repealed
by No. 10216 s. 4
(c).

Sale of land prior to approval of plan.

9AA. (1) Section 9 (1) (d) (ii) does not apply to the sale of an allotment on a plan of subdivision where—

S. 9AA inserted
by No. 10216
s. 5.

- (a) the contract for the sale of that allotment provides that the deposit moneys payable by the purchaser are to be paid—
 - (i) to a solicitor or licensed estate agent acting for the vendor to be held by the solicitor or licensed estate agent on trust for the purchaser until the approval of the plan of subdivision; or
 - (ii) into a special purpose banking accounting in a bank in Victoria specified by the vendor in the contract in the joint names of the purchaser and the vendor until the approval of the plan of subdivision; and
- (b) the deposit moneys payable under the contract do not exceed 10 per cent of the purchase price of the allotment.

(2) The deposit moneys paid by the purchaser prior to the approval of the plan under a prescribed contract of sale of an allotment shall be paid (as the case requires)—

- (a) to the solicitor or licensed estate agent acting for the vendor; or
- (b) into a special purpose banking account in the bank in Victoria specified in the contract in the joint names of the purchaser and the vendor.

(3) A banking account established under sub-section (2) (b) may be drawn upon only with the signature of both the vendor and the purchaser or the personal representative of the vendor or purchaser (as the case may be).

(4) Nothing in this section shall impose any additional liability upon the bank in respect of any money deposited pursuant to sub-section (2) (b).

pounds ;

(c) If the mortgagee had actual or constructive notice of the interest of the purchaser under the terms contract—

- (i) the mortgagee shall not be entitled to exercise his remedies under the mortgage ;
- (ii) the mortgagee shall be obliged to execute a proper discharge of the mortgage in respect of the land sold and to obtain registration of that discharge ;
- (iii) any amount paid by the mortgagee to the vendor may be recovered by the mortgagee from the vendor ;

(d) In the case of land under the operation of the *Transfer of Land Act 1958* :—

- (i) Upon the registration of a transfer in accordance with the provisions of section seventy-seven of the *Transfer of Land Act 1958* the title of the purchaser from the mortgagee shall not be impeachable on the ground that the power of sale was exercised in contravention of this section ; and for the purposes of Part III. of the *Transfer of Land Act 1958* the purchaser from the mortgagee shall be deemed to have dealt with the registered proprietor of the land ;
- (ii) The purchaser shall have a remedy in damages against the mortgagee for exercising the power of sale if the mortgagee had actual or constructive notice of the interest of the purchaser ; and

(iii) The provisions of Division nine of Part IV. of the *Transfer of Land Act 1958* except so far as inconsistent with the express provisions of this section shall apply.

8. (1) Where any land which is subject to a mortgage is or has been subdivided into separate allotments or parcels the mortgagee may require the mortgagee to apportion the mortgage moneys to the respective allotments or parcels of land which are subject to the mortgage.

(2) If the mortgagee fails to apportion the mortgage moneys to the respective allotments or parcels or if the mortgagee is dissatisfied

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apportioned to each such allotment or parcel.

(3) Where the mortgage moneys have been apportioned to the respective allotments or parcels pursuant to this section the mortgagee shall on tender of—

- (a) the amount apportioned to any particular allotment or parcel ; or
- (b) a registrable instrument of mortgage to secure payment of all moneys apportioned to that allotment or parcel—

execute and deliver to the mortgagee a discharge of the first mentioned mortgage in so far as it relates to that allotment or parcel.

(4) A mortgage tendered under this section shall contain all such powers in favour of the mortgagee and all such covenants on the part of the mortgagee as are usual in mortgages and shall fully accord with and provide for the observance of all obligations of the mortgagee pursuant to the mortgage to be discharged and shall be prepared and registered at the cost of the mortgagee.

(5) Any question as to the sufficiency of any instrument of mortgage tendered pursuant to this section shall in the absence of agreement between the parties be determined by an arbitrator.

9. (1) Where a notice of intention to subdivide land into allotments in the form of the Thirtieth Schedule to the *Local Government Act 1958* has been given (whether before or after the commencement of this Act) or where in respect of any land such a notice is required to be given no person shall sell any such allotment unless the land is under the operation of the *Transfer of Land Act 1958* and the allotment is an allotment on a plan of subdivision approved by the Registrar pursuant to section ninety-seven of that Act.

(2) Any agreement for sale entered into in contravention of the last preceding sub-section shall be absolutely void and of no effect and any person who has paid any money under such agreement shall be entitled to recover the same.

(3) The Registrar may accept a statutory declaration made by the person giving or required to give notice of intention as aforesaid or by some other competent person as conclusive evidence that there has been no contravention of the provisions of this section.

(4) This section shall not apply—

- (a) to the sale of an allotment on any plan lodged with the Registrar before the coming into operation of this section ; and
- (b) to

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Sale of subdivided land to be prohibited before plan approved by Registrar.

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