

LAND TRANSFER AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes several miscellaneous amendments to the Land Transfer Act, 1915.

Clause 2: Section 3 of the principal Act provides for the abolition of or amendment of the boundaries of existing land registration districts, but does not authorize the constitution of new districts. The purpose of the clause is to enable new districts to be constituted.

Clause 3: This clause is to some extent consequential on *clause 2*, and provides for the compilation of the Register in respect of land which has become comprised in another or new district by reason of the abolition of an existing district, an alteration of the boundaries of an existing district, or the constitution of a new district. It also provides an alternative method of compiling the Register by authorizing the Registrar of the former district to deposit with the Registrar of the other or new district either the duplicates of instruments of title or copies of those duplicates.

Clause 4: The purpose of this clause is to give the Registrar a discretion as to whether or not he will require tenants in common to take separate certificates of title for their undivided shares on the registration of separate dealings with their respective interests. At present it is mandatory for the Registrar to issue separate certificates in those circumstances.

Clause 5: The purpose of this clause is to enable the covenants of a mortgage to be varied by memorandum of variation. At present the variations permitted by memorandum of variation are limited to those which vary the amount secured, the rate of interest, and the date of repayment.

Clause 6: Under section 154 of the principal Act a caveat against dealings lapses fourteen days after notice has been given to the caveator that application has been made to register a dealing affecting the land, unless the caveator takes appropriate action to sustain it. This does not apply where the caveat has been lodged by or on behalf of a beneficiary under a will or settlement or for the protection of a trust. At present, in order to have a caveat protecting beneficiaries or a trust removed, an order of the Supreme Court is required. The purpose of the clause is to remove the exception in favour of this class of caveator, and place those caveats on the same footing as other caveats.

Clause 7: Section 178 of the principal Act empowers the Registrar to call for a plan (involving a survey) in certain cases. There is no express power to call for a plan and survey where a lease, mortgage, or other dealing is registered against part only of the land comprised in a certificate of title. The amendment contained in *subclause (1)* of this clause will expressly authorize the Registrar to require a plan and survey in these cases.

The purpose of the new subsection (2) proposed to be added by *subclause (2)* of this clause is to enable a Registrar, where he considers the value of the land concerned to be such that it would be a hardship on the owner to be put to the expense of a survey, to dispense with a survey and issue a certificate of title not guaranteed as to survey.

The purpose of the new subsection (3) proposed to be added by *subclause (2)* of this clause is to provide that on a subdivision of land contained in a certificate of title limited as to parcels and issued under the Land Transfer (Compulsory Registration of Titles) Act, 1924, the Registrar is not entitled to require the deposit of a plan, but must issue certificates of title for the subdivided land similarly limited as to parcels.

Clause 8: The purpose of this clause is to remove the restrictions contained in the Ninth Schedule to the principal Act whereby the fees prescribed by regulations under the Act are not to exceed the maxima set out in that Schedule.

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

*House of Representatives,
18th August, 1950*

Hon. Mr. Webb

LAND TRANSFER AMENDMENT

ANALYSIS

<p>Title.</p> <p>1. Short Title.</p> <p>2. Constitution of new land registration districts.</p> <p>3. Register in respect of land transferred to another district.</p> <p>4. Amending provisions as to separate certificates of tenants in common.</p>	<p>5. Variation of covenants of mortgage by memorandum.</p> <p>6. Amending provisions as to lapse of caveat against dealings.</p> <p>7. Amending provisions as to deposit of survey plans.</p> <p>8. Amending provisions as to fees. Repeal. Schedule.</p>
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A BILL INTITULED

AN ACT to Amend the Land Transfer Act, 1915.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Land Transfer Amendment Act, 1950, and shall be read together with and deemed part of the Land Transfer Act, 1915 (hereinafter referred to as the principal Act).

Short Title.

See Reprint of Statutes, Vol. VII, p. 1162

2. Section three of the principal Act is hereby amended by adding to subsection two the words " or may declare any portion of any such district or any portions of two or more districts to be a new land registration district for the purposes of this Act under a name assigned to it by the Order in Council, and may

Constitution of new land registration districts.

assign a new name to any existing district in which the land or any part of the land comprised in a new district was formerly comprised ”.

Register in respect of land transferred to another district.

3. Section forty-four of the principal Act is hereby amended by repealing subsection one, and substituting the following subsections:— 5

“(1) Where by an alteration of the boundaries of any districts or by the constitution of a new district, whether before or after the commencement of this subsection, any land formerly comprised in any district has become included in any other district, the Registrar of the district in which the land was formerly comprised shall deposit with the Registrar of the other district either the duplicates or copies of the duplicates of grants and certificates and documents of title in respect of that land, which shall thereupon be bound by the Registrar of the other district in the Register kept by him under section thirty-three of this Act, or, in the case of land comprised in any Provisional Register, under section forty-six of this Act, under such volume and folio numbers as he may assign thereto, and the Register of the district in which the land was formerly comprised shall be amended accordingly. 10 15 20

“(1A) All such copies of the Registers of the district in which any such land was formerly comprised as have been deposited with the Registrar of the said other district, whether before or after the commencement of this subsection, shall, for all the purposes of the Land Transfer Acts, have and be deemed to have had the force and effect of the original Registers.” 25 30

Amending provisions as to separate certificates of tenants in common.

4. Section sixty-five of the principal Act is hereby amended by adding to the proviso the words “ and the Registrar, in his discretion, requires them to take separate certificates for those interests ”.

Variation of covenants of mortgage by memorandum.

5. (1) Section one hundred and four of the principal Act is hereby amended as follows:— 35

(a) By inserting in subsection one, after paragraph (c), the following paragraph:—

“(d) The covenants, conditions, and powers contained or implied in the mortgage may be varied, negatived, or added to— ”: 40

(b) By omitting from subsection one the expression “ or (3) ”, and substituting the expression “ (3), or (4) ”.

(2) The Fifth Schedule to the principal Act is hereby amended by adding the form of Memorandum of Variation of Covenants, Conditions, and Powers of Mortgage set out in the Schedule to this Act.

5 **6.** Section one hundred and fifty-four of the principal Act is hereby amended by omitting the words “ by or on behalf of a beneficiary claiming under any will or settlement, or for the protection of any trust, or ”.

Amending provisions as to lapse of caveat against dealings.

10 **7.** (1) Section one hundred and seventy-eight of the principal Act is hereby amended by inserting, after the words “ any such certificate or other instrument of title ”, the words “ or for the registration of any instrument affecting part only of the land comprised in any certificate or other instrument of title ”.

Amending provisions as to deposit of survey plans.

15 (2) Section one hundred and seventy-eight of the principal Act is hereby further amended by adding the following subsections as subsections two and three thereof:—

20 “(2) Notwithstanding anything contained in the last preceding subsection, where the Registrar considers that, having regard to the value of the land to be comprised in the certificate of title or new certificate of title, as the case may be, it would be a hardship on the applicant to require him to deposit a plan of the land or subdivision or portion, as the case may be, the Registrar in his discretion, but only with the written consent of every registered mortgagee or lessee of the land, may exempt the applicant from complying with the provisions of that subsection and may issue to the applicant a certificate of title limited as to parcels. The provisions of the Land Transfer (Compulsory Registration of Titles) Act, 1924, relating to certificates which are limited as to parcels shall, as far as they are applicable and with the necessary modifications, apply to every certificate issued by the Registrar under this subsection as if it were a certificate limited as to parcels issued under that Act.

See Reprint of Statutes, Vol. VII, p. 1253

35 “(3) Nothing contained in subsection one of this section shall apply with respect to any land comprised in a certificate which is limited as to parcels pursuant to the Land Transfer (Compulsory Registration of Titles) Act, 1924.”

40 **8.** (1) Section two hundred and nineteen of the principal Act is hereby amended by omitting from paragraph (a) the words “ except only that the fees to

Amending provisions as to fees.

