



Law of Property (Vema Seamount) Act, Mount Vema 2019

2019 No. 19

Order No.19 SI/MV2019/19

Made: 17th of December 2019, in accordance with the 2006 Declaration of Sovereignty

Royal Mount Vema Seal of Approval: Granted 12th of January 2019

Comes into Operation: 15th of January 2019

The Law of Property (Vema Seamount) Act is a legislation to make provisions related to conveyancing and the law of property in the Kingdom of Mount Vema.

In exercise of the powers conferred upon The Sovereign of Vema Seamount under GOD, and of all other powers enabling Him, His Mount Vema Majesty King Peter Jon Goldishman, Ruler of the Kingdom of Mount Vema, and the territorial waters at 31 38' S 8° 20' E, under GOD hereby Grants His Royal Seal of Approval, for the following Legislation:—

VEMA SEAMOUNT

The Vema Seamount Territory

In this Act—

- "land" means a unit (body of water) which is allocated by a postal code for administrative purposes within a district zone. Including any terminal, floating structure or other works within a harbor at which ships can obtain shelter or ship and unship goods or passengers in the Kingdom of Mount Vema national waters, including anything afloat (other than a ship) if it is anchored or attached to the sea bed or any such waters in accordance with subsections 130B.3(a) and 131.5 of the Merchant Marine and Shipping Act, Mount Vema 2017.

PART I

GENERAL PRINCIPLES AS TO LEGAL ESTATES, INTERESTS AND POWERS

1- Legal estates and equitable interests

1.1- The only land which are capable of subsisting or of being conveyed or created at law are—

(a) An estate in fee simple absolute in possession;

(b) A term of years absolute.

1.2- The only interests or charges in or land which are capable of subsisting or of being conveyed or created at law are—

(a) An easement, right, or privilege in or over a land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;

(b) A rentcharge in possession issuing out of or charged on a land being either perpetual or for a term of years absolute;

(c) A charge by way of legal mortgage;

(d) Any other similar charge on a land which is not created by an instrument;

(e) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.

1.3- All other estates, interests, and charges in or over a land take effect as equitable interests.

1.4- The estates, interests, and charges which under this section are authorized to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as "legal estates," and have the same incidents as legal estates subsisting at the commencement of this Act; and the owner of a legal estate is referred to as "an estate owner" and his legal estate is referred to as his estate.

1.5- A legal estate is not capable of subsisting or of being created in an undivided share in a land or of being held by an infant.

1.6- Every power of appointment over, or power to convey or charge a 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 Act (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf), operates only in equity.

1.7- Estates, interests, and charges in or over land which are not legal estates are in this Act referred to as "equitable interests," and powers which by this Act are to operate in equity only are in this Act referred to as "equitable powers."

1.8- The provisions in any statute or other instrument requiring a land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorized by this Act which may be required) be conveyed to a person of full age upon the requisite trusts.

1.9- This Act does not affect the operation regarding dealings taking effect before the commencement of this Act.

2- Conveyances overreaching certain equitable interests and powers

2.1- A conveyance to a purchaser of a legal estate in a land shall overreach any equitable interest or power affecting that estate, whether or not he has notice thereof, if—

(i) the conveyance is made under any powers conferred by a settlement, and the equitable interest or power is capable of being overreached thereby, and the statutory requirements respecting the payment of capital money arising under the settlement are complied with;

(ii) the conveyance is made by trustees of land and the equitable interest or power is at the date of the conveyance capable of being overreached by such trustees under the provisions of subsection (3) of this section or independently of that subsection, and the requirements of the relevant section of this Act respecting the payment of capital money arising on such a conveyance are complied with;

(iii) the conveyance 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 overreached by such conveyance, and any capital money arising from the transaction is paid to the mortgagee or personal representative;

(iv) the conveyance 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.

2.2- An equitable interest in a land subject to a trust of land which remains in, or is to revert to, the settlor shall (subject to any contrary intention) be overreached by the conveyance if it would be so overreached were it an interest under the trust.

2.3- Where the legal estate affected is subject to a trust of land, then if at the date of a conveyance made after the commencement of this Act by the trustees, the trustees (whether original or substituted) are either—

(a) two or more individuals approved or appointed by the court or the successors in office of the individuals so approved or appointed; or

(b) a trust corporation,

any equitable interest or power having priority to the trust shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale.

2.4- The following equitable interests and powers are excepted from the operation of subsection (3) of this section, namely—

(i) Any equitable interest protected by a deposit of documents relating to the legal estate affected;

(ii) The benefit of any covenant or agreement restrictive of the user of a land;

(iii) Any easement, liberty, or privilege over or affecting a land and being merely an equitable interest (in this Act referred to as an "equitable easement");

(iv) The benefit of any contract (in this Act referred to as an "estate contract") to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase, a right of pre-emption, or any other like right;

(v) Any equitable interest protected by registration under the law of land charges, other than—

(a) an annuity within the meaning of that legislation;

(b) a limited owner's charge or a general equitable charge within the meaning of that legislation.

2.5- Subject to the protection afforded by this section to the purchaser of a legal estate, nothing contained in this section shall deprive a person entitled to an equitable charge of any of his rights or remedies for enforcing the same.

2.6- So far as regards the following interests, created before the commencement of this Act (which accordingly are not within the provisions of the law of land charges, namely—

(a) the benefit of any covenant or agreement restrictive of the user of a land;

(b) any equitable easement;

(c) the benefit of an estate contract, unless and until the same is acquired under a conveyance made after the commencement of this Act;

a purchaser of a legal estate shall only take subject thereto if he has notice thereof, and the same are not overreached under the provisions contained or in the manner referred to in this section.

3- Manner of giving effect to equitable interests and powers

3.1- All equitable interests and powers in or over a land shall be enforceable against the estate owner of the legal estate affected in manner following (that is to say):—

The estate owner shall be bound to give effect to the equitable interests and powers affecting his estate of which he has notice according to their respective priorities. This provision does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for purposes of administration.

3.2- Where, by reason of an equitable right of entry taking effect, or for any other reason, a person becomes entitled to require a legal estate to be vested in him, then and in any such case the estate owner whose estate is affected shall be bound to convey or create such legal estate as the case may require.

3.3- If any question arises whether any and what legal estate ought to be transferred or created as aforesaid, any person interested may apply to the court for directions in the manner provided by this Act.

3.4- If the estate owners refuse or neglect for one month after demand to transfer or create any such legal estate, or if by reason of their being out of the Kingdom of Mount Vema 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 estate in the manner provided by this Act.

3.5- This section does not affect a purchaser of a legal estate taking free from an equitable interest or power.

4- Creation and disposition of equitable interests

4.1- Interests in a land validly created or arising after the commencement of this Act, which are not capable of subsisting as legal estates, shall take effect as equitable interests, and, save as otherwise expressly provided by statute, interests in land which under the Statute of Uses or otherwise could before the commencement of this Act have been created as legal interests, shall be capable of being created as equitable interests:

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

4.2- All rights and interests in a 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 a land whether immediate or future, and whether vested or contingent.

4.3- All rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason may after the commencement of this Act, be made exercisable by any person and the persons deriving title under him.

5- Satisfied terms, whether created out of freehold or leasehold land to cease

5.1- Where the purposes of a term of years created or limited at any time out of freehold land, become satisfied either before or after the commencement of this Act (whether or not that term either by express declaration or by construction of law becomes attendant upon the freehold reversion) it shall merge in the reversion expectant thereon and shall cease accordingly.

5.2- Where the purposes of a term of years created or limited, at any time, out of leasehold land, become satisfied after the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly.

5.3- 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- Saving of lessors' and lessees' covenants

6.1- Nothing in this Part of this Act affects prejudicially the right to enforce any lessor's or 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.

6.2- This section applies where the covenant, agreement or condition is contained in any instrument—

(a) creating a term of years absolute, or

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

7- Saving of certain legal estates and statutory powers

7.1- A fee simple which, by virtue of any similar statute, is liable to be divested, is for the purposes of this Act a fee simple absolute, and remains liable to be divested as if this Act had not been passed and a fee simple subject to a legal or equitable right of entry or re-entry is for the purposes of this Act a fee simple absolute.

7.2- A fee simple vested in a corporation which is liable to determine by reason of the dissolution of the corporation is, for the purposes of this Act, a fee simple absolute.

7.3- The provision of—

(a) any statutes conferring special facilities or prescribing special modes for disposing of or acquiring a land, or providing for the vesting (by conveyance or otherwise) of the land in trustees or any person, or the holder for the time being of an office or any corporation sole or aggregate (including the Crown);

shall remain in full force.

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

8- Saving of certain legal powers to lease

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

8.2- Where a rentcharge is held for a legal estate, the owner thereof may under the statutory power or under any corresponding power, create a legal term of years absolute for securing or compelling payment of the same; but in other cases terms created under any such power shall, unless and until the estate owner of the land charged gives legal effect to the transaction, take effect only as equitable interests.

9- Vesting orders and dispositions of legal estates operating as conveyances by an estate owner

9.1- Every such order, declaration, or conveyance 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 vesting instrument made by the trustees of a settlement;

(d) every conveyance by a person appointed for the purpose under an order of the court or authorized under any statutory power to convey in the name or on behalf of an estate owner;

(e) every conveyance made under any power reserved or conferred by this Act, which is made or executed for the purpose of vesting, conveying, or creating a legal estate, shall operate to convey or create the legal estate disposed of in like manner as if the same had been a conveyance executed by the estate owner of the legal estate to which the order, declaration, vesting instrument, or conveyance relates.

9.2- Where the order, declaration, or conveyance is made in favor of a purchaser, the provisions of this Act relating to a conveyance of a legal estate to a purchaser shall apply thereto.

10- Title to be shown to legal estates

10.1- Where title is shown to a legal estate 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 conveyance of the estate to which title is being shown; but nothing in this Part of this Act 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.

10.2- A solicitor delivering an abstract framed in accordance with this Part of this Act 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- Land owned by the Vema Seamount Authority prior to commencement of this Act

11.1- It shall not be necessary to register after the commencement of this Act unless to transfer, or to create a charge thereon by way of legal mortgage.

11.2- Probates and letters of administration shall be treated as instruments capable of transferring a legal estate.

12- Limitation and Prescription Acts

Nothing in this Part of this Act affects the operation of any statute, 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.

13- Effect of possession of documents

This Act 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 estate 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 estate in land.

14- Interests of persons in possession

This Part of this Act 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.

15- Presumption that parties are of full age

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

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- Conveyances on behalf of persons suffering from mental disorder and as to land held by them

17.1- Where a legal estate in land (whether settled or not) is vested, either solely or jointly with any other person or persons, in a person lacking capacity to convey or create a legal estate, a deputy appointed for him by the Court of Protection or (if no deputy is appointed for him) any person authorized in that behalf shall, under an order of the Court of Protection , or of the court, or under any statutory power, make or concur in making all requisite dispositions for conveying or creating a legal estate in his name and on his behalf.

17.2- If land subject to a trust of land is vested, either solely or jointly with any other person or persons, in a person who lacks capacity (within the meaning of that Act) to exercise his functions as trustee, a new trustee shall be appointed in the place of that person, or he shall be otherwise discharged from the trust, before the legal estate is dealt with by the trustees.

17.3- Subsection (2) of this section does not prevent a legal estate being dealt with without the appointment of a new trustee, or the discharge of the incapable trustee, at a time when the donee of an enduring power of attorney or lasting power of attorney (within the meaning of the Act) is entitled to act for the trustee who lacks capacity in relation to the dealing.

18- Appointment of trustees of land

18.1- The persons having power to appoint new trustees of land shall be bound to appoint the same persons (if any) who are for the time being trustees of any trust of the proceeds of sale of the land.

18.2- A purchaser shall not be concerned to see that subsection (1) of this section has been complied with.

18.3- This section applies whether the trust of land and the trust of proceeds of sale are created, or arise, before or after the commencement of this Act.

19- Purchaser not to be concerned with the trusts of the proceeds of sale which are to be paid to two or more trustees or to a trust corporation

19.1- A purchaser of a legal estate from trustees of land shall not be concerned with the trusts affecting the land, the net income of the land or the proceeds of sale of the land whether or not those trusts are declared by the same instrument as that by which the trust of land is created.

19.2- Notwithstanding anything to the contrary in the instrument (if any) creating a trust of land or in any trust affecting the net proceeds of sale of the land if it is sold, 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, 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.

20- Trust of mortgaged property where right of redemption is barred

20.1- Where any property, vested in trustees by way of security, becomes, by virtue of the statutes of limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them in trust—

(a) to apply the income from the property in the same manner as interest paid on the mortgage debt would have been applicable; and

(b) if the property is sold, to apply the net proceeds of sale, after payment of costs and expenses, in the same manner as repayment of the mortgage debt would have been applicable.

20.2- Subsection (1) of this section operates without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

21- Effect of future dispositions to tenants in common

21.1- Where, after the commencement of this Act, land is expressed to be conveyed to any persons in undivided shares and those persons are of full age, the conveyance shall (notwithstanding anything to the contrary in this Act) operate as if the land had been expressed to be conveyed to the grantees, or, if there are more than four grantees, to the four first named in the conveyance, as joint tenants in trust for the persons interested in the land:

Provided that, where the conveyance 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 Act) as joint tenants subject to cesser on redemption in like manner as if the mortgage money had belonged to them on a joint account, but without prejudice to the beneficial interests in the mortgage money and interest.

21.2- A devise bequest or testamentary appointment, coming into operation after the commencement of this Act, of land to two or more persons in undivided shares shall operate as a devise bequest 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) in trust for the persons interested in the land.

21.3- In subsections (1) and (2) of this section references to the persons interested in the land include persons interested as trustees or personal representatives (as well as persons beneficially interested).

22- Joint tenancies

22.1- Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held in trust, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.

22.2- No severance of a joint tenancy of a legal estate, 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 estate is vested in the joint tenants:

Provided that, where a legal estate (not being settled land) 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 acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon the land shall be held in trust on terms which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

Nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held in trust.

22.3- Without prejudice to the right of a joint tenant to release his interest to the other joint tenants no severance of a mortgage term or trust estate, so as to create a tenancy in common, shall be permissible.

23- 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 Act, be treated as two persons.

24- Party structures

24.1- 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 user 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.

24.2- 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.

PART II

CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS

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

26- Provisions as to contracts

26.1- A stipulation that a purchaser of a legal estate in land 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 of land; or

(b) under any other statute.

26.2- A stipulation that a purchaser of a legal estate in land shall pay or contribute towards the costs of or incidental to—

(a) obtaining a vesting order, or the appointment of trustees of a settlement, or the appointment of trustees of land; or

(b) the preparation stamping or execution of a conveyance in trust;
shall be void.

26.3- A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Act, to the effect that an outstanding legal estate 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 estate, shall be void.

26.4- If the subject matter of any contract for the sale or exchange of land—

(i) is a mortgage term and the vendor has power to convey the fee simple in the land, or, in the case of a mortgage of a term of years absolute, the leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the fee simple in the land or such leasehold reversion;

(ii) is an equitable interest capable of subsisting as a legal estate, and the vendor has power to vest such legal estate 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 estate;

(iii) is an entailed interest in possession and the vendor has power to vest in himself or in the purchaser the fee simple in the land, (or, if the entailed interest is an interest in a term of years absolute, such term,) or to require the same to be so vested, the contract shall be deemed to extend to the fee simple in the land or the term of years absolute.

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

26.6- Where a purchaser has power to acquire land compulsorily, and a contract, whether by virtue of a notice to treat or otherwise, is subsisting under which title can be made without payment of the compensation money into court, title shall be made in that way unless the purchaser, to avoid expense or delay or for any special reason, considers it expedient that the money should be paid into court.

26.7- A vendor shall not have any power to rescind a contract by reason only of the enforcement of any right under this section.

26.8- This section only applies in favour of a purchaser for money or money's worth.

27- Rights protected by registration

27.1- Where a purchaser of a legal estate is entitled to acquire the same discharged from an equitable interest which is protected by registration as a pending action, annuity, writ, order or land charge, and which will not be overreached by the conveyance to him, he may notwithstanding any stipulation to the contrary, require—

(a) that the registration shall be cancelled; or

(b) that the person entitled to the equitable interest shall concur in the conveyance;

and in either case free of expense to the purchaser.

27.2- Where the registration cannot be cancelled or the person entitled to the equitable interest refuses to concur in the conveyance, this section does not affect the right of any person to rescind the contract.

28- Other statutory conditions of sale

28.1- 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 instruments, of 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, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise:

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.

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

28.3- Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-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 under-lease 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 lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

28.4- 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 Acts of Mount Vema Congress, inclosure awards, 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, evidences, 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 Acts of Mount Vema Congress or other 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.

28.5- 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.

28.6- Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Mount Vema Congress, or statutory declarations, ten years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

28.7- The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

28.8- Such acknowledgments 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.

28.9- 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.

28.10- This section applies to contracts for sale made before or after the commencement of this Act, 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:

Provided that this section shall apply subject to any stipulation or contrary intention expressed in the contract.

28.11- 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.

29- Forms of contracts and conditions of sale

The Treasury may from time to time prescribe and publish forms of contracts and conditions of sale of land, and the forms so prescribed shall, subject to any modification, or any stipulation or intention to the contrary, expressed in the correspondence, apply to contracts by correspondence, and may, but only by express reference thereto, be made to apply to any other cases for which the forms are made available.

30- Application of insurance money on completion of a sale or exchange

30.1- 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.

30.2- This section applies only to contracts made after the commencement of this Act, 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.

30.3- 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.

31- Stipulations preventing a purchaser, lessee, or underlessee from employing his own solicitor to be void

31.1- Any stipulation made on the sale of any interest in land after the commencement of this Act to the effect that the conveyance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor 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 demise or subdemise, then, for the purposes of this subsection, the instrument required for giving effect to the transaction shall be deemed to be a conveyance:

Provided that nothing in this subsection shall affect any right reserved to a vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared, or to charge a reasonable fee therefor, or, where a perpetual rentcharge is to be reserved as the only consideration in money or money’s worth, the right of a vendor to stipulate that the draft conveyance is to be prepared by his solicitor at the expense of the purchaser.

31.2- Any covenant or stipulation contained in, or entered into with reference to any lease or underlease made before or after the commencement of this Act—

(a) whereby the right of preparing, at the expense of a purchaser, any conveyance of the estate or interest of the lessee or underlessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or underlessor or his solicitor; or

(b) which in any way restricts the right of the purchaser to have such conveyance carried out on his behalf by a solicitor 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 lessee or underlessee shall register with the lessor or his solicitor within six months from the date thereof, or as soon after the expiration of that period as may be practicable, all conveyances and devolutions (including probates or letters of administration) affecting the lease or underlease and pay the relevant fee in respect of each registration, and the power of entry (if any) on breach of any covenant contained in the lease or underlease shall apply and extend to the breach of any covenant so to be implied.

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

31.4- In this section "lease" and "underlease" include any agreement therefor or other tenancy, and "lessee" and "underlessee" and "lessor" and "underlessor" have corresponding meanings.

32- Applications to the court by vendor and purchaser

32.1- A vendor or purchaser of any interest in land, or their representatives respectively, may apply in a summary way 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.

32.2- 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.

32.3- This section applies to a contract for the sale or exchange of any interest in land.

33- Discharge of incumbrances by the court on sales or exchanges

33.1- 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 Government 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 of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reason thinks fit to require a larger additional amount.

33.2- Thereupon, 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 conveyance, 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.

33.3- 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.

33.4- 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.

33.5- 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 a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

33.6- This section applies to sales or exchanges whether made before or after the commencement of this Act, and to incumbrances whether created by statute or otherwise.

34- Lands lie in grant only

34.1- All lands and all interests therein lie in grant and are incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale; and a conveyance 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 thereto.

34.2- The use of the word grant is not necessary to convey land or to create any interest therein.

35- Conveyances to be by deed

35.1- All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.

35.2- This section does not apply to—

- (a) assents by a personal representative;
- (b) disclaimers not required to be evidenced in writing;
- (c) surrenders by operation of law, including surrenders which may, by law, be effected without writing;

- (d) leases or tenancies or other assurances not required by law to be made in writing;
- (e) flexible tenancies;
- (f) assured tenancies that are granted by private registered providers of social housing and are not long tenancies or shared ownership leases;
- (g) receipts;
- (h) vesting orders of the court or other competent authority;
- (i) conveyances taking effect by operation of law.

36- Instruments required to be in writing

36.1- Subject to the provision 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 conveying the same, or by his agent thereunto lawfully authorized 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 of the same, or by his agent thereunto lawfully authorized in writing or by will.

36.2- This section does not affect the creation or operation of resulting, implied or constructive trusts.

37- Creation of interests in land by parol

37.1- 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 authorized in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

37.2- Nothing in the foregoing provisions of this Part of this Act shall affect the creation by parol of leases taking effect in possession for a term not exceeding

three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine.

38- Savings in regard to last two sections

Nothing in the last two foregoing sections shall—

- (a) invalidate dispositions by will; or
- (b) affect any interest validly created before the commencement of this Act; or
- (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.

39- Persons taking who are not parties and as to indentures

39.1- 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 conveyance or other instrument.

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

40- 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 as a conveyance, deed of exchange, vesting deed, trust instrument, settlement, mortgage, charge, transfer of mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected.

41- Provisions as to supplemental instruments

Any instrument (whether executed before or after the commencement of this Act) 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 a purchaser may

accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

42- Construction of expressions used in deeds and other instruments

In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Act, 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.

43- General words implied in conveyances

43.1- A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, water-courses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

43.2- A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

43.3- A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all commons, minerals, trees, coppices, and the ground and soil thereof, fishings, fisheries, customs, tolls, duties, reliefs, fines, sums of money, waifs, rentscharge, rents, services, royalties jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or

reputed to appertain, or, at the time of conveyance, demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

For the purposes of this subsection the right to compensation for manorial incidents on the extinguishment thereof shall be deemed to be a right appertaining to the manor.

43.4- This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

43.5- 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 conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

44- All estate clause implied

44.1- Every conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

44.2- This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

45- Production and safe custody of documents

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

45.2- An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and 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 acknowledgment, unless prevented from so doing by fire or other inevitable accident.

45.3- The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right 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 acknowledgment relates.

45.4- The obligations imposed under this section by an acknowledgment are—

(i) 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 authorized in writing; and

(ii) 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, 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 that title or claim; and

(iii) 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.

45.5- 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.

45.6- An acknowledgment 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.

45.7- Any person claiming to be entitled to the benefit of an acknowledgment 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.

45.8- An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

45.9- 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.

45.10- 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.

45.11- An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

45.12- The rights conferred by an acknowledgment 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 Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

45.13- This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

45- Reservation of legal estates

45.1- A reservation of a legal estate shall operate at law without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made, or any regrant by him, so as to create the legal estate 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.

45.2- A conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance, shall operate as a reservation, unless a contrary intention appears.

46- Confirmation of past transactions

46.1- A deed containing a declaration by the estate owner that his estate shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his estate and capable under this Act of subsisting as legal estates 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 estate of the estate owner, but without prejudice to the restrictions imposed by this Act 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.

46.2- The powers conferred by this section may be exercised by a tenant for life or statutory owner, trustee of land or a personal representative (being in each case an estate owner) as well as by an absolute owner, but if exercised by any person, other than an absolute owner, only with the leave of the court.

46.3- This section applies only to deeds containing such a declaration as aforesaid if executed after the commencement of this Act.

47- Receipt in deed sufficient

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 indorsed on the deed.

48- Receipt in deed or indorsed evidence

A receipt for consideration money or other consideration in the body of a deed or indorsed 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.

49- Receipt in deed or indorsed authority for payment to solicitor

Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed 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 solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

50- Partial release of security from rentcharge

A release from a rentcharge of part of the land charged therewith does not extinguish the whole rent charge, but operates only to bar the right to recover any part of the rentcharge out of the land released, without prejudice to the rights of any persons interested in the land remaining unreleased, and not concurring in or confirming the release.

51- Release of part of land affected from a judgment

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

51.2- This section operates without prejudice to the rights of any persons interested in the property remaining unreleased and not concurring in or confirming the release.

52- Conveyances by a person to himself, &c.

52.1- A personal property, including chattels real, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.

52.2- A freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

52.3- After the commencement of this Act a person may convey land to or vest land in himself.

52.4- Two or more persons (whether or not being trustees or personal representatives) may convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party; provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

53- Execution of instruments by or on behalf of corporations

53.1- In favour of a purchaser an instrument shall be deemed to have been duly executed by a corporation aggregate if a seal purporting to be the corporation's seal purports to be affixed to the instrument in the presence of and attested by—

(a) two members of the board of directors, council or other governing body of the corporation, or

(b) one such member and the clerk, secretary or other permanent officer of the corporation or his deputy.

53.2- Subsection (1) of this section applies in the case of an instrument purporting to have been executed by a corporation aggregate in the name or on behalf of another person whether or not that person is also a corporation aggregate.

53.3- For the purposes of subsection (1) of this section, a seal purports to be affixed in the presence of and attested by an officer of the corporation, in the case of an officer which is not an individual, if it is affixed in the presence of and attested by an individual authorized by the officer to attest on its behalf.

53.4- 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 which is not a deed in relation to any matter within the powers of the corporation.

53.5- Where a person is authorized under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness who attests the signature, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

53.6- Where a corporation aggregate is authorized under a power of attorney or under any statutory or other power to convey 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 instrument by signing it in the name of such other person or, if the instrument is to be a deed, by so signing it in the presence of a witness who attests the signature; 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 authorized.

53.7- The foregoing provisions of this section apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of this Act, 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 Act or by this Act.

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

54- Execution of instrument as a deed

54.1- An instrument is validly executed by a corporation aggregate as a deed, if and only if—

- (a) it is duly executed by the corporation, and
- (b) it is delivered as a deed.

54.2- An instrument shall be presumed to be delivered for the purposes of subsection (1)(b) of this section upon its being executed, unless a contrary intention is proved.

55- Rights of purchaser as to execution

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

56- Implied covenants in conveyances subject to rents

56.1- 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 conveyance for valuable consideration, other than a mortgage, of the entirety of the land affected by a rentcharge, a covenant by the grantee or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one. Where a rentcharge has been apportioned in respect of any land, with the consent of the owner of the rentcharge, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rentcharge were the rentcharge referred to, and the document creating the rentcharge related solely to that land:

(b) In a conveyance for valuable consideration, other than a mortgage, of part of land affected by a rentcharge, subject to a part of that rentcharge which has been or is by that conveyance apportioned (but in either case without the consent of the owner of the rentcharge) in respect of the land conveyed:—

(i) A covenant by the grantee of the land or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one;

(ii) A covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land affected by such rentcharge is retained, with the grantees of the land and with each of them (if more than one).

56.2- Where in a conveyance for valuable consideration, other than a mortgage, part of land affected by a rentcharge is, without the consent of the owner of the rentcharge, expressed to be conveyed subject to or charged with the entire rent, paragraph (B)(i) of subsection (1) of this section shall apply as if,—

(a) any reference to the apportioned rent were to the entire rent; and

(b) the words “(other than the covenant to pay the entire rent)” were omitted.

56.3- Where in a conveyance for valuable consideration, other than a mortgage, part of land affected by a rentcharge is, without the consent of the owner of the

rentcharge, expressed to be conveyed discharged or exonerated from the entire rent, paragraph (B)(ii) of subsection (1) of this section shall apply as if—

- (a) any reference to the balance of the rent were to the entire rent; and
- (b) the words “, other than the covenant to pay the entire rent,” were omitted.

56.4- In this section “conveyance” does not include a demise by way of lease at a rent.

56.5- Any covenant which would be implied under this section by reason of a person conveying or being expressed to convey as beneficial owner may, by express reference to this section, be implied, with or without variation, in a conveyance, whether or not for valuable consideration, by a person who conveys or is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or under an order of the court.

56.6- 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.

56.7- A covenant implied as aforesaid may be varied or extended by 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 directed in this section to be implied.

56.8- In particular any covenant implied under this section may be extended by providing that—

- (a) the land conveyed; or
- (b) the part of the land affected by the rentcharge 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.

57- Benefit of covenants relating to land

57.1- 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.

For the purposes of this subsection in connexion 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 the land of the covenantee intended to be benefited.

58- Burden of covenants relating to land

58.1- A covenant relating to any land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself 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.

This subsection 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.

58.2- For the purposes of this section in connexion 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.

59- Covenants binding land

59.1- A covenant and a bond and an obligation or contract binds the real estate as well as the personal 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.

This subsection extends to a covenant implied by virtue of this Act.

59.2- Every covenant running with the land, whether entered into before or after the commencement of this Act, 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.

59.3- The benefit of a covenant relating to land entered into after the commencement of this Act 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 Act.

59.4- 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.

60- Effect of covenant with two or more jointly

60.1- A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for 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 Act shall be construed as being also made with each of them.

60.2- This section extends to a covenant implied by virtue of this Act.

60.3- 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.

61- Covenants and agreements entered into by a person with himself and another or others

61.1- 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.

61.2- This section applies to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the court made before such commencement.

62- 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 Act, 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.

63- Power to discharge or modify restrictive covenants affecting land

63.1- The Upper Tribunal shall (without prejudice to any concurrent jurisdiction of the court) have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction on being satisfied—

(a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Upper Tribunal may deem material, the restriction ought to be deemed obsolete, or

(b) that in a case falling within subsection (2) below the continued existence thereof would impede some reasonable user of the land for public or private purposes or, as the case may be, would unless modified so impede such user; or

(c) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or

(d) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction:

and an order discharging or modifying a restriction under this subsection may direct the applicant to pay to any person entitled to the benefit of the restriction such sum by way of consideration as the Tribunal may think it just to award under one, but not both, of the following heads, that is to say, either—

(i) a sum to make up for any loss or disadvantage suffered by that person in consequence of the discharge or modification; or

(ii) a sum to make up for any effect which the restriction had, at the time when it was imposed, in reducing the consideration then received for the land affected by it.

63.2- Subsection (1) (b) above authorizes the discharge or modification of a restriction by reference to its impeding some reasonable user of land in any case in which the Upper Tribunal is satisfied that the restriction, in impeding that user, either—

(a) does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them; or

(b) is contrary to the public interest;

and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification.

(c) In determining whether a case is one falling within subsection (b) above, and in determining whether (in any such case or otherwise) a restriction ought to be discharged or modified, the Upper Tribunal shall take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the relevant areas, as well as the period at which and context in which the restriction was created or imposed and any other material circumstances.

(d) It is hereby declared that the power conferred by this section to modify a restriction includes power to add such further provisions restricting the user of or the building on the land affected as appear to the Upper Tribunal to be reasonable in view of the relaxation of the existing provisions, and as may be accepted by the applicant; and the Upper Tribunal may accordingly refuse to modify a restriction without some such addition.

63.3- The court shall have power on the application of any person interested—

(a) To declare whether or not in any particular case any freehold land is or would in any given event be affected by a restriction imposed by any instrument; or

(b) To declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is or would in any given event be enforceable and if so by whom.

63.4- The Upper Tribunal shall, before making any order under this section, direct such enquiries, if any, to be made of any government department or district authority, and such notices, if any, whether by way of advertisement or otherwise, to be given to such of the persons who appear to be entitled to the benefit of the restriction intended to be discharged, modified, or dealt with as, having regard to

any enquiries notices or other proceedings previously made, given or taken, the Upper Tribunal may think fit.

63.5- On an application to the Upper Tribunal under this section the Upper Tribunal shall give any necessary directions as to the persons who are or are not to be admitted (as appearing to be entitled to the benefit of the restriction) to oppose the application, and no appeal shall lie against any such direction; but Tribunal Procedure Rules shall make provision whereby, in cases in which there arises on such an application (whether or not in connection with the admission of persons to oppose), the proceedings on the application can and, if the rules so provide, shall be suspended to enable the decision of the court to be obtained on that question by an application under that subsection, or otherwise, as may be provided by those rules or by rules of court.

63.6- Any order made under this section shall be binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction, which is thereby discharged, modified, or dealt with, and whether such persons are parties to the proceedings or have been served with notice or not.

63.7- An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified, or dealt with, may not have been produced to the court or the Upper Tribunal, and the court or the Upper Tribunal may act on such evidence of that instrument as it may think sufficient.

63.8- This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter, but this section does not apply where the restriction was imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes.

63.9- This section applies whether the land affected by the restrictions is registered or not.

63.10- Where any proceedings by action or otherwise are taken to enforce a restrictive covenant, any person against whom the proceedings are taken, may in such proceedings apply to the court for an order giving leave to apply to the Upper Tribunal under this section, and staying the proceedings in the meantime.

63.11- This section does not apply to restrictions imposed by the Commissioners of Works under any statutory power for the protection of any Royal Mount Vema Park or Garden or to restrictions of a like character imposed in any manor vested

in His Mount Vema Majesty in right of the Crown of Mount Vema nor subject to subsection (12) below to restrictions created or imposed—

(a) for Naval, Military or Air Force purposes,

(b) for civil aviation purposes

63.12- Subsection (11) of this section—

(a) shall exclude the application of this section to a restriction falling within subsection (11)(a), and not created or imposed in connection with the use of any land as an aerodrome, only so long as the restriction is enforceable by or on behalf of the Crown of Mount Vema; and

(b) shall exclude the application of this section to a restriction falling within subsection (11)(b), or created or imposed in connection with the use of any land as an aerodrome, only so long as the restriction is enforceable by or on behalf of the Crown or any public or international authority.

PART III

MORTGAGES, RENTCHARGES, AND POWERS OF ATTORNEY

Mortgage

64- Mode of mortgaging freeholds

64.1- A mortgage of an estate in fee simple shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage:

Provided that a first mortgagee shall have the same right to the possession of documents as if his security included the fee simple.

64.2- Any purported conveyance of an estate in fee simple by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a demise of the land to the mortgagee for a term of years

absolute, without impeachment for waste, but subject to cesser on redemption, in 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 conveyance as aforesaid includes an absolute conveyance with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the fee simple in a mortgagee subject to redemption.

64.3- Subsection (2) does not apply to registered land, but, subject to that, this section applies whether or not the land is registered land and whether or not the mortgage is expressed to be made by way of trust for sale or otherwise.

64.4- Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of an estate in fee simple shall be construed as a power to mortgage the estate for a term of years absolute, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.

65- Mode of mortgaging leaseholds

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

Provided that a first mortgagee shall have the same right to the possession of documents as if his security had been effected by assignment.

65.2- Any purported assignment of a term of years absolute by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a subdemise of the leasehold land to the mortgagee for a term of years absolute, 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.

65.3- Subsection (2) does not apply to registered land, but, subject to that, this section applies whether or not the land is registered land and whether or not 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.

65.4- Without prejudice to the provisions of this Act 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 subdemise for a term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

66- Charges by way of legal mortgage

66.1- 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 an estate in fee simple, 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 absolute, a sub-term less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee.

66.2- Where an estate vested in a mortgagee immediately before the commencement of this Act has by virtue of this Act been converted into a term of

years absolute or 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 term or sub-term had remained subsisting.

The power conferred by this subsection may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.

66.3- 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 chattels personal comprised in the mortgage.

66.4- Subsection (1) of this section shall not be taken to be affected by owner's powers in relation to a registered estate which do not include power to mortgage by demise or sub-demise).

67- Realization of freehold mortgages

67.1- Where an estate in fee simple has been mortgaged by the creation of a term of years absolute 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 conveyance by him shall operate to vest in the purchaser the fee simple in the land conveyed 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 conveyed;

and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.

67.2- Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple 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, if any, shall thereby be merged in the fee simple, and any subsequent mortgage term or

charge by way of legal mortgage bound by the order shall thereupon be extinguished.

67.3- Where any such mortgagee acquires a title under the Limitation law, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.

67.4- Where the mortgage includes fixtures or chattels personal 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.

67.5- In the case of a sub-mortgage by subdemise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the fee simple or acquire it by foreclosure, enlargement, or otherwise as aforesaid.

67.6- This section applies to a mortgage whether created before or after the commencement of this Act, and to a mortgage term created by this Act, but does not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the mortgage (being a valid mortgage) and the restrictions imposed by this Act 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 demise or by charge by way of legal mortgage.

68- Realization of leasehold mortgages

68.1- Where a term of years absolute has been mortgaged by the creation of another term of years absolute 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 conveyance by him shall operate to convey to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court) the 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 leasehold reversion or be extinguished unless excepted as aforesaid;

and such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested.

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

68.2- 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 leasehold reversion 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 provision to the contrary contained in the order, merge in such leasehold reversion or be extinguished.

68.3- Where any such mortgagee acquires a title under the Limitation law, he, or the persons deriving title under him, may by deed declare that the 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 leasehold reversion or be extinguished.

68.4- Where the mortgage includes fixtures or chattels personal, 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.

68.5- In the case of a sub-mortgage by subdemise of a term (less a nominal period) itself limited out of a 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 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 convey the leasehold reversion or acquire it by foreclosure, vesting, or otherwise as aforesaid.

68.6- This section takes effect without prejudice to any incumbrance or trust affecting the 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 Act, and to a mortgage term created by this Act, but does not apply where the mortgage term

does not comprise the whole of the land included in the 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.

In this subsection references to an apportionment include an equitable apportionment made without the consent of the lessor.

69- Realization of equitable charges by the court

69.1- 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 absolute or by a charge by way of legal mortgage) the court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land or create and vest in the mortgagee a legal term of years absolute 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 Act, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

70- Sale of mortgaged property in action for redemption or foreclosure

70.1- 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.

70.2- 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.

70.3- But, 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.

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

70.5- This section applies to actions brought either before or after the commencement of this Act.

70.6- In this section "mortgaged property" includes the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.

70.7- For the purposes of this section the court may, in favour of a purchaser, make a vesting order conveying 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.

71- Power to authorize land and minerals to be dealt with separately

71.1- Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the court may, on his application, authorize him and the persons deriving title under him to dispose—

(a) of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting or carrying away of minerals; or

(b) of all or any mines and minerals, with or without the said rights or powers separately from the land;

and thenceforth the powers so conferred shall have effect as if the same were contained in the mortgage.

72- Restriction on consolidation of mortgages

72.1- 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.

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

73- Obligation to transfer instead of re-conveying, and as to right to take possession

73.1- Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a reconveyance or surrender, he shall be entitled to require the mortgagee, instead of re-conveying or surrendering, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.

73.2- 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.

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

73.4- Nothing in this Act affects prejudicially the right of a mortgagee of land whether or not his charge is secured by a legal term of years absolute to take possession of the land, but the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest.

74- Regulations respecting inspection, production and delivery of documents, and priorities

74.1- 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 costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

74.2- 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 require a surrender or re-conveyance or otherwise.

75- Actions for possession by mortgagors

75.1- A mortgagor for the time being 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 thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

75.2- 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 any legal estate vested in him or otherwise.

76- Leasing powers of mortgagor and mortgagee in possession

76.1- A mortgagor of land while in possession shall, as against every incumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorized.

76.2- A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have power to make from time to time any such lease as aforesaid.

76.3- The leases which this section authorizes are—

(i) occupation leases for any term not exceeding twenty-one years, or, in the case of a mortgage made after the commencement of this Act, fifty years; and

(ii) building leases for any term not exceeding ninety-nine years, or, in the case of a mortgage made after the commencement of this Act, nine hundred and ninety-nine years.

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

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

76.6- Every such 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.

76.7- Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

76.8- A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

76.9- Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the 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 leased, an improvement for or in connexion with building purposes.

76.10- In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

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

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

76.13- 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.

76.14- The mortgagor and 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 leasing or having reference to 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 Act, 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.

76.15- Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a 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 Act and the enactments replaced by this section had not been passed:

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

76.16- Subject as aforesaid, this section applies to any mortgage made after this act, 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.

76.17- The provisions of this section referring to a 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 leasing or letting.

76.18- For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

76.19- The powers of leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under his 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.

77- Powers of mortgagor and mortgagee in possession to accept surrenders of leases

77.1- For the purpose only of enabling a lease authorized 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 authorized lease) to be granted, a mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines and minerals therein, and, on a surrender of the lease so far as it comprises part only of the land or mines and minerals leased, the rent may be apportioned.

77.2- 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 Act, power to accept from time to time any such surrender as aforesaid.

77.3- On a surrender of part only of the land or mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorized lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the 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 lease.

77.4- Where any consideration for the surrender, other than an agreement to accept an authorized lease, is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section authorizes a surrender to a mortgagor without the consent of the incumbrancers, or authorizes a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

77.5- No surrender shall, by virtue of this section, be rendered valid unless:—

(a) An authorized lease is granted of the whole of the land or mines and minerals comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender; and

(b) The term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and

(c) Where the whole of the land mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.

77.6- 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.

77.7- 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 shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

77.8- The provisions of this section referring to a 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 leasing or letting.

77.9- 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 leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Act, 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.

77.10- 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 Act and the enactments replaced by this section had not been passed.

77.11- For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

77.12- 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.

78- Powers incident to estate or interest of mortgagee

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

(i) 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; and

(ii) 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 freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

(iii) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged property consists of an interest in income, or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof; and

78.2- Where the mortgage deed is executed, the power of sale aforesaid includes the following powers as incident thereto (namely):—

(i) 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 user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing:

(ii) A power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface:—

(a) 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

(b) With or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers or working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold: and

(c) With or without covenants by the purchaser to expend money on the land sold.

78.3- The provisions of this Act relating to the foregoing powers, comprised either 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 Act.

78.4- This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and has effect subject to the terms of the mortgage deed and to the provisions therein contained.

78.6- The power of sale conferred by this section includes such power of selling the estate in fee simple or any leasehold reversion as is conferred by the provisions of this Act relating to the realization of mortgages.

79- Provision as to mortgages of undivided shares in land

79.1- A person who was before the commencement of this Act a mortgagee of an undivided share in land shall have the same power to sell his interest under the trust to which the land is subject, as, independently of this Act, he would have had in regard to the share in the land; and shall also have a right to require the trustees 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 Act, he would have had to

take possession or to appoint a receiver of the rents and profits attributable to the same share.

79.2- The powers conferred by this section are exercisable by the persons deriving title under such mortgagee.

80- Regulation of exercise of power of sale

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

(i) 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 of part thereof, for three months after such service; or

(ii) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(iii) There has been a breach of some provision contained in the mortgage deed or in this Act, or in an enactment replaced by this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

81- Conveyance on sale

81.1- A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as he is by this Act authorized to sell or convey or may be the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage.

81.2- Where a conveyance is made in exercise of the power of sale conferred by this Act, or any enactment replaced by this Act, the title of the purchaser shall not be impeachable on the ground—

(a) that no case had arisen to authorize the sale; or

(b) that due notice was not given; or

(c) where the mortgage is made after the commencement of this Act, that leave of the court, when so required, was not obtained; or

(d) whether the mortgage was made before or after such commencement, that the power was otherwise improperly or irregularly exercised;

and a purchaser is not, either before or on conveyance, concerned to see or inquire whether a case has arisen to authorize the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

81.3- A conveyance on sale by a mortgagee, made after the commencement of this Act, shall be deemed to have been made in exercise of the power of sale conferred by this Act unless a contrary intention appears.

82- 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 Act 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, interest, and costs, 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 authorized to give receipts for the proceeds of the sale thereof.

83- Provisions as to exercise of power of sale

83.1- The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

83.2- The power of sale conferred by this Act does not affect the right of foreclosure.

83.3- 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 Act, or of any trust connected therewith, of any power or provision contained in the mortgage deed.

83.4- At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an estate, 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.

84- Mortgagee's receipts, discharges, &c.

84.1- The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, 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.

84.2- 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 Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act, 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.

85- Amount and application of insurance money

85.1- The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act 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.

85.2- An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i) Where there is a declaration in the mortgage deed that no insurance is required:

(ii) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii) 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 Act authorized to insure.

85.3- All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or any enactment replaced by this Act, 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.

85.4- Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money.

86- Appointment, powers, remuneration and duties of receiver

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

86.2- A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.

86.3- The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action or under any commercial rent arrears recovery issued by a tribunal or court, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or 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 Act.

86.4- A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

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

86.6- 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 that gross amount, or at such other rate as the court thinks fit to allow, on application made by him for that purpose.

86.7- 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 property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

86.8- Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:

(i) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(ii) 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; and

(iii) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv) In payment of the interest accruing due in respect of any principal money due under the mortgage; and

(v) 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.

87- Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver

87.1- Where the statutory or express power for a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor being adjudged a bankrupt, such power shall not be exercised only on account of the adjudication, without the leave of the court.

88- Effect of advance on joint account

88.1- 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 as money, 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 money's worth, for the time 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 money's 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 money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

88.2- 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.

89- Notice of trusts affecting mortgage debts

89.1- 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.

89.2- 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.

90- Transfers of mortgages

90.1- 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, 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

(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 estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.

90.2- In this section "transferee" includes his personal representatives and assigns.

90.5- This section does not extend to a transfer of a bill of sale of chattels by way of security.

91- Reconveyances of mortgages by endorsed receipts

91.1- 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 reconveyance, surrender, or release—

(a) Where a mortgage takes effect by demise or subdemise, as a surrender of the term, 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 demise or subdemise, as a reconveyance 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 estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

91.2- 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 been 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.

91.3- 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.

91.4- 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.

91.5- In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee, subject to any interest which is paramount to the mortgage.

91.6- 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.

91.7- 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 Act, but only as respects discharges effected after such commencement.

91.8- The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building 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.

91.9- In this section "mortgaged property" means the property remaining subject to the mortgage at the date of the receipt.

92- 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 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.

93- Forms of statutory legal charges

93.1- As a special form of charge by way of legal mortgage, a mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage with such variations and additions, if any, as circumstances may require, and if so made the provisions of this section shall apply thereto.

93.2- There shall be deemed to be included, and there shall by virtue of this Act be implied, in such a mortgage deed—

- First, a covenant with the mortgagee by the person therein expressed to charge as mortgagor to the effect following, namely:

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 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:

- Secondly, 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 meantime 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.

94- Forms of statutory transfers of legal charges

94.1- A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage.

94.2- In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):—

(i) 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:

(ii) All the term and interest, if any, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

94.3- If a covenantor joins in the deed of transfer, there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely):

That the covenantor will, 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.

94.4- If the deed of transfer is made under this Act, it shall, by virtue of this Act, 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.

95- 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 convey 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.

96- Form of discharge of statutory mortgage or charge

A statutory mortgage may be surrendered or discharged by a receipt with such variations and additions, if any, as circumstances may require.

Rentcharges

97- Remedies for the recovery of annual sums charged on land

97.1- Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the annual sum shall have such remedies for recovering and compelling payment thereof as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

97.2- If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

97.3- In the like case the person entitled to the annual sum, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by all or any of the means hereinafter mentioned, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed:

Provided that this subsection shall not authorize the creation of a legal term of years absolute after the commencement of this Act, save where the annual sum is a rentcharge held for a legal estate.

The surplus, if any, of the money raised, or of the income received, under the trusts of the deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

The means by which such annual sum, arrears, costs, and expenses may be raised includes—

(a) the creation of a legal mortgage or a sale (effected by assignment or subdemise) of the term created in the land charged or any part thereof,

(b) the receipt of the income of the land comprised in the term.

97.4- This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and has effect subject to the terms of that instrument and to the provisions therein contained.

98- Creation of rentcharges charged on another rentcharge and remedies for recovery thereof

98.1- A rentcharge or other annual sum (not being rent incident to a reversion) payable half yearly or otherwise may be granted, reserved, charged or created out of or on another rentcharge or annual sum (not being rent incident to a reversion) charged on or payable out of land or on or out of the income of land, in like manner as the same could have been made to issue out of land.

98.2- If at any time the annual sum so created or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum shall (without prejudice to any prior interest or charge) have power to appoint a receiver of the annual sum charged or any part thereof, and the provisions of this Act relating to the appointment, powers, remuneration and duties of a receiver, shall apply in like manner as if such person were a mortgagee entitled to exercise the power of sale conferred by this Act, and the annual sum charged were the mortgaged property and the person entitled thereto were the mortgagor.

98.3- The power to appoint a receiver conferred by this section shall (where the annual sum is charged on a rentcharge) take effect in substitution for the remedies conferred, in the case of annual sums charged on land.

98.4- This section applies to annual sums expressed to be created before as well as after the commencement of this Act, and, but without prejudice to any order of the court made before the commencement of this Act, operates to confirm any annual sum which would have been validly created if this section had been in force.

Powers of Attorney

99- Powers of attorney relating to land to be filed

99.1- Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land (not being registered land) shall be entitled to have any

instrument creating a power of attorney which affects his title, or a copy thereof or of the material portions thereof delivered to him free of expense.

99.2- This section only applies to instruments executed after the commencement of this Act, and no right to rescind a contract shall arise by reason of the enforcement of the provisions of this section.

PART IV

EQUITABLE INTERESTS AND THINGS IN ACTION

100- Entailed interests in real and personal property

100.1- In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by this Act, an entailed interest (to the extent of the property affected) shall devolve as an equitable interest, from time to time, upon the persons who would have been successively entitled thereto as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, or as tenant by the curtesy, if the entailed interest had, before the commencement of this Act, been limited in respect of freehold land governed by the general law in force immediately before such commencement, and such law had remained unaffected.

100.2- Where personal chattels are settled without reference to settled land on trusts creating entailed interests therein, the trustees, with the consent of the usufructuary for the time being if of full age, may sell the chattels or any of them, and the net proceeds of any such sale shall be held in trust for and shall go to the same persons successively, in the same manner and for the same interests, as the chattels sold would have been held and gone if they had not been sold, and the income of investments representing such proceeds of sale shall be applied accordingly.

100.3- In this Act where the context so admits "entailed interest" includes an estate tail (now made to take effect as an equitable interest) created before the commencement of this Act.

101- As to heirs taking by purchase

101.1- A limitation of real or personal property in favour of the heir, either general or special, of a deceased person which, if limited in respect of freehold land before the commencement of this Act, would have conferred on the heir an estate in the land by purchase, shall operate to confer a corresponding equitable interest in the property on the person who would, if the general law in force immediately before such commencement had remained unaffected, have answered the description of the heir, either general or special, of the deceased in respect of his freehold land, either at the death of the deceased or at the time named in the limitation, as the case may require.

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

102- Restriction on executory limitations

102.1- Where there is a person entitled to—

(a) an equitable interest in land for an estate in fee simple or for any less interest not being an entailed interest, or

(b) any interest in other property, not being an entailed interest,

with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or 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 eighteen years of the class on default or failure whereof the limitation over was to take effect.

102.2- This section only applies to limitations of land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life.

103- Equitable waste

An equitable interest for life without impeachment of waste does not confer upon the tenant for life any right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such equitable interest.

104- Legal assignments of things in action

104.1- 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:

Provided that, 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.

105- Dealings with life interests, reversions and other equitable interests

105.1- The law applicable to dealings with equitable things in action which regulates the priority of competing interests therein, shall, as respects dealings with equitable interests in land, capital money, and securities representing capital money effected after the commencement of this Act, apply to and regulate the priority of competing interests therein.

This subsection applies whether or not the money or securities are in court.

105.2-

(i) In the case of a dealing with an equitable interest in settled land, capital money or securities representing capital money, the persons to be served with notice of the dealing shall be the trustees of the settlement; and where the equitable interest is created by a derivative or subsidiary settlement, the persons to be served with notice shall be the trustees of that settlement.

(ii) In the case of a dealing with an equitable interest in land subject to a trust of land, or the proceeds of the sale of such land, the persons to be served with notice shall be the trustees.

(iii) In any other case the person to be served with notice of a dealing with an equitable interest in land shall be the estate owner of the land affected.

The persons on whom notice is served pursuant to this subsection shall be affected thereby in the same manner as if they had been trustees of personal property out of which the equitable interest was created or arose.

This subsection does not apply where the money or securities are in court.

105.3- A notice, otherwise than in writing, given to, or received by, a trustee after the commencement of this Act as respects any dealing with an equitable interest in real or personal property, shall not affect the priority of competing claims of purchasers in that equitable interest.

106.4- Where, as respects any dealing with an equitable interest in real or personal property—

(a) the trustees are not persons to whom a valid notice of the dealing can be given; or

(b) there are no trustees to whom a notice can be given; or

(c) for any other reason a valid notice cannot be served, or 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;

(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.

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.

106.5- Where the property affected is settled land, the memorandum shall be placed on or annexed to the trust instrument and not the vesting instrument.

Where the property affected is land subject to a trust of land, the memorandum shall be placed on or annexed to the instrument whereby the equitable interest is created.

106.6- 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.

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.

106.7- Where a notice in writing of a dealing with an equitable interest in real or personal 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.

106.8- The liability of the estate owner of the legal estate affected to produce documents and furnish information to persons entitled to equitable interests therein shall correspond to the liability of a trustee for sale to produce documents and furnish information to persons entitled to equitable interests in the proceeds of sale of the land.

106.9- This section does not apply until a trust has been created, and in this section "dealing" includes a disposition by operation of law.

107- Power to nominate a trust corporation to receive notices

107.1- By any settlement or other instrument creating a trust, a trust corporation may be nominated to whom notices of dealings affecting real or personal 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.

107.2- The person having the possession or custody of any instrument on which notices under that section may be endorsed shall cause the name of the trust corporation to whom notices may be given to be endorsed upon that instrument.

107.3- 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.

107.4- 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.

107.5- A trust corporation shall not be nominated for the purposes of this section—

(a) unless that corporation consents to act; or

(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 or one of the trustees of the instrument creating the trust.

107.6- Where a trust corporation acting for the purposes 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.

107.7- 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.

107.8- The trust corporation may, before making any entry in the register, require the applicant to pay a fee not exceeding the prescribed fee.

107.9- 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.

107.10- 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.

107.11- In this section "prescribed fee" means the fee prescribed by the Treasury in cases where the Public Trustee acts as a trust corporation for the purposes of this section.

PART V

LEASES AND TENANCIES

108- Effect of extinguishment of reversion

Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the lessee 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.

109- Apportionment of conditions on severance

109.1- Notwithstanding the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate 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 lease.

109.2- In this section "right of re-entry" includes a right to determine the lease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.

110- Rent and benefit of lessee's covenants to run with the reversion

110.1- Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the 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 estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.

110.2- Any such rent, covenant or provision 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 leased.

110.3- Where that person becomes entitled by conveyance or otherwise, such rent, covenant or provision 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.

110.4- This section applies to leases made before or after the commencement of this Act, but does not affect the operation of—

(a) any severance of the reversionary estate; or

(b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent covenant or provision;

effected before the commencement of this Act.

111- Obligation of lessor's covenants to run with reversion

The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

112- Effect of licences granted to lessees

112.1- Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only—

(a) to the permission actually given; or

(b) to the specific breach of any provision or covenant referred to; or

(c) to any other matter thereby specifically authorized to be done;

and the licence does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.

112.2- Notwithstanding any such licence—

(a) All rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorized 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 authorized to be done.

112.3- Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting or doing any other specified act without a licence, and a licence is granted—

(a) to any one or two or more lessees to do any act, or to deal with his equitable share or interest; or

(b) to any lessee, or to any one of two or more 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-lessees of the other shares or interests in the property, or by the lessee or lessees of the rest of the property (as the case may be) in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests or property not the subject of the licence.

This subsection does not authorize the grant after the commencement of this Act of a licence to create an undivided share in a legal estate.

In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition, or agreement shall, unless the 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.

113- Lessee to give notice of ejectment to lessor

Every lessee to whom there is delivered any writ for the recovery of premises demised to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his lessor or his bailiff 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 rack rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

114- Restrictions on and relief against forfeiture of leases and underleases

114.1- A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach;

and the 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 lessor, for the breach.

114.2- Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the 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.

114.3- A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and 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 lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Act.

114.4- Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, or for non-payment of rent, the court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the 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 lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or 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 under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

114.5- For the purposes of this section—

(a) "Lease" includes an original or derivative under-lease; also an agreement for a lease where the lessee has become entitled to have his lease granted; also a grant at a fee farm rent, or securing a rent by condition;

(b) "Lessee" includes an original or derivative under-lessee, and the persons deriving title under a lessee; also a grantee under any such grant as aforesaid and the persons deriving title under him;

(c) "Lessor" includes an original or derivative under-lessor, and the persons deriving title under a lessor; also a person making such grant as aforesaid and the persons deriving title under him;

(d) "Under-lease" includes an agreement for an under-lease where the under-lessee has become entitled to have his underlease granted;

(e) "Under-lessee" includes any person deriving title under an under-lessee.

114.6- For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

114.7- This section does not extend—

(i) To a covenant or condition against assigning, underletting, parting with the possession, or disposing of the land leased where the breach occurred before the commencement of this Act; or

(ii) In the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

114.8- This section does not apply to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest if contained in a lease of—

(a) Agricultural or Aquaculture land;

(b) Mines or minerals

(c) A house used or intended to be used as a public-house or beershop;

(d) A house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures;

(e) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

114.9- Where a condition of forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest is contained in any lease, other than a lease of any of the classes mentioned in the last sub-section, then—

(a) if the lessee's interest is sold within one year from the bankruptcy or taking in execution, this section applies to the forfeiture condition aforesaid;

(b) if the 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 bankruptcy or taking in execution.

114.10- 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.

115- Relief against notice to effect decorative repairs

115.1- After a notice is served on a lessee relating to the internal decorative repairs to a house or other building, he may apply to the court for relief, and if, having regard to all the circumstances of the case (including in particular the length of the lessee's term or interest remaining unexpired), the court is satisfied that the notice is unreasonable, it may, by order, wholly or partially relieve the lessee from liability for such repairs.

115.2- This section does not apply:—

(i) where the liability arises under an express covenant or agreement to put the property in a decorative state of repair and the covenant or agreement has never been performed;

(ii) to any matter necessary or proper—

(a) for putting or keeping the property in a sanitary condition, or

(b) for the maintenance or preservation of the structure;

(iii) to any statutory liability to keep a house in all respects reasonably fit for human habitation;

(iv) to any covenant or stipulation to yield up the house or other building in a specified state of repair at the end of the term.

115.3- In this section "lease" includes an underlease and an agreement for a lease, and "lessee" has a corresponding meaning and includes any person liable to effect the repairs.

115.4- This section applies whether the notice is served before or after the commencement of this Act, and has effect notwithstanding any stipulation to the contrary.

116- Waiver of a covenant in a lease

Where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any 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.

117- Surrender of a lease, without prejudice to underleases with a view to the grant of a new lease

117.1- A lease may be surrendered with a view to the acceptance of a new lease in place thereof, without a surrender of any under-lease derived thereout.

117.2- A new lease may be granted and accepted, in place of any lease so surrendered, without any such surrender of an under-lease as aforesaid, and the new lease operates as if all under-leases derived out of the surrendered lease had been surrendered before the surrender of that lease was effected.

117.3- The lessee under the new lease and any person deriving title under him is entitled to the same rights and remedies in respect of the rent reserved by and the covenants, agreements and conditions contained in any under-lease as if the original lease had not been surrendered but was or remained vested in him.

117.4- Each under-lessee and any person deriving title under him is entitled to hold and enjoy the land comprised in his under-lease (subject to the payment of any rent reserved by and to the observance of the covenants agreements and conditions contained in the under-lease) as if the lease out of which the under-lease was derived had not been surrendered.

117.5- The lessor granting the new lease and any person deriving title under him is entitled to the same remedies, (commercial rent arrears recovery) or by entry in and upon the land comprised in any such under-lease for rent reserved by or for breach of any covenant, agreement or condition contained in the new lease (so far only as the rents reserved by or the covenants, agreements or conditions contained in the new lease do not exceed or impose greater burdens than those reserved by or contained in the original lease out of which the under-lease is derived) as he would have had—

(a) If the original lease had remained on foot; or

(b) If a new under-lease derived out of the new lease had been granted to the under-lessee or a person deriving title under him;

as the case may require.

117.6- This section does not affect the powers of the court to give relief against forfeiture.

118- Provision as to attornments by tenants

118.1- Where land is subject to a lease—

(a) the conveyance of a reversion in the land expectant on the determination of the lease; or

(b) the creation or conveyance of a rentcharge to issue or issuing out of the land; shall be valid without any attornment of the lessee:

Nothing in this subsection—

(i) affects the validity of any payment of rent by the lessee to the person making the conveyance or grant before notice of the conveyance or grant is given to him by the person entitled thereunder; or

(ii) renders the lessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the lessee.

118.2- An attornment by the lessee in respect of any land to a person claiming to be entitled to the interest in the land of the lessor, if made without the consent of the lessor, shall be void.

This subsection does not apply to an attornment—

(a) made pursuant to a judgment of a court of competent jurisdiction; or

(b) to a mortgagee, by a lessee holding under a lease from the mortgagor where the right of redemption is barred; or

(c) to any other person rightfully deriving title under the lessor.

119- Leases invalidated by reason of non-compliance with terms of powers under which they are granted

119.1- Where in the intended exercise of any power of leasing, whether conferred by an Act or any other instrument, a lease (in this section referred to as an invalid 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 the determination of the interest of the grantor to the reversion; or

(b) as against any other person who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease;

the lease, if it was made in good faith, and the lessee has entered, thereunder, shall take effect in equity as a contract for the grant, at the request of the lessee, of a valid lease under the power, of like effect as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the power:

Provided that a lessee under an invalid lease shall not, by virtue of any such implied contract, be entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

119.2- Where a lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the lease at the date thereof, 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 lease in the like terms, the lease shall take effect as a valid lease in like manner as if it had been granted at that time.

119.3- Where during the continuance of the possession taken under an invalid 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 lease without variation, the lessee, or other person who would have been bound by the lease had it been valid, shall, at the request of the person so able to confirm the lease, be bound to accept a confirmation thereof, and thereupon the lease shall have effect and be deemed to have had effect as a valid lease from the grant thereof.

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 lease.

119.4- Where a receipt or a memorandum in writing confirming an invalid 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 that person, be deemed to be a confirmation of the lease.

119.5- 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 lessee named in an invalid 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 lease, would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the lease and binding on the lessee.

119.6- Where a valid power of leasing is vested in or may be exercised by a person who grants a lease which, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the 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 lease.

119.7- This section does not apply to a lease of land held on charitable, ecclesiastical or public trusts.

119.8- This section takes effect without prejudice to the provision in this Act for the grant of leases in the name and on behalf of the estate owner of the land affected.

PART VI

POWERS

120- 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.

121- Disclaimer of power

121.1- 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.

121.2- 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.

122- Protection of purchasers claiming under certain void appointments

122.1- 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:

Provided that, if the interest appointed 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.

122.2- 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 money's 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.

122.3- Persons deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.

123- Validation of appointments where objects are excluded or take illusory shares

123.1- No appointment 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.

123.2- 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.

124- Execution of powers not testamentary

124.1- 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.

124.2- 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;

(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.

124.3- 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.

PART VII

VOIDABLE DISPOSITIONS

125- Voluntary disposition of land how far voidable as against purchasers

125.1- Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

125.2- For the purposes of this section, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made.

126- Acquisitions of reversions at an under value

126.1- No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of under value.

In this subsection "reversionary interest" includes an expectancy or possibility.

126.2- This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

PART VIII

WILLS

127- Contingent and future testamentary gifts to carry the intermediate income

A contingent or future specific devise or bequest of property, whether real or personal, and a contingent residuary devise of freehold land, and a specific or residuary devise of freehold land to trustees upon trust for persons whose interests are contingent or executory shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator, except so far as such income, or any part thereof, may be otherwise expressly disposed of.

128- Power for tenant in tail in possession to dispose of property by specific devise or bequest

128.1- A tenant in tail of full age shall have power to dispose by will, by means of a devise or bequest referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally—

(a) of all property of which he is tenant in tail in possession at his death; and

(b) of money (including the proceeds of property directed to be sold) subject to be invested in the purchase of property, of which if it had been so invested he would have been tenant in tail in possession at his death;

in like manner as if, after barring the entail, he had been tenant in fee-simple or absolute owner thereof for an equitable interest at his death, but, subject to and in default of any such disposition by will, such property shall devolve in the same manner as if this section had not been passed.

128.2- This section applies to entailed interests authorized to be created by this Act as well as to estates tail created before the commencement of this Act, but does not extend to a tenant in tail who is by statute restrained from barring or defeating his estate tail, whether the land or property in respect whereof he is so restrained was purchased with money provided by the Mount Vema Congress in consideration of public services or not, or to a tenant in tail after possibility of issue extinct, and does not render any interest which is not disposed of by the will of the tenant in tail liable for his debts or other liabilities.

128.3- In this section "tenant in tail" includes an owner of a base fee in possession who has power to enlarge the base fee into a fee-simple without the concurrence of any other person.

128.4- This section only applies to wills executed after the commencement of this Act, or confirmed or republished by codicil executed after such commencement.

129- Prescribed forms for reference in wills

The Treasury may from time to time prescribe and publish forms to which a testator may refer in his will, and give directions as to the manner in which they may be referred to, but, unless so referred to, such forms shall not be deemed to be incorporated in a will.

PART IX

MISCELLANEOUS

130- Provisions as to corporations

130.1- Where either after or before the commencement of this Act any property or any interest therein is or has been vested in a corporation sole (including the Crown), 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.

130.2- Where either after or before the commencement of this Act 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.

130.3- 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 Act) 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.

131- Dissolution of a corporation

Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate.

132- Protection of solicitor and trustees adopting Act

132.1- The powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed to be included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction, and a solicitor 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 connexion 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 others in place thereof, in any case where the provisions of this Act would allow of his doing so.

132.2- But, save as expressly provided by this Act, nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

132.3- Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

132.4- Where such persons are acting without a solicitor, they shall also be protected in like manner.

133- Fraudulent concealment of documents and falsification of pedigrees

133.1- Any person disposing of property or any interest therein for money or money's worth to a purchaser, or the solicitor or other agent of such person, who—

(a) conceals from the purchaser any instrument or incumbrance material to the title; or

(b) falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept the title offered or produced;

with intent in any of such cases to defraud, is guilty of a misdemeanour punishable by fine, or by imprisonment for a term not exceeding two years, or by both.

133.2- Any such person or his solicitor or agent is also liable to an action for damages by the purchaser or the persons deriving title under him for any loss sustained by reason of—

(a) the concealment of the instrument or incumbrance; or

(b) any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.

133.3- In estimating damages, where the property or any interest therein is recovered from the purchaser or the persons deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

133.4- No prosecution for any offence under this section shall be commenced without the leave of the Attorney-General.

133.5- Before leave to prosecute is granted there shall be given to the person intended to be prosecuted such notice of the application for leave to prosecute as the Attorney-General may direct.

134- Presumption of survivorship in regard to claims to property

In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

135- Merger

There is no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

136- Rights of pre-emption capable of release

All statutory and other rights of pre-emption affecting a legal estate shall be and be deemed always to have been capable of release, and unless released shall remain in force as equitable interests only.

137- Legal easements

137.1- Where an easement, right or privilege for a legal estate is created, it shall enure for the benefit of the land to which it is intended to be annexed.

137.2- Nothing in this Act 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 estate in common with any other person, or the power of creating or conveying such an easement right or privilege.

138- Power to direct division of chattels

Where any chattels belong to persons in undivided shares, the persons interested in a moiety 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.

139- 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 to which the indemnity is intended to relate, and may be enforced by the estate owner for the time being of the whole or any part of that land, notwithstanding that the benefit may not have been expressly apportioned or assigned to him or to any of his predecessors in title.

Redemption and Apportionment of Rents, &c.

140- Equitable apportionment of rents and remedies for non-payment or breach of covenant

140.1- Where in a conveyance for valuable consideration, other than a mortgage, of part of land which is affected by a rentcharge, such rentcharge or a part thereof is, without the consent of the owner thereof, expressed to be—

(a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained or other land; or

(b) charged exclusively on the land retained or any part thereof in exoneration of the land conveyed or other land; or

(c) apportioned between the land conveyed or any part thereof, and the land retained by the grantor or any part thereof;

then, without prejudice to the rights of the owner of the rentcharge, such charge or apportionment shall be binding as between the grantor and the grantee under the conveyance and their respective successors in title.

140.2- Where in a conveyance for valuable consideration, other than a mortgage, of part of land comprised in a lease, for the residue of the term or interest created by the lease, the rent reserved by such lease or a part thereof is, without the consent of the lessor, expressed to be—

(a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained by the assignor or other land; or

(b) charged exclusively on the land retained by the assignor or any part thereof in exoneration of the land conveyed or other land; or

(c) apportioned between the land conveyed or any part thereof and the land retained by the assignor or any part thereof;

then, without prejudice to the rights of the lessor, such charge or apportionment shall be binding as between the assignor and the assignee under the conveyance and their respective successors in title.

Judgments, &c. affecting Land

141- Equitable charges in right of judgment debt, &c.

A recognisance, on behalf of the Crown or otherwise, whether entered into before or after the commencement of this Act, and an inquisition finding a debt due to the Crown, and any obligation or speciality made to or in favour of the Crown, whatever may have been its date, shall not operate as a charge on any interest in land, or on the unpaid purchase money for any land, unless or until a writ or order, for the purpose of enforcing it, is registered in the register of writs and orders at the Land Registry.

Notices

142- Regulations respecting notices

142.1- Any notice required or authorized to be served or given by this Act shall be in writing.

142.2- Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested,

without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

142.3- Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the Kingdom of Mount Vema of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

142.4- Any notice required or authorized by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, 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 by the postal operator concerned undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

142.5- 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 Act unless a contrary intention appears.

142.6- This section does not apply to notices served in proceedings in the court.

143- Registration under the Land Charges, to be notice

143.1- The registration of any instrument or matter in any register kept under the Land Charges, shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.

143.2- This section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee, and applies only to instruments and matters required or authorized to be registered.

144- Restrictions on constructive notice

144.1- A purchaser shall not be prejudicially affected by notice of—

(i) any instrument or matter capable of registration under the provisions of the Land Charges, or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof;

(ii) any other instrument or matter or any fact or thing unless—

(a) 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

(b) 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 solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

144.2- Paragraph (ii) of the last subsection shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, 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.

144.3- 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.

145- Notice of restrictive covenants and easements

145.1- Where land having a common title with other land is disposed of to a purchaser (other than a lessee or a 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 indorsed 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.

145.2- The title of any person omitting to require an indorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.

145.3- This section does not apply to dispositions of registered land.

145.4- Nothing in this section affects the obligation to register a land charge in respect of—

(a) any restrictive covenant or agreement affecting freehold land; or

(b) any estate contract; or

(c) any equitable easement, liberty or privilege.

PART X

CONSTRUCTION, JURISDICTION, AND GENERAL PROVISIONS

146- Payment into court, jurisdiction and procedure

146.1- Payment of money into court effectually exonerates therefrom the person making the payment.

146.2- Subject to any rules of court to the contrary—

(a) Every application to the court under this Act shall, save as otherwise expressly provided, be by summons at chambers;

(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.

146.3- In this Act, unless the contrary intention appears, "the court" means any court of justice, where those courts respectively have jurisdiction.

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.

147- Orders of court conclusive

147.1- 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.

147.2- This section has effect with respect to any 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.

147.3- This section applies to all orders made before or after the commencement of this Act.

148- General definitions

148.1- In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

(i) "Bankruptcy" includes liquidation by arrangement; also in relation to a corporation means the winding up thereof;

(ii) "Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will; "convey" has a corresponding meaning; and "disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and "dispose of" has a corresponding meaning;

(iii) "Building purposes" include the erecting and improving of, and the adding to, and the repairing of buildings; and a "building lease" is a lease for building purposes or purposes connected therewith;

(iv) "Death duty" means estate duty and every other duty leviable or payable on a death;

(v) "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner;

(vi) "-----" omitted;

(vii) "Incumbrance" includes a legal or equitable mortgage and a trust for securing money, and a lien, and a charge of a portion, 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;

(viii) "Instrument" does not include a statute, unless the statute creates a settlement;

(ix) "Land" includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; and "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same; a "manor"; and "hereditament" means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir;

(x) "Legal estates" mean the estates, interests and charges, in or over land (subsisting or created at law) which are by this Act authorized to subsist or to be created as legal estates; "equitable interests" mean all the other interests and charges in or over land; an equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate under this Act;

(xi) "Legal powers" include the powers vested in a chargee by way of legal mortgage or in an estate owner under which a legal estate can be transferred or created; and "equitable powers" mean all the powers in or over land under which equitable interests or powers only can be transferred or created;

(xii) A "mining lease" means a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes;

(xiii) "Minister" means the "Minister of Agriculture and Fisheries";

(xiv) "Mortgage" includes any charge or lien on any property for securing money or money's worth; "legal mortgage" means a mortgage by demise or subdemise or a charge by way of legal mortgage and "legal mortgagee" has a corresponding meaning; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right in the mortgaged property; "mortgagee" includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgagee; and "mortgagee in possession" is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property; and "right of redemption" includes an option to repurchase only if the option in effect creates a right of redemption;

(xv) "Notice" includes constructive notice;

(xvi) "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;

(xvii) "Possession" includes receipt of rents and profits or the right to receive the same, if any; and "income" includes rents and profits;

(xviii) "Property" includes any thing in action, and any interest in real or personal property;

(xix) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that in Part I of this Act and elsewhere where so expressly provided "purchaser" only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage; and where the context so requires "purchaser" includes an intending purchaser; "purchase" has a meaning corresponding with that of "purchaser"; and "valuable consideration"

includes marriage, and formation of a civil partnership, but does not include a nominal consideration in money;

(xx) "Registered land" has the same meaning as in the Land Registration Law;

(xxi) "Rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest; "rentcharge" includes a fee farm rent; "fine" includes a premium or foregift and any payment, consideration, or benefit in the nature of a fine, premium or foregift; "lessor" includes an underlessor and a person deriving title under a lessor or underlessor; and "lessee" includes an underlessee and a person deriving title under a lessee or underlessee, and "lease" includes an underlease or other tenancy;

(xxii) "Sale" means a sale;

(xxiii) "Securities" include stocks, funds and shares;

(xxiv) "Tenant for life," "statutory owner," "settled land," "settlement," "vesting deed," "subsidiary vesting deed," "vesting order," "vesting instrument," "trust instrument," "capital money," and "trustees of the settlement";

(xxv) "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 estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest); but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this Act, 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 Act to take effect within that period; and in this definition the expression "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

(xxvi) "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 rules, to act as custodian trustee;

(xxvii) "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;

“trustees for sale” mean the persons (including a personal representative) holding land on trust for sale;

(xxviii) “Kingdom of Mount Vema” means Mount Vema, the City of Mount Vema, Vema Seamount and its adjacent waters.

(xxix) “Will” includes codicil.

148.2- Any reference in this Act to money being paid into court shall be construed as referring to the money being paid into the Senior Courts or any other court that has jurisdiction, and any reference in this Act to the court, in a context referring to the investment or application of money paid into court, shall be construed, in the case of money paid into the Senior Courts, as referring to the High Court, and in the case of money paid into another court, as referring to that other court.

148.3- 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.

149- Application to the Crown

149.1- Nothing in this Act shall be construed as rendering any property of the Crown subject to distress, or liable to be taken or disposed of by means of any distress.

149.2- This Act shall not in any manner (save as otherwise expressly provided and except so far as it relates to undivided shares, joint ownership, leases for lives or leases for years terminable with life or marriage) affect or alter the descent, devolution or tenure or the nature of the estates and interests of or in any land for the time being vested in His Mount Vema Majesty in right of the Crown, but so nevertheless that, after the commencement of this Act, no estates, interests or charges in or over any such lands as aforesaid shall be conveyed or created, except such estates, interests or charges as are capable under this Act of subsisting or of being conveyed or created.

150- Citation and commencement

150.1- This Act may be cited as Law of Property (Vema Seamount) Act, Mount Vema 2019.

150.2- This Act shall come into operation on 15th of January 2019.

SCHEDULE FORMS OF TRANSFER AND DISCHARGE OF MORTGAGES

FORM NO. I

FORM OF TRANSFER OF MORTGAGE

This Transfer of Mortgage made the day of -- , between M. of [&c.] of the one part and V. of [&c.] of the other part, supplemental to a Mortgage dated [&c.], and made between [&c.], and to a Further Charge dated [&c.], and made between [&c.] affecting &c. (here state short particulars of the mortgaged property).

WITNESSETH that in consideration of the sums of ₦ and ₦ (for interest) now paid by V. 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 conveys and transfers to V. the benefit of the said mortgage and further charge.

In witness, &c.

FORM NO. II

FORM OF RECEIPT ON DISCHARGE OF A MORTGAGE

I, A.B., of [&c.] hereby acknowledge that I have this day of -- , 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, &c., or otherwise as required] together with all interest and costs, the payment having been made by C.D. of [&c.] and E.F. of [&c.].

As witness, &c.

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.