



BERMUDA

CONVEYANCING ACT 1983

1983 : 16

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[preamble and words of enactment omitted]

PART I

PRELIMINARY

Citation and commencement

1 This Act may be cited as the Conveyancing Act 1983 [*commencement provision omitted*].

Interpretation

2 (1) In this Act, unless the context otherwise requires—

“attorney” means a barrister and attorney duly admitted to practise under the Supreme Court Act 1905 [*title 8 item 1*];

“the Court” means the Supreme Court;

“estate representative” means the executor, original or by representation, or administrator for the time being of a deceased person;

“mortgage” includes every instrument by virtue whereof land is in any manner conveyed, assigned, pledged, or charged as security for the repayment of money or money’s worth lent, and to be re-conveyed, re-assigned, or released on satisfaction of the debt;

“statutory rate of interest” shall mean the statutory rate as fixed by the Interest and Credit Charges (Regulation) Act 1975 [*title 17 item 22*].

(2) In the interpretation of all words, phrases and expressions used in deeds, wills, orders and other instruments the Interpretation Act 1951 [*title 1 item 1*] shall apply unless the context otherwise requires.

PART II

CONVEYANCES AND OTHER INSTRUMENTS

Contracts for the disposition of land to be in writing

3 (1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought,

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or some memorandum or note thereof, is in writing and signed by the party to be charged or by some other person lawfully authorized to act on his behalf.

(2) This section shall not apply to leases or tenancies for terms not exceeding three years, nor shall it affect a contract when there has been part performance or sale by order of a court.

(3) Any lease or tenancy in respect of which there is a right or option of renewal which if exercised would increase the term of the lease or tenancy beyond three years shall be deemed to be a lease or tenancy exceeding three years.

(4) The law relating to part performance shall be interpreted in the same manner as it is interpreted in the courts in England.

Lands lie in grant only, technicalities abolished and certain covenants not implied

4 (1) A conveyance of land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

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

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

(4) An exchange or other conveyance of land shall not imply any condition or covenant in law other than those provided in this Act.

(5) 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.

(6) The use of the word "grant" or the words "grant and release" shall not be necessary to convey land or to create any interest therein.

Form of conveyance of fee simple

5 Subject to section 46 and to any other provision of law, a conveyance in the form set out in the First Schedule, with such variations as circumstance may require, shall be deemed to convey the fee simple absolute of the land referred to therein from the person named as the vendor to the person named as the purchaser.

Description of deeds

6 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

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mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected.

Deeds and their execution

6A (1) Notwithstanding any rule of law which—

- (a) restricts the substances on which a deed may be written;
- (b) requires a seal for the valid execution of an instrument as a deed by an individual; or
- (c) requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed,

an instrument shall be a deed if it complies with the requirements of subsection (2).

(2) Those requirements are—

- (a) that it makes it clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and
- (b) it is validly executed as a deed by that person or, as the case may be, one or more of those parties.

(3) For the purposes of subsection (2)(b), an instrument is validly executed as a deed by an individual if, and only if—

- (a) it is signed—
 - (i) by him in the presence of a witness who attests the signature; or
 - (ii) by some other person at his direction and in his presence and the presence of two witnesses who each attest the signature; and
- (b) it is delivered as a deed by him or a person authorised to do so on his behalf.

(4) In subsections 2(a) and (3) “sign”, in relation to an instrument executed as a deed by an individual, includes making one’s mark on the instrument, and “signature” is to be construed accordingly.

(5) Where an attorney, or an agent or employee of an attorney, in the course of or in connection with a transaction involving the disposition or creation of an interest in land, purports to deliver an instrument as a deed on behalf of a party to the instrument, it shall be conclusively presumed in favour of a purchaser that he is authorised so to deliver the instrument.

(6) Where—

- (a) an instrument under seal that constitutes a deed is required for the purposes of an Act passed before the commencement of this Act; and

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- (b) in the case of an individual, the requirements of subsection (2) are complied with,

this section shall have effect in place of any provision of that Act as to signing, sealing or delivery.

(7) The references in this section to the execution of a deed by an individual do not include execution by a corporation sole and the reference in subsection (6) to signing, sealing or delivery by an individual does not include signing, sealing or delivery by a corporation sole.

(8) In this section—

“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;

“interest in land” means any estate, interest or charge in or over land or in or over the proceeds of sale of land; and

“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 and, in reference to a legal estate, includes a chargee by way of legal mortgage.

[section 6A inserted by 1995:42 effective 21 December 1996]

General words implied in a conveyance

7 (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, pools, fixtures, walls, fences, ways, rights of way, rights, liberties, privileges, easements, advantages and appurtenances whatsoever belonging to the same or reputed as part thereof or appurtenant thereto.

(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, pools, 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,

(3) 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.

(4) 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 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.

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All estate clause implied

8 (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.

(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.

Reservation of legal estates

9 (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.

(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.

(3) This section applies only to reservations made after 2 January 1984.

Confirmation of past transactions

10 (1) A deed containing a declaration by the owner of the legal estate 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 of subsisting at law, 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 such owner, operate to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings aforesaid.

(2) The powers conferred by this section may be exercised by a trustee for sale or estate representative as well as by an absolute owner.

(3) This section applies only to deeds containing such a declaration as aforesaid if executed after 2 January 1984

Receipts in deeds

11 (1) A receipt for consideration money or securities in the body of a deed shall be 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.

(2) A receipt for consideration money or other consideration the body of a deed or indorsed thereon 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, shall be sufficient evidence of the payment or giving of the whole amount thereof.

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(3) Where an attorney 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 attorney, without the attorney producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

Effect of payments to trustees, mortgagees

12 The bona fide payment to, and the receipt of, any person to whom any money is payable upon any express or implied trust or for any limited purpose or of the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust or security.

Persons who are not parties to conveyance

13 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.

Conveyance by a person to himself

14 (1) A person may convey land to or vest land in himself.

(2) Two or more persons, whether or not being trustee or estate 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 carrying out the transaction, the conveyance shall be liable to be set aside.

Production and safe custody of documents

15 (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.

(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.

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(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.

(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 of copies thereof by the person entitled to request production or by any person by him authorized in writing; and
- (ii) an obligation within Bermuda to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or any occasion on which production may properly be required, for providing 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 to unattested, of or from the documents or any of them.

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

(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.

(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.

(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.

(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 document safe, whole, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss or destruction of, or injury to, the

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documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11) 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.

(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.

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

Statutory commencement of title

16 (1) In the completion of any contract for the sale of land a purchaser shall not require a vendor of land to show title to the land for a longer period than twenty years.

(2) Under a contract to grant or assign a term of years of less than twenty-one years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assignee shall not be entitled to call for the title to the freehold.

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

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

(5) Where by reason of any of subsections (2) (3) or (4), an intending lessee or assignee is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not, where the contract is made after 2 January 1984 be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

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

(7) Where a lease whether made before, on or after 3 January 1984, is made under a power contained in a settlement, will, Act or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

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

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Other statutory conditions of sale

17 (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 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 of any deed, will or other document furnished to the purchaser, 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, 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 furnished 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 a furnished document; or
- (iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by furnished document.

(2) Where land sold is held by lease, other than an underlease, 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.

(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 underlease before the date of actual completion of the purchase he shall assume, unless the contrary appears, that all the covenants and provisions of the 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.

(4) Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts or statutory declarations, twenty 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.

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(5) 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.

(6) 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.

(7) Nothing in this section shall be construed as binding a purchaser to complete his purchase 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 a court.

Application of insurance money on completion of a sale or exchange

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

(2) This section has effect subject to—

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

(3) This section applies to a sale or exchange by an order of any 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.

PART III
COVENANTS

Covenants for title

19 (1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the person jointly if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common—

- (A) In a conveyance for valuable consideration, other than a mortgage, a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part I of the Second Schedule;
- (B) In a conveyance of leasehold property for valuable consideration, other than a mortgage, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part II of the Second Schedule;
- (C) In a deed of mortgage a covenant by a person who conveys or charges and is expressed to convey or charge as beneficial owner in the terms set out in Part III of the Second Schedule;
- (D) In a deed of mortgage of freehold property subject to a rent or of leasehold property, a further covenant by a person who conveys or charges and is expressed to convey or charge as beneficial owner in the terms set out in Part IV of the Second Schedule;
- (E) In a conveyance by way of settlement, a covenant by a person who conveys and is expressed to convey as settlor in the terms set out in Part V of the Second Schedule;
- (F) In any conveyance—
 - (i) a covenant by every person who conveys and is expressed to convey as trustee or mortgagee or as estate representative of a deceased person, or under an order of the Court, in the terms set out in Part VIA of the Second Schedule to this Act, which shall be deemed to extend to every such person's own acts only, and may be implied in a vesting deed by an estate representative in like manner as in a conveyance by deed; and
 - (ii) a further covenant in the terms set out in Part VIB of the Second Schedule to this Act.
- (G) In a voluntary conveyance, a covenant in the terms set out in Part VIB of the Second Schedule to this Act.

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(1A) Subsection (1)(F)(ii) applies to any conveyance, and subsection (1)(G) applies to any voluntary conveyance, whether made before or after the commencement of this Act.

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

(3) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as estate representative of a deceased person, or under an order of the court, or by direction of a person as beneficial owner, no covenant, other than the covenant set out in Part VIB of the Second Schedule to this Act, on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(4) In this section a conveyance does not include a demise by way of lease at a rent, but does include a charge and "convey" has a corresponding meaning.

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

(6) A covenant implied as aforesaid may be varied or extended by a deed, 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 extension were directed in this section to be implied.

[section 19 amended by 1995:42 effective 21 December 1995]

Implied covenants in conveyances subject to rents

20 (1) In addition to the covenants implied under section 19 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—

- (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, in the terms set out in Part VII of the Second Schedule. 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, in the terms set out in paragraph (i) of Part VIII of the Second Schedule;
 - (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, in the terms set out in paragraph (ii) of Part VIII of the Second Schedule;
- (C) In a conveyance for valuable consideration, other than a mortgage, of the entirety of the land comprised in a lease, for the residue of the term or interest created by the lease, a covenant by the assignee or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in Part IX of the Second Schedule. Where a rent has been apportioned in respect of any land, with the consent of the lessor, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land;
- (D) In a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent which has been or is by the conveyance apportioned, but in either case without the consent of the lessor in respect of the land conveyed:—
- (i) A covenant by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part X of the Second Schedule;
 - (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 comprised in the lease is retained, with the assignees of the land and with each of them, if more than one, in the terms set out in paragraph (ii) of Part X of the Second Schedule.
- (2) Where in a conveyance for valuable consideration, other than a mortgage, part of land affected by a rentcharge, or part of land comprised in a lease is, without the consent of the owner of the rentcharge or of the lessor, as the case may be, expressed to be conveyed—

- (i) subject to or charged with the entire rent—then subsection (1)(b)(i) or (d)(i), as the case may require, shall have effect as if the entire rent were the apportioned rent; or
- (ii) discharged or exonerated from the entire rent—then subsection (1)(b)(ii) or (d)(ii), as the case may require, shall have effect as if the entire rent were the balance of the rent, and the words “other than the covenant to pay the entire rent” had been omitted.

(3) In this section “conveyance” does not include a demise by way of lease at a rent.

(4) 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 estate representative of a deceased person, or under an order of the court.

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

(6) A covenant implied as aforesaid may be varied or extended by 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.

(7) 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; or
- (c) the part of the land demised 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.

Benefit of covenants relating to land

21 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 section in connexion with covenants restrictive of the user of land “successors in title” shall be deemed to include the owner and occupiers for the time being of the land of the covenantee intended to be benefited.

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Burden of covenants relating to land

22 (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.

(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.

Covenants to bind land of covenantor

23 A covenant and a bond and an obligation or contract under seal, 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 section extends to a covenant implied by virtue of this Act.

Covenants running with the land

24 (1) Every covenant running with the land, whether entered into before, on or after 3 January 1984, 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.

(2) The benefit of a covenant relating to land entered into after 2 January 1984 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 3 January 1984.

(3) 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.

Effect of covenant with two or more jointly

25 (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 2 January 1984 shall be construed as being also made with each of them.

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

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(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.

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

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

(2) This section applies to covenants or agreements entered into before, on or after 3 January 1984 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 3 January 1984.

PART IV MORTGAGES

Obligation on mortgagee to transfer instead of reconveying

27 (1) Where a mortgagor is entitled to redeem, he shall have power to require the mortgagee, instead of re-conveying on the terms on which he would be bound to re-convey, 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.

(2) This section does not apply in the case of a mortgagee being or having been in possession.

(3) This section applies to mortgages made either before, on or after 3 January 1984, and shall have effect notwithstanding any stipulation to the contrary.

Power for mortgagor to inspect title deeds

28 (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, to inspect and make copies of abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2) This section shall have effect notwithstanding any stipulation to the contrary.

Restriction on consolidation of mortgages

29 (1) A mortgagor seeking to redeem any one mortgage, shall be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

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

Powers incident to estate or interest of mortgagee

30 (1) A mortgagee shall have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further—

- (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 an auction, or to rescind any contract for sale, and to re-sell, 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 and windstorm any building or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, 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 of any part thereof.

(2) The powers provided for in this section and in any subsequent sections 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 were contained in this Act.

(3) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

Regulation of exercise of power of sale

31 (1) A mortgagee shall not exercise a power of sale unless and until—

- (i) notice requiring payment of the mortgage money has been served on the mortgagor or one of several 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 arrears and unpaid for one month after becoming due; or
- (iii) there has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person

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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.

- (1A) For the purposes of subsection (1)(i) notice may be served—
- (a) by delivering it to the mortgagor;
 - (b) by leaving it at the usual or last known place of abode of the mortgagor;
 - (c) by sending it by prepaid registered post addressed to the mortgagor at his usual or last known place of abode; or
 - (d) by affixing it to some conspicuous part of the mortgaged land.

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

[subsection 1A inserted by 1995:42 effective 21 December 1995]

Conveyance, receipt on sale

32 (1) A mortgagee exercising the power of sale shall have power, by deed, to convey the property sold, for such estate and interest therein as is 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.

(2) Where a conveyance is made in exercise of a power of sale, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly 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.

(3) 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 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.

(4) A power of sale may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5) A power of sale shall not affect the right of foreclosure.

(6) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of a power of sale or of a trust connected therewith.

(7) At any time after a power of sale has become exercisable, the person entitled to exercise the same may demand an 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.

Mortgagee's receipts, discharges

33 (1) The receipt in writing of a mortgagee shall be sufficient discharge for any money arising under the power of sale 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 his mortgage.

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under a power of sale; 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.

Amount and application of insurance money

34 (1) The amount of an insurance effected by a mortgagee against loss or damage shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed the amount that would be required, in case of total destruction, to restore the property insured.

(2) An insurance shall not be effected by a mortgagee in any of the following cases—

- (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, to the amount in which the mortgagee is authorized to insure;
- (iv) where the mortgaged property consists of no insurable property.

(3) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

Appointment, powers and remuneration of receiver

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

(2) The receiver 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.

(3) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress 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.

(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.

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

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

(7) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage, 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.

(8) The receiver shall apply all money received by him as follows—

- (i) in discharge of all rents, taxes and outgoings whatever affecting the mortgaged property;
- (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;
- (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 any sum falling to be paid in accordance with the terms of the mortgage deed,

and shall pay the residue 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 the mortgaged property, or who is otherwise entitled to that property.

Sale of mortgaged property in action for foreclosure

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

(2) In any action, whether for foreclosure, or for redemption or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person and notwithstanding that 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, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

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

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

(5) This section applies to actions brought either before, on or after 3 January 1984.

PART IV A

PROVISIONS AGAINST DISPOSITIONS WITH REQUISITE INTENTION

Interpretation

36A (1) In this Part—

“appointed day” means the date on which this Part comes into operation;

“disposition” means any disposition or series of dispositions of property of any nature whatsoever and however effected, and, without limiting the generality of the foregoing, includes any exercise of a power of appointment, any trust, gift, transfer, sale, exchange, demise, assignment, assurance, grant, lease, surrender, conveyance, reconveyance, release, reservation, any purchase or other acquisition, any covenant, contract or option and any compromise or other dealing or arrangement;

“eligible creditor” means a person to whom—

- (a) on, or within two years after, the material date the transferor owed an obligation and on the date of the action or proceeding to set aside the relevant disposition that obligation remains unsatisfied;

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- (b) on the material date the transferor owed a contingent liability and since that date the contingency giving rise to the obligation has occurred and on the date of the action or proceeding to set aside the relevant disposition that obligation remains unsatisfied; or
- (c) on the date of the action or proceeding to set aside the relevant disposition, the transferor owes an obligation in consequence of a claim, made by that person against the transferor, arising from a cause of action which accrued prior to, or within two years after, the material date.

“material date” means the date on which a relevant disposition is made;

“obligation” means any obligation or liability, other than a contingent liability, to pay a sum of money or to transfer property;

“property” includes money, goods, things in action, land and every description of property wherever situated and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“relevant disposition” means a disposition to which section 36C applies;

“requisite intention” means an intention of a transferor to make a disposition the dominant purpose of which is to put the property which is the subject of that disposition beyond the reach of a person or a class of persons who is making, or may at some time make, a claim against him;

“transferor” means a person who directly or indirectly makes a relevant disposition or causes it to be made;

“transferee” means the person to whom a relevant disposition is made and includes a successor in title of such person;

“trust” includes a settlement;

“undervalue”, in relation to a disposition of property, means a disposition in respect of which—

- (a) no consideration is given; or
- (b) the value of the consideration given is, in money or money’s worth, significantly less than the value, in money or money’s worth, of the property.

[Section 36A inserted by 1994:21 effective 13 July 1994]

Application

36B (1) Subject to subsections (2) and (3), with effect from the appointed day the provisions of this Part shall apply to every disposition of property made by any person whether that disposition was made before or after the appointed day and whether or not the property, the subject of the disposition, is situated in Bermuda or elsewhere.

(2) Notwithstanding subsection (1), where—

- (a) prior to, or within six months after, the appointed day; and

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- (b) pursuant to a conveyance of property to which section 37 of the Conveyancing Act 1983 applies,

any action or proceeding has been commenced, this Part shall have no application, and the provisions of the said section 37 shall have effect as if this Part had not been enacted.

- (3) This Part shall not affect the operation of a disentailing assurance or the law of bankruptcy for the time being in force.

[Section 36B inserted by 1994:21 effective 13 July 1994]

Avoidance of dispositions made with the requisite intention, etc

36C (1) Subject to subsection (2) and the provisions of this Part, every disposition of property made with the requisite intention and at an undervalue shall be voidable at the instance of an eligible creditor thereby prejudiced.

(2) Where a person seeking to set aside a relevant disposition was not, on the material date, a person to whom an obligation was owed by the transferor, the Court shall not set aside that disposition unless the Court is satisfied that that person was, on the material date, reasonably foreseeable by the transferor as a person to whom an obligation might become owed by him.

(3) Subject to subsection (4), no action or proceeding to set aside a disposition shall be commenced pursuant to this Part unless such action or proceeding is commenced—

- (a) in the case of an eligible creditor referred to in paragraph (a) of the definition of that expression, within six years after the material date or within six years after the date when the obligation became owed, whichever is the later date;
- (b) in the case of an eligible creditor referred to in paragraph (b) of that definition, within six years after the material date;
- (c) in the case of an eligible creditor referred to in paragraph (c) of that definition, within six years after the material date, or within six years after the date when the cause of action accrued, whichever is the later date.

(4) Except as provided in subsection (3), nothing contained in this section shall be construed as in any way affecting the operation of the Limitation Act 1984.

(5) For the avoidance of doubt it is hereby declared—

- (a) that a disposition to which this Part applies shall not, by reason only that it was made at an undervalue, be set aside by the Court; and
- (b) the Court shall, for the purpose of setting aside such a disposition determine, on a balance of probability, whether it was made with the requisite intention.

[Section 36C inserted by 1994:21 effective 13 July 1994]

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Savings of certain rights

36D (1) Where, pursuant to this Part, a relevant disposition is set aside and the Court is satisfied that the transferee has acted in good faith, then,—

- (a) the transferee shall have a first and paramount charge over the property, the subject of the relevant disposition, for an amount equal to all costs (and not only such costs as the Court might otherwise allow) properly incurred by the transferee in the defence of the action or proceeding to set aside that disposition;
- (b) the relevant disposition shall be set aside subject to all fees and costs properly incurred and subject also to any pre-existing rights, claims and interests of the transferee and of any person through whom the transferee claims and who has acted in good faith; and
- (c) in the case of a trust, the relevant disposition shall only be set aside subject to the right of a beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or a discretion vested in the trustee of such trust or any other person, and otherwise properly exercised.

(2) The burden of proving that a transferee or any person through whom the transferee claims has not acted in good faith shall be upon the person making the allegation.

[Section 36D inserted by 1994:21 effective 13 July 1994]

Extent of avoidance of relevant disposition

36E Subject to section 36D, a relevant disposition shall be set aside pursuant to this Part only to the extent necessary to satisfy the obligation owed to the eligible creditor at whose instance the disposition has been set aside.

[Section 36E inserted by 1994:21 effective 13 July 1994]

Part not to validate certain dispositions

36F Nothing contained in this Part shall be construed as -

- (a) validating any disposition of property which is neither owned by, nor is the subject of a power of disposal with respect thereto vested in, the transferor; or
- (b) affecting the recognition of a foreign law in determining whether the transferor is the owner of such property or the holder of such power.

[Section 36F inserted by 1994:21 effective 13 July 1994]

Relationship with Trusts (Special Provisions) Act 1989

36G Nothing in this Part shall be construed as permitting the court to give effect to any foreign order to which section 11 of the Trusts (Special Provisions) Act 1989 applies.

[Section 36G inserted by 1994:21 effective 13 July 1994; Section 36G repealed and substituted by 2020: 43 s. 8 effective 5 August 2020]

PART V
MISCELLANEOUS

Voluntary conveyances to defraud creditors voidable

37 *[Repealed by 1994:21]*

Voluntary disposition of land, how far voidable as against purchasers

38 (1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(2) For the purposes of this section no voluntary disposition, whenever made, shall be deemed to have been made with intent to de-fraud by reason only that a subsequent conveyance for valuable consideration was made, if such subsequent conveyance was made before, on or after 3 January 1984.

Registration of voluntary conveyance

39 (1) Every voluntary conveyance shall, within thirty days of its being duly stamped in accordance with the Stamp Duties Act 1976 [*title 14 item 24*], be deposited for registration in the office of the Land Title Registrar with a memorandum, signed by or on behalf of the grantor and grantee, or if there are more than one grantor or grantee, then by or on behalf of the grantor or grantee first named in such conveyance, containing the date of such voluntary conveyance, the names of the parties thereto, and the description of the property thereby conveyed.

(2) The Land Title Registrar shall record and register any memorandum of the substance of a voluntary conveyance duly deposited in his office in accordance with subsection (1) in the manner provided by, and subject to the provisions of, the Land Title Registrar (Recording of Documents) Act 2017.

(3) Subsections (1) and (2) shall not apply to—

- (a) any disposition of registered land within the meaning of the Land Title Registration Act 2011; or
- (b) any voluntary conveyance of an estate which is required to be registered under the Land Title Registration Act 2011 by virtue of sections 24 and 25 of that Act.

[Section 39 amended by 1995:42 effective 21 December 1995; subsections (1) and (2) amended by 2017 : 9 s. 11 effective 20 February 2017; Section 39 subsection (3) inserted by 2011 : 51 Sch. 9 effective 2 July 2018]

Apportionment of conditions on severance

40 (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

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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.

(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.

(3) This section applies to leases made before, on or after 3 January 1984 and whether the severance of the reversionary estate or the partial avoidance or cesser of the term was effected before, on or after 3 January 1984.

Rent and benefit of lessee’s covenants to run with the reversion

41 (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.

(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, or the land leased.

(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.

(4) This section applies to leases made before, on or after 3 January 1984, 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 3 January 1984.

Obligation of lessor’s covenants to run with reversion

42 (1) 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

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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.

(2) This section applies to leases made before, on or after 3 January 1984, whether the severance of the reversionary estate was effected before, on or after 3 January 1984. This section takes effect without prejudice to any liability affecting a covenantor or his estate.

Contingent remainder

43 (1) After 2 January 1984 no estate in land shall be created by way of contingent remainder; but every estate which before 3 January 1984 would have taken effect as a contingent remainder shall take effect, if in a will or codicil, as an executory devise, and, if in a deed, as an executory estate of the same nature and having the same properties as an executory devise.

(2) Contingent remainders existing under deeds, wills or instruments executed, or made before 3 January 1984, shall not fail, or be destroyed or barred, merely by reason of the destruction or merger of any preceding estate, or its determination by any other means than the effluxion of the time of such preceding estate, or some event on which it was on its creation limited to determine.

Validity of conveyance by husband to his wife

44 For the avoidance of doubt it is hereby declared that—

- (a) a husband may and shall always be deemed to have been enabled to convey land in Bermuda to his wife without the intervention of a trustee or a grantee to uses; and
- (b) every deed or conveyance of land in Bermuda heretofore executed by any married woman, either alone or in conjunction with her husband for any valuable consideration, is as effectual for the assuring or conveying of such land to the grantee named in such deed or conveyance as if such woman had been a feme sole at the time of such execution, and whether such deed or conveyance was or was not recorded, registered or acknowledged in accordance with any Act for the time being in force in Bermuda, relating to deeds or conveyances executed by any married woman for valuable consideration.

Stipulation restricting right of a party to employ own attorney to be void

45 (1) Any stipulation made on the sale, mortgage, lease or rental of any land which in any way restricts the right of any party to be advised or represented by an attorney appointed by him shall be void.

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(2) Any stipulation made on the sale, mortgage, lease or rental of any land which in any way restricts the right of the purchaser, mortgagee, lessor or landlord, as the case may be, to have a conveyance, mortgage, lease or rental agreement drawn by an attorney appointed by him shall be void.

(3) Nothing in this section shall affect the right of one party to a transaction mentioned in this section to furnish a form, of conveyance, mortgage, lease or rental agreement from which a draft can be prepared to another party to the transaction and to charge therefor a reasonable fee.

The Act not to affect validity of certain transfers of title

46 (1) Nothing in this Act shall affect the validity of any conveyance or other transfer of title of an interest in land expressed in a form differing from those provided for in this Act, so far as other provisions of law permit.

(2) Nothing in this Act shall affect the validity of any conveyance or other transfer of title of an interest in land valid before 3 January 1984.

Act only to apply to deeds executed after 2 January 1984

47 This Act shall only apply to deeds, wills, orders and other instruments executed, made or coming into operation after 2 January 1984 unless it is otherwise provided.

Repeals

48 (1) The Acts set out in the Third Schedule are hereby repealed or shall cease to apply.

(2) From 3 January 1984—

- (a) all fines and recoveries shall cease to be levied;
- (b) Quit Rent shall cease to be payable.

Actions already barred and pending actions

49 Nothing in this Act shall—

- (a) enable any action to be brought which was barred before 3 January 1984 by an enactment repealed by this Act, except in so far as the cause of action or right of action may be viewed by an acknowledgment or part payment made in accordance with this Act; or
- (b) affect any action or arbitration commenced before 3 January 1984 as the title to any property which is the subject of any such action or arbitration.

FIRST SCHEDULE

(Section 5)

THIS CONVEYANCE is dated the [blank] day of [blank]
19 [blank] and made between
of [blank] (hereinafter called "the Vendor") of the one part and [blank] of
(hereinafter called "the Purchaser") of the other part.

WHEREAS:

(1) By a deed dated the [blank] day of [blank] 19 [blank] and made between XY of the one part and the Vendor of the other part for the consideration therein mentioned a parcel of land in [blank] Parish in Bermuda (of which the hereditaments described in the First Schedule hereto formed a part) was granted and released unto and to the use of the Vendor his heirs and assigns forever.

(2) The Vendor has agreed to sell to the Purchaser the fee simple of the hereditaments described in the First Schedule hereto at the price of \$

NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the sum of \$ now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as beneficial owner hereby conveys unto the Purchaser ALL THAT lot of land more particularly described in the First Schedule hereto TO HOLD the same unto the Purchaser and the Vendor hereby acknowledges the right of the Purchaser to production and delivery of copies of the documents of title which are mentioned in the Second Schedule hereto and hereby undertakes for the safe custody of such documents.

IN WITNESS WHEREOF etc.

THE FIRST SCHEDULE above referred to

(Description of the land)

THE SECOND SCHEDULE above referred to

(Documents covenanted to be produced)

SECOND SCHEDULE

(Sections 19 and 20)

IMPLIED COVENANTS

PART I

COVENANT IMPLIED IN A CONVEYANCE FOR VALUABLE CONSIDERATION, OTHER THAN A MORTGAGE, BY A PERSON WHO CONVEYS AND IS EXPRESSED TO CONVEY AS BENEFICIAL OWNER

That, notwithstanding anything by the person who so conveys or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made), through whom the person who so conveys derives title, otherwise than by purchase for value:

And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands, other than those subject to which the conveyance is expressly made, as, either before or after the date of the conveyance, have been or shall be made occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value:

And further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so

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expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

PART II

FURTHER COVENANT IMPLIED IN A CONVEYANCE OF LEASEHOLD PROPERTY FOR VALUABLE CONSIDERATION, OTHER THAN A MORTGAGE, BY A PERSON WHO CONVEYS AND IS EXPRESSED TO CONVEY AS BENEFICIAL OWNER

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and has in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

PART III

COVENANT IMPLIED IN A CONVEYANCE BY WAY OF MORTGAGE BY A PERSON WHO CONVEYS AND IS EXPRESSED TO CONVEY AS BENEFICIAL OWNER

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed:

And also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made):

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And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made:

And further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

The above covenant in the case of a charge shall have effect as if for references to "conveys", "conveyed" and "conveyance" there were substituted respectively references to "charges", "charged" and "charge".

PART IV

COVENANT IMPLIED IN A CONVEYANCE BY WAY OF MORTGAGE OF FREEHOLD PROPERTY SUBJECT TO A RENT OR OF LEASEHOLD PROPERTY BY A PERSON WHO CONVEYS AND IS EXPRESSED TO CONVEY AS BENEFICIAL OWNER

That the lease or grant creating the term or estate for which the land is held is at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and has in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance.

And also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains owing on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed if the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions and agreements, or any of them.

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The above covenant in the case of a charge shall have effect as if for references to "conveys", "conveyed", and "conveyance" there were substituted respectively references to "charges", "charged" and "charge".

PART V

COVENANT IMPLIED IN A CONVEYANCE BY WAY OF SETTLEMENT, BY A PERSON WHO CONVEYS AND IS EXPRESSED TO CONVEY AS SETTLOR

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, as by them or any of them shall be reasonably required, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made.

PART VIA

COVENANT IMPLIED IN ANY CONVEYANCE, BY EVERY PERSON WHO CONVEYS AND IS EXPRESSED TO CONVEY AS TRUSTEE OR MORTGAGEE, OR AS ESTATE REPRESENTATIVE OF A DECEASED PERSON OR UNDER AN ORDER OF THE COURT

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

[Part VIA renumbered by 1995:42 effective 21 December 1995]

PART VIB

COVENANT FOR FURTHER ASSURANCE IMPLIED IN ANY CONVEYANCE, BY EVERY PERSON WHO CONVEYS AND IS EXPRESSED TO CONVEY AS TRUSTEE OR MORTGAGEE, OR AS ESTATE REPRESENTATIVE OF A DECEASED PERSON OR UNDER AN ORDER OF THE COURT AND BY EVERY PERSON WHO MAKES A VOLUNTARY CONVEYANCE

That the person so conveying will, from time to time, and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title

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under him, as by them or any of them shall be reasonably required, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made.

[part VIB inserted by 1995:42 effective 21 December 1995]

PART VII

COVENANT IMPLIED IN A CONVEYANCE FOR VALUABLE CONSIDERATION, OTHER THAN A MORTGAGE, OF THE ENTIRETY OF LAND AFFECTED BY A RENTCHARGE

That the grantees or the persons deriving title under the will at all times, from the date of the conveyance or other date therein stated, duly pay the said rentcharge and observe and perform all the covenants, agreements and conditions contained in the deed or other document erecting the rentcharge, and thenceforth on the part of the owner of the land to be observed and performed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rentcharge or any part thereof, or any breach of any of the said covenants, agreements and conditions.

PART VIII

COVENANTS IMPLIED IN A CONVEYANCE FOR VALUABLE CONSIDERATION, OTHER THAN A MORTGAGE, OF PART OF LAND AFFECTED BY A RENTCHARGE, , SUBJECT TO A PART NOT LEGALLY APPORTIONED OF THAT RENTCHARGE

(i) That the grantees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants (other than the covenant to pay the entire rent) and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land conveyed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent, or any breach of any of the said covenants and conditions, so far as the same relate as aforesaid.

(ii) That the conveying parties, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the balance of the rentcharge (after deducting the apportioned rent aforesaid, and any other rents similarly apportioned in respect of land not retained), and observe and perform all the covenants, other than the covenant to pay the entire rent, and conditions contained in the deed or other

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document creating the rentcharge, so far as the same relate to the land not included in the conveyance and remaining vested in the covenantors:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the grantees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rentcharge, or any breach of any of the said covenants and conditions as far as they relate as aforesaid.

PART IX

COVENANT IN A CONVEYANCE FOR VALUABLE CONSIDERATION, OTHER THAN A MORTGAGE, OF THE ENTIRETY OF THE LAND COMPRISED IN A LEASE FOR THE RESIDUE OF THE TERM OR INTEREST CREATED BY THE LEASE

That the assignees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, duly pay all rent becoming due under the lease creating the term or interest for which the land is conveyed, and observe and perform all the covenants, agreements and conditions therein contained and thenceforth on the part of the lessees to be observed and performed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants, agreements and conditions.

PART X

COVENANTS IMPLIED IN A CONVEYANCE FOR VALUABLE CONSIDERATION, OTHER THAN A MORTGAGE, OF PART OF THE LAND COMPRISED IN A LEASE, FOR THE RESIDUE OF THE TERM OR INTEREST CREATED BY THE LEASE, SUBJECT TO A PART (NOT LEGALLY APPORTIONED) OF THAT RENT

(i) That the assignees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease creating the term or interest for which the land is conveyed, and thenceforth on the part of the lessees to be observed and performed, so far as the same relate to the land conveyed:

And also will at all times from the date aforesaid save harmless and keep indemnified, the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent or any breach of any of the said covenants, agreements and conditions so far as the same relate as aforesaid.

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(ii) That the conveying parties, or the persons deriving title under them, will at all times, from the date of the conveyance, or other date therein stated, pay the balance of the rent (after deducting the apportioned rent aforesaid and any other rents similarly apportioned in respect of land not retained) and observe and perform conditions contained in the lease and on the part of the lessees to be observed and performed so far as the same relate to the land demised (other than the land comprised in the conveyance) and remaining vested in the covenantors:

And also will at all times, from the date aforesaid, save harmless and keep indemnified, the assignees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rent or any breach of any of the said covenants, agreements and conditions so far as they relate as aforesaid.

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THIRD SCHEDULE

(Section 48)

[list of Bermuda Acts repealed omitted.]

The following Acts of the United Kingdom—

- (a) the Statute of Uses (27 Hen. 8. c.10);
- (b) An Act against fraudulent deeds, gifts, alienations, etc. (13 Eliz. c.5);
- (c) An Act against covenous and fraudulent conveyances (27 Eliz. c.4);
- (d) the Grantees of Reversions Act, (32 Hen. 8 c.34)

shall cease to apply in Bermuda

[this Act was brought into operation on 3 January 1984 by BR 34/1983]

[Amended by:

1994 : 21

1995 : 42

2017 : 9

2011 : 51

2020 : 43]