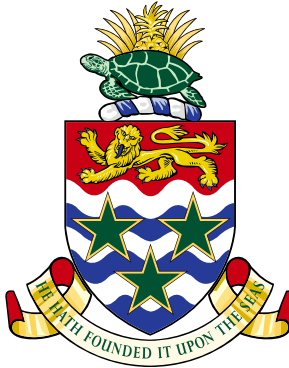


CAYMAN ISLANDS



SETTLED LAND LAW

(1998 Revision)

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CAYMAN ISLANDS



SETTLED LAND LAW

(1998 Revision)

PART I - Introductory

Short title

1. This Law may be cited as the *Settled Land Law (1998 Revision)*.

Definitions and interpretation

2. (1) In this Law —

“**building purposes**” include the erecting and the improving of, the adding to and the repairing of buildings; and a

“**building lease**” is a lease for any building purpose or purposes connected therewith;

“**Court**” means the Grand Court;

“**income**” includes rents and profits;

“**land**” includes incorporeal hereditaments, also an undivided share in land;

“**mines and minerals**” mean mines and minerals whether already opened or in work or not, and include all minerals and substances (other than such minerals, mineral oil and substances as may be vested in the Crown) in, on or under the land, obtainable by underground or by surface working; and “**mining purposes**” include the sinking and searching for, winning, working, getting, making

merchandise, smelting or otherwise converting or working for the purposes of any manufacture, carrying away and disposing of mines and minerals, in or under the settled land or any other land, and the erection of buildings and the execution of engineering and other works suitable for those purposes;

“**mining lease**” is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes;

“**possession**” includes receipt of income;

“**Record Office**” means the office of the Public Recorder;

“**rent**” includes yearly or other rent, and toll, duty, royalty or other reservation, by the acre or the ton or otherwise; and, in relation to rent, “**payment**” includes delivery; and “**fine**” includes premium or fore-gift, and any payment, consideration or benefit in the nature of a fine, premium or fore-gift;

“**securities**” include stocks, funds, and shares; and

“**will**” includes codicil and other testamentary instrument, and a writing in the nature of a will.

- (2) Any deed, will or agreement for a settlement or other agreement, covenant to surrender, Act of the United Kingdom, law of the Islands or other instrument, or any number of instruments, under or by virtue of which instrument or instruments, any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Law a settlement, and is in this Law referred to as a settlement, or as the settlement, as the case requires.
- (3) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator’s heir, is for purposes of this Law an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.
- (4) Land and any estate or interest therein, which is the subject of a settlement, is for purposes of this Law settled land, and is, in relation to the settlement, referred to in this Law as the settled land.
- (5) The determination of the question whether land is settled land, for purposes of this Law or not, is governed by the state of facts and the limitations of the settlement, at the time of the settlement taking effect.
- (6) Whoever is, for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Law the tenant for life of that land and the tenant for life under that settlement.
- (7) If, in any case, there are two or more persons so entitled as tenants in common, as joint tenants or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Law.



- (8) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.
- (9) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Law, are for purposes of this Law trustees of the settlement.
- (10) Capital money arising under this Law and receivable for the trusts and purposes of the settlement is in this Law referred to as capital money arising under this Law.

PART II - Sale, Exchange and Partition

Powers of tenant for life to sell, etc.

3. A tenant for life —

- (a) may sell the settled land or any part thereof, or any easement, right or privilege of any kind, over or in relation to the same;
- (b) may make an exchange of the settled land or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and
- (c) where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Exchanges

- 4. On any exchange or partition any easement, right or privilege of any kind may be reserved or may be granted over or in relation to the settled land or any part thereof. or other land or an easement, right or privilege of any kind may be given or taken in exchange or on partition for land or for any other easement, right or privilege of any kind.

Powers of tenant for life

- 5. A tenant for life may make any conveyance which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by such predecessor would have been valid as against his successors in title.

Regulations respecting sale, exchange and partition

6. (1) Every sale shall be made at the best price that can reasonably be obtained.
- (2) Every exchange and partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.
- (3) A sale may be made in one lot or in several lots, and either by auction or private contract.
- (4) On a sale the tenant for life may fix reserve biddings and buy in at an auction.
- (5) A sale, exchange or partition may be made subject to any stipulation respecting title, evidence of title or other things.
- (6) On a sale, exchange or partition, any restriction or reservation with respect to building on or other user of land or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the Law permits, by covenant, conditions or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.
- (7) Settled land in the Islands shall not be given in exchange for land out of the Islands.

Transfer of incumbrances on land sold, etc.

7. Where on a sale, exchange or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

PART III - Leases**Power for tenant for life to lease for ordinary, building or mining purposes**

8. A tenant for life may lease the settled land, or any part thereof, or any easement, right or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding —
- (a) in case of a building lease, ninety-nine years;
 - (b) in case of a mining lease, sixty years; and
 - (c) in case of any other lease, twenty-one years.



Leases

9. A lease for a term not exceeding twenty-one years at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life —
- (a) notwithstanding that there may be no trustees of the settlement for the purposes of this Law; and
 - (b) by writing under hand only, containing an agreement instead of a covenant by the lessee for payment of rent in cases where the term does not extend beyond three years from the date of the writing.

Regulations respecting leases generally

10. (1) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.
- (2) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.
- (3) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.
- (4) Every lease shall be executed by the lessor and the lessee, and shall be recorded in the Record Office within six months of its execution.
- (5) A statement, contained in a lease or in an indorsement thereof, signed by the tenant for life, respecting any matter of fact, or of calculation under this Law in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Regulations respecting building leases

11. (1) Every building lease shall be made partly in consideration of the lessee, some person by whose direction the lease is granted or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorised by this Law, for or in connection with building purposes.
- (2) A peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.
- (3) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner, save that —
- (a) the annual rent reserved by any lease shall not be less than one dollar;



- (b) the total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Law, ought to be reserved in respect of the whole land for the time being leased; and
- (c) the rent reserved by any lease shall not exceed twenty per cent part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

Regulations respecting mining leases

12. (1) In a mining lease —

- (a) the rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away or disposed of, in or from the settled land or any other land or by or according to any facilities given in that behalf; and
 - (b) a fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.
- (2) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorised by this Law for or in connection with mining purposes.

Variation of building or mining lease according to circumstances of district

13. (1) Where it is shown to the Court with respect to the district in which any settled land is situate, either —

- (a) that it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Law, or in perpetuity; or
- (b) that it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Law, or except in perpetuity,

the Court may, if it thinks fit, authorise generally the tenant for life to make, from time to time, leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorise the tenant for life to make any such lease or grant in any particular case.



- (2) Thereupon the tenant for life, and, subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Law, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

Effect of grant for building purposes

- 14.** (1) Where on a grant for building purposes by a tenant for life, the land is expressed to be conveyed in fee simple with or subject to a reservation thereof of a perpetual rent or rent-charge, the reservation shall operate to create a rent-charge in fee simple issuing out of the land conveyed and having incidental thereto all powers and remedies for recovery thereof conferred by subsections (2) to (6) and the rent-charge so created shall go and remain to the uses of the trusts and subject to the powers and provisions which, immediately before the conveyance, were subsisting with respect to the land out of which it is reserved.
- (2) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent-charge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.
- (3) If, at any time, the annual sum, or any part thereof, is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum, all arrears thereof and all costs and expenses occasioned by non-payment thereof, may be fully paid.
- (4) If, at any time, the annual sum, or any part thereof, is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.
- (5) In the like case the person entitled to the annual charge whether taking possession or not, may also, by deed, demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste,



on trust by mortgage, sale or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

- (6) Subsections (2) to (5) apply only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

Part of mining rent to be set aside as capital

- 15.** Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be, from time to time, set aside, as capital money arising under this Law, part of the rent as follows, namely, where the tenant for life is impeachable for waste in respect of minerals, seventy-five per cent of the rent, and otherwise twenty-five per cent thereof, and in every such case the residue of the rent shall go as rents and profits.

Leasing powers for special objects

- 16.** The leasing power of a tenant for life extends to the making of —
- (a) a lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title;
 - (b) a lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and
 - (c) a lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Law or otherwise, as the case may require.

Surrender and new grant of leases

- 17.** (1) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Law or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.



- (2) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.
- (3) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.
- (4) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.
- (5) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease.
- (6) Every new or other lease shall be in conformity with this Law.

PART IV - Sales, Leases and other Dispositions

Dedication for streets, open spaces, etc.

- 18.** On or in connection with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof —
- (a) may cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens or other open spaces, for the use gratuitously or on payment, of the public or of individuals, with sewers, drains, water-courses, fencing, paving or other works necessary or proper in connection therewith; and
 - (b) may provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement or other trustees, any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and
 - (c) may execute any general or other deed necessary or proper for giving effect to this section (which deed shall be recorded in the Record Office), and thereby declare the mode, terms and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

Separate dealing with surface and minerals with or without way-leaves, etc.

19. (1) A sale, exchange, partition or mining lease may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, way-leaves or rights of way, rights of water and drainage, and other powers, easements, rights and privileges for or incident to or connected with mining purposes, in relation to the settled land or any part thereof, or any other land.
- (2) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Mortgage for equality money, etc.

20. Where money is required for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years in the settled lands or otherwise, and the money raised shall be capital money arising under this Law.

Raising of money

21. (1) Where money is required for the purpose of discharging an incumbrance on the settled land or part thereof, the tenant for life may raise the money so required and also the amount properly required for payment of the costs of the transaction on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or any part thereof or otherwise, and the money so raised shall be capital money for that purpose and may be paid or applied accordingly.
- (2) An incumbrance for the purpose of subsection (1) shall not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.

Concurrence in exercise of powers as to undivided shares

22. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur in any manner and to any extent necessary or proper for any purpose of this Law, with any person entitled to or having power or right of disposition of or over another undivided share.



Completion of sale, lease, etc., by conveyance

- 23.** (1) On a sale, exchange, partition, lease, mortgage or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged or charged, or intended so to be, including leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement or for any less estate or interest to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage or charge.
- (2) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Law, is effectual to pass the land conveyed, or the easements, rights or privileges created, discharged from all the limitations, powers and provisions of the settlement, and from all estates, interests and charges subsisting or to arise thereunder, but subject to and with the exception of —
- (a) all estates, interest and charges having priority to the settlement;
 - (b) all such other, if any, estates, interests and charges as have been conveyed or created for securing money actually raised at the date of the deed; and
 - (c) all leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, by any of his predecessors in title or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successor's in title of the tenant for life.
- (3) Conveyances executed under this Law shall be recorded in the Record Office within six months of their execution.

PART V - Investment or other Application of Capital Trust Money**Capital money under Law; investment, etc., by trustees of Court**

- 24.** (1) A fine received on the grant of a lease under any power conferred by this Law is to be deemed capital money arising under this Law.
- (2) Capital money arising under this Law, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes namely —

- (a) in investment on Government securities of Great Britain or of the Islands, or on other securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, or on the security of the bonds, mortgages or debentures, or in the purchase of the debenture stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities;
- (b) in discharge, purchase or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of property tax, Crown rent, chief rent or quit rent charged on or payable out of the settled land;
- (c) in payment for any improvement authorised by this Law;
- (d) in payment for equality of exchange or partition of settled land;
- (e) in purchase of the reversion or freehold in fee of any part of the settled land, being leasehold and held for years or life, or years determinable on life;
- (f) in purchase of land in fee simple or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land;
- (g) in purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right or privilege convenient to be held with the settled land for mining or other purposes; in payment to any person becoming absolutely entitled or empowered to give an absolute discharge; in payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of this Law; in any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Regulations respecting investment, devolution and income of securities, etc.

- 25.** (1) Capital money arising under this Law shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.
- (2) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and, in default thereof, according to the



discretion of the trustees, but in the last mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement, and any investment shall be in the names or under the control of the trustees.

- (3) The investment or other application under the direction of the Court shall be made on the application of the tenant for life or of the trustees.
- (4) Any investment or other application shall not, during the life of the tenant for life, be altered without his consent.
- (5) Capital money arising under this Law while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission and devolution, be considered as land, and the same shall be held for and go to the same person successively, in the same manner and for and on the same estates, interests and trusts as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.
- (6) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.
- (7) Those securities may be converted into money, which shall be capital money arising under this Law.

Investment in land in the Islands

- 26.** Capital money arising under this Law from settled land in the Islands shall not be applied in the purchase of land out of the Islands, unless the settlement expressly authorises the same.

Settlement of land purchased, taken in exchange, etc.

- 27.** (1) Land acquired by purchase, in exchange or on partition, shall be made subject to the settlement in manner directed in this section.
- (2) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.
- (3) Leasehold land shall be conveyed to and vested in the trustees of the settlement, on trusts and subject to powers and provisions corresponding as nearly as the law and circumstances permit, with the uses, trusts, powers and provisions to, on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, in tail male or in tail female, and who dies under the age of twenty-one

years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

- (4) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, any part thereof or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange or partition.
- (5) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to such charge.
- (6) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.
- (7) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights and privileges over and in relation to land.

Dealings as between tenant for life and the estate

- 28.** Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the limitations of the settlement, or an exchange is to be made with him of settled land for other land, or a partition is to be made with him of land an undivided share whereof is subject to the limitations of the settlement, the trustees of the settlement shall stand in the place of and represent the tenant for life, and shall, in addition to their powers as trustees, have all the powers of the tenant for life for the purpose of reference to negotiating and completing the transaction.

PART VI - Improvements

Description of improvements authorised by law

- 29.** Improvements authorised by this Law are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes, namely —
- (a) drainage, including the straightening, widening or deepening of drains, streams and water-courses;



- (b) irrigation and warping;
- (c) drains, pipes and machinery for supply and distribution of sewage as manure;
- (d) embanking or weiring from a river or lake, or from the sea or a tidal water;
- (e) groynes; sea walls; defences against water;
- (f) inclosing; straightening of fences; re-division of fields;
- (g) reclamation; dry warping;
- (h) farm and plantation roads; private roads, roads or streets in villages or towns;
- (i) clearing; trenching; planting;
- (j) cottages for labourers, farm and plantation servants, and artisans, employed on the settled land or not;
- (k) plantation buildings, farm houses, offices and outbuildings and other buildings, for plantation and farm purposes;
- (l) saw-mills, scutch-mills, sugar mills, coffee mills and other mills, water-wheels, engine-houses and kilns, which will increase the value of the settled land for agricultural purposes or as sugar and rum works or coffee or other works, or as woodland or otherwise;
- (m) reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices and other works and machinery for supply and distribution of water for agricultural, manufacturing or other purposes, or for domestic or other consumption;
- (n) tramways, railways, canals and docks;
- (o) jetties, piers and landing places on rivers, lakes, the sea or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes and of minerals and of things required for mining purposes;
- (p) markets and market-places;
- (q) streets, roads, paths, squares, gardens or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land;
- (r) sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making and other works necessary or proper in connection with any of the objects aforesaid;
- (s) trial pits for mines, and other preliminary works necessary or proper in connection with development of mines;
- (t) reconstruction, enlargement or improvement of any of those works;



- (u) bridges;
- (v) additions to or alterations in buildings reasonably necessary or proper to enable the same to be let; and
- (w) erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money shall be expended than the amount received for the buildings taken and the site thereof.

Approval by Court of scheme for improvement and payment thereon

- 30.** (1) Where the tenant for life is desirous that capital money arising under this Law shall be applied in or towards payment for any improvement authorised by this Law, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.
- (2) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on —
- (a) a certificate of a competent engineer, practical surveyor or builder nominated by the trustees and approved of by the Court, certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or
 - (b) an order of the Court directing or authorising the trustees to so apply a specified portion of the capital money.
- (3) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of a competent engineer or able practical surveyor or builder, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

Concurrence in improvements

- 31.** The tenant for life may join or concur with any other person interested in executing any improvement authorised by this Law, or in contributing to the cost thereof.



Obligation on tenant for life and successors to maintain, insure, etc.

- 32.** (1) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Court in any case may order, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Law, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Court may order.
- (2) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Law.
- (3) The tenant for life, and each of his successors as aforesaid, shall, from time to time, if required by the Court on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder or otherwise, report to the Court the state of every improvement executed under this Law, and the fact and particulars of fire insurance, if any, by filing in the Court a suggestion thereof.
- (4) The Court may vary any certificate made under this section, in such manner or to such extent as circumstances appear to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.
- (5) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder or reversion shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

Payment out of Court of capital money

- 33.** All or any part of any capital money paid into Court may, if the Court thinks fit, be at any time paid out to the trustees of the settlement for the purposes of this Law.

Court may order payment for improvements executed

- 34.** The Court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by this Law notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by this Law.

Protection as regards waste in execution and repair of improvements

- 35.** The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may, from time to time, enter on the settled land, and, without impeachment of waste by any remainder man or reversioner thereon execute any improvement authorised by this Law, or inspect, maintain and repair the same, and, for the purposes thereof, on the settled land, do, make and use all acts, works and conveniences proper for the execution, maintenance, repair and use thereof, and get and work freestone, limestone, clay, sand and other substances and make tramways and other ways and burn and make bricks, tiles and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

What included

- 36.** Improvement of or to land shall include the —

- (a) drainage of land, and the straightening, widening, deepening or otherwise improving the drains, streams and watercourses of any kind;
- (b) irrigation and warping of land;
- (c) embanking and weiring of land from the sea or tidal waters, or from lakes, rivers or streams, in a permanent manner;
- (d) inclosing of lands, the making of dividing fences and the straightening of fences and re-division of fields and the surveying and running of lines;
- (e) reclamation of land, including all operations necessary thereto;
- (f) making of permanent plantation and farm roads and permanent tramways and railways and navigable canals for all purposes connected with the improvement of the estate;
- (g) clearing of land;
- (h) erection of labourers' cottages, plantation and farmhouses, and other buildings required for plantation and farm purposes, and the improvement of and addition to labourers' cottages, works, houses and other buildings for plantation and farm purposes already erected so as such improvements or additions are of a permanent nature;
- (i) planting for shelter;
- (j) constructing or erecting of any engine-houses, stills, waterwheels, sugar, coffee, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, watercourses, bridges, weirs, sluices, floodgates or hatches, which will increase the value of any lands for agricultural purposes, or for the manufacture of agricultural products;
- (k) construction or improvement of jetties or landing places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle,



sheep and other agricultural stock and produce, and of lime, manure and other articles and things for agricultural purposes:

Provided that the Court shall be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof; and

- (l) the execution of all such works as in the judgment of the Court may be necessary for carrying into effect any matter hereinbefore mentioned, or for deriving the full benefit thereof.

PART VII - Contracts

Power of tenant for life to enter into contracts

37. (1) A tenant for life may —

- (a) contract to make any sale, exchange, partition, mortgage or charge;
 - (b) vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Law; and any such consideration, if paid in money, shall be capital money arising under the Law;
 - (c) contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Law;
 - (d) accept a surrender of a contract for lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted;
 - (e) enter into a contract for or relating to the execution of any improvement authorised by this Law, and may vary or rescind the same; and
 - (f) in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Law, and may vary or rescind the same.
- (2) Every contract shall be binding on, enure for the benefit of the settled land and be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any successor in the like case and manner, if any, as if it had been made by himself.

- (3) The Court may, on the application of the tenant for life, of any such successor or of any person interested in any contract give directions respecting the enforcing, carrying into effect, varying or rescinding thereof.
- (4) Any preliminary contract under this Law for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease or the benefit thereof.

PART VIII - Miscellaneous Provisions

Application of money in Court under other laws

- 38.** Where, under any Law public, local, personal or private, money is in Court, or is paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorised by the law under which the money is in Court, that money may be invested or applied as capital money arising under this Law, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and notwithstanding anything in this Law according to the same procedure, as if the modes of investment or application authorised by this Law were authorised by the law under which the money is in Court.

Application of money in hands of trustees under powers of settlement

- 39.** Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing wherewith as the trustees have independently of this Law, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Law.

Application of money paid for lease or reversion

- 40.** Where capital money arising under this Law is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate or interest, the trustees of the settlement or the Court, as the case may be, and, in the case of the Court, on the application of any party interested in that money, may, notwithstanding anything in this Law, require and cause the same to be laid out, invested, accumulated and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money, the like benefit therefrom as they might lawfully have had from the lease, estate, interest or reversion in respect whereof the money was paid, or as near thereto as may be.



Cutting and sale of timber and part of proceeds to be set aside

- 41.** (1) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant or life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.
- (2) Seventy-five per cent of the net proceeds of the sale shall be set aside as and be capital money arising under this Law, and the other twenty-five per cent shall go as rents and profits.

Proceeding for protection or recovery of land settled or claimed to be settled

- 42.** The Court may, if it thinks fit, approve of any action, defence, petition to the Legislature, legislative opposition or other proceeding taken or proposed to be taken for protection of settled land or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

Heirlooms

- 43.** (1) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.
- (2) The money arising by the sale shall be capital money arising under this Law, and shall be paid, invested, applied and otherwise dealt with in like manner in all respects as by this Law directed with respect to other capital money arising under this Law, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.
- (3) A sale or purchase of chattels under this section shall not be made without an order of the Court.

PART IX - Trustees

Appointment of trustees by Court

44. (1) If, at any time, there are no trustees of a settlement within the definition in this Law, or where in any other case it is expedient, for purposes of this Law, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder or otherwise, or, in the case of an infant, of his testamentary or other guardian or next friend, appoint fit persons to be trustees under the settlement for purposes of this Law.
- (2) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall, for the purposes of this Law, become and be the trustees or trustee of the settlement.

Trustees for the purposes of this Law

45. Where there are for the time being no trustees of the settlement within the meaning and for the purposes of this Law, then the following persons shall, for the purposes of this Law, be deemed trustees of the settlement, namely —
- (a) the persons, if any, who are for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold, or with power to consent or to approve of the exercise of such power of sale, or, if there be no such persons; then
 - (b) the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the land to be sold, or with power to consent to or approve of the exercise of such future power of sale, and whether the power or trust takes effect in all events or not.

Number of trustees to act

46. (1) Notwithstanding anything in this Law, capital money arising under this Law shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorises the receipt of capital trust money of the settlement by one trustee.
- (2) Subject thereto, the provisions of this Law referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.



Trustees' receipts

47. The receipt or direction in writing of or by the trustees of the settlement, or where one trustee is empowered to act, of or by that trustee, or of or by the personal representatives of the last surviving or continuing trustee, for or relating to any money or securities, paid or transferred to or by the direction of the trustees, trustee or representatives, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Law, or that no more than is wanted is raised.

Protection of each trustee individually

48. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker or other person, or for the insufficiency or deficiency of any sureties, or for any loss not happening through his own wilful default.

Protection of trustees generally

49. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking or doing any such application, action, proceeding or thing, as they might make, bring, take or do; and in case of purchase of land with capital money arising under this Law, or of an exchange, partition or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition or lease, or answerable as regards any price, consideration or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition or lease.

Trustees' reimbursement

50. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

Reference of differences to Court

- 51.** If, at any time, a difference arises between a tenant for life and the trustees of the settlement respecting the exercise of any of the powers of this Law, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference and respecting the costs of the application as the Court thinks fit.

Notice to trustees

- 52.** (1) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage or charge shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the Islands, and shall give like notice to the attorney-at-law for the trustees, if any such attorney-at-law is known to the tenant for life, by posting a registered letter containing the notice, addressed to the attorney-at-law at his place of business in the Islands, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage or charge, or of a contract for the same. The notice by this section required may be a notice of a general intention in that behalf.
- (2) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.
- (3) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.
- (4) The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him, from time to time, with reference to sales, exchanges, partitions or leases effected, or in progress, or immediately intended.
- (5) Any trustee, by writing under his hand, may waive notice either in any particular case, or generally, and may accept less than one months' notice.

PART X - Court and Procedure**Regulations respecting payments into Court, applications, etc.**

- 53.** (1) All matters within the jurisdiction of the Court under this Law shall be subject to the laws regulating the Court, and to the practice of the Court.
- (2) Payment of money into Court effectually exonerates therefrom the person making the payment.
- (3) Every application to the Court shall be by petition, or by summons at Chambers.



- (4) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.
- (5) On any application, notice shall be served on such persons, if any, as the Court thinks fit.
- (6) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.
- (7) General Rules for purposes of this Law shall be deemed Rules of Court within section 19 of the *Grand Court Law (1995 Revision)*, and may be made accordingly.

Payment of costs out of settled property

- 54.** Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Law, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money or investments or by means of a sale of part of the settled land in respect whereof the costs, charges or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

PART XI - Restrictions, Savings and General Provisions

Powers not assignable; contract not to exercise powers void

- 55.** (1) The powers under this Law of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.
- (2) A contract by a tenant for life not to exercise any of his powers under this Law is void.
- (3) This section shall operate without prejudice to the rights of any person being an assignee for value by instrument duly recorded in the Record Office of the estate

or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained without fine, and in other respects are in conformity with this Law.

- (4) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Law; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.
- (5) Every instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement shall be deemed one of the instruments creating the settlement, and not an instrument vesting in any person any right as assignee for value within the meaning or operation of this section.
- (6) Subsection (5) shall apply and have effect with respect to every disposition unless inconsistent with the nature or terms of such disposition.

Prohibition or limitation against exercise of powers void

- 56.** (1) If in a settlement, will, assurance or other instrument a provision is inserted purporting or attempting, by way of direction, declaration or otherwise, to forbid a tenant for life to exercise any power under this Law, or attempting, or tending, or intended, by a limitation, gift or disposition over of settled land, or by a limitation, gift or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Law, that provision, as far as it purports, or attempts or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.
- (2) For the purposes of subsection (1) an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

Provision against forfeiture

- 57.** Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Law shall not occasion a forfeiture.



Tenant for life trustee for all parties interested

- 58.** A tenant for life shall, in exercising any power under this Law, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

General protection of purchasers, etc.

- 59.** On a sale, exchange, partition, lease, mortgage or charge, a purchaser, lessee, mortgagee or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Law.

Exercise of powers, limitation of provisions, etc.

- 60.** (1) Powers and authorities conferred by this Law on a tenant for life, trustees or the Court are exercisable from time to time.
- (2) Where a power of sale, exchange, partition, leasing, mortgaging, charging or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make and do all deeds, instruments and things necessary or proper in that behalf.
- (3) Where any provision in this Law refers to sale, purchase, exchange, partition, leasing or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts and transactions under this Law.

Saving for other powers

- 61.** (1) Nothing in this Law shall take away, abridge or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction or otherwise; and the powers given by this Law are cumulative.
- (2) In case of conflict between a settlement and this Law, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Law, this Law shall prevail; and notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Law, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Law.

- (3) If a question arises, or a doubt is entertained, respecting any matter within subsection (1), the Court may, on the application of the trustees of the settlement, the tenant for life or any other person interested, give its decision, opinion, advice or direction thereon.

Additional or larger powers by settlement

- 62.** (1) Nothing in this Law shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Law.
- (2) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Law, operate and be exercisable in the like manner, and with all the like incidents, effects and consequences, as if they were conferred by this Law, unless a contrary intention is expressed in the settlement.

PART XII - Limited Owners Generally

Enumeration of other limited owners to have powers of tenant for life

- 63.** (1) The following persons shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Law, as if each of them were a tenant for life as defined in this Law —
- (a) a tenant in tail, including a tenant in tail who is by statute restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Law shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament or by the Legislature of the Islands in consideration of public services;
 - (b) a tenant in fee simple, with an executory limitation, gift or disposition over, on failure of his issue, or in any other event;
 - (c) a person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Law shall bind the Crown;
 - (d) a tenant for years determinable on life, not holding merely under a lease at a rent;
 - (e) a tenant for the life of another, not holding merely under a lease at a rent;
 - (f) a tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift or disposition over, or is subject



- to a trust for accumulation of income for payment of debts or other purpose;
- (g) a tenant in tail after possibility of issue extinct;
 - (h) a tenant by the curtsy, which is to be deemed for the purposes of this Law an estate arising under a settlement made by his wife;
 - (i) a person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, until sale of the land or until forfeiture of his interest therein on bankruptcy or other event.
- (2) In every such case the provisions of this Law referring to a tenant for life, either as conferring powers on him or otherwise, to a settlement and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.
- (3) In any such case any reference in this Law to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

PART XIII - Infants, Married Women and Lunatics

Infant absolutely entitled to be tenant for life

- 64.** Where a person who is, in his own right, seised of or entitled in possession to land, is an infant, then for purposes of this Law the land is settled land, and the infant shall be deemed tenant for life thereof.

Tenant for life, infant

- 65.** Where a tenant for life, or a person having the powers of a tenant for life under this Law, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Law, the powers of a tenant for life under this Law may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Married woman, how to be affected

- 66.** (1) The foregoing provisions of this Law apply to a married woman of full age, whether or not she is entitled to her estate or interest for her own benefit, and she, without her husband, may exercise the powers of a tenant for life under this Law.
- (2) A restraint on anticipation in a settlement shall not prevent the exercise by her of any power under this Law.



Tenant for life, lunatic

- 67.** Where a tenant for life, or a person having the powers of a tenant for life under this Law, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Court, exercise the powers of a tenant for life under this Law, and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

PART XIV - Settlement by Way of Trusts for Sale**Provision for case of trust to sell and re-invest in land**

- 68.** (1) Any land, or any estate or interest in land, which under or by virtue of any deed, will or agreement, covenant to surrender, statute or other instrument or any number of instruments is subject to a trust or direction for sale of that land, estate or interest, and for the application or disposal of the money to arise from the sale, the income of that money, the income of the land until sale or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being, under the settlement, trustees for sale of the settled land, or having power of consent to, approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Law are for purposes of this Law trustees of the settlement.
- (2) In every such case the provisions of this Law referring to a tenant for life, to a settlement and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except that —
- (a) any reference in this Law to the predecessors or successors in title of the tenant for life, the remaindermen or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, the income of that money or the income of the land, until sale (as the case may require);



- (b) capital money arising under this Law from the settled land shall not be applied in the purchase of land unless such application is authorised by the settlement in case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised by this Law, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement;
 - (c) capital money arising under this Law from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly; and
 - (d) land of whatever tenure acquired under this Law by purchase, in exchange or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.
- (3) In the case of a settlement within the meaning of this section, any consent not required by the terms of the settlement is not by force of anything contained in this Law to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any of the trusts or powers created by the settlement.
- (4) In the case of every other settlement, not within the meaning of this section, where two or more persons together constitute the tenant for life for the purposes of this Law, then notwithstanding anything contained in section 61(2), requiring the consent of all those persons, the consent of one only of those persons is by force of that section to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power conferred by the settlement exercisable for any purpose provided for in this Law.
- (5) With respect to the powers conferred by this section the following provisions are to have effect —
- (a) those powers are not to be exercised without the leave of the Court;

- (b) the Court may, by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given;
- (c) the Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order;
- (d) so long as an order under this section is in force neither the trustees of the settlement, nor any person other than a person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave is by the order given, to exercise a power conferred by this Law;
- (e) an order under this section shall be recorded in the Record Office;
- (f) any person dealing with the trustees from time to time, or with any other person acting under the trusts or powers of the settlement, is not to be affected by an order under this section, unless and until the order is duly recorded as aforesaid;
- (g) an application to the Court under this section may be made by the tenant for life, or by the persons who together constitute the tenant for life, within the meaning of this section;
- (h) an application to rescind or vary an order, or to make any new or further order under this section may be made also by the trustees of the settlement or by any person beneficially interested under the settlement; and
- (i) the person or persons to whom leave is given by an order under this section shall be deemed the proper person or persons to exercise the powers conferred by this section, and shall have, and may exercise, those powers accordingly.

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Carmena H. Parsons
Clerk of Executive Council

