No. 30 of 1969

An Act to amend the Real Property Act, 1886-1967.

[Assented to 2nd October, 1969.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Real Property Act Amendment Act, 1969".
   
   (2) The Real Property Act, 1886-1967, as amended by this Act, may be cited as the "Real Property Act, 1886-1969".
   
   (3) The Real Property Act, 1886-1967, is hereinafter referred to as "the principal Act".

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

3. Section 16 of the principal Act is amended—
   
   (a) by striking out the passage "the Acting Registrar" wherever it occurs in that section and inserting in lieu thereof in each case the passage "the Acting Registrar-General";
   
   (b) by striking out the passage "duties of the Registrar" and inserting in lieu thereof the passage "duties of the Registrar-General";
   
   and
   
   (c) by striking out the passage "senior Deputy Registrar" and inserting in lieu thereof the passage "senior Deputy Registrar-General".
4. Section 18 of the principal Act is amended by striking out the passage “said province” and inserting in lieu thereof the word “State”.

5. Section 23 of the principal Act is amended by striking out the passage commencing with the words “The Registrar-General” and ending with the word “Province” and inserting in lieu thereof the passage “The Registrar-General shall keep a correct account of all sums of money received by him in accordance with the provisions of this Act, and shall pay the same to the Treasurer”.

6. Section 28 of the principal Act is amended by striking out the passage “; nor from a married woman unless her husband shall consent to such application, or unless the land be her separate property or held for her separate use”.

7. Section 39 of the principal Act is amended by striking out the passage “the city of Adelaide” and inserting in lieu thereof the passage “South Australia”.

8. Section 64 of the principal Act is amended by inserting after the passage “Register Book,” the passage “notwithstanding that the relevant duplicate certificate has not been produced to him,”.

9. The following section is enacted and inserted in Part X of the principal Act after section 115 thereof:—

115a. (1) In this section—

“acquiring authority” means the Crown in right of the Commonwealth or the State, and includes a body corporate or other person in which or in whom land is vested by operation of law or which or who is empowered or authorized by or under any law of South Australia or of the Commonwealth to acquire or take land compulsorily.

(2) Notwithstanding anything in this Act or any other law, where—

(a) the Registrar-General is satisfied that by operation of law or without the execution of any transfer, conveyance or other instrument or document, any land has become vested, either for an estate in fee simple or for a lesser estate, in any acquiring authority; and
(b) an appropriate application has been made in writing by the acquiring authority to the Registrar-General,

then,

(c) if the land is under the provisions of this Act, the acquiring authority shall, without the execution of any transfer, conveyance, or other instrument or document, or the production of any duplicate certificate or other instrument or document, be registered as the proprietor of such estate in the land by the registration and issue of a new certificate of title in the name of the acquiring authority as the registered proprietor of that estate in the land;

and

(d) if the land is not under the provisions of this Act, the land shall, without any further or other application being made or the execution of any conveyance, transfer or other instrument or document or the publication of any notice or the production or examination of any documents of title whatsoever, be brought under the provisions of this Act, and a certificate of title for such estate in the land shall be registered and issued in the name of the acquiring authority as the registered proprietor.

10. Section 184 of the principal Act is amended by striking out the passage "within the intent and meaning of 'The Trustee Act, 1893', or otherwise".

11. Section 191 of the principal Act is amended—

(a) by striking out from paragraph I the passage "the city of Adelaide" and inserting in lieu thereof the passage "South Australia";

and

(b) by striking out from paragraph V the word "Adelaide" and inserting in lieu thereof the passage "South Australia".

12. Section 223m of the principal Act is amended—

(a) by inserting in the definition of "unit subsidiary" in subsection (1) after the passage "area for vehicles," the passage "or such area set apart for any amenity,";
(b) by striking out from subsection (4) the passage "unless the contrary intention appears.".

13. Section 223mb of the principal Act is amended—

(a) by striking out from paragraph (c) of subsection (2) the passage "or symbols";

and

(b) by striking out from paragraph (e) of subsection (2) the passage "and endorsed".

14. Section 223mc of the principal Act is amended—

(a) by inserting after the passage "shares in a company" in paragraph (c) of subsection (3) the passage "or rights of ownership in the whole or any part of the land";

(b) by inserting after the passage "ownership of shares" lastly occurring in paragraph (c) of subsection (3) the passage "or rights of ownership";

(c) by inserting after the passage "share in a company" in paragraph (a) of subsection (4) the passage "or right of ownership in the whole or any part of the land comprising the parcel";

and

(d) by inserting after subsection (5) the following subsection:

(6) For the purposes of this Act, an application referred to in paragraph (a) of subsection (2) or paragraph (a) of subsection (4) of this section shall be deemed to be a dealing in land and the provisions of this Act shall apply to and in relation to such application as if it were, as the case may require, an instrument referred to in and complying with the requirements of, section 56, 267 or 273 of this Act.

15. Section 223md of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (1) and inserting in lieu thereof the following paragraphs:

(b) that the strata plan represents an accurate delineation of the units and unit subsidiaries (if any) as constructed or laid out on the parcel:
(ba) that—

(i) the building or buildings shown on the strata plan has or have been completed in compliance with the provisions of the Building Act, 1923-1965, and the regulations thereunder and in accordance with the plans and specifications relating thereto and approved by the council on the date of such approval which shall be specified in the certificate;

or

(ii) if there has been any contravention of or non-compliance with any provision of that Act or those regulations or any departure from those plans or specifications, such contravention, non-compliance or departure is such as need not be rectified;

(b) by inserting after subsection (3) the following subsection:

(3a) Notwithstanding anything contained in subsection (3) or subsection (5) of this section, a council shall not refuse an application referred to in subsection (1) of this section on any ground specified in paragraph (c) of subsection (3) of this section if—

(a) the regulation, authorized development plan or law referred to in that paragraph had not been in force at the time when the plans and specifications relating to the building or buildings shown in the strata plan were approved by the council under the Building Act, 1923-1965, and the regulations thereunder;

and

(b) the construction of the building or buildings had been commenced within twelve months after such approval had been given;
(c) by inserting after subsection (4) the following subsection:—

(4a) Notwithstanding anything contained in subsection (4) or subsection (5) of this section, the Director shall not refuse an application referred to in subsection (2) of this section on any ground specified in subsection (4) of this section if—

(a) the provision of the Planning and Development Act or the regulations or the authorized development plan referred to in that subsection had not been in force at the time when he had advised the council pursuant to the regulations that he was satisfied that the proposed building unit scheme—

(i) did not contravene, or is not inconsistent with any provision of, the Planning and Development Act, 1966-1967, or any regulation thereunder;

(ii) would not be inconsistent with any authorized development plan within the meaning of that Act;

and

(iii) did not contravene the requirement of regulation 16 of the regulations as in force at that time;

and

(b) the construction of the building or buildings for the proposed building unit scheme had been commenced within twelve months after the Director had so advised the council;

and

(d) by inserting after subsection (6) the following subsection:—

(7) Where any portion of a building depicted on a deposited strata plan projects beyond any alignment of a street or road vested in the council
within whose area the parcel depicted on the plan lies, the certificate issued by the council under section 223md of this Act to the proposed applicant or applicants referred to therein shall imply that, upon the deposit of the strata plan in the Lands Titles Registration Office—

(a) the care, control and management of that portion of the building shall be vested in the corporation to be incorporated upon such deposit by virtue of section 223nc of this Act;

and

(b) the council shall be deemed to have granted to the corporation a licence to hold and occupy that portion of the building so long as it has the care, control and management thereof and the corporation maintains that portion of the building in a proper state of repair to the satisfaction of the council.

16. Section 223mf of the principal Act is amended—

(a) by striking out from subsection (1) the passage “and endorsed”; 

(b) by striking out subsections (3), (4) and (5);

(c) by striking out from paragraph (b) of subsection (6) the passage “which application the Commissioner of Land Tax or the other person referred to in subsection (3) of this section has approved in writing”; 

and

(d) by striking out from subsection (7) the passage “the Commissioner of Land Tax or the other person referred to in subsection (3) of this section and to such other persons as the Court thinks fit; and the Commissioner of Land Tax or the other person referred to in that subsection” and inserting in lieu thereof the passage “such persons as the Court thinks fit; and any of those persons”.

17. Section 223mg of the principal Act is amended—

(a) by striking out subsections (2), (3), (4), (5) and (6); 

(b) by striking out subsection (7) and inserting the following subsection in its place:
(7) Where any of the registered proprietors is a company or a foreign company within the meaning of the Companies Act, 1962, as amended, the Registrar-General may defer the deposit of the strata plan in the Lands Titles Registration Office if he is satisfied that there is a floating or other charge affecting the parcel comprised in the strata plan which charge is registered under that Act or under a corresponding previous enactment, or required to be registered, or capable of being registered, under that Act, until he is satisfied that such charge has been discharged.

and

(c) by striking out subsections (8) and (9) and inserting in lieu of subsection (8) the following subsection:—

(8) Nothing in this Act as in force after the commencement of the Real Property Act Amendment Act, 1969, shall affect the validity of anything done under this Act as in force prior to such commencement.

18. Section 223mh of the principal Act is repealed and the following section is enacted and inserted in its place:—

223mh. If it appears to the Registrar-General that the deposit of the strata plan in the Lands Titles Registration Office would be consistent with, and would not contravene, the provisions of this Part and any other enactment, he shall deposit the plan in the Lands Titles Registration Office, give it a number as a deposited strata plan, and notify the registered proprietor or registered proprietors of the parcel or his or their agent in the prescribed form accordingly.

19. Section 223n of the principal Act is repealed and the following section is enacted and inserted in its place:—

223n. After the commencement of the Real Property Act Amendment Act, 1969, all registers and records kept prior to such commencement by the Registrar of Companies for the purposes of this Part shall be transferred by him to the custody of the Registrar-General who shall retain them in his custody.

20. Section 223na of the principal Act is amended by striking out subsection (11).
21. Section 223nc of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:

(1) Subject to this Part, on and after the deposit of a strata plan in the Lands Titles Registration Office by the Registrar-General, the registered proprietor or registered proprietors for the time being of the units defined on the plan shall, by virtue of this section, be a body corporate—

(a) incorporated, where the plan was deposited in the Lands Titles Registration Office before the commencement of the Real Property Act Amendment Act, 1969, by the name by which, as the corporation referred to in section 223mh of this Act as in force before such commencement, it was registered under this Part by the Registrar of Companies;

or

(b) incorporated, where the plan was deposited in the Lands Titles Registration Office after the commencement of the Real Property Act Amendment Act, 1969, by the name "Strata Plan No. Incorporated", the number given to the strata plan as a deposited strata plan under section 223mh of this Act being inserted in the space preceding the word "Incorporated".

22. Section 223ne of the principal Act is amended—

(a) by striking out subsection (2) and inserting in lieu thereof the following subsection:

(2) Until the first annual general meeting of the corporation, all the members thereof shall constitute the committee, but thereafter—

(a) in the case of a corporation incorporated under this Part before the commencement of the Real Property Act Amendment Act, 1969, the committee shall consist of not less than three nor more than fifteen members who shall be elected at each annual general meeting; but where there are not more than three members of the corporation, the committee shall consist of all those members;
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1969.

(b) in the case of a corporation incorporated under this Part after the commence-
ment of the Real Property Act Amend-
ment Act, 1969, the committee shall consist of not less than ten nor more
than fifteen members who shall be elected at each annual general meeting;
but where there are not more than ten members of the corporation, the
committee shall consist of all those members.

(b) by striking out from subsection (5) the passage—
“and

(d) where the committee consists of seven
members, be four.”

and inserting in lieu thereof the passage—
“(d) where the committee consists of seven or
eight members, be four;
(e) where the committee consists of nine or ten
members, be five;
and
(f) where the committee consists of more than
ten members, be six.”;

(c) by striking out from paragraph (d) of subsection (10)
the passage “and within fourteen days, or such
further time as the Registrar of Companies may
allow, after each annual general meeting, lodge
with the Registrar of Companies a copy of the
accounts as approved by the corporation certified
as correct by a member of the committee”;

(d) by striking out from paragraph (f) of subsection (10)
the passage “Registrar of Companies” and inserting
in lieu thereof the passage “Registrar-General”;

and

(e) by striking out subsection (11) and inserting in lieu
thereof the following subsection :

(11) No fee shall be payable to the Registrar-
General on the furnishing of any return or
information required to be furnished under
paragraph (f) of subsection (10) of this section.

23. Section 223nh of the principal Act is amended by
inserting after the passage “by virtue of” in paragraph (b)
of subsection (6) the passage “subsection (3) of”.

Amendment of
principal Act,
s. 223nh—
The common
property.
24. Section 223nj of the principal Act is amended by inserting after the passage “Registrar of Companies” in subsection (4) the passage “if the resolution is made before the commencement of the Real Property Act Amendment Act, 1969, or with the Registrar-General if the resolution is made after such commencement”.

25. Section 223nl of the principal Act is amended by striking out from paragraph (c) of subsection (6) the passage “notify the Registrar of Companies of the cancellation and the Registrar of Companies shall thereupon cancel the registration of the corporation and”.

26. Section 223nn of the principal Act is amended by striking out from subsection (8) the passage “and the Registrar of Companies”.

27. Section 223no of the principal Act is amended by striking out from subsection (3) the passage “and the Registrar of Companies each of whom shall thereupon make appropriate entries in their respective records accordingly” and inserting in lieu thereof the passage “who shall make an appropriate entry in his records”.

28. Section 223nr of the principal Act is amended by striking out from paragraph (g) of subsection (2) the passage “Registrar of Companies” and inserting in lieu thereof the passage “Registrar-General”.

29. Section 231 of the principal Act is amended by striking out the passage “, and to be kept to hard labour and solitary confinement for any part of such term”.

30. Section 233 of the principal Act is amended by striking out the passage “five hundred pounds” and inserting in lieu thereof the passage “one thousand dollars”.

31. Section 241 of the principal Act is amended by inserting after the passage “as hereinbefore provided” the passage “, except a strata plan as defined in section 223m of this Act”.

32. Section 242 of the principal Act is amended by inserting after the passage “the passing hereof,” the passage “except a certificate for a unit that is represented on a strata plan within the meaning of Part XIXB of this Act,”.
33. Section 242a of the principal Act is amended—
(a) by striking out the passage “The Real Property Act, 1886,” and inserting in lieu thereof the passage “this Act”;

and

(b) by striking out the passage “the said Act” and inserting in lieu thereof the passage “this Act”.

34. Section 245 of the principal Act is amended by striking out the passage “The Court may also appoint a person to act as next friend of a married woman for the purpose of any proceedings under this Act, and may from time to time remove or change such next friend”.

35. Section 272 of the principal Act is amended by striking out from subsection (1) the passage “The Real Property Act, 1886” and inserting in lieu thereof the passage “the Real Property Act, 1886-1969, as amended”.

36. The third schedule to the principal Act is amended by striking out the passage “the City of Adelaide” and inserting in lieu thereof the passage “South Australia”.

37. The twelfth schedule to the principal Act is amended by striking out the passage “the City of Adelaide” and inserting in lieu thereof the passage “South Australia”.

38. The fifteenth schedule to the principal Act is repealed.

39. The twenty-fourth schedule to the principal Act is repealed and the following schedule is enacted and inserted in its place:

THE TWENTY-FOURTH SCHEDULE.

FORM 1.

Register Book, vol. , folio

SOUTH [Royal Arms] AUSTRALIA.

Certificate of Title for Unit defined on a Strata Plan.

[Refer here to the dealing, if any, pursuant to which the Certificate of Title is issued.]

A.B., of [here insert residence and occupation or other description] is the proprietor of an estate [here describe the estate of freehold] subject nevertheless to such encumbrances, liens and interests as are notified by memorial underwritten or endorsed hereon in Unit [here state the number of the unit defined on Strata Plan No. [here state the number of the plan] deposited in the Lands Titles Registration Office.]

In witness whereof I have hereunto signed my name and affixed my seal this day of 19 in the presence of—

Further particulars relating to the title:

[Here insert such further particulars as are relevant.]

[Signature of Registrar-General] (t.s.)

Registrar-General
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FORM 2.

Register Book, vol. , folio

SOUTH [Royal Arms] AUSTRALIA.

Certificate of Title for COMMON PROPERTY comprised in a Strata Plan.

[Refer here to the dealing, if any, pursuant to which the Certificate of Title is issued.]

[Here insert name and address of corporation] is the proprietor of an estate in fee simple in the COMMON PROPERTY comprised in Strata Plan No. [here insert the number of the plan] deposited in the Lands Titles Registration Office.

[here refer to any easement to which the common property is subject and to any easement which is appurtenant to the common property.]

In witness whereof I have hereunto signed my name and affixed my seal this day of , 19 in the presence of—

[Signature of Registrar-General] (L.a.)

Registrar-General.

40. The twenty-fifth schedule to the principal Act is repealed and the following schedule is enacted and inserted in its place:—

THE TWENTY-FIFTH SCHEDULE.

Schedule to Deposited Strata Plan No. . . . .

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| Aggregate |

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

J. W. HARRISON, Governor.