

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 10 November 1982.

Words struck out are shown in italics within bold round brackets; words inserted are shown in roman underlined with a double rule.

Hon. Mr McLay

LAND TRANSFER AMENDMENT (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to amend the Land Transfer Act 1952 to provide compensation for persons suffering loss from reliance on official search copies, and to authorise the preparation of fresh duplicate grants or certificates of title where the originals have been lost

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

10 **1. Short Title and commencement**—(1) This Act may be cited as the Land Transfer Amendment Act (No. 2) 1982, and shall be read together with and deemed part of the Land Transfer Act 1952* (hereinafter referred to as the principal Act).

15 (2) Sections 3 and 4 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the date of its passing.

*Reprinted 1970, Vol. 3, p. 1991
Amendment: 1972, No. 76

2. Registrar to keep register—Section 33 of the principal Act (as substituted by section 2 of the Land Transfer Amendment Act 1961) is hereby amended by omitting from subsection (2) the words “the principal Act”, and substituting the words “this Act”. 5

3. Compensation for loss occurring after search and before registration—The principal Act is hereby amended by inserting, after section 172, the following section:

“172A. (1) In this section, unless the context otherwise requires,— 10

“ ‘First operative period’, in relation to any transaction to which this section applies, means the period of ~~(7)~~ 14 days commencing with the ~~(6th)~~ 13th day preceding the date on which the transaction is settled: 15

“ ‘Purchase money’ includes, in relation to any mortgage, the amount to be advanced by the mortgagee in consideration of the grant of the mortgage:

“ ‘Search copy’, in relation to any grant or certificate of title, means a search copy of that grant or certificate of title prepared and issued by the Registrar under and for the purposes of this section: 20

“ ‘Second operative period’, in relation to any transaction to which this section applies, means the 25 period of 2 months commencing with the day after the date on which the transaction is settled:

“ ‘Transaction to which this section applies’, means any agreement or arrangement entered into in respect of any land subject to this Act whereby one party (in this section referred to as the purchaser) is to acquire or has acquired from the other party (in this section referred to as the vendor) an estate or interest in that land for valuable consideration. 30

“(2) For the purposes of this section, except as the parties may expressly agree a transaction is settled when the purchaser pays, gives, or otherwise makes available to the 35

vendor the purchase money or other consideration, either in full or to the extent necessary to entitle the purchaser, in terms of the agreement or arrangement relating to the 40

transaction, to call upon the vendor to do everything required of him under that agreement or arrangement to enable the purchaser to register the estate or interest to which the transaction relates.

5 “(3) Any purchaser under a transaction to which this section applies who obtains, at any time during the first operative period, a search copy in respect of the land that is the subject of the transaction and who sustains any loss or damage through the registration or lodging under this Act of
10 any instrument or other document relating to that land may bring an action against the Crown for the recovery of damages if—

15 “(a) No entry or memorial in the register relating to that registration or lodging appears in the search copy; and

20 “(b) The registration or lodging was effected at any time before the expiry of the second operative period or the sooner registration of all instruments and other documents necessary to give effect to the transaction.

30 “(4) For the purposes of an action under this section, the Court may, on application made to it in that behalf by the purchaser (whether before or after the expiry of the second operative period), extend the second operative period for such length of time as it thinks just where it is satisfied that the registration of all instruments and other documents giving effect to the transaction have not been registered within that period and that the delay in such registration is attributable otherwise than to the fault of the purchaser, his solicitor, or agents.”

4. Recovery of compensation paid and costs in case of negligence—Section 175 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

35 “(1A) Without limiting subsection (1) of this section, where any sum of money has been lawfully paid out of the Public Account as compensation for any loss or damage sustained in any case to which section 172A of this Act applies and that loss or damage was caused wholly or partly by the negligence
40 of the purchaser’s solicitor, the amount of that compensation (together with all costs incurred in testing or defending any claim or action in relation to that compensation), to the

extent that it may properly be attributed to that solicitor's negligence, shall be deemed a debt due to the Crown from that solicitor, and may be recovered from him, or from his personal representatives, by action at law, in the name of the Registrar-General, or, in case of bankruptcy, may be proved as a debt due from his estate. 5

“(1B) No solicitor shall be held for the purposes of subsection (1A) of this section to have acted negligently merely because he relied on a search copy issued under and for the purposes of section 172A of this Act without also 10 searching any journal or other record kept by the Registrar unless, in the special circumstances of the case, a prudent and competent solicitor would have searched that journal or other record.”

5. Registrar may require production of instruments, etc.—Section 211 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph: 15

“(ca) He may, for the purpose of preparing a copy of any original grant or certificate under section 215B of this Act, by notice require any person having in his possession or control any duplicate certificate of title, or any instrument or other document, relating to the land to which the original grant or certificate relates to produce that duplicate certificate, instrument, or other document within a reasonable 20 time to be fixed by the notice, and to deposit it in the Land Registry Office of his district for such time as may be necessary for the said purposes.”. 25

6. Register folium lost, etc.—(1) The principal Act is hereby amended by inserting, after section 215A (as inserted 30 by section 14 (1) of the Land Transfer Amendment Act 1966), the following section:

“215B. Where any duplicate grant or certificate of title constituting a separate folium of the register, or any other instrument of any kind forming part of the register or his records, is lost, misplaced, or destroyed, the Registrar may, after making all such inquiries as he considers necessary and reasonably practicable and as best he can in the light of those inquiries, prepare another copy of the original grant or certificate of title or other instrument, and record thereon the 35 particulars of all instruments, dealings, and other matters 40

affecting the land as those particulars were recorded on the duplicate grant or certificate of title at the time of its loss, misplacement, or destruction; and paragraphs (a) and (b) of section 215A of this Act, so far as they are applicable and with
5 any necessary modifications, shall apply in respect of every copy prepared under this section.”

(2) Where, before the commencement of this section, the Registrar has prepared a copy of the original grant or certificate of title or other instrument relating to any land in
10 circumstances in which he would have been authorised to do so by section 215B of the principal Act (as inserted by subsection (1) of this section) if that section had then been in force, that copy shall be deemed to have and to have always had the same effect as it would have had if that section had
15 been in force at the date of the preparation of that copy.