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LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT

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LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT

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LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT

Interpretation

1. In this Act—

"bankruptcy" includes liquidation by arrangement, and in relation to a corporation, means the winding up thereof;

"conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will;

"Court" means the High Court;

"hereditaments" means real property which under an intestacy devolve on the next of kin;

"land" includes land of any tenure, houses and other buildings, mines and minerals, and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, and also an undivided share in land;

"lease" includes an under-lease or other tenancy;

"lessee" includes an under-lessee and a person deriving title under a lessee or under-lessee;

"mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and winning the same;

"mortgage" includes any charge on any property for securing money or money's worth;

"mortgagee" includes any person from time to time deriving title under the original mortgagee;

"property" includes any thing in action, and any interest in real or personal property;

"purchaser" includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and "purchase" has a corresponding meaning;

"rent" includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise reserved or issuing out of or charged upon land, but does not include mortgage interest;

"will" includes codicil.

Production and safe custody of documents

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

(2) An acknowledgement 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 acknowledgement, unless prevented from so doing by fire or other inevitable accident.

(3) The obligations imposed under this section by an acknowledgement are to be performed from time to time at the request in writing of the person to whom an acknowledgement 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 acknowledgement relates.

(4) The obligations imposed under this section by an acknowledgement are—

(a) an obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any person by him authorized in writing;

(b) an obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in Anguilla, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(c) an obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

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

(6) An acknowledgement 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 acknowledgement 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 acknowledgement 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 documents safe, whole, uncancelled, 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 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 acknowledgement 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 acknowledgement or undertaking, and shall have effect subject to the terms of the acknowledgement 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 acknowledgement or undertaking.

(14) This section applies to an acknowledgement or undertaking given, or a liability respecting documents incurred, after the 31st of December, 1881.

Effect of covenant with two or more jointly

3. (1) A covenant, bond, obligation, or contract by deed 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, bond, obligation, or contract devolves, and where made after the 31st of December, 1881, shall be construed as being also made with each of them.

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

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, bond, obligation, or contract, and has effect subject to the covenant, bond, obligation or contract, and to the provisions therein contained.

(4) Except as otherwise expressly provided, this section applies to a covenant, bond, obligation or contract made or implied after the 31st of December, 1881.

Execution under power of attorney

4. The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and his own seal where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

Payment by attorney under power without notice of death, etc.

5. (1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become subject to disability or bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2) This section does not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payor if the payment had not been made by him.

(3) This section applies only to payment and acts made and done after the 31st of December, 1881.

Effect of irrevocable power of attorney for value

6. (1) If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable then, in favour of a purchaser—

(a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability, or bankruptcy of the donor of the power;

(b) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and

(c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the

concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power.

(2) This section applies to powers of attorney created by instruments executed after the 31st of December, 1881.

Effect of power of attorney irrevocable for a fixed time

7. (1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser—

(a) the power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power;

(b) any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability, or bankruptcy of the donor of the power, had not been done or happened; and

(c) neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability or bankruptcy of the donor of the power, within that fixed time.

(2) This section applies to powers of attorney created by instrument executed after the 31st of December, 1881.

Release of powers simply collateral

8. A person to whom any power, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise, the power.

Disclaimer of power

9. (1) A person to whom any power, whether coupled with an interest or not, is given, may by deed disclaim the power, and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2) On such disclaimer, the power may be exercised by the other person or persons, or the survivor or survivors of the other persons, to whom the power is given, unless the contrary is expressed in the instrument creating the power.

Execution of powers not testamentary

10. (1) A deed executed and attested in the manner in which deeds are required by law to be executed and attested is so far as respects the execution and attestation thereof a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or instrument in writing made in exercise of the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.

(2) This section does not operate to defeat any direction in the instrument creating the power that—

(a) the consent of any particular person is to be necessary to a valid execution; or

(b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

(3) This section does not prevent the donee of a power from executing it in accordance with the power by writing or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section does not apply.

(4) This section applies to appointments by deed made after the 12th of August, 1859.

Citation

11. This Act may be cited as the Law of Property (Miscellaneous Provisions) Act, Revised Statutes of Anguilla, Chapter L25.

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