



REAL PROPERTY (TRANSFER OF ALLOTMENTS) AMENDMENT ACT 1992

No. 23 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 23 of 1992

An Act to amend the Real Property Act 1886 and to make a related amendment to the Strata Titles Act 1988.

[Assented to 14 May 1992]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Real Property (Transfer of Allotments) Amendment Act 1992*.

(2) The *Real Property Act 1886* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 223/a—Interpretation

3. Section 223/a of the principal Act is amended—

(a) by inserting after the definition of “**Metropolitan Adelaide**” in subsection (1) the following definition:

“**the Mount Lofty Ranges**” means that part of the State delineated in General Registry Office Plan No. 180 of 1992:

and

(b) by inserting after subsection (1a) the following subsection:

(1b) For the purposes of this Part allotments will be taken to be contiguous if they abut one another at any point or if they are separated only by—

(a) a road, street, railway, thoroughfare or travelling stock route;

or

(b) a reserve or other similar open space dedicated for public purposes.

Amendment of s. 223/g—Certificate of the Commission

4. Section 223/g of the principal Act is amended by inserting after subsection (5) the following subsection:

(5a) Where the allocation of amalgamation units is required to a proposed division of land (see Division IVA), a certificate of approval under this section in respect of the division must—

(a) specify the date on which the application for planning authorization in respect of the division was lodged with the relevant planning authority;

and

(b) specify the number of amalgamation units that must be allocated to the division.

Amendment of s. 223/l—Amalgamation

5. Section 223/l of the principal Act is amended by striking out from paragraph (d) of subsection (2) “allotments” and substituting “allotment”.

Insertion of new Division

6. The following division is inserted in Part XIXAB of the principal Act after Division IV:

DIVISION IVA—AMALGAMATION OF ALLOTMENTS IN EXCHANGE FOR
DIVISION OF LAND

Interpretation

223/la. In this Division, unless the contrary intention appears—

“division” includes the division of land by strata plan.

Amalgamation in exchange for division

223/lb. (1) The Governor may, by regulation, provide that the Registrar-General must not deposit in the Lands Titles Registration Office a plan of division, or a strata plan, in respect of division, or a specified class of division, in a specified part of the Mount Lofty Ranges unless the number of amalgamation units specified in the regulation has been allocated to the proposed division.

(2) A regulation under subsection (1)—

(a) will apply to a division of land in respect of which—

(i) in the case of division under this Part—the application for planning authorization under the *Planning Act 1982* was lodged with the relevant planning authority on or after 29 January 1992 or such later date as is specified in the regulation;

or

(ii) in the case of division by strata plan—the application for the approval of the Commission or the council under section 14 of the *Strata Titles Act 1988* was lodged on or after 29 January 1992 or such later date as is specified in the regulation;

(b) may exclude land, or land of a particular class, from the operation of the regulation;

(c) binds the Crown not only in right of the State but also, so far as the legislative power of the State permits, in all its other capacities unless the regulation provides that the Crown is not bound.

(3) A regulation under subsection (1) has effect notwithstanding any Act or law to the contrary.

Creation of amalgamation units

223//c. (1) The amalgamation of allotments pursuant to Division IV on or after 29 January 1992 in a part of the Mount Lofty Ranges specified for that purpose by regulation creates a number of amalgamation units equal to the difference between the number of allotments amalgamated and the number of allotments remaining after the amalgamation.

(2) Amalgamation units are not created under subsection (1) where one or more of the allotments amalgamated is subject to a caveat unless the caveator has given his or her consent to the amalgamation.

The right to allocate amalgamation units

223//d. (1) The right to allocate an amalgamation unit to a proposed division of land is vested initially in the person who applied for the amalgamation.

(2) Where immediately before amalgamation, the allotments amalgamated were subject to a mortgage or encumbrance that was first registered before 29 January 1992, the rights to allocate the amalgamation units created by the amalgamation are charged with payment of the amount secured from time to time by the mortgage or encumbrance.

(3) Subject to subsection (4), upon amalgamation the Registrar-General must issue to the person who applied for the amalgamation a certificate in respect of each unit certifying that the person named in the certificate has the right to allocate the unit to a proposed division of land.

(4) The Registrar-General must record a charge operating under subsection (2) on the certificates for the rights of allocation that are subject to the charge and must issue the certificates to the person entitled to the charge or, where more than one such charge is in operation, to the person entitled to the charge that is first in order of priority.

(5) Upon lodgment at the Lands Titles Registration Office of a memorandum of transfer of the right of allocation together with the certificate issued in respect of the right, the Registrar-General must register the transfer, cancel the certificate and issue a new certificate in the name of the transferee.

(6) Where a right of allocation of an amalgamation unit has passed by testamentary disposition or by operation of law to another person, that person may lodge at the Lands Titles Registration Office an application to be registered as the holder of the right.

(7) The application must be accompanied by the certificate issued in respect of the right and such other evidence that the right has passed to the applicant as the Registrar-General requires and the Registrar-General must register the applicant as the holder of the right, cancel the certificate and issue a new certificate in the name of the applicant.

(8) The Registrar-General may, on being satisfied that a certificate issued under this Division has been lost, mislaid or destroyed, issue a new certificate in its place.

Right of allocation may be charged

223//e. Upon lodgment at the Lands Titles Registration Office of a memorandum of charge of the right of allocation of an amalgamation unit together with the certificate issued in respect of the right, the Registrar-General must register the charge, cancel the certificate and issue to the person entitled to the charge a new certificate expressed to be subject to the charge.

Allocation of an amalgamation unit

223//f. (1) Upon lodgment at the Lands Titles Registration Office of a memorandum of allocation of an amalgamation unit to a proposed division of land together with the certificate issued in respect of the right of allocation, the Registrar-General must register the allocation and cancel the certificate.

(2) A memorandum of allocation of an amalgamation unit to a proposed division must be lodged at or after the time at which the application for the division of the land or the application for deposit of the strata plan is lodged at the Lands Titles Registration Office.

(3) Where an application for the division of land or for the deposit of a strata plan is withdrawn or the Registrar-General refuses to deposit a plan of division or strata plan in the Lands Titles Registration Office, the Registrar-General must revive the right of allocation of an amalgamation unit allocated to the division by issuing a certificate to the person who allocated the unit.

Dealings with right subject to charge

223//g. (1) Subject to subsection (2), where a right of allocation of an amalgamation unit is subject to a charge, the Registrar-General must not—

(a) register a memorandum of transfer or a memorandum of charge of the right without the written consent of the person entitled to the charge unless the transfer or charge is expressed to be subject to the existing charge;

or

(b) register a memorandum of allocation of the amalgamation unit without the written consent of the person entitled to the charge

(2) The consent of a person entitled to a charge of lower priority is not required under subsection (1) to the registration of a memorandum of transfer by a person entitled to a charge of higher priority exercising a power of sale under section 223//h.

Power of sale

223//h. (1) A person who is entitled to a charge of the right of allocation of an amalgamation unit is entitled to sell the right in the circumstances in which a mortgagee or encumbrancee is entitled under this Act to sell land that is subject to the mortgage or encumbrance.

(2) Sections 132 to 136 inclusive apply to, and in relation to, a charge of a right of allocation as if the charge were a mortgage or encumbrance, the person entitled to the charge were the mortgagee or encumbrancee, the holder of the right of allocation were the mortgagor or encumbrancer and the right of allocation were the land mortgaged or encumbered.

Discharge of charge of right of allocation

223//i. (1) A charge of a right of allocation is discharged in the following circumstances:

- (a) upon registration by the Registrar-General of a discharge of the charge;
- (b) in the case of a charge arising under section 223//d (2) on the creation of amalgamation units—upon the discharge of the mortgage or encumbrance giving rise to the charge under that section (but not where the discharge occurs upon registration of a transfer of the land by a mortgagee or encumbrancee exercising the power of sale conferred by this Act).

(2) Upon lodgment at the Lands Titles Registration Office of a full or partial discharge of a charge of a right of allocation together with the certificate issued in respect of the right, the Registrar-General must register the discharge, cancel the certificate and issue a new certificate in the name of the holder of the right.

(3) Where the amount secured by a charge has been paid the holder of the right of allocation is entitled to a discharge of the charge.

(4) Section 146 applies to, and in relation to, a charge of a right of allocation as if the charge were a mortgage, the person entitled to the charge were the mortgagee and the holder of the right of allocation were the mortgagor.

(5) Where two or more persons are entitled to a charge jointly a discharge of the charge may be signed by one on behalf of all of them.

Order of priority of charges

223//j. The order of priority of charges of a right of allocation is as follows:

- (a) charges arising under section 223//d (2) have the same priority as the mortgage or encumbrance from which they arose;
- (b) charges registered under section 223//e have priority in accordance with the time of registration of the memorandum of charge;

and

- (c) charges referred to in paragraph (a) have priority over charges referred to in paragraph (b).

Register of amalgamated units

223//k. (1) The Registrar-General must maintain a public register of amalgamation units.

(2) The register must include the following information in relation to each unit:

- (a) particulars identifying the amalgamation that created the unit;
- (b) the holder (if any) of a certificate in respect of the right to allocate the unit to a proposed division;
- (c) particulars of the charges (if any) of the right to allocate the unit and of the discharge of any of those charges;
- (d) the division (if any) to which the unit has been allocated.

Form of transfers, etc.

223/ll. (1) A memorandum of transfer, a memorandum of charge, a discharge of a charge, a memorandum of allocation of an amalgamation unit and an application to the Registrar-General under this Division must be in a form approved by the Registrar-General.

(2) A fee prescribed in relation to the administration of this Division must be paid before the Registrar-General takes the action in respect of which the fee is prescribed.

Exemption from fees and stamp duty

223/lm. (1) No fee is payable in respect of the registration of a memorandum of allocation of an amalgamation unit.

(2) Stamp duty is not payable in respect of the transfer or charging of the right of allocation of an amalgamation unit.

Amendment of Strata Titles Act 1988

7. Section 14 of the *Strata Titles Act 1988* is amended—

(a) by inserting after subsection (10) the following subsection:

(10a) Where the allocation of amalgamation units to a proposed division of land is required the certificates of approval by the Commission and the council under this section in respect of the division must—

(a) specify the date on which the application for the certificate was lodged with the Commission or the council;

and

(b) specify the number of amalgamation units that must be allocated to the division;

and

(b) by inserting after subsection (13) the following subsection:

(14) In this section—

“amalgamation unit” means an amalgamation unit created pursuant to Part XIXAB Division IVA of the *Real Property Act 1886* upon the amalgamation of allotments.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor