

# CHAPTER P10 - PROPERTY LAW

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## PROPERTY LAW

A Law which sets out the law of property in the State.

[KWS No. 26 of 1991.]

[Date of commencement: *5th August, 1991*]

## PART I

*General Principles as to Legal Interests, Equitable Interests and Powers*

**1. Legal and equitable interests**

(1) The only legal rights and interests which are capable of subsisting or of being created or transferred in land are—

- (a) a right of occupancy;
- (b) a sub-lease;
- (c) an underlease;
- (d) a sub-underlease;
- (e) a charge by way of legal mortgage;
- (f) a right of entry or re-entry exercisable over or in respect of any of the interests in (a), (b), (c) or (d) above; and
- (g) a right, easement or privilege in or over land equivalent to any of the interests in (a), (b), (c) or (d) above.

(2) All other interests and charges in or over land take effect, or may be created, as equitable interests.

(3) Where any land has before the commencement of this Law been held as an estate in fee tail the same shall be deemed to be held as a right of occupancy after the commencement of this Law; any grant or devise in such terms as would before the commencement of this Law have created an estate in fee tail takes effect as the grant or other disposition of a right of occupancy.

(4) The legal rights, interests and charges which in this section are authorised to subsist or to be created or transferred in land (hereinafter called "legal interests" wherever the context permits) shall have the same incidents as legal estates subsisting at the commencement of the Land Use Act.

(5) A legal interest may subsist concurrently with or subject to any other legal interest in the same land in like manner as it could have done before the commencement of this Law.

(6) A legal interest is not capable of subsisting or of being created in an undivided share in land.

(7) A legal interest in land is not capable of being held by an infant.

(8) Every power of appointment over, or power to transfer or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Law (not being a power vested in a legal mortgage or the owner of a legal interest in right of his interest and exercisable by him or by another person in his name and on his behalf), operates only in equity.

(9) Rights, interests and charges in or over land which are not legal interests are in this Law referred to as "equitable interests", and powers which by this Law are to operate in equity only are in this Law referred to as "equitable powers".

(10) The provisions in any statute or other instrument requiring land to be transferred to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal interest authorised by this Law which may be required) be transferred to a person of full age upon the requisite trusts.

## **2. Transfer to over-reach certain equitable interests and powers**

(1) A transfer to a purchaser of a legal interest in land shall over-reach any equitable interest or power affecting that interest, whether or not he has notice thereof, if—

- (a) the transfer is made by trustees for sale and the equitable interest or power is at the date of the transfer capable of being over-reached by

such trustees and the statutory requirement respecting the payment of capital money arising under a disposition upon trust for sale are complied with;

- (b) the transfer is made by a mortgagee or personal representative in the exercise of his paramount powers and the equitable interest or power is capable of being over-reached by such transfer, and any capital money arising from the transaction is paid to the mortgagee or personal representative; or
- (c) the transfer is made under an order of the court and the equitable interest or power is bound by such order, and any capital money arising from the transaction is paid into, or in accordance with the order of, the court.

### **3. Manner of giving effect to equitable interests and powers**

(1) All equitable interests and powers in or over land shall be enforceable against the owner of the legal interest affected in the manner following, that is to say—

- (a) where the legal interest affected is vested in trustees for sale—
  - (i) the trustees shall stand possessed of the net proceeds of sale after payment of costs and of the net rents and profits of the land until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the same respectively, of which they have notice, and whether created before or after the disposition upon trust for sale, according to their respective priorities;

- (ii) where, by reason of the exercise of any equitable power or under any trust affecting the proceeds of sale, any principal sum is required to be raised, or any person of full age becomes entitled to require a legal interest in the land to be vested in him in priority to the trust for sale, then unless the claim is satisfied out of the net proceeds of sale, the trustees for sale shall (if so requested in writing) be bound to transfer or create such legal interest, to take effect in priority to the trust for sale, as may be required for raising the money by way of legal mortgage or for giving legal effect to the rights of the person so entitled.

Provided that, if the proceeds of sale are held in trust for persons of full age in undivided shares absolutely free from incumbrances affecting undivided shares, those persons cannot require the land to be transferred to them in undivided shares, but may (subject to effect being given by way of legal mortgage in incumbrances affecting the entirety) require the same to be vested in any of them (not exceeding four) as joint tenants on trust for sale; and if the transaction purports to transfer the land to any of them in undivided shares or to more than four such persons, it shall operate only as a transfer to them or (if more than four) to the four first named therein as joint tenants on trust for sale.

- (b) where the legal interest affected is not vested in trustees for sale, the owner thereof shall be bound to give effect to the equitable interests and powers affecting his interest of which he has notice according to their respective priorities; but this provision does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for purposes of administration.

(2) Effect may be given by means of a legal mortgage to an agreement for a mortgage, charge or *lien* (whether or not arising by operation of law) if the agreement, charge or *lien* ought to have priority over the trust for sale.

(3) Where, by reason of a statutory or other right of reverter, or of an equitable right of entry taking effect, or for any other reason, a person becomes entitled to require a legal interest to be vested in him, then and in any such case the owner of the interest that is affected shall be bound to transfer or create such legal interest as the case may require.

(4) If any question arises whether any and what legal interest ought to be transferred or created as aforesaid, any person interested may apply to the court for directions in the manner provided by this Law.

(5) If the trustees for sale or other interest owners refuse or neglect for one month after demand to transfer or create any such legal interest, or if by reason of their being out of Nigeria or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating a legal interest in the manner provided by this Law.

(6) This section does not affect a purchaser of a legal interest taking free from an equitable interest or power.

#### **4. Creation and disposition of equitable interests**

(1) Interests in land validly created or arising after the commencement of the Law which are not capable of subsisting as legal interests shall take effect as equitable interests, and save as otherwise expressly provided by statute, interests in land which under the law in force at the commencement of the Law could before such commencement have been created as legal interests, shall be capable of being created as equitable interests.



Provided that, after the commencement of this Law (and save as hereinafter expressly enacted) an equitable interest in land shall only be capable of being validly created in any case in which an equivalent equitable interest in property could have been validly created before such commencement.

(2) All rights and interests in land may be disposed of, including—

- (a) a contingent, executory or future equitable interest in any land, or a possibility coupled with an interest in any land whether or not the object of the gift or limitation of such interest or possibility be ascertained;
- (b) a right of entry into or upon land whether immediate or future, and whether vested or contingent.

(3) All rights of entry affecting a legal interest which are exercisable on condition broken or for any other reason may, after the commencement of this Law, be made exercisable by any person and the persons deriving title under him, but, in regard to a right of occupancy only within the period authorised by the rule relating to perpetuities.

#### **5. Satisfied terms, whether created out of right of occupancy or sub-lease to cease**

(1) Where the purpose of a sub-lease or an underlease created or limited at any time out of a right of occupancy becomes satisfied either before or after the commencement of this Law (whether or not that term either by express declaration or by construction of law becomes attendant upon the reversion), it shall merge in the reversion expectant thereon and shall cease accordingly.

(2) Where the purposes of a sub-underlease created or limited, at any time, out of a sub-lease or an under-lease, becomes satisfied after the commencement of this Law, that term shall merge in the reversion expectant thereon and shall cease accordingly.

(3) Where the purposes are satisfied only as respects part of the land comprised

in a term, this section shall have effect as if a separate term had been created in regard to that part of the land.

**6.**

(1) Nothing in this Part of this Law affects prejudicially the right to enforce any sub-lessor's or sub-lessee's covenants, agreements or conditions (including a valid option to purchase or right of pre-emption over the reversion), contained in any such instrument as is in this section mentioned, the benefit or burden of which runs with the reversion or the term.

(2) This section applies where the covenant, agreement or condition is contained in any instrument—

(a) creating a term of years; or

(b) varying the rights of the sub-lessor or sub-lessee under the instrument creating the term.

**7. Saving of legal interests in certain cases**

(1) A right of occupancy which, by virtue of any enactment, is liable to be divested, is nevertheless a right of occupancy for the purposes of this Law and remains liable to be divested as if this Law had not been passed.

(2) A statutory right of occupancy subject to a legal or equitable right of entry or re-entry is, for the purposes of this Law, a right of occupancy.

(3) A right of occupancy vested in a corporation which is liable to determine by reason of the dissolution of the corporation is nevertheless a right of occupancy for the purposes of this Law.

(4) The provisions of any enactment conferring special facilities or prescribing special modes for the vesting (by transfer or otherwise) of land in trustees or any person or the holder for the time being of an office or any corporation sole or aggregate (including

the State) shall remain in full force.

(5) Where any such power for disposing of or creating a legal interest is exercisable by a person who is not the interest owner, the power shall, when practicable, be exercised in the name and on behalf of the interest owner.

#### **8. Savings of certain legal powers to sub-lease**

All sub-leases or tenancies at a rent for a term of years absolute authorised to be granted by a mortgagor or mortgagee or any enactment (whether or not extended by any instrument) may be granted in the name and on behalf of the interest owner by the person empowered to grant the same, whether being the interest owner or not, with the same effect and priority as if this Part of this Law had not been passed; but this section does not (except as respects the usual qualified covenant for quiet enjoyment) authorise any person granting a sub-lease in the name of an interest owner to impose any personal liability on him.

#### **9. Vesting orders and dispositions of legal interests operating as transfers by an interest owner**

(1) Every such order, declaration, or transfer as is hereinafter mentioned, namely—

- (a) every vesting order made by any court or other competent authority;
- (b) every vesting declaration (express or implied) under any statutory power;
- (c) every transfer by a person appointed for the purpose under an order of the court or authorised under any statutory power to transfer in the name or on behalf of an interest owner;
- (d) every transfer made under any power reserved or conferred by this Law,

which is made or executed for the purpose of vesting, transferring or creating a legal

interest, shall operate to transfer or create the legal interest disposed of in the like manner as if the same had been a transfer executed by the owner of the legal interest to which the order, declaration or transfer relates.

(2) Where the order, declaration or transfer is made in favour of a purchaser, the provisions of this Law relating to a transfer of a legal interest to a purchaser shall apply thereto.

(3) The provisions of any written law relating to vesting orders and orders appointing a person to transfer shall apply to vesting orders authorised to be made by this Part of this Law.

#### **10. Title to be shown to legal interests**

(1) Where title is shown to be a legal interest in land, it shall be deemed not necessary or proper to include in the abstract of title an instrument relating only to interests or powers which will be over-reached by the transfer of the interest to which title is being shown; but nothing in this Part of this Law affects the liability of any person to disclose an equitable interest or power which will not be so over-reached, or to furnish an abstract of any instrument creating or affecting the same.

(2) A legal practitioner delivering an abstract framed in accordance with this Part of this Law shall not incur any liability on account of an omission to include therein an instrument which, under this section, is to be deemed not necessary or proper to be included, nor shall any liability be implied by reason of the inclusion of any such instrument.

#### **11. Limitation and prescription laws**

Nothing in this Part of this Law affects the operation of any enactment or of the general law for the limitation of actions or proceedings relating to land or with reference to the acquisition of easements or rights over or in respect of land.

## **12. Effects of possession of documents**

This Law shall not prejudicially affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal interest in land, nor affect any question arising out of or consequent upon any omission to obtain, or any other absence of possession by any person of, any documents relating to a legal interest in land.

## **13. Interests of persons in possession**

This Part of this Law shall not prejudicially affect the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation.

## **14. Presumption that parties are of full age**

The persons expressed to be parties to any transfer of interest in land shall, until the contrary is proved, be presumed to be of full age at the date thereof.

Infants and Lunatics

## **15. Effect of transfer of right of occupancy to infants**

(1) A transfer of a right of occupancy to an infant jointly with one or more other persons of full age shall operate to vest the legal interest in that other person or persons on the statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale.

(2) A transfer of a right of occupancy to an infant alone or to two or more infants jointly shall not be effectual to pass any legal interest but shall operate as a declaration of trust for sale, and the grantor shall be deemed henceforth to hold the land on trust for sale, with power to postpone sale, for the benefit of the infant or infants.

(3) The foregoing provisions of this section do not apply to transfer on trust or by way of mortgage.

(4) A transfer of a right of occupancy to an infant jointly with a person of full age on any trust shall operate as if the infant had not been mentioned therein, but without prejudice to the beneficial interest, if any, intended to be thereby provided for the infant.

(5) A grant or transfer of a legal mortgage of land to an infant shall operate only as an agreement for valuable consideration to execute a proper transfer when the infant attains full age, and in the meantime to hold any beneficial interest in the mortgage debt on trust for the person for whose benefit the transfer was intended to be made.

(6) A grant or transfer of a legal mortgage of land to an infant and one or more other persons of full age shall operate as if the infant had not been named therein, but without prejudice to any beneficial interest in the mortgage debt intended to be thereby provided for the infant.

#### **16. Infants not to be appointed trustees**

The appointment of an infant to be a trustee in relation to any settlement or trust shall be void, but without prejudice to the power to appoint a new trustee to fill the vacancy.

#### **17. Receipts by married infants**

A married infant shall have power to give valid receipts for all incomes (including accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

#### **18. Transfers on behalf of lunatics and as to lands held by them on trust for sale**

(1) Where a legal interest in land is vested in a lunatic, either solely or jointly with any other person or persons, his committee or receiver shall, under an order in lunacy or of the court, or under any statutory power, make or concur in making all requisite dispositions for transferring or creating a legal interest in the name and on behalf of the lunatic.

(2) If land held on trust for sale is vested in a lunatic, either solely or jointly with any other person or persons, a new trustee shall be appointed in his place, or he shall be otherwise discharged from the trust, before the legal interest is dealt with under the trust for sale or under the powers vested in the trustees for sale.

#### **19. Effects of future dispositions to tenants in common**

(1) An undivided share in land shall not be capable of being created except as hereinafter mentioned.

(2) Where, after the commencement of this Law, land is expressed to be transferred to any persons in undivided shares and those persons are of full age the transfer shall (notwithstanding anything to the contrary in this Law) operate as if the land had been expressed to be transferred to the grantees, or, if there are more than four grantees, to the four first named in the transfer as joint tenants upon the statutory trusts hereinafter mentioned and so as to give effect to the rights of the persons who would have been entitled to the shares had the transfer operated to create those shares.

Provided that, where the transfer is made by way of mortgage, the land shall vest in the grantees or such four of them as aforesaid for a term of years absolute (as provided by this Law) as joint tenants subject to cesser on redemption in like manner as if the mortgage money had belonged to them in a joint account, but without prejudice to the beneficial interest in the mortgage money and interest.

(3) A disposition or appointment made by will, coming into operation after the commencement of this Law, of land to two or more persons in undivided shares shall operate as a disposition or appointment of the land to the personal representatives of the testator, and (but without prejudice to the rights and powers of the personal representatives for purposes of administration) upon the statutory trusts hereinafter mentioned.

(4) Any disposition purporting to make a settlement of an undivided share in land

shall only operate as a settlement of a corresponding share of the net proceeds of sale and of the rents and profits until sale of the entirety of the land.

## **20. Meaning of "statutory trusts"**

For the purpose of this Law land held upon the "statutory trusts" shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land.

## **21. Joint tenancies**

(1) Where a right of occupancy is beneficially limited to or held on trust for any persons as joint tenants, the same shall be held on trust for sale in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.

(2) No severance of a joint tenancy of a right of occupancy, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal interest is vested in the joint tenants.

(3) Where a right of occupancy is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other act or things as would, as in the case of chattels, be effectual to sever the tenancy in equity, and thereupon under the trust for sale



affecting the land, the net proceeds of sale and net rents and profits until sale shall be held upon the trusts which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

(4) Nothing in this Law affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal interest as if it were not held on trust for sale.

(5) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants, no severance of a mortgage term on trust property, so as to create a tenancy in common, shall be permissible.

## **22. Rights of husband and wife**

A husband and wife shall, for all purposes of acquisition of any interest in property under a disposition made or coming into operation after the commencement of this Law, be treated as separate persons.

## **23. Party structures**

(1) Where under a disposition or other arrangement which, if a holding in undivided shares had been permissible, would have created a tenancy in common, a wall or other structure is or is expressed to be made a party wall or structure, that structure shall be and remain severed vertically as between the respective owners, and the owner of each part shall have such rights to support and use over the rest of the structure as may be requisite for conferring rights corresponding to those which would have subsisted if a valid tenancy in common had been created.

(2) Any person interested may, in case of dispute, apply to the court for an order declaring the rights and interests under this section of the persons interested in any such party structure, and the court may make such order as it thinks fit.

## **24. Transitional provisions in First Schedule**

For the purpose of effecting the transition from the law existing prior to the commencement of this Law to the law enacted hereby the provisions set out in the First Schedule hereto shall have effect—

- (a) for converting existing legal estates, interests and charges not capable under this Law of taking effect as legal interests into equitable interests;
- (b) for discharging, getting in or vesting outstanding legal interests;
- (c) for making provisions with respect to legal interests vested in infants;
- (d) for subjecting land held in undivided shares to trusts for sale;
- (e) for dealing with party structures and open spaces held in common;
- (f) for converting existing freehold mortgages into mortgages of legal interests;
- (g) for converting existing leasehold mortgages into mortgages of sub-leases or underleases.

#### *Dispositions on Trust for Sale*

### **25. Duration of trusts for sale**

(1) Where land has, either before or after the commencement of this Law become subject to an express or implied trust for sale, such trust shall, so far as regards the safety and protection of any purchaser thereunder, be deemed to be subsisting until the land has been transferred to or under the direction of the persons interested in the proceeds of sale.

(2) This section applies to sales whether made before or after the commencement of this Law, but operates without prejudice to an order of any Court restraining a sale.

### **26. Appointment of trustees of dispositions on trust for sale**

(1) The person having power to appoint new trustees of a transfer of land on trust for sale shall be bound to appoint the same persons (if any) who are for the time being

trustees of the settlement of the proceeds of sale, but a purchaser shall not be concerned to see whether the proper persons are appointed trustees of the transfer of the land.

(2) This section applies whether the settlement of the proceeds of sale or the transfer on trust for sale comes into operation before or after the commencement of this Law.

## **27. Power to postpone sale**

(1) A power to postpone sales shall in the case of every trust for sale of land, be implied unless a contrary intention appears.

(2) Where there is a power to postpone the sale, then (subject to any express direction to the contrary in the instruments if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion for any indefinite period; nor shall a purchaser of a right of occupancy be concerned in any case with any directions respecting the postponement of sale.

(3) The foregoing provisions of this section apply whether the trust for sale is created before or after the commencement or by virtue of this Law.

(4) Where a disposition or settlement coming into operation after the commencement of this Law contains a trust either to retain or sell land, the same shall be construed as a trust to sell the land with power to postpone the sale.

## **28. Consents to the execution of a trust for sale**

(1) If the consent of more than two persons is by the disposition made requisite to the execution of a trust for sale of land, then, in favour of a purchaser, the consent of any two of such persons to the execution of the trust or to the exercise of any statutory or other powers vested in the trustees for sale shall be deemed sufficient.

(2) Where the person whose consent to the execution of any such trust or power is expressed to be required in a disposition is not sui juris or becomes subject to disability

his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power; but the trustees shall, in any such case, obtain the separate consent of the parent or testamentary or other guardian of an infant or of the committee (if any) of a lunatic.

(3) Trustees for sale shall so far as practicable consult the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale, and shall so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or in the case of dispute, of the majority (according to the value of their combined interests) to see that the provisions of this subsection have been complied with.

(4) In the case of a trust for sale, not being a trust for sale created by or in pursuance of the powers conferred by this or any other Law, subsection (3) shall not apply unless the contrary intention appears in the disposition creating the trust.

(5) This section applies whether the trust for sale is created before or after the commencement or by virtue of this Law.

**29. Purchaser not to be concerned with the trust of the proceeds of sale which are to be paid to two or more trustees or to a Trust Corporation**

(1) A purchaser of a right of occupancy from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale (whether made to attach to such proceeds by virtue of this Law or otherwise), or affecting the rents and profits of the land until sale whether or not those trusts are declared by the same instrument by which the trust for sale is created.

(2) Notwithstanding anything to the contrary in the instrument (if any) creating a trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as

trustees for sale, except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, proceeds of sale or other capital money, nor, except where capital money arises on the transaction, render it necessary to have more than one trustee.

**30. Powers of management, etc. on trustees for sale**

(1) Trustees for sale shall, in relation to land and to the proceeds of sale, have all the powers conferred upon them by sections 42 to 64 inclusive and (subject to any express trust to the contrary) all money arising under the said powers shall be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

(2) All land acquired under subsection (1) shall be transferred to the trustees on trust for sale.

(3) The powers conferred by subsection (1) shall be exercised with such consents (if any) as would have been required on a sale under the trust for sale, and when exercised shall operate to over-reach any equitable interests or powers which are by virtue of this Law or otherwise made to attach to the net proceeds of sale as if created by a trust affecting those proceeds.

(4) Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance and other outgoings shall be paid or applied in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested.

(5) Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents

and profits of the land until sale, subject to the provisions of the Land Use Act—

- (a) partition the land remaining unsold or any part thereof; and
- (b) provide (by way of mortgage or otherwise) for the payment of any equality money,

and, upon such partition being arranged, the trustees for sale shall give effect thereto by transferring the land so partitioned in severalty (subject or not to any legal mortgage created for raising equality money) to persons of full age and either absolutely or on trust for sale or partly in one way and partly in another in accordance with the rights of the persons interested under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given.

Provided that—

- (i) if a share in the net proceeds belongs to a lunatic, the consent of his committee if any, shall be sufficient to protect the trustees for sale;
- (ii) if a share in the net proceeds is affected by an incumbrance, the trustees for sale may either give effect thereto or provide for the discharge thereof by means of the property allotted in respect of such share, as they may consider expedient.

(6) If a share in the net proceeds is absolutely vested in an infant, the trustees for sale may act on his behalf and retain land (to be held on trust for sale) or other property to represent his share, but in other respects the foregoing power shall apply as if the infant had been of full age.

(7) This section applies to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of this Law.

### **31. Delegation of powers of management by trustees for sale**

(1) The powers of and incidental to leasing, accepting surrenders of sub-leases and management conferred on trustees for sale whether by this Law or otherwise, may, until sale of the land, be revocably delegated from time to time, by writing signed by them, to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land during his life or for any less period; and in favour of a sub-lessee such writing shall, unless the contrary appears, be sufficient evidence that the person named therein is a person to whom the powers may be delegated, and the production of such writing shall, unless the contrary appears, be sufficient evidence that the delegation has not been revoked.

(2) Any power so delegated shall be exercised only in the names and on behalf of the trustees delegating the power.

(3) The persons delegating any power under this section shall not, in relation to the exercise or purported exercise of the power, be liable for the acts or defaults of the person to whom the power is delegated, but that person shall, in relation to the exercise of the power by him, be deemed to be in the position and to have the duties and liabilities of a trustee.

### **32. Power of court where trustees for sale refuse to exercise power**

If the trustees for sale refuse to sell or to exercise any of the powers conferred by either of the last preceding sections, or any requisite consent cannot be obtained, any person interested may apply to the court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustee for sale to give effect thereto, and the court may make such order as it thinks fit.

### **33. Trust for sale of mortgaged property where right of redemption is barred**

(1) Where any property, vested in trustees by way of security, becomes, by virtue of any enactment relating to the limitation of actions, or of an order for foreclosure or

otherwise discharged from the right of redemption, it shall be held by them on trust for sale.

(2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection operates without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

(3) This section does not affect the right of any person to require that, instead of a sale, the property shall be transferred to him or in accordance with his directions.

(4) This section applies whether the right of redemption was discharged before or after the commencement of this Law, but has effect without prejudice to any dealings or arrangements made before that date.

#### **34. Implied trust for sale in settlements**

(1) Where a settlement of property other than land or of land held upon trust for sale contains a power to invest money in the purchase of land, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale; and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income or investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested in property other than land.

(2) This section applies to settlements coming into operation after the commencement of this Law.

#### **35. Application of Part II to personal representatives**

The provisions of this Part of this Law relating to trustees for sale apply to personal representatives holding on trust for sale, but without prejudice to their rights and powers



for purposes of administration.

*Settlements by way of Trust for Sale*

**36. Limitation of land by way of succession to create trust for sale**

(1) Where any land is, before the commencement of this Law limited to or in trust for any person by way of succession, the same shall be deemed to be held on a trust for sale upon such trust and subject to such powers as are necessary to give effect to the rights of the persons to whom the land is limited; and, after the commencement of this Law, land may be limited as aforesaid only by the creation of such trust for sale.

(2) When land is for the time being—

- (a) limited in trust for any person as a right of occupancy or for a term of years subject to an executory limitation, gift or disposition over on failure of his issue or in any other event;
- (b) limited in trust for any person in possession, being an infant, as a right of occupancy or for a term of years;
- (c) limited in trust for any person as a right of occupancy or for a term of years contingent on the happening of any event,

it shall, for the purpose of this Law, be deemed to be limited for persons by way of succession, and the provisions of subsection (1) shall apply to it.

**37. Vesting of land limited by way of succession**

(1) A transfer or a disposition by will having effect after the commencement of this Law, by which land is limited to or in trust for any person by way of succession shall, if the land is not vested in trustees upon trust for sale in accordance with the provisions of section 36, operate to vest the land in the persons and upon the trusts specified in the succeeding provisions of this section.

(2)(a) The land shall vest—

- (i) in the persons appointed by the instrument of transfer or the will as trustees of the settlement, or if there are no such persons; then
- (ii) in the persons, if any, upon whom power of sale of the land or power to consent to or approve the exercise of the power of sale is conferred, or, if there are no such persons; then
- (iii) in the persons if any who are for the time being under the transfer or the will, trustees with power of or upon trust for sale of any other land comprised therein and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such power of sale.

(b) where the land is limited by will and apart from subsection (1) there would be no trustees for sale for the purposes of this Law, then the personal representatives of the deceased shall, until other trustees are appointed, be the trustees for sale in whom the legal interest in the land concerned is by virtue of this subsection vested but where there is a sole personal representative, not being a trust corporation, it shall be obligatory on him to appoint an additional trustee to act with him for the purposes of this Law, and the provisions of any written law in force in the State, relating to the appointment of new trustees and the vesting of trust property shall apply accordingly.

(3) The land shall be held by the trustees upon the trusts and subject to the provisions following, namely upon trust to sell the same with power to postpone sale of the whole or any part thereof and to stand possessed of the net proceeds of sale for payment of costs and the net rents and profits until sale after payment of rates, taxes, costs of insurance,

repairs and other outgoings upon such trust and subject to such powers and provisions (including all powers and provisions specified in the settlement not inconsistent with the foregoing) as may be necessary for giving effect to the rights of the persons beneficially interested in the land.

**38. Vesting of land under Settled Land Acts, 1882–1890**

Where by virtue of any deed, will, agreement or other instrument land is immediately before the commencement of this Law settled land for the purposes of the Settled Lands Acts, 1882 to 1890 of the United Kingdom, the land shall be held by the persons who are immediately before the commencement of this Law trustees of the settlement for the purposes of the said Acts upon the trusts specified in subsection (3) of section 37.

**39. Transfer disposition right of occupancy to infant operative only as declaration to create a trust for sale**

(1) A transfer of a right of occupancy to an infant alone or to two or more persons jointly, both or all of whom are infants, for his or their own benefit shall operate only as a declaration that such right of occupancy is vested in the person who made the transfer upon trust to transfer the same to trustees for sale for the benefit of the infant or infants.

(2) A disposition of a right of occupancy by will to an infant alone or to two or more persons jointly, both or all of whom are infants, for his or their benefit shall operate only as a declaration that such right of occupancy is valid in the personal representatives of the testator upon trust, subject and without prejudice to the rights and powers of such personal representatives for purposes of administration, to transfer the same to trustees for such for the benefit of the infant or infants.

**40. Trust for sale arises from devolution of right of occupancy on an infant by reason of**

intestacy, etc.

Where, after the commencement of this Law, an infant is beneficially entitled to land under a right of occupancy or for a term of years and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a trust for sale for the benefit of the infant shall be deemed to have been created by the intestate or by the person whose interest the infant has acquired.

**41. Trustees for sale where infant entitled to right of occupancy**

(1) Where, by reason of an infant being beneficially entitled to land under a right of occupancy, such land is deemed to be held under a trust for sale by virtue of the provisions of subsection (2) of section 39, or a trust for sale is deemed to have been created by virtue of the provisions of section 49, and there are no trustees for sale of the land, then—

- (a) the right of occupancy in the land shall vest in the Public Trustee upon such trusts as may by virtue of this Law be requisite for giving effect to the rights of the infant;
- (b) the Public Trustee shall not be entitled to act in the trust, or charge any fee or be liable in any manner unless and until requested in writing to act on behalf of the infant by his parents or parent or testamentary or other guardian in the order named;
- (c) after the Public Trustee has been so requested to act, and has accepted the trust, he shall become the trustee for sale, and no trustee shall (except by an order of the Court) be appointed in his place without his consent;
- (d) if there is no other person able and willing to appoint trustees the parents or parent or testamentary or other guardian of the infant, if respectively able and willing to act, shall (in the order named) have

power by deed to appoint trustees for sale in place of the Public Trustee in like manner as if the Public Trustee had refused to act in the trust, and to vest the land held upon trust for sale in them on the trusts aforesaid, and the provisions of any written law in force in the State relating to the appointment of new trustees, and the vesting of trust property shall apply as if the persons aforesaid (in the order named) had been nominated under the trust for sale for the purpose of appointing new trustees thereof; and in default of any such appointment of infant by his next friend, may, during the minority, apply to the court for the appointment of trustees for sale, and the court may make such order as it thinks fit, and if thereby trustees for sale are appointed, the land held upon trust for sale shall vest in such trustees as joint tenants upon the trusts aforesaid.

Provided that in favour of a purchaser a statement in the deed of appointment that the father or mother or both are dead or are unable or unwilling to make the appointment shall be conclusive evidence of the fact stated.

(2) Subsection (1) of this section does not apply where an infant is beneficially entitled in possession of land under a right of occupancy jointly with a person of full age, but it applies where two or more infants are entitled as aforesaid jointly and a trust for sale arises by virtue of subsection (2) of section 39 or section 40.

(3) Where a trust for sale is to be created for the benefit of an infant or infants in accordance with the provisions of section 39 of this Law, the trustees for sale, in whom the right of occupancy shall be vested, shall be such persons as may be appointed trustees by the person who made the transfer or by the personal representatives of the testator, as the case may be, in whom the right of occupancy transferred or disposed of by will to an infant

or infants, is in the meantime by virtue of this Law, vested.

(4) As soon as practicable after any such transfer or disposition as is mentioned in section 39 has come into operation, the person or persons having the power under the provisions of subsection (3) of this section to appoint trustees for sale shall make the necessary appointment, and if there are no such person or persons able and willing to make the necessary appointment, then the court may, on the application of the testamentary or other guardian of the infant or infants for whose benefit the trust for sale is to be created, appoint fit persons to be trustees for sale, and the court may make such order as it thinks fit, and if thereby trustees for sale are appointed the land to be held upon trust for sale shall vest in such trustees as joint tenants upon such trusts as may by virtue of this Law be requisite for giving effect to the rights of the infant or infants.

#### *Powers of Trustees for Sale*

##### *Sale and Exchange*

#### **42. Powers of sale and exchange**

Trustees for sale—

- (a) may sell the trust land, or any part thereof, or any easement, right or privilege of any kind over or in relation to the land;
- (b) may make exchange of the trust land, or any part thereof, or of any easement, right, or privilege of any kind whether or not newly created, over or in relation to the trust land, or any part thereof, for other land, or for any easement, right or privilege of any kind, including an exchange in consideration of money paid for equality of exchange.

#### **43. Stipulations respecting sales**

- (1) Save as hereinafter provided, every sale shall be made for the best

consideration in money that can reasonably be obtained.

(2) A sale may be made in one lot or in several lots, and either by auction or by private contract, and may be made subject to any stipulations respecting title, or other things.

(3) On a sale the trustees for sale may fix reserve biddings and may buy in at an auction.

#### **44. Regulations respecting exchanges**

(1) Save as in this part of this Law provided every exchange shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(2) An exchange may be made subject to any stipulations respecting title, or evidence of title, or other things.

(3) Trust land in the State shall not be given in exchange for land out of the State.

#### *Sub-leasing Powers*

#### **45. Power to sub-lease for ordinary or building purposes**

The trustees for sale may sub-lease the trust land, or any part thereof, or any easement, right or privilege of any kind over or in relation to the land for any purpose whatever, whether involving waste or not, for any term not exceeding—

(a) in case of a building sub-lease, ninety-nine years;

(b) in case of any other sub-lease, fifty years.

#### **46. Regulations respecting sub-leases generally**

(1) Save as in this Law provided, every sub-lease—

(a) shall be by deed, and be made to take effect in possession not later than twelve months after its date, or in reversion after existing sub-lease that has not more than seven years to run at the date of the new

sub-lease;

- (b) 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 trust land, and generally to the circumstances of the case;
- (c) shall contain a covenant by the sub-lessee for payment of the rent, and a condition of re-entry if the rent is not paid within a time therein specified not exceeding thirty days.

(2) A counterpart of every sub-lease shall be executed by the sub-lessee and delivered to the trustees for sale, of which execution and delivery the execution of the sublease by the trustees shall be sufficient evidence.

(3) A statement, contained in a sub-lease or in an endorsement thereon, signed by the trustees for sale respecting any matter of fact or of calculation under this Law in relation to the sub-lease, shall in favour of the sub-lessee and those claiming under him be sufficient evidence of the matter stated.

(4) A fine received on the grant of a sub-lease under any power conferred by this Law shall be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

(5) A sub-lease at the best rent that can be reasonably obtained without a fine, and whereby the sub-lease is not exempted from punishment for waste, may be made where the term does not extend beyond three years from the date of the writing, by any writing under hand only containing an agreement instead of a covenant by the sub-lessee for payment of rent.

#### **47. Sub-leasing powers for special objects**

The sub-leasing power of the trustees for sale extends to the making of—



- (a) a sub-lease for giving effect (in such manner and so far as the law permits) to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the trust land; and
- (b) a sub-lease for confirming, as far as may be, a previous lease being void or voidable, but so that every sub-lease, as and when confirmed, shall be such a sub-lease as might at the date of the original sub-lease have been lawfully granted under this Law or otherwise, as the case may require.

#### *Building Sub-leases*

#### **48. Regulations respecting building sub-leases**

(1) Every building sub-lease shall be made partly in consideration of the sub-lessee, or some person by whose direction the sub-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 sub-leased, an improvement in connection with building purposes.

(2) 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 sublet in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner:

Provided that—

- (a) the annual rent reserved by any sub-lease shall not be less than one naira;
- and
- (b) the total amount of the rents reserved on all sub-leases for the time being granted shall not be less than the total amount of the rents which, in order that the sub-leases may be in conformity with this Law, ought to be reserved in respect of the whole land for the time being sublet; and

- (c) the rent reserved by any sub-lease shall not exceed one-fifth part of the full annual value of the land comprised in that sub-lease with the buildings thereon when completed.

*Miscellaneous Powers*

**49. Power on disposition to impose restrictions and make reservations and stipulations**

- (1) On a sale or other disposition or dealing under the powers of this Law—
  - (a) any easement, right, or privilege of any kind may be reserved or granted over or in relation to the trust land or any part thereof or other land, including the land disposed of, and in the case of an exchange, the land taken in exchange;
  - (b) any restriction with respect to building on or other user of land or with respect to any other thing, may be imposed and made binding, as far as the law permits, by covenant, condition or otherwise, on the trustees for sale and the trust land or any part thereof, or on the other party and any land disposed of to him; and
  - (c) the whole or any part of any capital or annual sum charged on or payable out of the land disposed of, or any part thereof, and other land subject to the settlement, may as between the trustees for sale and the other party and persons deriving title under or in succession to him (but without prejudice to the rights of the person entitled to such capital or annual sum) be charged exclusively on the land disposed of, or any part thereof, or such other land as aforesaid, or any part thereof in exoneration of the rest of the land on or out of which such capital or annual sum is charged or payable.

(2) A sale of land may be subject to a stipulation that all or any of the timber and other trees, pollards, tellers, underwood, sapling and plantations on the land sold (in this section referred to as "timber") or any articles attached to the land (in this section referred to as "fixtures") shall be taken by the purchaser at a valuation, and the amount of the valuation shall form part of the price of the land, and shall be capital money accordingly.

(3) Where on a sale the consideration attributable to any timber or fixtures is by mistake paid to any person not entitled to receive it, then, if such person or the purchaser or the persons deriving title under either of them subsequently pay the aforesaid consideration, with such interest, if any, thereon as the court may direct, to the trustees or other persons entitled thereto, or into court, the court may, on the application of the purchaser or the persons deriving title under him, declare that the disposition is to take effect as if the whole of the consideration had at the date thereof been duly paid to the trustees or other persons entitled to receive the same.

(4) The person, not entitled to receive the same, to whom the consideration is paid under subsection (3), and his estate and effects shall remain liable to make good any loss attributable to the mistake.

## **50. Power to grant options**

(1) The trustees for sale may at any time, either with or without consideration, grant by writing an option to purchase or take a sub-lease of the trust land, or any part thereof, or any easement, right or privilege over or in relation to the same at a price or rent fixed at the time of the granting of the option.

(2) Every such option shall be made exercisable within an agreed number of years not exceeding ten.

(3) The price or rent shall be the best which, having regard to all the circumstances, can reasonably be obtained and either—

- (a) may be a specified sum of money or rent, or at a specified rate according to the superficial area of the land with respect to which the option is exercised, or the frontage thereof or otherwise; or
- (b) in the case of an option to purchase contained in a sub-lease or agreement for a sub-lease, may be a stated number of years' purchase of the highest rent reserved by the sub-lease or agreement; or
- (c) if the option is exercisable as regards part of the land comprised in the sublease or agreement, may be a proportionate part of such highest rent and any aggregate price or rent may be made to be apportionable in any manner or according to any system, or by reference to arbitration.

(5) The consideration for the grant of the option shall be applicable in the same manner as if it represented proceeds of sale arising under the trust for sale.

## **51. Surrenders**

(1) The trustees for sale may accept, with or without consideration, a surrender of any sub-lease of trust land, whether made under this Law or not, in respect of the whole land sublet or any part thereof or any of them, and with or without an exception of any easement, right or privilege of any kind over or in relation to the land surrendered.

(2) On a surrender of a sub-lease in respect of part only of the land concerned, the rent may be apportioned.

(3) On a surrender, the trustees for sale may in relation to the land surrendered or of any part thereof, make a new or other sub-lease, or new or other sub-leases, in lots.

(4) A new or other sub-lease may comprise additional land and may reserve any apportioned or other rent.

(5) On a surrender, and the making of a new or other sub-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 sub-leasee's interest in the sub-lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine or consideration in money to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other sub-lease.

(6) Every new or other sub-lease shall be in conformity with this Law.

(7) All money received on the exercise by the trustees for sale of the powers conferred by this section, shall, unless the court, on an application made within six months after the receipt thereof or within such further time as the court may in special circumstances allow, otherwise directs, be applicable in the same manner as if it represented proceeds of sale arising under the trust for sale.

## **52. Acceptance of sub-leases**

(1) The trustees for sale may accept a sub-lease of any land, or of any easement, right or privilege, convenient to be held or annexed in enjoyment to the trust land, or any part thereof, for such period and upon such terms and conditions as the trustees think proper.

(2) The sub-lease may contain an option to purchase the reversion expectant on the term thereby granted.

## **53. Power to compromise claims and release restrictions etc.**

(1) The trustees for sale may, either with or without giving or taking any consideration in money or otherwise, compromise, compound, abandon, submit to arbitration, or otherwise settle any claim, dispute, or any part thereof, including in particular claims, disputes or questions as to boundaries, easement, and restrictive covenants, and for any of those purposes may enter into, give, execute, and do such agreements, assurances, releases, and other things as the trustees may think proper.

(2) The trustees for sale may at any time, by deed or writing, either with or without consideration in money or otherwise, release, waive, or modify, or agree to release, waive, or modify, any covenant, agreement, or restriction imposed on any other land for the benefit of the trust land, or any part thereof, or release, or agree to release, any other land from any easement, right or privilege, including a right of pre-emption, affecting the same for the benefit of the trust land, or any part thereof.

**54. Power to vary sub-leases and to give licences and consents**

(1) The trustees for sale may, at any time, by deed, either with or without consideration in money or otherwise, vary, release, waive or modify, either absolutely or otherwise, the terms of any sub-lease whenever made of the trust land or any part thereof, in respect of the whole or any part of the land comprised in any such sub-lease, but so that every such-lease shall, after such variation, release, waiver or modification as aforesaid, be such a sub-lease as might then have been lawfully made under this Law if the sub-lease has been surrendered.

(2) Where land is or has been disposed of subject to any covenant requiring the licence, consent, or approval of the covenantee or his successors in title as to—

- (a) the use of the land in any manner; or
- (b) the erection, construction or alteration of or addition to buildings or works of any description on the land; or
- (c) the plans or elevations of any proposed buildings or other works on the land; or
- (d) any other act, manner, or thing relating to the land, or any buildings or works thereon; or
- (e) any assignment, under-letting or parting with the possession of all or any part of the property comprised in any sub-lease affecting the

trust land,

and the covenant ensures for the benefit of the trust land (including, where the disposition is a sub-lease, the reversion expectant on the determination thereof), the licence, consent or approval may be given by the trustees for sale of the trust land affected.

**55. Power to apportion rents**

(1) The trustees for sale may, at any time, by deed, either with or without consideration in money or otherwise, agree for the apportionment of any rent reserved or created by any such sub-lease as mentioned in the last preceding sections so that the apportioned part of such rent shall thenceforth be payable exclusively out of or in respect of such respective portions of the land subject thereto as may be thought proper, and also agree that any covenants, agreements, powers or remedies for securing such rent and any other covenants or agreements by the sub-leasee or grantee and any conditions shall also be apportioned and made applicable exclusively to the respective portions of the land out of or in respect of which the apportioned parts of such rent shall thenceforth be payable.

(2) Where the trust land, or any part thereof, is held or derived under a sub-lease, or subject to covenants, agreements or conditions, whether such sub-lease comprises other land or not, the trustees for sale may at any time by deed, with or without giving or taking any consideration in money or otherwise, procure the variation, sub-lease, waiver, or modification, either absolutely or otherwise, of the terms, covenants, agreements, or conditions contained in such sub-lease in respect of the whole or any part of the trust land comprised therein, including the apportionment of any rent, covenants, agreements, conditions and provisions reserved or created by, or contained in such sub-lease.

(3) This section applies to sub-leases made either before or after the commencement of this Law.

**56. Provisions as to consideration**

(1) All money, not being rent, payable by the trustees for sale in respect of any transaction to which any of the three last preceding sections relates shall be paid out of capital; and all money not being rent, received on the exercise by the trustees for sale of the powers conferred by any of those sections shall, unless the court, on an application made within six months after the receipt thereof or within such further time as the court may in special circumstances allow, otherwise directs, be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

(2) For the purpose of the three last preceding sections "**consideration in money or otherwise**" means—

- (a) a capital sum of money or a rent;
- (b) land, being a right of occupancy or a sub-leasehold for any term of years whereof not less than sixty years shall be unexpired;
- (c) any easement, right or privilege over or in relation to the trust land, or any part thereof, or any other land;
- (d) the benefit of any restrictive covenant or condition; and
- (e) the release of the trust land, or any part thereof, or any other land, from any easement, right or privilege, including a right of pre-emption, or from the burden of any restrictive covenant or condition affecting the same.

**57. General power for the trustees for sale to effect any transaction under an order of the court**

(1) Any transaction affecting or concerning the trust land, or any part thereof, or any other land (not being a transaction otherwise authorised by this Law or by the settlement) which in the opinion of the court would be for the benefit of the trust land, or any part thereof, or the person interested under the settlement, may, under an order of the



court, be effected by the trustees for sale, if it is one which could have been validly effected by a holder of right of occupancy.

(2) In this section "**transaction**" includes any sale, exchange, assurance, sub-lease, surrender, retransfer, release, reservation or other disposition, and any compromise or other dealing, or arrangement; and "**effected**" has the meaning appropriate to the particular transaction; and the references to land include references to restrictions and burdens affecting land.

#### 58. Power to raise money by mortgage

(1) Where money is required for any of the following purposes, namely—

- (a) discharging an incumbrance on the trust land or part thereof;
- (b) paying for any improvement authorised by the settlement;
- (c) equality of exchange; or
- (d) payment of the costs of any transaction authorised by this section,

the trustees for sale may raise the money so required, on the security of the trust land or of any part thereof, by a legal mortgage, and the money so raised shall be applicable in the same manner as if it represented proceeds of sale arising under the trust for sale.

(2) "**Incumbrance**" in this section does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.

(3) The restrictions imposed by this Part of this Law on the sub-leasing powers of trustees for sale do not apply in relation to a mortgage term created under this Law.

#### *Transfers*

#### 59. Completion of transactions by transfer

(1) On a sale, exchange, sub-lease, mortgage, charge or other disposition, the trustees for sale may as regards land sold, given in exchange, sublet, mortgaged, or otherwise disposed of, or intended so to be, or as regards easements or other rights or

privileges sold, given in exchange, sublet, mortgaged, or otherwise disposed of, or intended so to be, effect the transaction by deed to the extent of the interest vested or declared to be vested in them or any less interest, in the manner requisite for giving effect to the sale, exchange, sub-lease, mortgage, charge, or other disposition, but so that a mortgage shall be effected by the creation of a term of years in the trust land or by charge by way of legal mortgage, and not otherwise.

(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 shall be effectual to pass the land transferred, or the easements, rights, privileges or other interests created, discharged from all the limitations, powers and provisions of the settlement, and from all interests and charges subsisting or to arise thereunder, but subject to and with the exception of—

- (a) all legal interests and charges by way of legal mortgage having priority to the settlement;
- (b) all legal interests and charges by way of legal mortgage which have been transferred or created for securing money actually raised at the date of the deed;
- (c) all sub-leases at a rent or otherwise and all grants of easements, rights of common or other rights or privilege which—
  - (i) were before the date of the deed granted or made for value or agreed so to be made by the trustees for sale under the settlement or under any statutory power or are at the date otherwise binding on them; and
  - (ii) are at the date of the deed protected under this Law by reason of their registration under the Land Instruments Registration Law if capable of registration thereunder.

(3) Notwithstanding the registration of a general equitable charge under the Land Instruments Registration Law, a disposition by trustees for sale under this Law operates to over-reach such charges which shall, according to their priority, take effect as if limited by the instrument creating the trust for sale.

(4) Where a sub-lease is by this Law authorised to be made by writing under hand only, such writing shall have the same operation under this section as if it had been a deed.

### *Miscellaneous Provisions*

#### **60. Power for trustees to enter into contracts**

(1) The trustees for sale may—

- (a) contract to make any sale, exchange, mortgage, charge or other disposition authorised by this Law;
- (b) vary or rescind, with or without consideration, the contract in the like case and manner in which, if they were holders of the right of occupancy in respect of the trust land, they might lawfully vary or rescind the same, but so that the contract as varied shall be in conformity with this Law; and
- (c) contract to make any sub-lease, and in making the sub-lease may vary the terms with or without consideration, but so that the sub-lease be in conformity with this Law; and
- (d) accept a surrender of a contract for a sub-lease, in like manner and the like terms in and on which they might accept a surrender of a lease and thereupon may make a new or other contract for or relative to terms in and on which they might make a new or other sub-lease, or new or other sub-leases, where a sub-lease had been executed;

and

- (e) 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 any such contract.

(2) All money arising on the exercise by the trustees for sale of the powers conferred by subsection (1) of this section, shall, unless the court on an application made within six months after the receipt of the money, or within such further time as the court may in special circumstances allow, otherwise directs, be applicable in the same manner as if it represented proceeds of sale arising under the trust for sale.

#### **61. Reference of questions to court**

- (1) If a question arises or a doubt is entertained—
  - (a) respecting the exercise or intended exercise of any of the powers conferred by this Law or any enactment replaced by this Law or the settlement, or any matter relating thereto; or
  - (b) otherwise in relation to property subject to a settlement,

the trustees, or any other person interested under the settlement, may apply to the court for its decision or direction thereon, or for the sanction of the court to any conditional contract, and the court may make such order or give such directions respecting the matter as the court thinks fit.

#### **62. Management of land**

- (1) The trustees for sale shall manage or superintend the management of the trust land, with full power—
  - (a) to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise;
  - (b) to erect, pull down, rebuild and repair houses and other buildings

and erections;

- (c) to continue the working of quarries which have usually been worked;
- (d) to drain or otherwise improve the land or any part thereof;
- (e) to make allowances to and arrangements with tenants and others;
- (f) to determine tenancies; and to accept surrenders of sub-leases and tenancies; and

(g) generally deal with the land in a proper and due course of management.

(2) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(3) This section applies only if and as far as a contrary intention is not expressed in the settlement.

### **63. Saving for and exercise of other powers under settlement**

(1) Nothing in this Law shall take away, abridge or prejudicially affect any power subsisting under a settlement or by statute or otherwise, exercisable by trustees for sale, and the powers given by this Law are cumulative.

(2) Subject to the provisions of subsection (3) of section 62, in case of conflict between the provisions of a settlement and the provisions of this Law relative to any matter in respect of which the trustees for sale exercise any power under this Law, the provisions of this Law shall prevail.

(3) If a question arises or a doubt is entertained respecting any matter within this section, the trustees for sale or any other person interested under the settlement may

apply to the court for its decision thereon, and the court may make such order respecting the matter as the court thinks fit.

**64. Saving for additional or larger powers under settlement**

(1) Nothing in this Law precludes a settler from conferring on the trustees for sale 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, and if relating to the trust land, as if they were conferred by this Law on the trustees for sale.

**PART II**

*Contracts, Transfers and other Instruments*

*Contracts*

**65. Contracts for sale etc., of land to be in writing**

(1) Save as otherwise provided in this Law, no action may be brought upon any contract for the sale or other disposition of land or any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of this Law but does not affect the laws relating to part performance, or sales by the court.

**66. Stipulations not of the essence of a contract**

Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract are also to be

construed and have effect at law in accordance with the same rules.

**67. Provisions as to contracts**

(1) A stipulation that a purchaser of a legal interest shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void, if a title can be made discharged from the equitable interest without such concurrence—

- (a) under a trust for sale; or
- (b) under this Law, or any other statute.

(2) A stipulation that a purchaser of a legal interest shall pay or contribute towards the costs of or incidental to—

- (a) obtaining a vesting order, or the appointment of trustees of a transfer on trust for sale; or
- (b) the preparation, stamping or execution of a transfer on trust for sale, shall be void.

(3) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Law, to the effect that an outstanding legal interest is to be traced or got in by or at the expense of a purchaser or that no objection is to be taken on account of an outstanding legal interest, shall be void.

(4) If the subject matter of any contract for the sale or exchange of land—

- (a) is a mortgage term and the vendor had power to transfer the right of occupancy, or in the case of a mortgage of a term of years, the sub-leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the right of occupancy or such reversion;
- (b) is an equitable interest capable of subsisting as a legal interest, and the vendor has power to vest such legal interest in himself or in the

purchaser or to require the same to be so vested, the contract shall be deemed to extend to such legal interest.

(5) This section does not affect the right of a mortgagee of a sub-leasehold land to sell his mortgage term only if he is unable to transfer or vest the sub-leasehold reversion expectant thereon.

(6) Any contract to transfer an undivided share in land made before or after the commencement of this Law shall be deemed to be sufficiently complied with by the transfer of a corresponding share in the proceeds of sale of the land in like manner as if the contract had been to transfer that corresponding share.

(7) A vendor shall not have any power to rescind a contract by reason only of the endorsement of any right under this section.

(8) This section only applies in favour of a purchaser for money or monies worth.

#### **68. Statutory commencement of title**

(1) After the commencement of this Law thirty years shall be substituted for forty years as the period of commencement of title which a purchaser of land may require; nevertheless earlier title than thirty years may be required in cases similar to those in which earlier title than forty years might immediately before the commencement of this Law be required.

(2) Under a contract to grant or assign a term of years, whether derived or to be derived out of right of occupancy or sub-leasehold land, the intended sub-lessee or assign shall not be entitled to call for the title to the right of occupancy.

(3) Under a contract to sell and assign a term of years derived out of a sub-leasehold interest in land, the intended assign shall not have the right to call for the title to the sub-leasehold reversion.



(4) On a contract to grant a term of years to be derived out of a sub-leasehold interest, with a sub-leasehold reversion, the intended sub-lessee shall not have the right to call for the title to that reversion.

(5) Where by reason of any of the three preceding subsections an intending sub-lessee or assign is not entitled to call for the title to the right of occupancy or to a sub-leasehold reversion, as the case may be, he shall not, where the contract is made after the commencement of this Law, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

(6) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Law or by any other statute, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.

(7) Where a sub-lease whether made before or after the commencement of this Law, is made under a power contained in a settlement, will, written law, or other instrument, any preliminary contract for or relating to the sub-lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the sub-lease.

(8) This section, save where otherwise expressly provided, applies to contracts for sale whether made before or after the commencement of this Law, and applies to contracts for exchange in like manner as to contracts for sale, save that it applies only to contracts for exchange made after such commencement.

(9) This section applies only if and so far as a contrary intention is not expressed in the contract.

## **69. Other statutory conditions of sale**

(1) A purchaser of any property shall not—

- (a) require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or
- (b) require any information, or make any requisition, objection or inquiry, with respect to any such deed, will or document, or the title prior to that time, notwithstanding that any such deed, will or other document, or that prior title, is recited, agreed to be produced, or noticed,

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instrument, or any deed, will or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, or otherwise perfected.

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of—

- (i) any power of attorney under which any abstracted document is executed; or
- (ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or
- (iii) any document creating any limitation or trust by reference to which

any part of the property is disposed of by an abstracted document.

(2) Where land sold is held by sub-lease (other than a sub-underlease), the purchaser shall assume, unless the contrary appears, that the sub-lease was duly granted; and, on production of the receipt for the last payment due for rent under the sub-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the sub-lease have been duly performed and observed up to the date of actual completion of the purchase.

(3) Where land sold is held by sub-underlease, the purchaser shall assume, unless the contrary appears, that the underlease and every superior interest were duly granted; and, on production of the receipt for the last payment due for rent under the underlease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the underlease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior interest, and all the covenants and provisions of every superior hold-ing, have been paid and duly performed and observed up to that date.

(4) On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say—

- (a) the expenses of the production and inspection of all records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the possession of the vendor or his mortgagee or trustee, and the expenses of all journeys incidental to such production or inspection; and
- (b) the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidence and information not

in the possession of the vendor or his mortgagee or trustee, and all attested, stamped, office, or other copies or abstracts of or extracts from, any documents aforesaid, not in the possession of the vendor or his mortgagee or trustee,

and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(5) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(6) The inability of a vendor to furnish a purchaser with an acknowledgement of his right to production and delivery of copies of documents of title or with legal covenant to produce and furnish copies of documents of title shall not be an objection to title but the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

(7) Such acknowledgements of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

(8) A vendor shall be entitled to retain documents of title where—

(a) he retains any part of the land to which the documents relate; or

(b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.

(9) This section applies to contracts for sale made before or after the commencement of this Law, and applies to contracts for exchange in like manner as to contracts for sale,

except that it applies only to contracts for exchange made after such commencement.

(10) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

(11) This section shall apply subject to any stipulation or contrary intention expressed in the contract.

#### **70. Application of insurance money on completion of a sale or exchange**

(1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

(2) This section applies only to contracts made after the commencement of this Law and has effect subject to—

- (a) any stipulation to the contrary contained in the contract;
- (b) any requisite consents of the insurers;
- (c) the payment by the purchaser of the proportionate part of the premium from the date of the contract.

(3) This section applies to a sale or exchange by an order of the court, as if—

- (a) for references to the "vendor" there were substituted references to the

"person bound by the order";

- (b) for the reference to the completion of the contract there were substituted a reference to the payment of the purchase or equality money (if any) into court;
- (c) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

**71. Stipulation preventing a purchaser, sub-lessee, or sub-underlessee, from employing his own legal practitioner to be void**

(1) Any stipulation made on the sale of any interest in land after the commencement of this Law to the effect that the instrument of transfer to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a legal practitioner appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a legal practitioner to act on his behalf in relation to any interest in land agreed to be purchased, shall be void; and, if a sale is effected by sub-lease, then, for the purpose of this subsection, the instrument giving effect to the transaction shall be deemed to be the instrument of transfer:

Provided that nothing in this subsection shall affect any right reserved to a vendor to furnish a form of transfer to a purchaser from which the draft can be prepared, or to charge a reasonable fee for such form.

(2) Any covenant or stipulation contained in, or entered into with reference to, any sub-lease or sub-underlease made before or after the commencement of this Law—

- (a) whereby the right of preparing, at the expense of a purchaser, any document of transfer of the interest of the sub-lessee or sub-underlessee in the premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such

interest, is expressed to be reserved to or vested in the lessor or underlessor or his legal practitioner; or

- (b) which in any way restricts the right of the purchaser to have such transfer carried out on his behalf by a legal practitioner appointed by him,

shall be void.

Provided that, where any covenant or stipulation is rendered void by this subsection, there shall be implied in lieu thereof a covenant or stipulation that the sub-lessee or sub-underlessee shall register with the sub-lessor or his legal practitioner within six months from the date thereof, or as soon after the expiration of that period as may be practicable, all transfers and devolutions (including probates or letters of administration) affecting the sub-lease or sub-underlease and pay a fee of two naira ten kobo in respect of each registration, and the power of entry (if any) on breach of any covenant contained in the sub-lease or sub-underlease shall apply and extend to the breach of any covenant so to be implied.

(3) Save where a sale is effected by sub-lease or sub-underlease, this section does not affect the law relating to the preparation of a sub-lease or sub-underlease or the draft thereof.

(4) In this section "**sub-lease**" and "**sub-underlease**" includes any agreement thereof or other tenancy, and "sub-lessee" and "sub-underlessee" and "sub-lessor" and "sub-underlessor" have corresponding meanings.

## **72. Application to the court by vendor and purchaser**

(1) A vendor or purchaser of any interest in land, or their representatives respectively, may apply in a summary way by summons or as may be otherwise provided by rules of court to the court, in respect of any requisitions or objections or any claim for

compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the court may make such order upon the application as to the court may appear just, and may order how and by whom all or any of the costs of and incident to the application are to be borne and paid.

(2) Where the court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit.

(3) This section applies to a contract for the sale or exchange of any interest in land.

### **73. Discharge of incumbrances by the court on sales or exchange**

(1) Where land subject to any incumbrance, whether immediately realisable or payable or not, is sold or exchanged by the court, or out of court, the court may, if it thinks fit, on the application of any party to the sale or exchange, direct or allow payment into court of such sum as is hereinafter mentioned, that is to say—

(a) in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, the sum to be paid into court shall be of such amount as, when invested in trustee securities, the court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge; and

(b) in any other case of capital money charged on the land, the sum to be paid into court shall be of an amount sufficient to meet the incumbrance and any interest due thereon,

but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency, except depreciation of investments, not



exceeding one-tenth part of the original amount to be paid in, unless the court for special reasons thinks fit to require a larger additional amount.

(2) Subject to subsection (1), the court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the court thinks fit, declare the land to be freed from the incumbrance, and make any order for transfer, or vesting order, proper for giving effect to the sale or exchange, and give directions for the retention and investment of the money in court and for the payment or application of the income thereof.

(3) The court may declare all other land, if any, affected by the incumbrance (besides the land sold or exchanged) to be freed from the incumbrance, and this power may be exercised either after or without notice to the incumbrancer, and notwithstanding that on a previous occasion an order relating to the same incumbrance has been made by the court which was confined to the land then sold or exchanged.

(4) On any application under this section the court may, if it thinks fit as respects any vendor or purchaser, dispense with the service of any notice which would otherwise be required to be served on the vendor or purchaser.

(5) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(6) This section applies to sales or exchanges whether made before or after the commencement of this Law, and to incumbrances whether created by statute or otherwise.

#### *Transfers and other Instruments*

#### **74. Lands lie in grant only**

(1) All lands and all interests therein lie in grant and a transfer of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but

subject to all prior rights therein.

(2) The use of the word "grant" is not necessary to transfer land or to create any interest therein.

**75. Transfer to be by deed**

(1) Except as otherwise provided in this Law, all transfers of land or of any interest therein are void for the purposes of transferring or creating a legal interest unless made by deed.

(2) This section does not apply to—

- (a) assents by a personal representative;
- (b) surrenders by operation of law, including surrenders which may, by law be effected without writing;
- (c) sub-leases or tenancies or other assurances not required by any written law to be made in writing;
- (d) receipts not required by any written law to be under seal;
- (e) vesting orders Of the court or other competent authority;
- (f) transfers taking effect by operation of law.

**76. Instruments required to be in writing**

(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—

- (a) no interest in land can be created or disposed of except by writing signed by the person creating or transferring the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
- (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person

who is able to declare such trust or by his will;

- (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing the same, or by his agent thereunto lawfully authorised in writing or by will.

#### **77. Creation of interests in land by parol**

(1) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only,

(2) Nothing in the foregoing provisions of this Part of this Law shall affect the creation by parol or a sub-lease or a sub-underlease taking effect in possession for a term not exceeding three years (whether or not the sub-lessee or sub-underlessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine.

#### **78. Savings in regard to last two sections**

Nothing in the last two foregoing sections shall—

- (a) invalidate dispositions by will;
- (b) affect any interest validly created before the commencement of this Law;
- (c) affect the right to acquire an interest in land by virtue of taking possession; or
- (d) affect the operation of the law relating to part performance.

#### **79. Persons taking who are not parties and as to indentures**

(1) A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement over or respecting

land or other property, although he may not be named as a party to the transfer or other instrument.

(2) A deed between parties, to effect its objects, has the effect of an indenture though not indented or expressed to be an indenture.

#### **80. Description of deeds**

Any deed, whether or not being an indenture, may be described (at the commencement thereof or otherwise) as a deed simply, or a transfer, deed of exchange, settlement, mortgage, charge, transfer of mortgage, appointment, sub-lease or otherwise according to the nature of the transaction intended to be effected.

#### **81. Provisions as to supplemental instruments**

Any instruments (whether executed before or after the commencement of this Law) expressed to be supplemental to a previous instrument shall, as far as may be, be read and have effect as if the supplemental instrument contained a full recital of the previous instrument, but this section does not operate to give any right to an abstract or production of any such previous instrument, and the purchaser may accept the same as evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

#### **82. Conditions and certain covenants not implied**

(1) An exchange or other transfer of land made by deed after the thirty-first day of December, eighteen hundred and ninety nine, does not imply any condition of law.

(2) The word "give" or "grant" does not, in a deed made after the date last aforesaid, imply any covenant in law, save where otherwise provided by statute.

#### **83. Abolition of technicalities in regard to transfers and deeds**

(1) A transfer of a right of occupancy over land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the right of occupancy or

other the whole interest which the grantor had power to transfer in such land, unless a contrary intention appears in the transfer.

(2) A transfer of a right or occupancy to a corporation sole by his corporate designation without the word "successors" shall pass to the corporation the right of occupancy or other the whole interest which the grantor had power to transfer in such land, unless a contrary intention appears in the transfer.

(3) In a voluntary transfer a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be transferred for the use or benefit of the grantee.

(4) The foregoing provisions of this section apply only to transfers and deeds executed after the commencement of this Law.

(5) In construing a deed executed before the commencement of the Land Use Act, it is sufficient, for the purpose of limiting a freehold estate, if the word "freehold" is used without the use of the word "heirs".

#### **84. Construction of expressions used in deeds and other instruments**

(1) In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Law, unless the context otherwise requires—

- (a) **"month"** means calendar month;
- (b) **"person"** includes a corporation;
- (c) the singular includes the plural and vice versa;
- (d) the masculine includes the feminine and vice versa.

(2) (a) a transfer of land shall be deemed to include and shall by virtue of this Law operate to transfer, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, liberties, privileges, easements, rights and advantages

whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of transfer, sublet, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof;

(b) a transfer of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Law operate to transfer, with the land, houses or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, passages, lights, water courses, liberties, privileges, easements, rights and advantages whatsoever appertaining or reputed to appertain to the land, houses, or other buildings transferred, or any of them, or any part thereof, or, at the time of transfer, sublet, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings transferred, or any of them, or any part thereof;

(c) this section applies only if and as far as a contrary intention is not expressed in the transfer, and has effect subject to the terms of the transfer and to the provisions therein contained;

(d) this section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the transfer gives to him to the land expressed to be transferred, or as transferring to him any property, right or thing in this section mentioned, further or otherwise than as the same could have been transferred to him by the transferring parties;

(e) this section applies to transfers made after the thirty-first day of December, eighteen hundred and ninety-nine.

## **85. Ail interests clause implied**

(1) Every transfer is effectual to pass all the right, title, interest, claim and demand which the transferring parties respectively have into or on the property transferred or expressed or intended so to be, or which they respectively have power to transfer in, to,

or on the same.

(2) This section applies only if and as far as a contrary intention is not expressed in the transfer, and has effect subject to the terms of the transfer and to the provisions therein contained.

(3) This section applies to transfers made after the thirty-first day of December, eighteen hundred and ninety-nine.

#### **86. Production and safe custody of documents**

(1) Where a person retains possession of documents, and gives to another an acknowledgement in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an "acknowledgement"), that acknowledgement shall have effect as in this section provided.

(2) An acknowledgement shall bind the documents to which it relates in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgement, unless prevented from so doing by fire or other inevitable accident.

(3) The obligations imposed under this section by an acknowledgement are to be performed from time to time at the request in writing of the person to whom an acknowledgement is given, or of any person, not being a sub-lessee at a rent, having or claiming any interest or right through or under that person or otherwise becoming through or under that person or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgement relates.

(4) The obligations imposed under this section by an acknowledgement are—

(a) an obligation to produce the documents or any of them at all

reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any person by him authorised in writing;

- (b) an obligation to produce the documents or any of them at any trial, hearing or examination in any court, or in the execution of any commission, or elsewhere in Nigeria on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to the title or claim; and
- (c) an obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgement shall be paid by the person requesting performance.

(6) An acknowledgement shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7) Any person claiming to be entitled to the benefit of an acknowledgement may apply to the court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents, or any of them, to him, or some person on his behalf; and the court may if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.



(8) An acknowledgement shall by virtue of this Law satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10) Any person claiming to be entitled to the benefit of such an undertaking may apply to the court to assess damages for any loss or destruction of, or injury to, the documents or any of them, and the court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11) The undertaking for safe custody of documents shall by virtue of this Law satisfy any liability to give a covenant for safe custody of documents.

(12) The rights conferred by an acknowledgement or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents, as are not, by virtue of this Law, satisfied by the giving of the acknowledgement or undertaking, and shall have effect subject to the terms of the acknowledgement or undertaking and to any provisions therein contained.

(13) This section applies only if and as far as a contrary intention is not expressed in the acknowledgement or undertaking.

(14) This section applies to an acknowledgement or undertaking given, or a liability respecting documents incurred, before or after the commencement of this Law.

## **87. Reservation of legal interest**

(1) A reservation of a legal interest shall operate at law without any execution of the transfer by the grantee of the interest out of which the reservation is made, or any regrant by him, so as to create the interest reserved, and so as to vest the same in possession in the person (whether being the grantor or not) for whose benefit the reservation is made.

(2) A transfer of a legal interest expressed to be made subject to another legal interest not in existence immediately before the date of the transfer, shall operate as a reservation, unless a contrary intention appears.

(3) This section applies only to reservations made after the commencement of this Law.

## **88. Confirmation of past transactions**

(1) A deed containing a declaration by a property owner that his property shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his property and capable under this Law of subsisting as a legal interest which, at some prior date, were expressed to have been transferred or created, and any dealings therewith which would have been legal if those interests had been legally and validly transferred or created, shall, to the extent of the interest of the owner and subject to the restrictions imposed by this Law in the case of mortgages, operate to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings aforesaid.

(2) The powers conferred by this section may be exercised by a trustee for sale or a personal representative as well as by the property owner, but if exercised by any person, other than the property owner, only with the leave of the court.

(3) This section applies only to deeds containing such a declaration as aforesaid if executed after the commencement of this Law.

**89. Receipts in deed sufficient**

(1) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being endorsed on the deed.

(2) This section applies to deeds executed before or after the commencement of this Law.

**90. Receipt in deed or endorsed evidence**

(1) A receipt for consideration money or other consideration in the body of a deed or endorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2) This section applies to deeds executed before or after the commencement of this Law.

**91. Receipt in deed or endorsed authority for payment to legal practitioner**

(1) Where a legal practitioner produces a deed, having in the body thereof or endorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be a sufficient authority to the person liable to pay or give the same for his paying or giving the same to the legal practitioner, without the legal practitioner producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2) This section applies whether the consideration was paid or given before or after the commencement of this Law.

**92. Release of part of land affected from a judgement**

(1) A release from a judgement (including any writ or order imposing a charge) of a part of any land charged therewith does not affect the validity or the judgment as respects any land not specifically released.

(2) This section operates without prejudice to the rights of any person interested in the property remaining unreleased and not concurring in or confirming the release.

(3) This section applies to release made before or after the commencement of this Law.

**93. Transfers by a person to himself, etc.**

(1) Property other than land, including sub-leases, may be transferred by a person to himself jointly with another person by the like means by which it might be transferred by him to another person.

(2) In transfers made before or after the commencement of this Law, a right of occupancy, or a thing in action, may be transferred by a person to himself jointly with another person, by the like means by which it might be transferred by him to another person; and may, in like manner, be transferred by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(3) After the commencement of this Law a person may transfer land to or vest land in himself.

(4) Two or more persons (whether or not being trustees or personal representatives) may transfer, and shall be deemed always to have been capable of transferring, any property vested in them to any one or more of themselves in like manner as they could have transferred such property to a third party.

Provided that if the persons in whose favour the transfer is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the transfer shall be liable to be set aside.

**94. Execution of deeds by an individual**

(1) Where an individual executes a deed, he shall either sign or place his mark upon the same; and sealing alone shall not be deemed sufficient.

(2) This section applies only to deeds executed after the commencement of this Law.

**95. Execution of instruments by or on behalf of corporations**

(1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and if the seal has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

(2) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.

(3) Where a person is authorised under a power of attorney or under any statutory or other power to transfer any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the transfer by signing the name of the corporation in the presence of at least one witness, and in the case of a deed affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the transfer.

(4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to transfer any interest in property in the name or on

behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person, and where an instrument appears to be executed by an officer so appointed then in favour of a purchaser, the instrument shall be deemed to have been executed by an officer duly authorised.

(5) The foregoing provisions of this section apply to transactions whenever effected but only to deeds and instruments executed after the commencement of this Law, except that in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Law, or by this Law.

(6) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

#### **96. Right of purchaser as to execution**

(1) On a sale, the purchaser shall not be entitled to require that the transfer to him be executed in his presence, or in that of his legal practitioner as such; but shall be entitled to have, at his own cost, the execution of the transfer attested by some person appointed by him who may, if he thinks fit, be his legal practitioner.

(2) This section applies to sales made before or after the commencement of this Law.

#### *Covenants*

## 97. Covenants for title Second Schedule

(1) In a transfer there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Law, be implied, a covenant, by the person or by each person who transfers as far as regards the subject matter or share of subject matter expressed to be transferred by him, with the person, if one, to whom the transfer is made, or with the persons jointly if more than one, to whom the transfer is made as joint tenants, or with each of the persons, if more than one, to whom the transfer is (when the law permits) made as tenants in common, that is to say—

- (a) in a transfer for valuable consideration, other than a mortgage, a covenant by a person who transfers and is expressed to transfer as beneficial owner in the terms set out in Part I of the Second Schedule to this Law;
- (b) in a transfer of a sub-leasehold property for valuable consideration, other than a mortgage, a further covenant by a person who transfers and is expressed to transfer as beneficial owner in the terms set out in Part II of the Second Schedule of this Law;
- (c) in a transfer by way of mortgage (including a charge) a covenant by a person who transfers or charges and is expressed to transfer or charge as beneficial owner in the terms set out in Part III of the Second Schedule to this Law;
- (d) in a transfer by way of mortgage (including a charge) or a right of occupancy subject to a rent or of a sub-leasehold, a further covenant by a person who transfers or charges and is expressed to transfer or charge as beneficial owner in the terms set out in Part IV of the Second Schedule of this Law;

- (e) in a transfer by way of settlement a covenant by a person who transfers and is expressed to transfer as settlor in the terms set out in Part V of the Second Schedule to this Law;
- (f) in any transfer, a covenant by every person who transfers and is expressed to transfer as trustee or mortgagee, or as personal representative of a deceased person, or as a committee of a lunatic or under an order of the court, in the terms set out in Part VI of the Second Schedule to this Law, which covenant shall be deemed to extend to every such person's own acts only and may be implied in an assent by a personal representative in like manner as in a transfer by deed.

(2) Where in a transfer it is expressed that by direction of a person expressed to direct as beneficial owner another person transfers, then, for the purposes of this section, the person giving the direction, whether he transfers and is expressed to transfer as beneficial owner or not, shall be deemed to transfer and to be expressed to transfer as beneficial owner the subject matter so transferred by his direction; and a covenant on his part shall be implied accordingly.

(3) Where in a transfer a person transferring is not expressed to transfer as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or under an order of the court, or by direction of a person as beneficial owner, no covenant on the part of the person transferring shall be, by virtue of this section, implied in the transfer.

(4) In this section a transfer does not include a sub-lease at a rent, but includes a charge; and "**transfer**" has a corresponding meaning.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident



to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is for the whole or any part thereof, from time to time vested.

(6) A covenant implied as aforesaid may be varied or extended by a deed or an assent, and as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(7) This section applies to transfers made before or after the commencement of this Law; but only to assents by a personal representative made after the commencement of this Law.

#### **98. Implied covenants in transfers subject to rents**

(1) In addition to the covenants implied under the last preceding section, there shall in the several cases in this section mentioned, be deemed to be included and implied, a covenant to the effect in this section stated, by and with such persons as are hereinafter mentioned, that is to say—

(a) in a transfer for valuable consideration, other than a mortgage, of the entirety of the land comprised in a sub-lease, for the residue of the term or interest created by the sub-lease a covenant by the assignee or joint and several covenants by the assignees (if more than one) with the transferring parties and with each of them (if more than one) in the terms set out in Part VII of the Second Schedule to this Law;

[Second Schedule.]

(b) where a rent has been apportioned in respect of any land, with consent of the sub-lessor, the covenant in paragraph (a) shall be

implied in the transfer of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land;

(c) in a transfer for valuable consideration, other than a mortgage, or part of the land comprised in a sub-lease, for the residue of the term or interest created by the sub-lease, subject to a part of the rent which has been or is by the transfer apportioned (but in either case without the consent of the sub-lessor) in respect of the land transferred—

(i) a covenant by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the transferring parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part VIII of the Second Schedule to this Law;

(ii) a covenant by a person who transfers or is expressed to transfer as beneficial owner, or joint and several covenants by the persons who so transfer or are expressed to so transfer, if at the date of the transfer any part of the land comprised in the sub-lease is retained, with the assignees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part VIII of the Second Schedule to this Law.

(2) Where in a transfer for valuable consideration, other than a mortgage, part of the land comprised in a sub-lease is, without the consent of the sub-lessor, expressed to be transferred—

(a) if subject to the entire rent, then paragraph (c) (i) of the last subsection shall have effect as if the entire rent were the apportioned

rent; or

- (b) if discharged or exonerated from the entire rent, then paragraph (c) (ii) of the last subsection shall have effect as if the entire rent were the balance of the rent, and the words "other than the covenant to pay the entire rent" had been omitted.

(3) In this section "**transfer**" does not include a transfer by way of a sub-lease at a rent.

(4) Any transfer which would be implied under this section by reason of a person transferring or being expressed to transfer as beneficial owner may, by express reference to this section, be implied, with or without variation, in a transfer, whether or not for valuable consideration, by a person who transfers or is expressed to transfer as settlor, or as a trustee, or as mortgagee, or as personal representative of a deceased person, or as committee for a lunatic, or under an order of the court.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with the interest of the implied covenantee, and shall be capable of being enforced by every person in whom that interest is, for the whole or any part thereof, from time to time vested.

(6) A covenant implied as aforesaid may be varied or extended, and shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extension were directed in this section to be implied.

(7) In particular, any covenant implied under this section may be extended by providing that—

- (a) the land transferred; or
- (b) the part of the land let which remains vested in the covenantor,

shall, as the case may require, stand charged with the payment of all money which may become payable under the implied covenant.

(8) This section applies only to transfers made after the commencement of this Law.

#### **99. Benefit of covenants relating to land**

(1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed.

(2) For the purposes of subsection (1), in connection with covenants restrictive of the user of land "successors in title" shall be deemed to include the owner and occupiers for the time being of the land of the covenantee intended to be benefited.

(3) This section applies to covenants made after the commencement of this Law, but does not affect the operation of covenants made before the commencement of this Law under any written law then in force in the state.

#### **100. Burden of covenants relating to land**

(1) A covenant relating to any land of a covenantor or capable of being bound by him shall unless a contrary intention is expressed, bind his successors in title and the persons deriving title under him or them, and subject as aforesaid, shall have effect as if such successors and other persons were expressed.

(2) Subsection (1) extends to a covenant to do some act relating to the land, notwithstanding that the subject matter may not be in existence when the covenant is made.

(3) For the purpose of this section in connection with covenants restrictive of the user of land "**successors in title**" shall be deemed to include the owners and occupiers for the time being of such land.

(4) This section applies only to covenants made after the commencement of this

Law.

#### **101. Covenants binding land**

(1) A covenant and a bond and an obligation or contract under seal made before or after the commencement of this Law binds the whole estate of the person making the same if and so far as a contrary intention is not expressed in the covenant, bond, obligation or contract.

(2) Subsection (1) extends to a covenant implied by virtue of this Law.

(3) Every covenant running with the land, whether entered into before or after the commencement of this Law, shall take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of every such covenant shall vest in or bind the persons who by virtue of any such enactment or otherwise succeed to the title of the covenantee or the covenantor, as the case may be.

(4) The benefit of a covenant relating to land entered into after the commencement of this Law may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Law.

(5) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

#### **102. Effect of covenants with two or more person jointly**

(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more persons jointly, to pay money or to make a transfer, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Law, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to sue on the benefit of, any other person to whom the right to sue on the

covenant, contract, bond or obligation devolves, and where made after the commencement of this Law shall be construed as being also made with each of them.

(2) This section extends to a covenant implied by virtue of this Law.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and has effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4) Except as otherwise expressly provided, this section applies to a covenant, contract, bond or obligation made or implied before or after the commencement of this Law.

#### **103. Covenants and agreements entered into by a person with himself and another or others**

(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

(2) This section applies to covenants or agreements entered into before or after the commencement of this Law, and to covenants implied by statute in the case of a person who transfers or is expressed to transfer to himself and one or more other persons, but without prejudice to any order of the court made before such commencement.

#### **104. Construction of implied covenants**

In the construction of a covenant or proviso, or other provision, implied in a deed or assent by virtue of this Law, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

### **PART III**

## *Mortgages and Power of Attorney*

### *Mortgages*

#### 105. Mode of mortgaging right of occupancy

(1) A mortgage of a right of occupancy shall only be capable of being effected at law either by—

- (a) a sub-lease for a term of years subject to a provision for cesser on redemption; or
- (b) a charge by deed expressed to be by way of legal mortgage.

(2) A first mortgagee shall have the same right of the possession of documents as if his security included the right of occupancy.

(3) Any purported transfer of a right of occupancy by way of mortgage made after the commencement of this Law shall (to the extent of the interest of the mortgagor) operate as a sub-lease of the land to the mortgagee for a term of years, without impeachment for waste, but subject to cesser on redemption, in the manner following, namely—

- (a) a first or only mortgagee shall take a term of three thousand years from the date of the mortgage;
- (b) a second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee; and, in this subsection, any such purported transfer as aforesaid includes an absolute transfer with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the right of occupancy in a mortgagee subject to redemption.

(4) This section applies whether or not the land is registered or the mortgage is expressed to be made by way of trust for sale or otherwise.

(5) Without prejudice to the provisions of this Law respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of a right of occupancy shall be construed as a power to mortgage the property for a term of years, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.

#### **106. Mode of mortgaging sub-lease-holds**

(1) A mortgage of a term of years shall only be capable of being effected at law either by a sub-lease for a term of years, less by one day at least than the term vested in the mortgagor, and subject to a provision for a cesser on redemption, or by charge by deed expressed to be by way of legal mortgage is required, such licence shall not be unreasonably refused.

(2) A first mortgagee shall have the same right to the possession of documents as if his security had been effected by assignment.

(3) Any purported assignment of a term of years by way of mortgage made after the commencement of this Law shall (to the extent of the interest of the mortgagor) operate as sub-underlease of the leasehold land to the mortgagee for a term of years, but subject to cesser on redemption, in manner following, namely—

(a) the term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned;

(b) the term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last mentioned term



permits, and in any case for a term less by one day at least than the term expressed to be assigned,

and, in this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the term of the mortgagor in a mortgagee subject to redemption.

(4) This section applies whether or not the land is registered or the mortgage is made by way of sub-mortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise.

(5) Without prejudice to the provisions of this Law respecting legal and equitable powers, every power to mortgage for or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the term by sub-underlease for a term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

#### **107. Charges by way of legal mortgage**

(1) Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if—

- (a) where the mortgage is a mortgage of a right of occupancy, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and
- (b) where the mortgage is a mortgage of a term of years, a sub-term less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee.

(2) Where an interest vested in a mortgage immediately before the commencement of this Law has by virtue of this Law been converted into a term of years of sub-term, the mortgagee may, by a declaration in writing to that effect signed by him, convert the mortgage into a charge by way of legal mortgage, and in that case the mortgage term shall be extinguished in the inheritance or in the head term as the case may be, and the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage terms or sub-term had remained subsisting.

(3) Such declaration shall not affect the priority of the mortgagee or his right to retain possession of documents, nor affect his title to or right over any fixtures or personal effects comprised in the mortgage.

(4) The power conferred by subsection (2) may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.

#### **108. Realisation of a mortgaged right of occupancy**

(1) Where a right of occupancy has been mortgaged by the creation of a term of years limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

(a) the transfer by him shall operate to vest in the purchaser the right of occupancy transferred subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured; and thereupon;

(b) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land transferred.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the

order shall operate to vest the right of occupancy in him (subject to any legal mortgagee having priority to the mortgage right of which the foreclosure is obtained and to any money thereby secured), and thereupon the mortgage term, if any, shall thereby be merged in the right of occupancy and any subsequent mortgage term of charge by way of legal mortgage bound by the order shall thereupon be extinguished.

(3) Where any such mortgagee acquires a title under any limitation law he, or the persons deriving title under him, may enlarge the mortgage term into a right of occupancy under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a charge by way of legal mortgage may by deed declare that the right of occupancy is vested in him discharged as aforesaid, and the same shall vest accordingly.

(4) Where the mortgage includes fixtures or personal effects any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

(5) In the case of a sub-mortgage by sub-underlease of a long term (less a nominal period) itself limited out of a right of occupancy, the foregoing provisions of this section shall operate as if the derivative terms, if any, created by the sub-mortgagee had been limited out of the right of occupancy and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgagee as aforesaid, and to enable the sub-mortgagee to transfer the right of occupancy or acquire it by foreclosure, enlargement or otherwise as aforesaid.

(6) This section applies to a mortgage whether created before or after the commencement of this Law, and to a mortgage term created by this Law, but does not operate to confer a better title to the right of occupancy than would have been acquired if the same had been transferred by the mortgage (being a valid mortgage) and the

restrictions imposed by this Law in regard to the effect and creation of mortgages were not in force, and all prior mortgages (if any) not being merely equitable charges had been created by sub-lease or by charge by way of legal mortgages.

#### **109. Realisation of sub-leasehold mortgages**

(1) Where a term of years has been mortgaged by the creation of another term of years limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

- (a) the transfer by him shall operate to transfer to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court) the sub-leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured; and thereupon;
- (b) the mortgage term or the charge by way of legal mortgage, and any subsequent mortgage term or charge, shall merge in such sub-leasehold reversion or be extinguished unless excepted as aforesaid; and such transfer may, as respects the sub-leasehold reversion, be made in the name of the owner in whom it is vested.

Where a licence to assign is required on a sale by a mortgage such licence shall not be unreasonably refused.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall, unless it otherwise provides, operate (without giving rise to a forfeiture for want of a licence to assign) to vest the sub-leasehold reversions affected by the mortgage and any subsequent mortgage term in him subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured;

and thereupon the mortgage term and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall, subject to any express provisions to the contrary contained in the order, merge in such sub-leasehold reversion or be extinguished.

(3) Where any such mortgagee acquires a title under any limitation law, he or the persons deriving title under him, may by deed declare that the sub-leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and the same shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly; and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall, subject to any express provision to the contrary contained in the deed, merge in such sub-leasehold reversion or be extinguished.

(4) Where the mortgage includes fixtures or personal effects, any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

(5) In the case of a sub-mortgage by sub-underlease of a term (less a nominal period) itself limited out of a sub-leasehold reversion, the foregoing provisions of this section shall operate as if the derivative term created by the sub-mortgage had been limited out of the sub-leasehold reversion, and so as (subject as aforesaid) to merge the principal mortgage term therein as well as the derivative term created by the sub-mortgage and to enable the sub-mortgagee to transfer the sub-leasehold reversion or acquire it by foreclosure, vesting or otherwise as aforesaid.

(6) This section takes effect without prejudice to any incumbrance or trust affecting the sub-leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure or title is made or acquired, and applies to a mortgage whether executed before or after the commencement of this Law, and to a mortgage term created by

this Law, but does not apply where the mortgage term does not comprise the whole of the land included in the sub-leasehold reversion unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, or the rent is of no money value or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected.

#### **110. Realisation of equitable charges by the court**

(1) Where an order for sale is made by the court in reference to an equitable mortgage on land (not secured by a legal term of years or by a charge by way of legal mortgage) the court may, in favour of purchaser, make a vesting order transferring the land or may appoint a person to transfer the land or create and vest in the mortgage a legal term of years to enable him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by deed by way of legal mortgage pursuant to this Law, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

(2) This section applies to equitable mortgages made or arising before or after the commencement of this law, but not to a mortgage which has been over-reached under the powers conferred by this Law or otherwise.

#### **111. Sale of mortgaged property in action for redemption or foreclosure**

(1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding that—

(a) any other person dissents; or

(b) the mortgagee or any person so interested does not appear in the action,

and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property, on such terms as it thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms.

(3) In an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5) This section applies to actions brought either before or after the commencement of this Law.

(6) In this section "mortgagee property" includes the interest which a mortgagee would have had power to transfer if the statutory power of sale were applicable.

(7) For the purposes of this section the court may, in favour of a purchaser make a vesting order transferring the mortgaged property, or appoint a person to do so, subject or not to any incumbrance, as the court may think fit, or, in the case of an equitable mortgage, may create and vest a mortgage term in the mortgagee to enable him to carry out the sale as if the mortgage had been made by deed by way of legal mortgage.

## **112. Restriction on consolidation of mortgages**

(1) A mortgagor seeking to redeem any one mortgage is entitled to do so without

paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

(2) This subsection applies only if and as far as a contrary intention is not expressed in the mortgage deeds or any of them.

(3) Save as aforesaid, nothing in this Law in reference to mortgages, affects any right of consolidation or renders inoperative a stipulation in relation to any mortgage made before or after the commencement of this Law, reserving a right to consolidate.

### **113. Tacking and further advances**

(1) After the commencement of this Law, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

- (a) if an arrangement had been made to that effect with the subsequent mortgagees;
- (b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or
- (c) whether or not he had such notice as aforesaid, where the mortgage imposed an obligation on him to make such further advances.

(2) Subsection (1) applies whether or not the prior mortgage was made expressly for securing further advances.

(3) In relation to the making of further advances after the commencement of this Law a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered under Part XVII of this Law if it was not so registered at the time when the original mortgage was created or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.



Provided that this subsection only applies when the prior mortgage was made expressly for securing a current account or other further advances.

(4) Save in regard to the making of further advances as afore said, the right to tack is hereby abolished.

Provided that nothing in this Law shall affect any property acquired before the commencement of this Law by tacking or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.

(5) This section applies to mortgages of land made before or after the commencement of this Law.

#### **114. Obligation to transfer instead of retransferring and as to right to take possession**

(1) Where a mortgagor is entitled to redeem, then subject to compliance with the terms on the compliance with which he would be entitled to require a retransfer or surrender, he shall be entitled to require the mortgagee, instead of retransferring or surrendering, to assign the mortgage debt and transfer the mortgaged property to any third persons, as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and are capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer prevails over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer prevails over a requisition of a subsequent incumbrancer.

(3) The foregoing provisions of this section do not apply in the case of a mortgagee being or having been in possession.

(4) Nothing in this Law affects prejudicially the right of a mortgagee of land whether or not his charge is secured by a legal term of years to take possession of the land,

but the taking of possession by the mortgagee does not convert any legal interest of the mortgagor into an equitable interest.

(5) This section applies to mortgages made either before or after the commencement of this Law, and takes effect notwithstanding any stipulation to the contrary.

#### **115. Regulations respecting inspection, production, and delivery of documents and priorities**

(1) A mortgagor, as long as his right to redeem subsists, shall be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgage.

This section applies to mortgages made before or after the commencement of this Law, and takes effect notwithstanding any stipulation to the contrary.

(2) A mortgagee whose mortgage is surrendered or otherwise extinguished, shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto, unless he has notice of the right or claim of a person having a better right, whether by virtue of a right to right to require a surrender or retransfer or otherwise.

#### **116. Priorities between mortgages**

Every mortgage affecting a legal interest made after the commencement of this Law, whether legal or equitable, shall rank according to its date of registration under Part XVII of this Law.

#### **117. Actions for possession by mortgagors**

(1) A mortgagor entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to take possession

or to enter into the receipt of the rents and profits thereof, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereof, in his own name only, unless the cause of action arises upon a sub-lease or other contract made by him jointly with any other person.

(2) This section does not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of legal interest vested in him or otherwise.

#### **118. Leasing powers of mortgagor and mortgagor in possession**

(1) A mortgagor of land while in possession shall, as against all prior incumbrancers, and as against the mortgagor, have power to make from time to time building or other sub-leases of the mortgaged land or any part thereof for any term not exceeding ninety-nine years.

(2) Every person making a sub-lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(3) Every such sub-lease shall be made to take effect in possession not later than twelve months after its date.

(4) Every such sub-lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(5) Every such sub-lease shall contain a covenant by the sub-leasee 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.

(6) A counterpart of every such sub-lease shall be executed by the sub-leasee and delivered to the sub-lessor, of which execution and delivery the execution of the sub-lease by the sub-lessor shall, in favour of the sub-lessee, and all persons deriving title

under him, be sufficient evidence.

(7) Every such building sub-lease shall be made in consideration of the lessee, or some person by whose direction the sub-lease is granted, having erected, or agreeing to erect within not more than five years from the date of the sub-lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute within that time, on the land sublet, an improvement for or in connection with building purposes.

(8) In any such building sub-lease 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.

(9) In case of a sub-lease by the mortgagor, he shall, within one month after making the sub-lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the sub-lease duly executed by the sub-lessee, but the sub-lessee shall not be concerned to see that this provision is complied with.

(10) A contract to make or accept a sub-lease under this section may be enforced by or against every person on whom the sub-lease, if granted, would be binding.

(11) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(12) The mortgagee may, by agreement in writing, whether or not contained in the mortgage deed reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of sub-leasing or having reference to sub-leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Law, and with all the like incidents, effects and consequences.

(13) The powers reserved or conferred under subsection (12) shall not

prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(14) Nothing in this Law shall be construed to enable a mortgagor or mortgagee to make a sub-lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Law, and the enactment replaced by this section had not been passed.

Provided that, in the case of a mortgage of a sub-leasehold land, a sub-lease granted under this section shall reserve a reversion of not less than one day.

(15) Subject as aforesaid, this section applies to any mortgage made before or after the commencement of this Law, but the provisions thereof, or any of them, may, by agreement in writing made after that date between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(16) The provisions of this section referring to a sub-lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for sub-leasing or sub-letting.

(17) For the purpose of this section "**mortgagor**" does not include an incumbrancer deriving title under the original mortgagor.

(18) The powers of sub-leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee under his statutory powers, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by

writing, delegate any of such powers to the receiver.

#### **119. Powers of mortgagor and mortgagee in possession to accept surrenders of subleases**

(1) For the purpose only of enabling a sub-lease authorised under the last preceding section, or under any agreement made pursuant to that section, or by the mortgage deed (in this section referred to as an authorised sub-lease) to be granted, a mortgagor of land while in possession shall, as against every incumbrancers, have, by virtue of this Law, power to accept from time to time a surrender of any sub-lease of the mortgaged land or any part thereof comprised in the sub-lease, and, on surrender of the sub-lease so far as it comprises part only of the land sub-leased, the rent may be apportioned.

(2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Law, power to accept from time to time any such surrender as aforesaid.

(3) On a surrender of part only of the land sub-leased, the original sub-lease may be varied:

Provided that the sub-lease when varied would have been valid as an authorised sub-lease if granted by the persons accepting the surrender; and, on a surrender and the making of a new or other sub-lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions or conditions, the value of the lessee's interest in the sub-lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature of the covenants, provisions and conditions to be inserted in the new or other sub-lease.

(4) Where any consideration for the surrender, other than an agreement to accept an authorised sub-lease, is given by or on behalf of the sub-lessee to or on behalf of

the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

(5) No surrender shall, by virtue of this section be rendered valid unless—

- (a) an authorised sub-lease is granted of the whole of the land comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender;
- (b) the term certain or other interest granted by the new sub-lease is not less in duration than the unexpired term of interest which would have been subsisting under the original sub-lease if that sub-lease had not been surrendered; and
- (c) where the whole of the land originally sublet has been surrendered, the rent reserved by the new sub-lease is not less than the rent which would have been payable under the original sub-lease if it had not been surrendered, or where part only of the land has been surrendered, the aggregate rents respectively remaining payable or reserved under the original sub-lease and the new sub-lease are not less than the rent which would have been payable under the original sub-lease if no partial surrender had been accepted.

(6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

(7) This section applies only if and as far as contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(8) This section applies to a mortgage made after the date of the commencement of this Law but the provisions of this section, or any of them, may, by agreement in writing made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(9) The provisions of this section referring to a sub-lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for sub-letting.

(10) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor or mortgagee or both, any further or other powers relating to the surrender of sub-leases; and any further or other power so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Law, and with all the like incidents, effects and consequences. Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(11) Nothing in this section operates to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor with the concurrence of all the incumbrancers if this Law had not been passed.

(12) For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

(13) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the



receivership, in like manner as if such mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

**120. Powers incident to interest of mortgagee**

(1) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Law, have the following powers, to the like extent as if they had been terms conferred by the mortgage deed, but not further, namely—

- (a) a power, when the mortgage money has become due to sell or to concur with any other person in selling the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby;
- (b) a power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the land or building or not, being or forming part of the property which or an interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgage property or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money;
- (c) a power, when the mortgage money has become due, to appoint a receiver of income of the mortgaged property, or any part thereof; or if the mortgaged property consists of an interest in income, or an

annual or other periodical sum, a receiver of that property or any part thereof; and

- (d) a power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contracts.

(2) Where the mortgage deed is executed after the commencement of this Law the power of sale aforesaid includes the following powers as incident thereto, namely—

- (a) a power to impose or reserve or make binding as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other use of the land, or with respect to any other thing;
- (b) a power to sell the mortgaged property, or any part thereof—
  - (i) with or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold; and
  - (ii) with or without covenants by the purchaser to expend money on the land sold.

(3) The provisions of this Law relating to the foregoing powers, comprised whether in this section or in any other section, regulating the exercise of those powers, may

be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Law.

(4) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed and to the terms of the mortgage deed and to the provisions therein contained.

(5) The power of sale conferred by this section includes such power of selling the interest in the right of occupancy or any sub-leasehold reversions as is conferred by the provisions of this Law relating to the realisation of mortgages.

(6) Save as otherwise provided, this section applies whether the mortgage deed is executed before or after the commencement of this Law.

#### **121. Provisions as to mortgages of undivided shares in land**

(1) A person who was, before the commencement of this Law, mortgagee of an undivided share in land shall have the same power to sell his share in the proceeds of sale of the land and in the rents and profits thereof until sale, as, independently of this Law, he would have had in regard to the share in the land; and shall also have a right to require the trustees for sale in whom the land is vested to account to him for the income attributable to that share or to appoint a receiver to receive the same from such trustees corresponding to the right which, independently of this Law, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share.

(2) The powers conferred by this section are exercisable by the persons deriving title under such mortgagee.

#### **122. Regulation of exercise of power of sale**

A mortgagee shall not exercise the power of sale conferred by this Law unless and until—

- (a) notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or part thereof, for three months after such service;
- (b) some interest under the mortgage is in arrears and unpaid for two months after becoming due; or
- (c) there has been a breach of some provision contained in the mortgage deed or in this Law, or in an enactment replaced by this Law, and on the part of the mortgagor to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

### **123. Transfer on sale**

(1) A mortgagee exercising the power of sale conferred by this Law shall have power, by deed to transfer the property sold, for such interest therein as he is by this Law authorised to sell or transfer or may be the subject of the mortgage, freed from all interests and rights to which the mortgage has priority, but subject to all interests and rights which have priority to the mortgage.

(2) Where a transfer is made in exercise of the power of sale conferred by this Law, or any enactment replaced by this Law, the title of the purchaser shall not be impeachable on the ground—

- (a) that no case had arisen to authorise the sale;
- (b) that due notice was not given; or
- (c) whether the mortgage was made before or after the commencement of this Law, that the power was otherwise improperly or irregularly exercised,

and a purchaser is not, either before or on transfer, concerned to see or inquire whether a

case has arisen to authorise the sale, or due notice has been given or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3) A transfer on sale by a mortgagee, made after the commencement of this Law, shall be deemed to have been made in exercise of the power of sale conferred by this Law, unless a contrary intention appears.

#### **124. Application of proceeds of sale**

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this Law of a sum to meet any prior incumbrance, shall be held by him, in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale or otherwise; and secondly, in discharge of the mortgage money, interests and consents, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of sale thereof.

#### **125. Provisions as to exercise of power of sale**

(1) The power of sale conferred by this Law may be exercised by any person entitled to receive and give a discharge for the mortgage money.

(2) The power of sale conferred by this Law does not affect the right of foreclosure.

(3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Law, or of any trust connected therewith or, where the mortgage is executed after the commencement of this Law, of any power or provisions contained in the mortgage deed.

(4) At any time after the power of sale conferred by this Law has become exercisable, the person entitled to exercise the power may demand and recover from any persons, other than a person having in the mortgaged property an interest or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

**126. Mortgagee's receipts, discharges, etc.**

(1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Law, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Law directed respecting money received by him arising from a sale under the power of sale conferred by this Law, but with this variation, that the costs, charges and expenses payable shall include the costs, charges and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money instead of those incident to sale.

**127. Amount and application of insurance money**

(1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Law shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, two-third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2) An insurance shall not, under the power conferred by this Law, be effected by a mortgagee in any of the following cases, namely—

- (a) where there is a declaration in the mortgage deed that no insurance is required;
- (b) where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed;
- (c) where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Law authorised to insure.

(3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Law, or any enactment replaced by this Law, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, any insurance benefit received in respect of a mortgaged property insured against loss or damage by fire or otherwise effected under this Law or any enactment replaced by this Law, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall be applied in or towards the discharge of the mortgage money.

#### **128. Appointment, powers, remuneration and duties of receiver**

(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Law shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Law, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2) A receiver appointed under the powers conferred by this Law or any

enactment replaced by this Law, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or default unless the mortgage deed otherwise provides.

(3) The receiver shall have power to demand and recover all the income of which he is appointed receiver by action, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Law.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding five *per centum* on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five *per centum* on the gross amount, or at such other rate as the court thinks fit to allow on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any building, effects or other property comprised in the mortgage, whether affixed to the mortgaged property or not, being of an insurable nature.

(8) Subject to the provisions of this Law as to the application of insurance money, the receiver shall apply all money received by him as follows—



- (a) in discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property;
- (b) in keeping down all annual sums or other payments and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;
- (c) in payment of his commission, and of the premiums for fire, life and other insurances, if any, properly payable under the mortgage deed or under this Law, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;
- (d) in payment of the interest accruing due in respect of any principal money due under the mortgage; and
- (e) in or towards discharge of the principal money if so directed in writing by the mortgagee,

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

#### **129. Effect of advance on joint account**

- (1) Where—
  - (a) in a mortgage or an obligation for payment of money or a transfer of a mortgage or of such an obligation, the sum or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money or monies belonging to them on a joint account; or
  - (b) a mortgage or such an obligation or such a transfer is made to more persons than one jointly,

the mortgage money or other money, or monies worth, being due to those persons on the mortgage or obligation shall, as between them and the mortgagor or obligor, be deemed to be and remain money or monies worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or monies worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2) This section applies if and so far as a contrary intention is not expressed in the mortgage, obligation or transfer, and has effect subject to the terms of the mortgage, obligation or transfer, and to the provisions therein contained.

(3) This section applies to any mortgage obligation or transfer incurred or made before or after the commencement of this Law.

### **130. Notice of trusts affecting mortgage debts**

(1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged, released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage—

- (a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and
- (b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the

same or the mortgaged property or any part thereof,  
without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

(2) This section applies to mortgages made before or after the commencement of this Law, but only as respects dealings effected after such commencement.

(3) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

### 131. Transfers of mortgages

(1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—

- (a) the right to demand, use for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon;
- (b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and
- (c) all the interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such interests subject to the right of redemption then subsisting.

(2) In this section "**transferee**" includes his personal representatives and assigns.

(3) A transfer of a mortgage may be made in the form contained in the Third Schedule to this Law with such variations and additions, if any, as the circumstances may require.

[Third Schedule.]

(4) This section applies, whether the mortgage transferred was made before or after the commencement of this Law, but applies only to transfers made after the commencement of this Law.

(5) This section does not extend to a transfer of a bill of sale or chattels by way of security.

### **132. Retransfers of mortgages by endorsed receipts**

(1) A receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money, shall operate, without any retransfer, surrender, or release—

(a) where a mortgage takes effect by sub-lease or sub-underlease, as a surrender of the terms, so as to determine the term or merge the same in the reversion immediately expectant thereon;

(b) where the mortgage does not take effect by sub-lease or sub-underlease, as a retransfer thereof to the extent of the interest which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption,

and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under, the mortgage, but without prejudice to any term or other interest which is paramount to the interest of the mortgagee or other person in whom the mortgaged property was vested.

(2) Provided that, where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed transferred to him, unless—

- (a) it is otherwise expressly provided; or
- (b) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

(3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.

(4) This section does not affect the right of any person to require a reassignment, surrender, release or transfer to be executed in lieu of a receipt.

(5) A receipt may be given in the form contained in the Third Schedule to this Law, with such variations and additions, if any, as may be deemed expedient; and where it takes effect under this section, it shall (subject as hereinafter provided) be liable to the same stamp duty as if it were a retransfer under seal.

[Third Schedule.]

(6) In a receipt given under this section, the same covenants shall be applied as if the person who executes the receipt had by deed been expressed to transfer the property as mortgagee, subject to any interest which is paramount to the mortgage.

(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

(8) This section applies to the discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not,

executed before or after the commencement of this Law, but only as respects discharges effected after such commencement.

(9) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipt given by or on behalf of a building, friendly, industrial or provident society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society, but nothing in this section shall render a receipt given by or on behalf of any such society liable to any stamp duty which would not have been otherwise payable.

(10) This section does not apply to the discharge of a charge or incumbrance registered under Part XVII of this Law.

(11) In this section "**mortgaged property**" means the property remaining subject to the mortgage at the date of the receipt.

### **133. Cesser of mortgage terms**

Without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage term to be kept alive by transfer or otherwise, a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease.

### **134. Forms of statutory legal charges**

(1) As a special form of charge by way of legal mortgage, a mortgage of a right of occupancy or a sub-leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in one of the Forms (Nos. 1 to 4) set out in the Fourth Schedule to this Law, with such variations and additions, if any, as circumstances may require and if so made the provisions of this section shall apply thereto.

[Fourth Schedule.]

(2) There shall be deemed to be included, and there shall by virtue of this Law be implied, in such a mortgage deed—

(a) a covenant with the mortgagee by the person therein expressed to charge as mortgagor to the effect following, namely—

(i) that the mortgagor will on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate; and

(ii) will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee (as well after as before any judgment is obtained under the mortgage) interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six months from the day stated for payment of the mortgage money;

(b) a provision to the following effect, namely, that if the mortgagor on the stated day pays to the mortgagee the stated mortgage money, with interest thereon in the mean time at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall discharge the mortgaged property or transfer the benefit of the mortgage as the mortgagor may direct.

(3) Subsection (2) applies to a mortgage deed made under the corresponding provisions of the enactment replaced by this section with a substitution of a reference to

"the person therein expressed to convey as mortgagor" for the reference in this subsection to "the person therein expressed to charge as mortgagor".

### **135. Forms of statutory transfers of legal charges**

(1) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer or mortgage, being in such one of the three Forms (Nos. 2, 3 or 4) set out in the Fourth Schedule to this Law as may be appropriate to the case with such variations and additions, if any, as circumstances may require, and if so made the provisions of this section shall apply thereto.

[Fourth Schedule.]

(2) In whichever of those three Forms the deed of transfer is made, it shall have effect as follows—

- (a) there shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred (who, with his personal representatives and assigns, is in this section designated the transferee), the right to demand, sue for, recover and give receipts for the mortgage money, or the unpaid part thereof and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee;
- (b) all the terms and interest, if any, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3) If a covenantor joins in the deed of transfer, there shall also be deemed to be included, and there shall by virtue of this Law be implied therein, a covenant with the



transferee by the person expressed to join therein as covenantor to the effect that the covenantor shall, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed, and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4) If the deed of transfer is made in Form 4, it shall, by virtue of this Law, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

(5) This section applies to the transfer of a statutory mortgage created under any written Law hitherto in force in the State.

### **136. Implied covenants, joint and several**

In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to transfer or charge as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

### **137. Form of discharge of statutory mortgage or charge**

A statutory mortgage may be surrendered or discharged by a receipt in Form 5 set

out in the Fourth Schedule to this Law with such variations and additions, if any, as circumstances may require.

[Fourth Schedule.]

### *Powers of Attorney*

#### **138. Execution under power of attorney**

(1) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and under his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in Law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Law, and operates without prejudice to any statutory direction that an instrument is to be executed in the name of an interest owner.

#### **139. Payment by attorney under power without notice of death, etc.**

(1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become subject to disability or bankrupt or had revoked the power where the fact of the death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the same.

(2) A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act as

aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was done.

(3) Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

(4) Where probate or letters of administration have been granted to any person, as attorney for some other person this section applies as if the payment made or acts done under the grant had been made or done under a power of attorney.

(5) This section does not affect any rights against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(6) This section applies to payments and acts made and done before or after the commencement of this Law, and in this section "power of attorney" includes a power of attorney implied by statute.

#### **140. Effect of irrevocable power of attorney for value**

(1) If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—

(a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power;

(b) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power had not been done or happened; and

(c) neither the donee of the power nor the purchaser shall at any time be

prejudicially affected by notice of anything done by the donor of the power, or of the death, disability or bankruptcy of the donor of the power.

(2) This section applies to powers of attorney created by instruments executed before or after the commencement of this Law.

#### **141. Effect of power of attorney irrevocable for a fixed time**

(1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser—

- (a) the power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power;
- (b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and
- (c) neither the donee of the power nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power, within that fixed time.

(2) This section applies to powers of attorney created by instruments executed before or after the commencement of this Law.

**142. Devolution of power of attorney given to a purchaser**

(1) A power of attorney given for valuable consideration may be given, and shall be deemed to have been always capable of being given, to a purchaser of property or any interest therein and to the persons deriving title under him thereto, and those persons shall be the duly constituted attorneys for all the purposes of the power, but without prejudice to any right to appoint substitutes given by the power.

(2) This section applies to powers of attorney created by instruments executed before or after the commencement of this Law.

**143. Power of attorney granted by married woman**

(1) A married woman, whether an infant or not, has power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing or doing any other act which she might herself execute or do, and the provisions of this Law relating to instruments creating powers of attorney apply thereto.

(2) This section applies to deeds executed before or after the commencement of this Law.

**PART IV**

*Equitable Interests and Things in Action*

**144. Abolition of the Rule in Shelley's case**

Where by any instrument coming into operation after the commencement of this Law an interest in any property is expressed to be given to the heirs or issue or any particular heir or any class of the heirs or issue of any person in words which, but for this section would, under the rule of law known as the Rule in Shelley's case, have operated to give to that person an inheritable right of occupancy, such words shall operate in equity as

words of vesting and not of description only, and subject to the proviso to subsection (3) of section 3 shall be construed and have effect accordingly; and in the case of an interest in any particular heir or class of heirs, the same person or persons shall take as would in the case of a right of occupancy have answered that description under the law in force before the commencement of this Law.

**145. As to heir taking by purchaser**

(1) A limitation of property in favour of the heir general of a deceased person which, if limited in respect of a right of occupancy before the commencement of this Law would have conferred on the heir a vested legal interest, shall operate to confer a corresponding equitable interest in the property on the person who would, if the law in force immediately before such commencement had remained unaffected, have answered the description of the heir general of the deceased in respect of his right of occupancy, either at the death of the deceased or at the time named in the limitation, as the case may require.

(2) This section applies whether the deceased person dies before or after the commencement of this Law, but only applies to limitations or trusts created by an instrument coming into operation after such commencement.

**146. Restriction on executory limitation**

(1) Where there is a person entitled to—

- (a) an equitable interest in a right of occupancy or for any less interest; or
- (b) any interest in other property,

with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation

over was to take effect.

(2) This section applies where the executory limitation is contained in an instrument coming into operation before or after the commencement of this Law, save that, as regards instruments coming into operation before the commencement of this Law it only applies to limitations of land for a right of occupancy, or for a term of years absolute or determinable on life, or for a term of life.

#### **147. Legal assignments of things in action**

(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

- (a) the legal right to such debt or thing in action;
- (b) all legal and other remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor.

(2) If the debtor, trustee or other person liable in respect of such debt or thing in action has notice—

- (a) that the assignment is disputed by the assignor or any person claiming under him; or

(b) of any other opposing or conflicting claims to such debt or thing in action,

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court and give notice of

the payment to the assignor or claimants as the case may require.

(3) This section does not affect the provisions of any enactment relating to policies of assurance.

**148. Effect of registration of equitable interest**

Every instrument registered under the Land Instruments Registration Law shall, so far as it affects any equitable interest in land, take effect, as against other instruments affecting any equitable interest in the same land, from the date of its registration under that Law.

[Cap. 12.]

**149. Dealings with equitable interests in property other than land**

(1) Subject to the provisions of this section, the law applicable to dealings with equitable things in action which regulates the priority of competing interests therein shall continue to apply to and regulate the priority of those competing interests.

(2) A notice, otherwise than in writing, given to or received by a trustee after the commencement of this Law as respects any dealing with and equitable interests in property other than land shall not affect the priority of competing claims of purchasers in that equitable interest.

(3) Where, as respects any dealing with an equitable interest in property other than land—

- (a) the trustees are not persons to whom a valid notice of the dealing can be given;
- (b) there are no trustees to whom a notice can be given; or
- (c) for any other reason a valid notice cannot be served, without unreasonable cost or delay, a purchaser may at his own cost require that—



- (i) a memorandum of the dealing be endorsed, written on or permanently annexed to the instrument creating the trust; or
- (ii) the instrument be produced to him by the person having the possession or custody thereof to prove that a sufficient memorandum has been placed thereon or annexed thereto,

and such memorandum shall, as respects priorities, operate in like manner as if notice in writing of the dealing had been given to trustees duly qualified to receive the notice at the time when the memorandum is placed on or annexed to the instrument creating the trust.

(4) Where the trust is created by statute or by operation of law, or in any other case where there is no instrument whereby the trusts are declared, the instrument under which the equitable interest is acquired or which is evidence of the devolution thereof shall, for the purposes of this section, be deemed the instrument creating the trust; and in particular, where the trust arises by reason of an intestacy, the letters of administration or probate in force when the dealing was effected shall be deemed such instrument.

(5) Nothing in this section affects any priority acquired before the commencement of this Law.

(6) Where a notice in writing of a dealing with an equitable interest in such property has been served on a trustee under this section, the trustees from time to time of the property affected shall be entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof; and subject to the payment of costs, any person interested in the equitable interest may require production of the notice.

(7) This section does not apply until a trust has been created, and in this section "dealing" includes a disposition by operation of law.

**150. Power to nominate a trust corporation to receive notices**

(1) By any instrument creating a trust, a trust corporation may be nominated to whom notices of dealings affecting any property may be given, whether or not under the foregoing section, and in default of such nomination the trustees (if any) of the instrument, or the court on the application of any person interested may make the nomination.

(2) The person having the possession or custody of any instrument of which notices under this or the last foregoing section may be endorsed shall cause the name of the trust corporation to whom notices may be given to be endorsed upon that instrument.

(3) Notice given to any trust corporation whose name is so endorsed shall operate in the same way as a notice or endorsement under the foregoing section.

(4) Where a trust corporation is acting for the purposes of this section, a notice given to a trustee of the trust instrument of a dealing relating to the trust property shall forthwith be delivered or sent by post by the trustee to the trust corporation, and until received by the corporation shall not affect any priority.

(5) A trust corporation shall not be nominated for the purposes of this section—

- (a) unless the corporation consents to act;
- (b) where that corporation has any beneficial interest in or charge upon the trust property; or
- (c) where a trust corporation is acting as the trustee of one of the trustees of the instrument creating the trust.

(6) Where a trust corporation acting for the purpose of this section becomes entitled to any beneficial interest in or charge upon the trust property, another trust corporation shall be nominated in its place and all documents relating to notices affecting the trust shall be delivered to the corporation so nominated.

(7) A trust corporation acting for the purposes of this section shall be bound to keep a separate register of notices of dealings in respect of each equitable interest and shall enter therein—

- (a) the date of the notice;
- (b) the name of the person giving the notice;
- (c) short particulars of the equitable interest intended to be affected; and
- (d) short particulars of the effect of the dealing if mentioned in the notice.

(8) The trust corporation may, before making any entry in the register, require the applicant to pay a fee not exceeding the prescribed fee.

(9) Subject to the payment of a fee not exceeding the prescribed fee the trust corporation shall permit any person who would, if the corporation had been the trustee of the trust instrument, have been entitled to inspect notices served on the trustee, to inspect and take copies of the register and any notices held by the corporation.

(10) Subject to the payment by the applicant of a fee not exceeding the prescribed fee, the trust corporation shall reply to all inquiries respecting notices received by the corporation in like manner and in the same circumstances as if the corporation had been the trustee of the trust instrument.

(11) In this section "prescribed fee" means the fee prescribed under the Public Trustee Law, in cases when the Public Trustee acts as a trust corporation for the purposes of this section.

## PART V

### *Sub-Leases and Tenancies*

#### **151. Effect of extinguishment of reversion**

(1) Where a reversion expectant on a sub-lease of land is surrendered or merged, the interest which as against the sub-leasee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

(2) This section applies to surrenders or mergers effected before or after the commencement of this Law.

#### **152. Apportionment of conditions on severance**

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

(2) In this section "**right of re-entry**" includes a right to determine the sub-lease by notice to quit or otherwise; but where the notice is served by a person entitled to a served part of the reversion so that it extends to part only of the land sublet, the sub-lessee may within one month determine the sub-lease in regard to the rest of the land by giving to the owner of the reversionary interest therein a counter notice expiring at the same time as the original notice.

(3) This section applies to sub-leases made before or after the commencement of this Law and whether the severance of the reversionary interest or the partial avoidance or cesser of the term was effected before or after such commencement.

Provided that, where the sub-lease was made before the first day of January, nineteen hundred, nothing in this section shall effect the operation of severance of the reversionary interest or partial avoidance or cesser of the term which was effected before the commencement of this Law.

### **153. Rent and benefit of lessee's covenants to run with the reversion**

(1) Rent reserved by a sub-lease, and the benefit of every covenant or provision therein contained, having reference to the subject matter thereof, and on the sub-lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary interest in the land, or in any part immediately expectant on the term granted by the sublease, notwithstanding severance of that reversionary interest, and without prejudice to any liability affecting a covenantor or his interest.

(2) Any such rent, covenant or provisions shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land sublet.

(3) Where that person becomes entitled by transfer or otherwise, such rent, covenant or provisions may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

(4) This section applies to sub-leases made before or after the commencement of this Law, but does not affect the operation of—

(a) any severance of the reversionary interest; or

(b) any acquisition by transfer or otherwise of the right to receive or enforce any rent, covenant or provision,

effected before the commencement of this Law.

#### **154. Obligation of sub-lessor's covenants to run with reversion**

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

(2) This section applies to sub-leases made before or after the commencement of this Law, whether the severance of the reversionary interest was effected before or after such commencement.

Provided that, where the sub-lease was made before the first day of January, nineteen hundred, nothing in this section shall affect the operation of any severance of the reversionary interest effected before such commencement.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

#### **155. Effect of licences granted to sub-lessees**

(1) Where a licence is granted to a sub-lessee to do any act, the licence, unless otherwise expressed, extends only—

- (a) to the permission actually given;
- (b) to the specific breach of any provision or covenant referred to; or
- (c) to any other matter thereby specifically authorised to be done, and the licence does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.

(2) Notwithstanding any such licence—

- (a) all rights under covenants and powers of re-entry contained in the sub-lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and
- (b) the condition or right of entry remains in force in all respects as if the licence had not been granted, save in respect of the particular matter authorised to be done.

(3) Where in any sub-lease there is a power or condition of re-entry on the sub-lessee assigning, sub-letting or doing any other specified act without a licence, and a licence is granted—

- (a) to any one of two or more sub-lessees to do any act, or to deal with his equitable share or interest; or
- (b) to any sub-lessee or to any one of two or more sub-lessees to assign or underlet part only of the property, or to do any act in respect of part only of the property,

the licence does not operate to extinguish the right of entry in case of any breach of

covenant or condition by the co-sub-lessees of the other shares or interests in the property, or by the sub-lessee or sub-lessees of the rest of the property (as the case may be) in respect of the shares, interests or property not the subject of the licence.

(4) This subsection does not authorise the grant after the commencement of this Law of a licence to create an undivided share in a right of occupancy.

(5) This section applies to licences granted before and after the commencement of this Law.

#### **156. No fine to be exacted for licence to assign**

In all sub-leases containing a covenant, condition or agreement against assigning, underletting or parting with the possession or disposing of the land or property sublet without licence or consent, such covenant, condition or agreement shall, unless the sub-lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

#### **157. Sub-lessee to give notice of ejectment to sub-lessor**

Every sub-lessee to whom there is delivered any writ for the recovery of premises sublet to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his sub-lessor or his agent or receiver, and, if he fails so to do, he shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years' improved or best rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

#### **158. Restrictions on and relief against forfeiture of sub-leases and sub-underleases**

(1) A right of re-entry or forfeiture under any provision or stipulation in a sub-



lease for a breach of any covenant or condition in the sub-lease shall not be enforceable by action or otherwise, unless and until the sub-lessor serves on the sub-lessee a notice—

- (a) specifying the particular breach complained of;
- (b) if the breach is capable of remedy, requiring the sub-lessee to remedy the breach; and
- (c) in any case, requiring the sub-lessee to make compensation in money for the breach,

and the sub-lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the sub-lessor, for the breach.

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

(3) A sub-lessor shall be entitled to recover as a debt due to him from a sub-lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the sub-lessor in the employment of a legal practitioner, surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which at the request of the sub-lessee, is waived by the sub-lessor, or from which the sub-lessee is relieved, under the provisions of this Law.

(4) Where a sub-lessor is proceeding by action or otherwise to enforce a right of

re-entry or forfeiture under any covenant, proviso or stipulation in a sub-lease, or for non-payment of rent, the court may, on application by any person claiming as sub-underlessee any interest in the property comprised in the sub-lease or any part thereof, either in the sub-lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting, for the whole term of the sub-lease or any less term, the property comprised in the sub-lease or any part thereof in any person entitled as sub-underlessee to any interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise as the court in the circumstances of each case may think fit, but in no case shall any such sub-underlessee be entitled to require a sub-underlease to be granted to him for any longer term than he had under his original sub-underlease.

(5) For the purposes of this section—

- (a) **"sub-lease"** includes an original or derivative under-lease; also an agreement for a sub-lease where the sub-lessee has become entitled to have his sub-lease granted; also a grant securing a rent by condition;
- (b) **"sub-lessee"** includes an original or derivative sub-underlessee, and the persons deriving title under a sub-lessee; also a grantee under any such grant as aforesaid and the persons deriving title under him;
- (c) **"sub-lessor"** includes an original or derivative sub-underlessor, and the persons deriving title under a sub-lessor; also a person making such grant as aforesaid and the persons deriving title under him;
- (d) **"sub-underlease"** includes an agreement for a sub-underlease where the sub-underlessee has become entitled to have his sub-underlease granted;

(e) "sub-underlessee" includes any person deriving title under a sub-underlease;

(6) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the sub-lease in pursuance of the directions of an enactment.

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

(8) This section does not extend to a covenant or condition against assigning, underletting, parting with the possession or disposing of the land sublet where the breach occurred before the commencement of this Law.

(9) Where a condition of forfeiture on taking in execution of the sub-lessee's interest is contained in any sub-lease, then—

(a) if the sub-lessee's interest is sold within a year from the taking in execution, this section applies to the forfeiture conditions aforesaid;

(b) if the sub-lessee's interest is not sold before the expiration of that year, this section only applies to the forfeiture condition aforesaid during the first year from the date of the taking in execution.

(10) This section does not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(11) This section has effect notwithstanding any stipulation to the contrary.

## **159. Waiver of a covenant in a sub-lease**

(1) Where actual waiver by a sub-lessor or the persons deriving title under him of the benefit of any covenant or condition in any sub-lease is proved to have taken place in

any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit of any such covenant or condition.

(2) This section applies unless a contrary intention appears, and extends to waivers effected before or after the commencement of this Law.

**160. Abolition of *interesse termini*, and as to reversionary sub-leases and sub-leases for lives**

(1) The doctrine of *interesse termini* is hereby abolished.

(2) As from the commencement of this Law all terms of years shall, whether the interest is created before or after such commencement, be capable of taking effect at law or in equity, according to the interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

(3) A term, at a rent or granted in consideration of a fine, limited after the commencement of this Law to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void; but this subsection does not apply to any term taking effect in equity under an equitable power for mortgage, indemnity or other like purposes.

(4) Nothing in subsections (1) and (2) of this section prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or as respects terms or interests created before the commencement of this Law, operates to vary any statutory or other obligations imposed in respect of such terms or interests.

(5) Nothing in this Law affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer

term, which rule is hereby confirmed.

(6) Any sub-lease or sub-underlease, at a rent, or in consideration of a fine, for life or lives or for any term of years determinable with life or lives, or on the marriage of the sub-lessee, or any contract therefore, made before or after the commencement of this Law shall take effect as a sub-lease, sub-underlease or contract therefore, for a term of ninety years determinable after the death or marriage (as the case may be) of the original sub-lessee, or of the survivor of the original sub-lessees, by at least one month's notice in writing given to determine the same on one of the quarter days applicable to the tenancy,

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either by the sub-lessor or the persons deriving title under him, to the person entitled to the sub-leasehold interest or, if no such person is in existence, by affixing the same to the premises, or by the sub-lessee or other persons in whom the sub-leasehold interest is vested to the lessor or other persons deriving title under him.

Provided that—

- (a) if the sub-lease, sub-underlease or contract therefor is made determinable on the dropping of the lives of persons other than or besides the sub-lessees, then the notice shall be capable of being served after the death of any person or of the survivor of any persons (whether or not including the sub-lessee) on the cesser of whose life or lives the sub-lease, sub-underlease, or contract is made determinable instead of after the death of the original sub-lessee or of the survivor of the original sub-lessees;
- (b) if there are no quarter days specially applicable to the tenancy, notice

may be given to determine the tenancy on one of the usual quarter days.

**161. Surrender of a sub-lease, without prejudice to sub-underleases with a view to the grant of a new sub-lease**

(1) A sub-lease may be surrendered with a view to the acceptance of a new sub-lease in place thereof, without a surrender of any sub-underlease derived thereout.

(2) A new sub-lease may be granted and accepted, in place of any sub-lease so surrendered, without any such surrender of a sub-underlease as aforesaid, and the new sub-lease operates as if all sub-underleases derived out of the surrendered sub-lease had been surrendered before the surrender of that sub-lease was effected.

(3) The sub-lessee under the new sub-lease and any person deriving title under him is entitled to the same rights and remedies in respect of the rent reserved by the covenants agreements and conditions contained in any sub-underlease as if the original sub-lease had not been surrendered but was or remained vested in him.

(4) Each sub-underlessee and any person deriving title under him is entitled to hold and enjoy the land comprised in his sub-underlease (subject to the payment of any rent reserved by and to the observance of the covenants, agreements and conditions contained in the sub-underlease) as if the sub-lease out of which the sub-underlease was derived had not been surrendered.

(5) The sub-lessor granting the new sub-lease and any person deriving title under him is entitled to the same remedies, by entry in and upon the land comprised in any such sub-underlease for rent reserved by or for breach of any covenant, agreement or condition contained in the sub-lease (so far only as the rents reserved by or the covenants or conditions contained in the new sub-lease do not exceed or impose greater burdens than those reserved by or contained in the original sub-lease out of which the sub-underlease is

derived) as he would have had—

- (a) if the original sub-lease had remained on foot; or
- (b) if a new sub-underlease derived out of the new sub-lease had been granted to the sub-underlessee or a person deriving title under him, as the case may require.

(6) This section does not affect the powers of the court to give relief against forfeiture.

## **162.**

(1) Where land is subject to a sub-lease, the transfer of a reversion in the land expectant on the determination of the sub-lease shall be valid without any attornment of the sub-lessee; but nothing in this subsection—

- (a) affects the validity of any payment of rent by the sub-lessee to the person making the transfer or grant before notice of the transfer or grant is given to him by the person entitled thereunder; or
- (b) renders the sub-lessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the transfer or grant before such notice is given to the sub-lessee.

(2) An attornment by the sub-lessee in respect of any land to a person claiming to be entitled to the interest in the land of the sub-lessor if made without the consent of the sub-lessor, shall be void; but this subsection does not apply to an attornment—

- (a) made pursuant to a judgment of a court of competent jurisdiction;
- (b) to a mortgagee, by a sub-underlessee holding under a sub-underlease from the mortgagor where the right of redemption is barred; or
- (c) to any other person rightfully deriving title under the sub-lessor.

**163. Sub-leases invalidated by reason of non-compliance with terms of powers under which they are granted**

(1) Where in the intended exercise of any power of sub-leasing, whether conferred by any enactment or any other instrument, a sub-lease (in this section referred to as an invalid sub-lease) is granted, which by reason of any failure to comply with the terms of the power is invalid, then—

- (a) as against the person entitled after determination of the interest of the grantor to the reversion; or
- (b) as against any other person who, subject to any sub-lease properly granted under the power, would have been entitled to the land comprised in the sub-lease,

the sub-lease, if it was made in good faith, and the sub-lessee has entered thereunder, shall take effect in equity as a contract for the grant, at the request of the sub-lessee, of a valid sub-lease under the power, of like effect as the invalid sub-lease, subject to such variations as may be necessary in order to comply with the terms of the power:

Provided that the sub-lessee under an invalid sub-lease shall not, by virtue of any such implied contract, be entitled to obtain a variation of the sub-lease if the other persons who would have been bound by the contract are willing and able to confirm the sublease without variation.

(2) Where a sub-lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the sub-lease at the date thereon, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a sub-lease in the like terms, the sub-lease shall take effect as a valid sub-lease in like manner as if it had been granted at that time.

(3) Where during the continuance of the possession taken under an invalid sub-



lease the person for the time being entitled, subject to such possession to the land comprised therein or to the rents and profits thereof, is able to confirm the sub-lease without variation, the sub-lessee, or other person who would have been bound by the sub-lease had it been valid, shall, at the request of the person so able to confirm the sub-lease be bound to accept a confirmation thereof, and thereupon the sub-lease shall have effect and be deemed to have had effect as a valid sub-lease from the grant thereof; and confirmation under this subsection may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the sub-lease.

(4) Where a receipt or a memorandum in writing confirming an invalid sub-lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance shall, as against the person, be deemed to be a confirmation of the sub-lease.

(5) The foregoing provisions of this section do not affect prejudicially—

- (a) any right of action or other right or remedy to which, but for those provisions or any enactment replaced by those provisions, the sub-lessee named in an invalid sub-lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or
- (b) any right of re-entry or other right or remedy to which, but for those provisions or any enactment replaced thereby, the grantor or other person for the time being entitled to the reversion expectant on the termination of the sub-lease, would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the sub-lease and binding on the sub-lessee.

(6) Where a valid power of sub-letting is vested in or may be exercised by a

person who grants a sub-lease which, by reason of the termination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the sub-lease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the sub-lease.

(7) This section does not apply to a sub-lease of land held on charitable, ecclesiastical or public trust.

(8) This section takes effect without prejudice to the provisions in this Law for the grant of sub-leases in the name and on behalf of the interest owner of the land affected.

#### **164. Application of Part V to existing sub-leases**

This Part of this Law, except where otherwise expressly provided, applies to sub-leases created before or after the commencement of this Law; and "**sub-lease**" includes a sub-underlease or other tenancy.

### **PART VI**

#### *Powers*

#### **165. Release of powers simply collateral**

A person to whom any power, whether coupled with an interest or not, is given may by deed release or contract not to exercise the power.

#### **166. Disclaimer of power**

(1) A person to whom any power, whether coupled with an interest or not, is given may by deed disclaim the power, and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2) On such disclaimer, the power may be exercised by the other person or persons, or the survivor or survivors of the other persons, to whom the power is given, unless the contrary is expressed in the instrument creating the power.

#### 167. Protection of purchasers claiming under certain void appointment

(1) An instrument purporting to exercise a power of appointment over property, which, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, shall not (save as hereinafter provided) be void on the ground of fraud on the power as against a purchaser in good faith.

(2) If the interest appointed under subsection (1) exceeds, in amount or value, the interest in such property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any hotchpot provision, the protection afforded by this section to a purchaser shall not extend to such excess.

(3) In this section "**a purchaser in good faith**" means a person dealing with an appointee of the age of not less than twenty-five years for valuable consideration in money or monies worth, and without notice of the fraud, or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

(4) Persons deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.

(5) This section applies only to dealings effected after the commencement of this Law.

#### 168. Validation of appointments where objects are excluded or take illusory shares

(1) No appointments made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that—

(a) an unsubstantial, illusory or nominal share only is appointed to, or left unappointed to devolve upon, any one or more of the objects of the power; or

(b) any object of the power is thereby altogether excluded,

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section does not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

(3) This section applies to appointments made before or after the commencement of this Law.

#### **169. Execution of powers not testamentary**

(1) A deed executed in the presence of and attested by two or more witnesses (in the manner in which deeds are ordinarily executed and attested) is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or instrument in writing, made in exercise of the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.

(2) This section does not operate to defeat any direction in the instrument creating the power that—

- (a) the consent of any particular person is to be necessary to a valid execution; or
- (b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

(3) This section does not prevent the donee of a power from executing it in accordance with the power by writing, or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section does not apply.

(4) This section applies to appointment by deed made before or after the commencement of this Law.

#### **170. Application of Part VI to existing powers**

This part of this Law applies to powers created or arising either before or after the commencement of this Law.

### **PART VII**

#### *Perpetuities and Accumulations*

#### **171. Abolition of rules of perpetuity and accumulation**

(1) The rules of law known as the rules against perpetuity are hereby abolished in the State.

(2) All rules of law against the accumulation of income or profits arising from interests in land or otherwise are hereby abolished in the State.

### **PART VIII**

#### *Lunatics*

#### **172. Power for court to settle the beneficial interest of a lunatic**

(1) The court may direct a settlement to be made of the property of a lunatic, or any part thereof or any interest therein, on such trusts and subject to such powers and provisions as the court may deem expedient and in particular may give such directions—

(a) where the property has been acquired under a settlement, a will or an intestacy, or represents property so acquired; or

(b) where by reason of any change in the law of intestacy or of any change in circumstances since the execution by the lunatic of a testamentary disposition, or of any absence of information at the time of such execution, or on account of the former management of the

property or the expenditure of money in improving or maintaining the same or for any other special reason the court is satisfied that any person might suffer an injustice if the property were allowed to devolve as undisposed of on the death intestate of the lunatic or under any testamentary disposition executed by him.

(2) The court may direct the receiver of the lunatic, or any trustee for him, to execute any transfer or other instrument, and to do any other act or thing which may be required for giving effect to the settlement, in the name and on behalf of the lunatic and, for that purpose, may make a vesting order or appoint a person to transfer; and any settlement approved by the court shall be as effectual and binding on all persons interested as if the same had been made by the lunatic while of full capacity.

(3) This section applies whether or not the lunatic has executed a testamentary disposition and notwithstanding that it is not known whether he has executed such a disposition or not but does not apply when he is an infant.

(4) Any person who under the Administration of Estates Law, has or if that Law, or any enactment which it replaces, had not been passed would have had, a *spes successions* (whether under any testamentary disposition which is known to exist or in the event of the intestacy of the lunatic) or an interest in the property of the lunatic or in any part thereof, as well as the receiver and any other person who may be authorised by rules made under this section, shall have power to apply to the court for an order under this section.

(5) Subject to making due provision for the maintenance of the lunatic in accordance with his station in life, whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing, by means and power of appointment or revocation, or otherwise, for the possibility of the lunatic recovering full capacity the court may, in making any order under this section, have

regard to—

- (a) the manner in which the property has been settled or dealt with on former occasions;
- (b) in the case of land, the welfare of the labourers and other persons employed thereon, and the expediency of settling personal estate to devolve therewith;
- (c) the continuation or provision of any pensions, and the application of any part of the income for charitable purposes;
- (d) The provisions of any testamentary disposition of the lunatic;
- (e) the expediency of providing for—
  - (i) discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good loss by fire (in lieu of, or in addition to, insurance) or for any other purpose;
  - (ii) the extension of any statutory powers of investment, management or otherwise;
  - (iii) the manner in which any costs are to be raised and paid, whether out of the settled property or otherwise;
  - (iv) any other matter or thing which, having regard to the nature of the settlement, or the property to be settled, and the management, development, and enjoyment thereof, and to the persons who are to take, either successively or otherwise, the court may consider material.

(6) In this section, "**testamentary disposition**" means an instrument executed by the lunatic while of full testamentary capacity, which, if unrevoked, might, on his death, be

proved as a will or codicil; and the court may act on such evidence as to the existence or absence of a testamentary disposition as it thinks fit.

(7) At any time before the death of the lunatic, the court may, as respects any property remaining subject to the trusts of a settlement made under this section, on being satisfied that any material fact was not disclosed to the court when the settlement was made, or on account of any substantial change in circumstances, by order vary the settlement in such manner as it thinks fit, and give any consequential directions.

(8) Rules of court may be made for giving effect to the provisions of this section, and in particular for compelling information to be furnished respecting, and production of, testamentary dispositions, and the lodgement thereof in court; for prescribing what notices, if any, of the proceedings are to be served; for dispensing with such notices and, when necessary, for making representation orders.

## PART IX

### Voidable Dispositions

#### **173. Voluntary transfers to defraud creditors voidable**

(1) Save as provided in this section, every transfer of property, made whether before or after the commencement of this Law, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced.

(2) This section does not extend to any interest in property transferred for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the transfer, notice of the intent to defraud creditors.

#### **174. Voluntary disposition of land; how far voidable as against purchasers**

(1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(2) For the purposes of this section, no voluntary disposition shall be deemed to



have been made with intent to defraud by reason only that a subsequent transfer for valuable consideration was made, if such subsequent transfer was made before the commencement of this Law.

**175. Acquisition of reversions at an under value**

(1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in any property, for money or monies worth, shall be liable to be opened or set aside merely on the ground of under-value.

(2) In this subsection "**reversionary interest**" includes an expectancy or possibility.

(3) This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

**PART X**

**Miscellaneous**

**176. Provisions as to corporation sole**

(1) Where either after or before the commencement of this Law any property or any interest therein is or has been vested in a corporation sole, the same shall, unless and until otherwise disposed of by the corporation, pass and devolve to and vest in and be deemed always to have passed and devolved to or vested in the successors from time to time of such corporation.

(2) Where either after or before the commencement of this Law there is or has been a vacancy in the office of a corporation sole or in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at the time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, such interest shall notwithstanding such vacancy vest and be deemed to have vested in the successor to such office on his

appointment as a corporation sole, or in the corporation aggregate (as the case may be), but without prejudice to the right of such successor, or of the corporation aggregate after the appointment of its head officer to disclaim that interest or charge.

(3) Any contract or other transaction expressed or purported to be made with a corporation sole, or any appointment of a corporation sole as a custodian or other trustee or as a personal representative, at a time (either after or before the commencement of this Law) when there was a vacancy in the office, shall on the vacancy being filled take effect and be deemed to have taken effect as if the vacancy had been filled before the contract, transaction or appointment was expressed to be made or was capable of taking effect, and on the appointment of a successor shall be capable of being enforced, accepted, disclaimed or renounced by him.

#### **177. Dissolution of a corporation**

Where, by reason of the dissolution of a corporation whether before or after the commencement of this Law, a legal interest in any property has determined, the court may be order create a corresponding interest and vest the same in the persons who would have been entitled to the interest which determined had it remained a subsisting interest.

#### **178. Protection of legal practitioners and trustees adopting Law**

(1) The powers given by this Law to any person, and the covenants, provisions, stipulations and words which under this Law are to be deemed to be included or implied in any instrument, or are by this Law made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulation and words, to be given by or to be contained in any such instrument, or to be adopted in connection with, or applied to, any such contract or transaction; and a legal practitioner shall not be deemed guilty of neglect or breach of duty, or become in any way

liable, by reason of his omitting in good faith, in any such instrument, or in connection with any such contract or transaction, to negative the giving inclusion, implication, or application of any of those powers, covenants, provisions, stipulations or words, or to insert or apply any other in place thereof in any case where the provisions of this Law would allow of his doing so.

(2) Save as expressly provided by this Law, nothing in this Law shall be taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations or words is improper.

(3) Where the legal practitioner is acting for trustees, executors or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4) Where such persons are acting without a legal practitioner, they shall also be protected in like manner.

#### **179. Merger**

There is no merger by operation of law only of any property the beneficial interest in which would not be deemed to be merged or extinguished in equity.

#### **180. Rights of pre-emption capable of release**

All statutory and other rights of pre-emption affecting a legal interest shall be and be deemed always to have been capable of release.

#### **181. Legal easements**

(1) Where an easement, right or privilege for a legal interest is created, it shall enure for the benefit of the land to which it is intended to be annexed.

(2) Nothing in this Law affects the right of a person to acquire, hold or exercise an easement, right or privilege over or in relation to land for a legal interest in common with any other person, or the power of creating or transferring such an easement, right or

privilege.

#### **182. Power to direct division of chattels**

Where any chattels belong to persons in undivided shares, the persons interested in one-half or upwards may apply to the court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit.

#### **183. Indemnities against rents**

The benefit of all covenants and powers given by way of indemnity against a rent or any part thereof payable in respect of land, or against the breach of any covenant or condition in relation to land, is and shall be deemed always to have been annexed to the land on which the indemnity is intended to relate, and may be enforced by the interest owner for the time being of the whole or any part of the land, notwithstanding that the benefit may not have been expressly apportioned or assigned to him or to any of his predecessors in title.

#### *Notices*

#### **184. Regulations respecting notices**

(1) Any notice required or authorised to be served or given by this Law shall be in writing.

(2) Any notice required or authorised by this Law to be served on a sub-lessee or a mortgagor shall be sufficient, although only addressed to the sub-lessee or the mortgagor by that designation, without his name, or generally to the person interested, without any name and notwithstanding that any person to be affected by the notice is absent, under disability, unborn or unascertained.

(3) Any notice required or authorised by this Law to be served shall be sufficiently served if it is left at the last-known place of abode or business in Nigeria of the sublessor, mortgagee, mortgagor or other person to be served, or, in case of a notice

required or authorised to be served on a sub-lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the sub-lease or mortgage.

(4) Any notice required or authorised by this Law to be served shall be sufficiently served, if it is sent by post in a registered letter addressed to the sub-lessee, sub-lessor, mortgagee, mortgagor or other person to be served, by name, at the aforesaid place of abode or business, office or counting-house, and if that letter is not returned through the post-office undelivered, that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Law unless a contrary intention appears.

(6) This section does not apply to notices served in proceedings in the court.

#### **185. Effect of registration of instrument under Land Instruments Registration Law**

(1) The registration of any instrument under the provisions of the Land Instruments Registration Law or any other enactment requiring the registration of instruments relating to land shall be deemed to constitute actual notice of such instrument in so far as it creates or affects any of the following—

- (a) an estate contract;
- (b) an equitable charge;
- (c) a general equitable charge; or
- (d) a restrictive covenant,

to all persons and for all purposes connected with land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.

(2) This section operates without prejudice to the provisions of the Law respecting the making of further advances by a mortgagee, and applies only to instruments and

matters required or authorised to be registered under the Land Registration Law.

[Cap. 13.]

**186. Restrictions on constructive notice**

(1) A purchaser shall not be prejudicially affected by notice of—

(a) any instrument or matter capable of registration under the provisions of the Land Instruments Registration Law which is void or not enforceable as against him under that law by reason of the non-registration thereof;

(b) any other instrument or matter or any fact or thing unless—

(i) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his legal practitioner or other agent, as such, or would have come to the knowledge of his legal practitioner or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the legal practitioner or other agent.

(2) Subparagraph (ii) of subsection (1) shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provisions or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if that paragraph had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by

notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Law.

#### **187. Notice of restrictive covenants and easements**

(1) Where land having a common title with other land is disposed of to a purchaser (other than a sub-lessee or mortgagee) who does not hold or obtain possession of the documents forming the common title, such purchaser, notwithstanding any stipulation to the contrary, may require that a memorandum giving notice of any provision contained in the disposition to him restrictive of user of, or giving rights over, any other land comprised in the common title, shall, where practicable, be written or endorsed on, or where impracticable, be permanently annexed to some one document selected by the purchaser but retained in the possession or power of the person who makes the disposition, and being or forming part of the common title.

(2) The title of any person omitting to require an endorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.

(3) This section does not apply to dispositions of registered land.

### **PART XI**

#### *General Provisions*

#### **188. Provisions of Law to apply to inheritable interests in land**

(1) The provisions of this part of this Law relating to legal interests apply to inheritable interest in land, subject only to qualifications necessarily arising by reason of the inherent nature of the interest affected.

(2) This section takes effect subject to the express provisions of this Law, relating to undivided shares.

**189. Payment into court, jurisdiction and procedure**

(1) Payment of money into court effectually exonerates therefrom the person making the payment.

(2) Subject to any rules of court to the contrary—

(a) every application to the court under this Law shall, save as otherwise expressly provided, be by summons;

(b) on an application by a purchaser, notice shall be served in the first instance on the vendor;

(c) on an application by a vendor, notice shall be served in the first instance on the purchaser;

(d) on any application, notice shall be served on such persons, if any, as the court thinks fit.

(3) The court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges and expenses of all or any of the parties to any application.

**190. Orders of court conclusive**

(1) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not.

(2) This section has effect with respect to any sub-lease, sale or other act under the authority of the court, and purporting to be in pursuance of any statutory power notwithstanding any exception in such statute.



(3) This section applies to all orders made before or after the commencement of this Law.

#### **191. Application to the State**

(1) This Law shall not in any manner (save as otherwise expressly provided and except so far as it relates to undivided shares, joint ownership, sub-leases for lives or subleases for years terminable with life or marriage) affect or alter the descent, devolution or tenure or the nature of the interest of or in any land for the time being vested in the State, but so nevertheless that, after the commencement of this Law, no interests or charges in or over any such lands as aforesaid shall be transferred or created, except such interests or charges as are capable under this Law of subsisting or of being transferred or created.

(2) Subject as aforesaid and to the provisions of the Land Use Act, the provisions of this Law shall bind the State.

[No. 6 of 1978.]

#### **192. Application**

(1) For avoidance of doubt, this Law shall apply subject to the provisions of the Land Use Act, and in particular, nothing in this Law shall be construed to—

- (a) apply to the radical title to any land in the State, which, in accordance with the provisions of the Land Use Act, is vested in the State;

[No. 6 of 1978.]

- (b) confer upon any person, family or community any higher right or interest in land than a right of occupancy;
- (c) authorise the holder of a right of occupancy in any land to *alien* ate such right without the consent of the Governor or the Local Government, as the case may be; or
- (d) affect the power of the Governor to revoke a right of occupancy in

accordance with the provisions of the Land Use Act.

(2) Subject to the provisions of subsection (3) of this section, this Law shall apply to all lands within the State.

(3) This Law shall not apply to any right or interest in land which is regulated by customary law or Islamic law except in any transaction the parties agreed, or must from the nature of the transaction be presumed to have agreed, that the transaction should be exclusively regulated otherwise than by customary law or Islamic law.

### **193. Interpretation**

(1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

**"building purposes"** include the erecting and improving of, and the adding to, and the repairing of buildings; and a "building sub-lease" is a sub-lease for building purposes or purposes connected therewith;

**"Court"** means the High Court;

**"disposition"** includes a transfer, and a gift or an appointment of any property or interest therein contained in a will; and "dispose of" has a corresponding meaning;

**"equitable easement"** means any easement, right or privilege over or affecting land and being merely an equitable interest;

**"equitable interest"** means any interest or charge in or over land or in the proceeds of sale of land other than a legal interest;

**"estate contract"** means any contract by an interest owner or by a person entitled at the date of the contract to have a legal interest transferred to him to transfer or create a legal interest, including a contract conferring either expressly or by implication of law a valid option to purchase, a right of pre-emption or any

other like right;

"**fine**" includes a premium and any payment, consideration or benefit in the nature of a fine or premium;

"general equitable charge" means any equitable charge whether or not protected by a deposit of documents relating to the legal interest affected, and which does not arise, or affect any interest arising, under a trust for sale and is not included in any other class of interests or charges set out in section 1;

"**holder**" has the meaning assigned to it in the Land Use Act;

"**incumbrance**" includes a legal or equitable mortgage and a trust for securing money, a *lien*, an annuity, or other capital or annual sum; and "incumbrancer" has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance or to require payment or discharge thereof;

"**interest owner**" means the owner of a legal interest in land; but an infant is not capable of being an interest owner;

"**land**" includes land held under a right of occupancy or under any other tenure (other than under customary law), things growing or attached to land, including buildings or parts of buildings (whether the division is horizontal, vertical, or made in any other way) and other tangible property; also a rent and other non-tangible property, and an easement, right, privilege, or benefit in, over or derived from land;

"**legal interest**" means a right, interest or charge in or over land (subsisting or created at law) which is by this Law authorised to subsist or to be created as a legal interest;

"**legal mortgage**" means a mortgage by sub-lease or sub-underlease or a

charge by way of legal mortgage; and **"legal mortgagee"** has a corresponding meaning;

**"legal power"** includes power vested in a chargee by way of legal mortgage or in an interest owner under which a legal interest can be transferred or created; and **"equitable power"** means the power in or over land under which equitable interest or power only can be transferred or created;

**"limitation"** in relation to the disposition of property means the marking out, by deed or other instrument, of—

- (a) property or interest in property to be held;
- (b) the person or class of persons intended to hold it; and
- (c) the class of persons that shall succeed to it;

**"limit"** with its grammatical derivatives has a corresponding meaning; **"lunatic"** includes a lunatic whether so found or not;

**"mortgage"** includes any charge or *lien* on any property for securing money or monies worth;

**"mortgage money"** means money or monies worth secured by a mortgage;

**"mortgaged"** includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgage;

**"mortgagee in possession"** is a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property;

**"mortgagor"** includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgaged property;

**"notice"** includes constructive notice;

**"personal representative"** means the executor, original or by representation, or administrator for the time being, of a deceased person, and as regards any liability

for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court;

**"possession"** includes a receipt of rents and profits or the right to receive the same, if any;

**"power of attorney"** means an authority given by one party to another party to act for him in respect of one or more specified subjects; also the document containing such authority; the party who gives the authority is the **"donor"**, and the party to whom it is given is the **"donee"** or **"attorney"**;

**"property"** includes a right of occupancy, a thing in action, and any interest in land or other form of property;

**"purchaser"** means a purchaser in good faith for valuable consideration and includes a sub-lessee, mortgagee or other person who for valuable consideration acquires an interest in property;

**"rent"** includes an annual or periodical payment in money or monies worth, reserved or issuing out of land, but does not include mortgage interest;

**"restrictive covenant"** means a covenant or agreement (not being a covenant or agreement made between sub-lessor and sub-lessee) restrictive of the user of land;

**"right of occupancy"** has the meaning assigned to it in the Land Use Act;

[No. 6 of 1978.]

**"securities"** includes stocks, funds and shares;

**"settlement"** means any deed, will, agreement or other instrument under or by virtue of which any property is or is deemed under this Law to be limited to or in trust for any person by way of succession; and the expressions **"settle"**, **"settled"** and

**"settlor"** shall be construed accordingly;

**"sub-lease"** means a legal interest created by a transfer in writing of a right of occupancy for a specified period of time, also the right so transferred, or the document containing such transfer;

**"sub-underlease"** means a transfer of part of the term of a sub-lease; also the term so transferred or the document containing such transfer;

**"tenancy"** means the holding or possession of land or buildings thereon for any term;

**"term of years"** includes a term for less than a year, or for a year and fraction of a year, or from year to year;

**"term of years absolute"** means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal interest, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cessor on redemption, or in any other event (other than the dropping of a life, or in determination of a determinable life interest) but does not include any term of years determinable with life or lives or with cessor of a determinable life interest, nor if created after the commencement of this Law, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by this Law to take effect within that period;

**"transfer"** includes a mortgage, charge, sub-lease, assent, vesting declaration, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will;

**"trust corporation"** means the public trustee or a corporation either appointed by the court in any particular case to be a trustee, or entitled by any

written law to act as a custodian trustee;

"**trust for sale**", in relation to land, means an immediate trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power to postpone the sale; and "**power to postpone sale**" means power to postpone in the exercise of a discretion;

"**trust land**" means any land held on a trust for sale;

"**trustee for sale**" means the person (including a personal representative) holding land on trust for sale;

"**under-lease**" has the same meaning as "**sub-lease**";

"**will**" includes codicil.

(2) Where an equitable interest in or power over property arises by statute or operation of law, references to the creation of an interest or power include references to any interest or power so arising.

#### 194. Citation

This Law may be cited as the Property Law, 1987.

### FIRST SCHEDULE

[Section 24.]

#### *Transitional Provisions*

### PART I

#### *Conversion of Certain Existing Legal Estates into Equitable Interests*

All estates, interests and charges in or over land, including fees determinable whether by limitation or condition, which immediately before the commencement of this Law were estates, interests or charges, subsisting at law, or capable of taking effect as such, but which by virtue of Part II of this Law are not capable of taking effect as legal interests,

shall as from the commencement of this Law be converted into equitable interests either in the land or in the proceeds of sale thereof, nor shall the priority of any such interest, charge or interest over other equitable interests be affected.

## PART II

### *Vesting of Legal Interests*

1. Where the purposes of a term of years, created or limited out of sub-leasehold land, are satisfied at the commencement of this Law, that term shall merge in the reversion expectant thereon and shall cease accordingly; but where the term was vested in the owner of the reversion, the merger and cesser shall take effect without prejudice to any protection which would have been afforded the owner for the time being of that reversion had the term remained subsisting.

Where the purposes are satisfied only as respects part of the land comprised in a term, this provision has effect as if a separate term had been created in regard to that part of the land.

2. Where immediately after the commencement of this Law any owner of a legal interest is entitled, subject or not to the payment of the costs of tracing the title and of transfer, to require any other legal interest in the same land to be surrendered, released or transferred to him so as to merge or be extinguished, the last-mentioned interest shall by virtue of this part of this Schedule be extinguished, but without prejudice to any protection which would have been afforded to him had that interest remained subsisting.

3. (1) Where immediately after the commencement of this Law any person is entitled subject or not to the payment of the costs of tracing the title and of transfer, to require any legal interest (not vested in trustees for sale) to be transferred to or otherwise vested in him, such legal interest, shall, by virtue of this part of this Schedule, vest in manner hereinafter provided.



(2) The divesting of a legal interest by virtue of this paragraph shall not, where the person from whom the interest is so divested was a trustee, operate to prevent the legal interest being transferred or a legal interest being created, by him in favour of a purchaser for money or monies worth, if the purchaser has not notice of the trust and if the documents of title relating to the interest divested are produced by the trustee or by a person deriving title under him.

(3) This paragraph shall (without prejudice to any claim, in respect of fines and fees) apply to a person who, under a surrender or any disposition having the effect of a surrender, or under a covenant to surrender or otherwise, was immediately before the commencement to be vested in him.

(4) Any person who, immediately after the commencement of this Law, is entitled to an equitable interest capable of subsisting as a legal interest which has priority over any legal interest in the same land, shall be deemed to be entitled for the foregoing purposes to require a legal interest to be vested in him for an interest of a like nature not exceeding in extent or duration the equitable interest:

Provided that this paragraph shall not—

- (a) apply where the equitable interest is capable of being overreached by virtue of a subsisting trust for sale;
- (b) operate to prevent such person from accruing any other legal interest under this part of this Schedule to which he may be entitled.

4. Under the provisions of this part of this Schedule, the legal interest affected (namely, any interest which a person is entitled to require to be vested in him as aforesaid) shall vest as follows—

- (a) where at the commencement of this Law, land is subject to a mortgage (not

being an equitable charge unsecured by any interest), the legal interest affected shall vest in accordance with the provisions relating to mortgages contained in this Schedule;

- (b)* where the land is at the commencement or by virtue of this Law or any statute coming into operation at the same time or subsequently subject or is by virtue of any statute made subject to a trust for sale, the legal interest affected shall vest in the trustees for sale (including personal representatives holding land on trust for sale) but subject to any mortgage term subsisting or created by this Law;
- (c)* in any case to which the foregoing subparagraphs do not apply the legal interest affected shall vest in the person of full age who, immediately after the commencement of this Law, is entitled (subject or not to the payment of costs) to require the legal interest to be vested in him, but subject to any mortgage term subsisting or created by this Law.

5. Nothing in this part of this Schedule shall operate—

- (a)* to vest in a mortgagee of a term of years absolute any nominal sub-leasehold reversion which is held in trust for him subject to redemption;
- (b)* to vest in a mortgagee any legal interest except a term of years absolute;
- (c)* to vest in a person entitled to a sub-leasehold interest, as respects such interest, any legal interest except a term of years absolute;
- (d)* to vest in a person entitled to an easement, right or privilege with reference thereto any legal interest except a legal interest in the easement, right or privilege; or
- (e)* to vest any legal interest in a person for an undivided share; or

- (f) to vest any legal interest in an infant; or
- (g) to affect prejudicially the priority of any mortgage or other incumbrance or interest subsisting at the commencement of this Law;
- (h) to render invalid any limitation or trust which would have been capable of taking effect as an equitable limitation or trust;
- (i) to vest in a purchaser or his personal representatives any legal interest which he has contracted to acquire and in regard to which a contract, including an agreement to create a legal mortgage, is pending at the commencement of this Law, although the consideration may have been paid or satisfied and the title accepted, or to render transfer of such estate; or
- (j) to vest in any person any legal interest affected by any rent, covenants or conditions if, before any proceedings are commenced in respect of the legal interest or dealing there with inter vivos is effected he or his personal representatives disclaim it in writing by him or them.

6. Any legal interest acquired by virtue of this part of this Schedule shall be held upon the trusts and subject to the powers, provisions, rents, covenants, conditions, rights of redemption (as respects terms of years absolute) and other rights, burdens and obligations, if any, upon or subject to which the interest acquired ought to be held.

7. No stamp duty shall become payable by reason only of any vesting, surrender or release effected by this Schedule.

### PART III

#### *Provisions as to Legal Interests vested in Infant*

1. Where immediately before the commencement of this Law a legal interest in land is vested in one or more infants beneficially or where immediately after the commencement of this Law a legal interest in land would by virtue of this Law have become vested in one or

more infants beneficially if he or they had been of full age, the legal interest shall vest in the manner provided by this Law.

2. Where immediately before the commencement of this Law a legal interest in land is vested in an infant jointly with one or more other persons of full age beneficially, the legal interest shall by virtue of this Law vest that other person or those other persons on the statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale.

Provided that, if by virtue of this paragraph the legal interest becomes vested in one person as trustee, then, if no other person is able and willing to do so, the parents or parent, testamentary or other guardian of the infant, if respectively able and willing to act (in the order named) may and at the request of any person interested shall (subject to the costs being provided for) by writing appoint an additional trustee and thereupon by virtue of this Law the legal interest shall vest in the additional trustee and existing trustee as joint tenants.

3. Where, immediately before the commencement of this Law, a legal interest in land is vested solely in an infant as a personal representative, or a trustee of a settlement, or on trust for sale or on any other trust, or by way of mortgage, or where immediately after the commencement of this Law a legal interest in land would by virtue of any provision of this Law or otherwise have been so vested if the infant were of full age, the legal interest and the mortgage debt (if any) and interest thereon shall by virtue of this Law vest in the public trustee pending the appointment of trustees as hereinafter provided—

- (a) as to the land, upon the trusts, and subject to the equities affecting the same but in the case of a mortgage estate for a term of years absolute in accordance with this Law; and
- (b) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially

interested therein.

Provided that—

- (i) the Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the persons interested in the land or the income thereof, or in the mortgage debt or interest thereon (as the case may be), which request may be made on behalf of the infant by his parents or parent, or testamentary or other guardian (in the order named) and those persons may, in the order aforesaid (if no other person is able and willing to do so) appoint new trustees in the place of the Public Trustee, and thereupon by virtue of this Law the land or term and mortgage money shall vest in the trustees so appointed upon the trusts and subject to equities aforesaid.

Provided that the Public Trustee may, before he accepts the trust, but subject to the payment of his costs, transfer to a person of full age who becomes entitled;

- (ii) after the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in his place without his consent;
- (iii) any person interested in the land or the income thereof, or in the mortgage debt or in the interest thereon (as the case may be), may, at any time during the minority, apply to the court for the appointment of trustees of the trust, and the court may make such order as it thinks fit, and if thereby new trustees are appointed the legal interest (but in

the case of a mortgage interest only for a term of years absolute as aforesaid) and the mortgage debt (if any) and interest shall, by virtue of this Law, vest in the trustees as joint tenants upon the trusts and subject to the equities aforesaid;

- (iv) neither a purchaser of the land nor a transferee for money or monies worth of the mortgage shall be concerned in any way with the trusts affecting the legal interest or the mortgage debt and interest thereon;
- (v) the vesting in the Public Trustee of a legal interest or a mortgage debt by virtue of this part of this Schedule shall not effect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

4. Where, immediately before the commencement of this Law, a legal interest in land is vested in two or more persons jointly as personal representatives, trustees, or mortgagees, and any one of them is an infant, or where immediately after the commencement of this Law a legal interest in land would, by virtue of this Law, or otherwise have been so vested if the infant were of full age, the legal interest in the land with the mortgage debt (if any) and the interest thereon shall, by virtue of this Law, vest in the other person or persons of full age—

- (a) as to the legal interest, upon the trusts and subject to the equities affecting the same (but in the case of a mortgage interest only for a term of years absolute as aforesaid); and
- (b) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein; but neither a purchaser of the

land nor a transferee for money or monies worth of the mortgage shall be concerned in any way with the trusts affecting the legal interest or the mortgage debt and interest thereon.

Provided that, if, by virtue of this paragraph, the legal and mortgage debt, if any, become vested in a sole trustee, then if no other person is able and willing to do so, the parents or parent, testamentary or other guardian of the infant (in the order named) may, and at the request of any person interested shall (subject to the costs being provided for) by writing appoint a new trustee in place of the infant, and thereupon by virtue of this Law the legal interest and mortgage money shall vest in the new and continuing trustees upon the trusts and subject to the equities aforesaid.

5. This part of this Schedule does not affect the interest or powers of an administrator during minority.

#### PART IV

##### *Provisions Subjecting Land Held in Undivided Shares to a Trust for Sale*

1. Where, immediately before the commencement of this Law, land is held at law or in equity in undivided shares vested in possession, the following provisions shall have effect—

(1) If the entirety of the land is vested in trustees or personal representatives (whether subject or not to incumbrances affecting the entirety or an undivided share) in trust for persons entitled in undivided shares, then—

(a) if the land is subject to incumbrances affecting individual shares or to encumbrances the entirety which under this Law or otherwise are not secured by legal terms of years absolute, the entirety of the land shall vest free from such incumbrances in such trustees or personal representatives and be held by them upon the statutory trusts; and

- (b) in any other case, the land shall be held by such trustees or personal representatives upon the statutory trusts; subject in the case of personal representatives, to their rights and powers for the purposes of administration.

(2) If the entirety of the land is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting undivided shares but subject or not to incumbrances affecting the entirety, it shall, by virtue of this Law, vest in them as joint tenants upon the statutory trusts.

(3) In any case to which the foregoing provisions of this part of this Schedule do not apply, the entirety of the land shall vest (free as aforesaid) in the Public Trustee upon the statutory trusts:

Provided that—

- (a) the Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the person interested in more than an undivided half of the land or the income thereof;
- (b) after the Public Trustee had been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;
- (c) subject as aforesaid, any person interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancer of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) and thereupon the land shall by virtue of this Law vest in the persons so appointed (free



as aforesaid) upon the statutory trusts or such person may (without such consent as aforesaid), at any time whether or not the Public Trustee has accepted the trust, apply to the court for the appointment of trustees and the court may make such order as it thinks fit, and if thereby trustees are appointed, the same shall by virtue of this Law, vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(d) if the persons interested in more than an undivided half of the land or the income thereof do not either request the Public Trustee to act, or (whether he refuses to act or has not been requested to act) apply to the court for the appointment of trustees in his place, within three months from the time when they have been requested in writing by any person interested so to do then and in any such case, any person interested may apply to the court for the appointment of trustees in the place of the Public Trustee, and the court may make such order as it thinks fit, and if thereby trustees are appointed the same shall, by virtue of this Law, vest (free as aforesaid) in the trustees upon the statutory trusts.

(4) The vesting in the Public Trustee of land by virtue of this part of this Schedule shall not affect any direction previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

(5) The court or the Public Trustee may act on evidence given by affidavit or by statutory declaration as respects the undivided shares without investigating the title to the land.

(6) Where all the undivided shares in the land are vested in the same mortgagees for securing the same mortgage money and the rights of redemption affecting the land are the same as might have been subsisting if the entirety had been mortgaged by an owner before the undivided shares were created, the land shall by virtue of this Law, vest in the mortgagees as joint tenants for a legal term of years absolute (in accordance with this Law) subject to cesser on redemption by the trustees for sale in whom the right of redemption is vested by this Law and for the purposes of this Part of this Schedule the mortgage shall be deemed an incumbrance affecting the entirety.

(7) This part of this Schedule does not (except where otherwise expressly provided) prejudice incumbrancers whose incumbrances affect the entirety of the land at the com-mencement of this Law, but (if the nature of the incumbrance admits), the land shall vest in them for legal terms of years absolute in accordance with this Law but not so as to affect subsisting priorities.

(8) The trust for sale and powers of management vested in persons who hold the entirety of the land on trust for sale shall, save as hereinafter mentioned, not be exercisable without the consent of any incumbrancer, being of full age, affected, whose incumbrance is divested by this part of this Schedule, but a purchaser shall not be concerned to see or inquire whether any such consent has been given, nor, where the incumbrancer is not in possession, shall any such consent be required if, independently of this Part of this Schedule or any enactment replaced thereby the transaction would have been binding on him, had the same been effected by the mortgagor.

(9) This part of this Schedule does not apply to land in respect of which a subsisting contract for sale (whether made under an order in a partition action or by or on behalf of all the tenants in common or copartners) is in force at the commencement of this Law if the contract is completed in due course (in which case title may be made in like

manner as if this Law and any enactment thereby replaced, had not been passed), nor to the law in respect of which a partition action is pending at such commencement if an order for a partition or sale is subsequently made in such action.

(10) Notwithstanding that the enactments relating to partition cease to apply, it shall be without prejudice to any proceedings thereunder commenced before the commencement of this Law, and to the jurisdiction of the court to make any orders in reference thereto, and subject to the following provisions, namely—

- (a) in any such proceedings, and at any stage thereof, any person or persons interested individually or collectively in one-half or upwards of the land to which proceedings relate, may apply to the court for an order staying such proceedings;
- (b) the court may upon such application make an order staying the proceedings as regards the whole or any part, not being an undivided share, of the land;
- (c) as from the date of such order the said enactments shall cease to apply to the land affected by the order and the provisions of this part of this Schedule shall apply thereto;
- (d) the court may by such order appoint trustees of the land and the same shall by virtue of this Law vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;
- (e) the court may order that the costs of the proceedings and of the application shall be raised by the trustees, by legal mortgage of the land or any part thereof, and paid either wholly or partially into court or to the trustees;

(f) the court may act on such evidence as appears to be sufficient, without investigating the title to the land.

(2) Where undivided shares in land, created before the commencement of this Law, fall into possession after such commencement, the personal representatives (subject to their rights and powers for purposes of administration) or other interest owners on whom the entirety of the land is vested shall, by an assent or a transfer, give effect to the foregoing provisions of this part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Law and in the meantime the land shall be held on the statutory trusts.

## PART V

### *Provisions as to Party Structures and Open Spaces*

1. Where, immediately before the commencement of this Law a part wall or other part structure is held in undivided share, the ownership thereof shall be deemed to be severed vertically as between the respective owners, and the owner of each part shall have such rights to support and of user over the rest of structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Law.

2. Where, immediately before the commencement of this Law, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the right of occupancy thereof shall vest in the Public Trustee on the statutory trusts which shall be executed only with the leave of the court and, subject to any order of the court to the contrary each person who would have been a tenant in common shall, until the open space is transferred to a purchaser, have rights of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting.

3. Any person interested may apply to the court for an order declaring the rights and interests under this part of this Schedule, of the persons interested in any such party structure or open space, or generally may apply in relation to the provisions of this part of this Schedule, and the court may make such order as it thinks fit.

## PART VI

### *Conversion of Existing Mortgages into Mortgages by Sub-Lease*

1. All land, which immediately before the commencement of this Law, was vested in a first or only mortgagee for an interest equivalent to a right of occupancy, shall from and after the commencement of this Law, vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the right of occupancy.

2. All land, which immediately before the commencement of this Law, was vested in a second or subsequent mortgagee for an interest equivalent to a right of occupancy shall, from and after the commencement of this Law, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that or such second or subsequent mortgagee, without impeachment of waste, but subject to the term or terms vested in such first or other prior mortgagee and subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the right of occupancy.

3. The right of occupancy which, immediately before the commencement of this Law, was vested in any such mortgagee shall, from and after such commencement, vest in the mortgagor or trustee for sale, personal representative, or other person of full age who if all money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged at the commencement of this Law, would have been entitled to have

the right of occupancy to him, but subject to any mortgage term created by this part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

4. If a sub-mortgage by transfer of the right of occupancy is subsisting immediately before the commencement of this Law, the principle mortgagee shall take the principal term created by paragraphs 1 or 2 of this Part of this Schedule (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so created, without impeachment of waste, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

5. This part of this Schedule (save where expressly excepted) applies to land whether or not the same is registered under the Land Instrument Registration Law or the mortgage is made by way of trust for sale or otherwise.

6. A mortgage affecting a legal interest made before the commencement of this Law which is not protected by registration, shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall in favour of such purchaser, be deemed to remain an equitable interest.

This paragraph does not apply to mortgages or charges registered or protected under the Land Instruments Registration Law.

7. Nothing in this part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage.

8. This part of this Schedule does not apply unless a right of redemption is subsisting immediately before the commencement of this Law.

## PART VII

### *Conversion of Existing Sub-Leasehold Mortgages into Mortgages by Sub-Lease*

1. All leasehold land, which immediately before the commencement of this Law, was vested in a first or only mortgagee by way of assignment of a term of years absolute shall, from and after the commencement of this Law, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage, less the last ten days thereof, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the term assigned.

2. All sub-leasehold land, which immediately before the commencement of this Law, was vested in a second or subsequent mortgagee by way of assignment of a term of years absolute (whether legal or equitable) shall, from and after the commencement of this Law vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee if the length of the last mentioned terms permits, and in any case for a term less by one day at least than the term assigned by the mortgage, but subject to the term or terms vested in such first or other prior mortgagee, and subject to a provision for cesser corresponding to the right of redemption which, at the commencement of this Law, was subsisting with respect to the term assigned by the mortgage.

3. The term of years absolute which was assigned by any such mortgage shall, from and after the commencement of this Law, vest in the mortgagor or trustee for sale, personal representative, or other person of full age who, if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Law, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

4. If a sub-mortgage by assignment of a term is subsisting immediately before the commencement of this Law, the principal mortgagee shall take the principal derivative term

created by paragraphs 1 to 2 of this Part of this Schedule or the derivative term created by this mortgage (as the case may require), and the sub-mortgagee shall take a derivative term less by one day than the terms so vested in the principal mortgagee, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

5. A mortgage affecting a legal interest made before the commencement of this Law which is not protected by registration shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest. This paragraph does not apply to mortgages or charges registered or protected under the Land Instruments Registration Law.

6. This part of this Schedule applies to perpetually renewable sub-leaseholds and to sub-leaseholds for lives, which are by statute converted into long terms, with the following variations, namely—

- (a) the term to be taken by a first or only mortgagee shall be ten days less than the term created by such statute;
- (b) the term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last-mentioned term permits and in any case for a term less by one day at least than the term created by such statute;
- (c) the term created by such statute shall, from and after the commencement of this Law, vest in the mortgagor or, trustee for sale, personal representative, or other person of full age, who if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at



the commencement of this Law, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage terms created by this part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

7. This part of this Schedule applies (save where expressly excepted) whether or not the sub-leasehold land is registered under the Land Instruments Registration Law, or the mortgage is made by way of trust for sale or otherwise.

8. Nothing in this part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage, but this Part of this Schedule does not apply unless a right of redemption is subsisting at the commencement of this Law.

## SECOND SCHEDULE

[Sections 97 and 98.]

### *Implied Covenant*

#### PART I

*Covenant Implied in a Transfer for Valuable Consideration other than a Mortgage, by a*

*Person who Conveys and is Expressed to Transfer as Beneficial Owner*

That notwithstanding anything by the person who so transfers or anyone through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so transfers, has with the concurrence of every other person, if any, transferring by his direction, full power to transfer the subject matter expressed to be transferred, subject as, if so expressed, and in the manner in which it is expressed to be transferred, and that, notwithstanding anything as aforesaid, that subject

matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the transfer is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so transfers or any person transferring by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so transfers; or any person transferring by his direction, or by, through or under anyone (not being a person claiming in respect of an estate or interest subject whereto the transfer is expressly made), through whom the person who so transfers derives title, otherwise than by purchase for value.

And that, freed and discharged from, or otherwise by the person who so transfers sufficiently indemnified against, all such estates, incumbrances, claims and demands, other than those subject to which the transfer is expressly made, as, either before or after the date of the transfer have been or shall be made, occasioned, or suffered by that person or by any person transferring by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so transfers, or by, through, or under any one through whom the person so transfers, derives title, otherwise than by purchase for value.

And further, that the person who so transfers and any person transferring by his direction, and every other person having or rightfully claiming any interest in the subject matter of the transfer, other than an interest subject whereto the transfer is expressly made, by, through, under, or in trust for the person who so transfers, or by, through, or under any person transfer-ring by his direction, or by, through, or under any one through whom the person who so transfers derives title, otherwise than by purchase for value, will from time to time and at all times after the date of the transfer on the request and at the cost of any person to whom the transfer is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly

assuring the subject matter of the transfer to the person to whom the transfer is made, and to those deriving title under him, subject as, if so expressed and in the manner in which to transfer is expressed, to be made, as by him or them or any of them shall be reasonably required.

In the above covenant a purchase for value shall not be deemed to include a transfer in consideration of marriage.

## PART II

*Further Covenant Implied in a Transfer of Sub-Leasehold Property for Valuable Consideration, other than a Mortgage, by a Person who Transfers and is Expressed to Transfer as Beneficial Owner*

That, notwithstanding any thing by the person who so transfers, or anyone through whom he derives title, otherwise than by purchase for value made, done, executed or omitted, or knowingly suffered, the sub-lease or grant creating the term or interest for which the land is transferred is, at the time of transfer, a good, valid, and effectual sub-lease or grant of the property transferred, and is in full force unforfeited, unsurrendered, and has in nowise become void or voidable, and that notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the sub-lease or grant, and on the part of the sub-lease or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of transfer.

In the above covenant a purchaser for value shall not be deemed to include a transfer in consideration of marriage.

## PART III

*Covenant Implied in a Transfer by Way of Mortgage by a Person who Transfers and is  
Expressed to Transfer as Beneficial Owner*

That the person who so transfers, has, with the concurrence of every other person, if any, transferring by his direction, full power to transfer the subject matter expressed to be transferred by him, subject as, if so expressed, and in the manner in which it is expressed to be transferred: and also that, if default is made in payment of the money intended to be secured by the transfer, or any interest thereon, or any part of that money or interest, contrary to any provision is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and henceforth quietly hold, occupy, and enjoy or take and have, the subject matter expressed to be transferred, or any part thereof, without any lawful interruption or disturbance by the person who so transfers, or any person conveying by his direction, or any other person (not being a person claiming in respect of an interest subject whereto the transfer is expressly made).

And that, freed and discharged from, or otherwise by the person who so transfers sufficiently indemnified against all estates, incumbrances, claims, and demands whatever, other than those subject whereto the transfer is expressly made.

And further, that the person who transfers and every person transferring by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject matter of the transfer, or any part thereof, other than an estate or interest subject whereto the transfer is expressly made, will from time to time and at all times, on the request of any person to whom the transfer is expressed to be made, or of any person deriving title under him, but as long as any right of redemption exists under the transfer, at the cost of the person so transferring, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further of more perfectly

assuring the subject matter of the transfer and every part thereof to the person to whom the transfer is made, and to those deriving title under him, subject as if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

The above covenant in the case of a charge shall have effect as if for reference to "transfers" "transferred" and "transfer" there were substituted respectively references to "charges", "charged" and "charge".

#### PART IV

*Covenant Implied in a Transfer by Way of Mortgage of Freehold Property Subject to a  
Rentor of Sub-Leasehold Property by a Person who Transfers and is Expressed to Transfer  
as  
Beneficial Owner*

That the sub-lease or grant creating the term or interest for which the land is held is, at the time of transfer, a good, valid and effectual sub-lease or grant of the land transferred and is in full force, unforfeited, and unsurrendered and has in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in the sub-lease or grant, and on the part of the sub-lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed and performed up to the time of transfer.

And also that the person so transferring, or the persons deriving title under him, will at all times, as long as any money remains owing on the security of the transfer, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the sub-lease or grant, and on the part of the sub-lessee or grantee and the persons deriving title under him to be

paid, observed, and performed, and will keep the person to whom the transfer is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenant, condition and agreements, or any of them.

The above covenant in the case of a charge shall have effect as if for references to "transfers" "transferred" and "transfer" there were substituted respectively references to "charges", "charged" and "charge".

## PART V

### *Covenant Implied in a Transfer by Way of Settlement, by a Person who Transfers and is Expressed to Transfer as Settlor*

That the person so transferring, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that transfer, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that transfer, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the transfer to the persons to whom the transfer is made and those deriving title under them, as by them or any of them shall be reasonably required, subject as, if so expressed, and in the manner in which the transfer is expressed to be made.

## PART VI

### *Covenant Implied in any Transfer, by every Person who Conveys and is Expressed to Convey as Trustee or Mortgagee, or as Personal Representative of a Deceased Person, or as Committee of a Lunatic or Under an Order of the Court*

That the person so transferring has not executed or done, or knowingly suffered, or

been party or privy to, any deed or thing, whereby or by means whereof the subject matter of the transfer, or any part thereof, is or maybe impeached, charged, affected, or incumbered in title, interest, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from transferring the subject matter of the transfer, or any part thereof, in the manner in which it is expressed to be transferred.

The foregoing covenant may be implied in an assent in like manner as in a transfer by deed.

## PART VII

### *Covenant in a Transfer for Valuable Consideration, other than a Mortgage of the Land Comprised in a Sub-Lease for the Residue of the term or Interest Created by the Sub-Lease*

That the assignees, or the persons deriving title under them, will at all times, from the date of transfer or other date therein stated, duly pay all rent becoming due under the sub-lease creating the term or interest for which the land is transferred, and observe and perform all the covenants, agreements and conditions therein contained and thenceforth on the part of the sublessees to be observed and performed.

And also will at all times, from the date aforesaid, save harmless and keep indemnified the transferring parties and their interests and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants, agreements and conditions.

## PART VIII

### *Covenants Implied in a Transfer for Valuable Consideration other than a Mortgage, of Part*

*of the Land Comprised in a Sub-Lease, for the Residue of the Term of Interest Created by the Sub-Lease, Subject to a Part (not Legally Apportioned) of that Rent*

(1) That the assignees, or the persons deriving title under them will at all times, from the date of the transfer or other date therein stated, pay the apportioned rent and observe and per-form all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the sub-lease creating the term or interest for which the land is transferred, and thenceforth on the part of the sub-lessees to be observed and performed so far as the case relates to the land transferred.

And also will at all times from the date aforesaid save harmless and keep indemnified, the transferring parties and their respective interests and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent or any breach of any of the said covenants, agreements and conditions so far as the same relates as aforesaid.

(2) That the transferring parties, or the persons deriving title under them, will at all times, from the date of the transfer, or other date therein stated, pay the balance of the rent (after deducting the apportioned rent aforesaid and any other rents similarly apportioned in respect of land not retained) and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the sub-lease and on the part of the sub-lessees to be observed and performed so far as the lease and on the part of the sub-lessees to be observed and performed so far as the same relate to the land demised (other than the land comprised in the transfer) and remaining vested in the covenantors.

And also will at all times, from the date aforesaid, save harmless and keep indemnified, the assignees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the



rent or any breach of any of the said covenants, agreements and conditions so far as they relate as aforesaid.

### THIRD SCHEDULE

[Sections 131 and 132.]

#### *Forms of Transfer and Discharge of Mortgages*

##### FORM 1

##### *Form of Transfer of Mortgages*

This transfer of mortgage made the.....day  
of.....20.....

between M. (etc.), and T. of (etc.) of the other parts, supplemental to a mortgage dated (etc.),  
and

made between (etc.) (here state short particulars of the mortgaged property). Witnesseth  
that in

consideration of the sums of ₦..... and ₦..... (for interest) now paid by T. to M.,  
being the respective amounts of the mortgage money and interest owing in respect of the  
said mortgage and further charge (the receipt of which sums M. hereby acknowledges) M.,  
as mortgagee hereby transfers to T. the benefit of the said mortgage and further charge.

In witness, etc.

##### FORM 2

##### *Form of Receipt on Discharge of a Mortgage*

A.B., of (etc.) hereby acknowledge that I have this.....day  
of.....20.....

received the sum of ₦..... representing the (aggregate) (balance remaining owing in

respect of the) principal money secured by the within (above) written (annexed) mortgage (and by a further charge dated, etc., or otherwise as required) together with all interest and costs, the payment having been made by CD. of (etc.,) and E.F. of (etc.).

Note—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of a fund applicable to the discharge of the mortgage.

#### FOURTH SCHEDULE

[Sections 134, 135, 147.]

*Forms Relating to Statutory Charges or Mortgages of Rights of Occupancy  
or Sub-Leasehold Land*

#### FORM 1

*Statutory Charge by Way of Legal Mortgage*

This Legal Charge made by way of statutory mortgage the.....day of.....20.....,between A. of (etc.) of the one part and M. of (etc.) of the other part witnesseth that in consideration of the sum of ₦.....now paid to A. by M. of which sum A. hereby acknowledges the receipt, A. as mortgagor and as beneficial owner hereby charges by way of legal mortgage, all that (etc.) with the payment to M. on the .....day of.....20.....of the principal sum of.....as the mortgage money with interest thereon at the rate..... of..... *per centum per annum*

#### FORM 1—*continued*

In witness, etc.

Note—Variations in this and the subsequent forms in this Schedule to be made, if required,

for sub-leasehold land or for giving effect special arrangements. M. will be in the same position as if the charge had been effected by a sub-lease of rights of occupancy or sub-underlease of sub-leaseholds.

## FORM 2

### *Statutory Transfer, Mortgagor Not Joining*

This Transfer of Mortgage made by way of statutory transfer the.....day of..... 20.....between M. of (etc.) of the one part and T. of (etc.) of the other part supplemental to a legal charge made by way of statutory mortgage dated (etc.) witnesseth that in consideration of the sum of ₦ .....now paid to M. by T. (being the aggregate amount of ₦.....mortgage money and ₦.....interest due in respect of the said legal charge (of which sum M. hereby acknowledges the receipt) M. as mortgagee hereby transfers to T. the benefit of the said legal charge.

In witness etc.

Note—This and the next two forms also apply to a transfer of a statutory mortgage made before the commencement of this Law, which will then be referred to as a mortgage instead of a legal charge.

## FORM 3

### *Statutory Transfer, a Covenantor Joining*

This Transfer of Mortgage made by way of statutory transfer the .....day of.....20.....between A. of (etc.) of the first part B. of (etc.) of the second part and C. of (etc.) of the third part supplemental to a legal charge made by way of statutory mortgage dated (etc.) and made (etc.) witnesseth that in consideration of the sum of ₦ .....now paid by A to C. (being the mortgage money

due in respect of the said legal charge no interest being now due or payable thereon of which sum A. hereby acknowledges the receipt). A. as mortgagee with the concurrence of B. who joins hereby transfers to C benefit of the said legal charge.

In witness etc.

#### FORM 4

##### *Statutory Transfer and Mortgage Combined*

This Transfer and Legal Charge is made by way of statutory transfer and mortgage the.....day of..... 20.....between A. of (etc.) of the first part, B. of (etc.) of the second part and C. of (etc.) of the third part supplemental to a legal charge made by way of statutory mortgage dated (etc.) and made (etc.) Whereas a principal sum of ₦ .....only remains due in respect of the

#### FORM 4—*continued*

said legal charge as the mortgage money and no interest is now due thereon; and whereas B. is the owner of the freehold estate in the land comprised in the said legal charge subject to that charge.

Now this Deed witnesseth as follows:

1. In consideration of the sum of ₦ now paid to A. by C. (the receipt and payment of which sum A. and B. hereby respectively acknowledge), A. as mortgagee hereby transfers to C. the benefit of the said legal charge.
2. For the consideration aforesaid B. I as beneficial owner hereby charges by way of legal mortgage all the premises comprised in the said legal charge with the payment to C. on the..... day of.....20.....of the sum of ₦..... as the mortgage money with interest thereon at the rate

of.....*per centum* per annum in witness, etc. (or in the case of a further advance after "acknowledge" insert "and of the further sum of N..... now paid by C. to B. of which sum B. hereby acknowledges the receipt," also at I "as beneficial owner" insert "mortgagor and" as well as where B. is not the original mortgagor. And after "of at I insert "the sums of N ..... and N .....making together")

Note—Variations to be made, as required in case of the deed being by endorsement or in respect of any other things.

## CHAPTER P10

### PROPERTY LAW

#### SUBSIDIARY LEGISLATION

*No Subsidiary Legislation*