

CONVEYANCING DECREE, 1973

MEMORANDUM

For transactions relating to land such as buying, selling and leasing, a need exists to develop methods and machinery which are reliable, simple, cheap, speedy and suited to the present-day needs of our country. One much needed step in this direction is to bring up to date the law relating to conveyancing, and to simplify conveyancing forms. Such a step will free conveyancing practice in Ghana from dependence on English law and from the need to look for this law in many different enactments. There is also a need to discourage fraudulent conveyances by imposing a general requirement of writing.

The Decree, which follows the recommendations of the Law Reform Commission, brings together in modern form the scattered law relating to conveyancing, with many simplifications and improvements. It also deals with the problem of transfers of interests in land in accordance with customary law. Such transfers do not, at present, have to be in writing, although the practice of customary transfers in writing is now very widespread.

In response to the national need for methods of transfer that are reliable, simple, cheap, speedy and suited to the circumstances of our country, provision is made for an imaginative development of the registries of our court system to handle the recording of customary transfers of interests in land. The intention is to require a recording in the Register of a District Court of transfers of interests in land, and to make such a recording a condition for validity in the same way as the traditional "guaha" was essential. In this way a permanent record will be progressively substituted for the indispensable but evanescent memory of witnesses to the "guaha" transaction. Provision is also made for the appointment of surveyors to ensure reasonable identification of the lands which form the subject-matter of recorded transactions.

Section 1 provides that a transfer of an interest in land shall be of no effect unless it is in writing signed by the transferor or his agent, or unless it falls within the class of exceptions specified in section 3. Section 2 contains similar provisions in respect of contracts for transfers.

The evil to which the requirement of writing is directed is the making of fraudulent conveyances. Hence certain classes of transfer which by their nature are not likely to be fraudulent—such as those taking effect by operation of law or equity, by order of the court, or upon the death of any person—are excluded from the requirements of sections 1 and 2 by section 3 of the Decree.

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Section 3 (1) (h) excludes oral grants under customary law from the requirement of writing. It is important that comprehensive records of such transfers be kept, and therefore sections 4 and 5 make provision for such recording, a significant step in developing permanent records of transfers of interests in land while preserving the customary mode of transfer. The transfer is to be recorded in the form contained in the First Schedule, signed by the transferor or his agent and certified by the appropriate registrar. Section 4 (3) provides for the preparation by the registrar of copies of the transaction. The magistrate settles any doubts concerning matters to be recorded and the registrar delivers and preserves the appropriate copies.

Section 5 provides that the certified record shall be prima facie evidence of the matters stated therein.

Section 6 (1) provides that the Chief Justice may make regulations for the administration of the recording scheme. This should give the system adequate flexibility. Subsections (2) and (3) provide for the appointment of registrars, official surveyors and other personnel necessary for the administration of the recording scheme.

Section 7 helps to ensure the recording of customary transfers. Subsection (1) provides that they shall be of no effect unless recorded, thus providing a significant incentive to record. Subsection (2) makes it mandatory that the District Court authorise execution of a record where the transferor without lawful excuse refuses to execute the record. This will enable transferees to obtain a valid transfer despite any unwillingness of the transferor to act in accordance with the law. Subsection (3) is designed to discourage dishonest conveyances of property by making such action a criminal offence.

Section 8 is to remind the courts of the operation of the so-called best evidence rule. Once a writing is made, this Part is satisfied. So if a writing is thereafter lost or destroyed, other evidence of its contents will be admissible.

Section 9 is designed to insulate the requirement for a writing from any impact on the choice of law rules.

Section 10 defines the transactions dealing with land covered by this Part.

Section 11 provides that Part I shall not have retroactive effect.

Part II describes the effect of conveyances and is designed to simplify the law. Thus section 12 specifies that the parties to a conveyance include their heirs, successors, personal representatives and assigns. Of course, the parties may vary this definition by agreement. Section 12 (2) creates the presumption that the parties are of full age and capacity to avoid having to prove it in every case.

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Section 13 describes the subject-matter of conveyances. Any appropriate word indicating the intention of the transferor to create or dispose of an interest in land is sufficient. All rights and interests which the transferor has are passed to the transferee unless otherwise indicated. A conveyance does not pass any greater interest than the transferor has power to convey.

By virtue of section 14 (1), entry is not necessary to pass possession or a right thereto. Section 14 (2) specifies that conveyances to corporations are to the corporations in their public capacity and pass the whole interest of the transferor unless indicated otherwise.

Subsection (3) reverses the presumption in favour of a joint tenancy found in English law and heretofore in Ghana: *Fynn v. Gardiner*, (1953) 14 W.A.C.A. 260. The purpose of the change is to bring the presumption into conformity with the probable intentions of parties to such transactions in Ghana (see K. Bentsi-Enchill, *Ghana Land Law* (1964) pp.242-247).

Section 15 provides that a person may take a benefit under a conveyance although he is not named as a party to the conveyance.

Section 16 makes clear that after a reversion expectant on a lease is surrendered or merged, the interest which confers the next vested right is the reversion. This preserves the same incidents and obligations as would have affected the original reversion.

Section 17 seeks to protect creditors, purchasers in good faith and subsequent transferees from fraud. Thus under section 17 (1) conveyances with intent to defraud creditors are voidable by persons affected. But this subsection does not extend to conveyances to transferees in good faith for valuable consideration and does not affect the law of insolvency. Under section 17 (3), a subsequent purchaser may avoid dispositions made with intent to defraud him. However, the mere fact of a subsequent conveyance does not of itself prove the requisite intent to defraud.

Section 18 gives the court power to set aside or modify an agreement or conveyance for unconscionability. It also indicates some of the more important factors to be considered in determining unconscionability, but requires the court to consider all the circumstances.

Section 19 (1) and (2) provide for conveyances by a person to himself and another and to himself in a different capacity. Subsection (3) provides that two or more persons may convey to any one or more of themselves as they might convey to a third party. Subsection (4) gives the court power to set aside a conveyance to prevent the commission or continuance of a breach of a fiduciary duty. This subsection is intended to prevent a fiduciary from conveying to himself in another capacity to deprive another of his interests.

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Section 20 (1) provides that the benefit of an agreement made with persons jointly shall be available to the survivors of them, and to their successors. Section 20 (2) allows the parties to vary the effect of section 20 (1). Under section 20 (3) such agreements and those entered into by a person with himself and another or others shall be construed and be capable of enforcement as if the covenant or agreement had been entered with the other person alone.

Section 21 (1) apportions every condition in a lease to the several parts of the reversionary estate, where the reversionary interest is severed or where the term is avoided or ceases in regard to part of the land. Thus, the conditions in the lease go with the appropriate portion that is severed. Section 21 (2) merely sets out the scope of such conditions to be as if each part had been comprised in the lease originally.

Section 22 (1) sets out the four usual covenants to be implied where the transferor is selling for valuable consideration. Section 22 (2) specifies that in addition to the above covenants, in conveyances by way of assignment or sublease there shall be implied further covenants relating to validity and past observance of the headlease. Further covenants are implied by the remaining provisions of this section. Section 22 (7) allows the parties to vary the covenants in the conveyance. The covenants implied by section 22 are set out in the Second Schedule.

Section 23 is the analogue of section 22 insofar as it provides for implied covenants by the receiving party. Thus section 23 (1) sets out the implied covenants in a lease, section 23 (2) the further covenants in a sublease, and section 23 (3) the covenants in an outright assignment. Section 23 (4) specifies that the implied covenants by the receiving party shall be made by each transferee with each transferor as far as regards the subject-matter expressed to be conveyed. Section 23 (5) gives the parties the power to vary or extend the covenants in the conveyance. The covenants dealt with by section 23 are set out in detail in the Third Schedule.

Section 24 specifies that the benefits of implied covenants go with the interest of the implied covenantee. They thus become part of that covenantee's interest.

Section 25 deals with the benefits of covenants relating to land.

Section 26 deals with the burden of covenants relating to land.

Section 27 specifies which benefits of covenants run with reversions and section 28 sets out the burden of covenants which run with the reversion. These are the logical extensions of sections 25 and 26 insofar as they relate to reversions and, like those sections, are designed to simplify and shorten the conveyancing document.

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Sections 29 and 30 deal with questions of re-entry and forfeiture. Section 29 sets out the process by which a right of re-entry or forfeiture shall become enforceable. The lessee must be given adequate notice and time to remedy the breach or make reasonable compensation or both. Section 29 (2) specifies what constitutes knowledge of the fact that notice has been served and section 29 (3) prevents the parties from evading the requirements of this section.

Section 30 allows a lessee and sublessee to apply to the court for relief where the lessor is proceeding to enforce a right of re-entry or forfeiture. Section 30 (2) and 30 (3) give the court latitude to consider various relevant matters and wide power to provide adequate relief. This section reflects the view that the court must have discretion to deal with such cases as it sees fit. Where relief is granted the effect is to restore the lease as if it had never been forfeited, so that an underlessee cannot refuse to pay rent for the period elapsing between the forfeiture and the granting of relief.

Section 31 (1) sets limits on damages or compensation for breach of a covenant or agreement regarding repair. Damages shall not exceed the amount by which the reversion is diminished. A tenant's liability to repair depends upon the nature of the tenancy in the absence of express covenant or agreement. Section 31 (2) recognizes that it is unfair to require damages where changed circumstances will shortly render alterations valueless.

Section 32 enacts the general rule that waiver shall extend only to breaches of a covenant to which the waiver specifically relates and does not operate as a general waiver, unless a contrary intention appears.

Section 33 limits the situations in which licences are extended. It restricts them to the specific act or omission and they are not extended to subsequent ones, unless a contrary intention is expressed. Likewise, all rights and conditions of re-entry remain in force as against subsequent breaches of the covenant as if the licence had not been granted.

Section 34 prohibits the unjust practice of demanding money payment for a licence or consent to assign, sublet, etc., where the lease does not contain an express provision requiring such payment.

Section 35 simplifies the law relating to production and control of documents of title.

Section 36 sets the period of commencement of title which a purchaser may require at thirty years. This is the present practice of lawyers in Ghana. The title may be documentary or otherwise: this takes into account modes of showing title under customary law. The section sets out the various cases in which documents of

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title may be called for, and contains consequential provisions relating to notice. These provisions reflect an attempt to strike a compromise between the need for security of title and the unnecessary trouble and expense of giving the right to call for title to any lessee. The period of three years has been selected because terms in excess of that period will often be commercial leases and security is necessary to encourage commercial undertakings. Equitable interests will also be protected whether the check was made or not where the right existed. Section 36 (12) gives the parties the right to vary these terms by contract.

Section 37 (1) to (5) relate to inquiries or objections about matters and documents anterior to the root of title. These subsections fill in the details of the policy set out in section 36, with the exception stated in section 37 (2). Section 37 (6) removes the objection to title upon the vendor's inability to produce the documents when an equitable right to production accrues upon completion of the contract. Section 37 (7) allocates the expenses for production. Section 37 (8) relates to the vendor's right to retain documents of title.

Sections 38 to 46 deal with supplemental instruments, notices, the procedure for formal execution of conveyances, receipts and other matters. Section 42 sets out a number of important rules for conveyancers which will assist them to frame conveyances in clear modern English, avoiding such archaic jargon as the phrases "piece or parcel" and "situate, lying and being". Section 43 and the Fourth Schedule provide basic model precedents of a conveyance on sale, a conveyance as a gift, a lease, a sublease and an assignment. From these precedents it will be seen that the contents of a conveyance have been simplified to the bare essentials; no longer will it be necessary to prepare cumbrous and lengthy conveyances in language unintelligible to the parties. In particular, such useful provisions of the Decree as sections 12 (parties to a conveyance) and 22 and 23 (covenants implied by law) enable the written contents of a conveyance to be drastically shortened. Conveyancers will now be expected to take full advantage of these improvements, which are long overdue.

Section 44 gives a right to damages for any fraudulent concealment of an instrument or encumbrance material to the title. Sections 45 and 46 contain supplementary provisions. The Decree is given a commencement date of 1st January, 1974. This will give conveyancers some time to become acquainted with its provisions and also to enable any objections and criticisms of its provisions to be considered before it comes into operation.

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ARRANGEMENT OF SECTIONS

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Section

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30. Relief against re-entry and forfeiture
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PART IV—MISCELLANEOUS

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43. Model precedents
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First Schedule—Record of customary transfer

Second Schedule—Implied covenants by transferor

Third Schedule—Implied covenants by transferee

Fourth Schedule—Model precedents.

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In pursuance of the National Redemption Council (Establishment) Proclamation, 1972 this Decree is hereby made:

PART I—MODES OF TRANSFER OF INTERESTS IN LAND

1. (1) A transfer of an interest in land shall be by a writing signed by the person making the transfer or by his agent duly authorised in writing, unless relieved against the need for such a writing by the provisions of section 3. Mode of transfer.

(2) A transfer of an interest in land made in a manner other than as provided in this Part shall confer no interest on the transferee.

2. No contract for the transfer of an interest in land shall be enforceable unless— Contracts for transfer.

(a) it is evidenced in a writing signed by the person against whom the contract is to be proved or by a person who was authorised to sign on behalf of such person; or

(b) it is relieved against the need for such a writing by the provisions of section 3.

3. (1) Sections 1 and 2 shall not apply to any transfer or contract for the transfer of an interest in land which takes effect— Transactions permitted without writing.

(a) by operation of law;

(b) by operation of the rules of equity relating to the creation or operation of resulting, implied or constructive trusts;

(c) by order of the court;

(d) by will or upon intestacy;

(e) by prescription;

(f) by a lease taking effect in possession for a term not exceeding three years, whether or not the lessee is given power to extend the term;

(g) by a licence or profit other than a concession required to be in writing by section 3 of the Concessions Ordinance (Cap. 136);

(h) by oral grant under customary law.

(2) Sections 1 and 2 shall be subject to the rules of equity including the rules relating to unconscionability, fraud, duress and part-performance.

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Records of
customary
transfers.

4. (1) An oral grant of an interest in land under customary law shall be recorded in the form contained in the First Schedule, or as near thereto as circumstances permit, incorporating the essential features of the transaction sought to be effected, signed by the person making the transfer or by his agent lawfully authorised for that purpose, and certified by a registrar having jurisdiction within any part of the area to which the transaction relates.

(2) An adequate plan of the land to which the transfer relates shall, if available, be incorporated in the record referred to in subsection (1).

(3) The registrar shall without delay and without charge prepare three copies of the record referred to in subsection (1).

(4) The registrar shall deliver to the transferor and the transferee copies of the record certified by him, and shall dispose of the third copy as may be provided in regulations made under section 6.

(5) The registrar shall refer to a magistrate for determination any doubt concerning issues arising under this section.

Effect of
record of
customary
transfer.

5. A record of a transfer of an interest in land certified by a registrar under section 4 shall as between the parties be prima facie evidence of the matters stated therein.

Adminis-
tration of
recording
scheme.

6. (1) The Chief Justice, after consultation with the Chief Lands Officer, may by legislative instrument make regulations providing generally for the administration of the scheme for recording customary transfers, prescribing the fee (if any) for the supply of copies, and permitting the public to inspect the records of such transfers at reasonable times.

(2) The Chief Justice may by notice published in the *Gazette* appoint any person to be a registrar of customary land transfers for the purposes of this Part, and shall in such notice specify the area within which such registrar shall exercise his functions:

Provided that until such notice is published the registrar of every District Court shall be deemed to be a registrar of customary land transfers for the purposes of this Part, and shall exercise his functions in relation to the magisterial district to which he is assigned.

(3) The Chief Justice shall appoint an official surveyor for each District Court and such other staff as the business of the District Court requires to provide for the administration of the scheme for recording customary transfers.

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(4) Where any transfer relates to land falling within the area of jurisdiction of more than one registrar, the registrar for the area in which the transaction is recorded shall send a copy of the record to the registrars of each of the other areas to which the record relates.

7. (1) An oral grant made under customary law shall be of no effect until it is recorded under section 4

Failure to record and unlawful recording.

(2) The District Court shall authorise the registrar to execute a record of transfer where the transferor without lawful excuse refuses at the request of the transferee to execute a record of a transfer to which section 4 applies.

(3) Any transferor who executes a record of a transfer under section 4 without reasonable cause to believe that he has the right to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred cedis or to imprisonment not exceeding twelve months or to both.

8. The rules of evidence which provide for the proof of the contents of an original writing by other evidence when the original writing is not available shall apply in the case of writings required by this Part.

Evidence of original writing.

9. The fact that a transfer of an interest in land was made in writing or evidenced in writing shall not by itself give rise to any implication concerning the intention of the parties as to the system of law which they intended to govern the transfer, but it shall be permissible to make any reasonable inference from the contents of any such writing.

Implication of intention from writing.

10. For the purposes of this Part, a transfer of an interest in land includes every sale, lease, gift or other creation or disposition of an interest in land.

Definition of transfer.

11. Nothing in this Part shall affect any transfer of an interest in land made before the commencement of this Decree.

Application of this Part.

PART II—EFFECT OF CONVEYANCES

12. (1) In every conveyance of an interest in land, the expressions used to denote the parties to the conveyance shall be deemed to include their heirs, successors, personal representatives and assigns, except insofar as a contrary intention is expressed in the conveyance or appears by necessary implication.

Parties to a conveyance.

(2) The persons expressed to be parties to a conveyance shall, until the contrary is proved, be presumed to be of full age and capacity at the date thereof.

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Subject-matter of conveyance

13. (1) Any word used in a conveyance indicating the intention of the transferor to create or dispose of an interest in land shall be sufficient for that purpose.

(2) Every conveyance shall pass all interests and rights in the land which the transferor has power to convey, unless a contrary intention is expressed in the conveyance, or appears by necessary implication.

(3) A conveyance shall not be construed to convey any title or right which the transferor does not have the power to convey.

Interest taken by transferee.

14. (1) 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.

(2) A conveyance of an interest in land to a corporation sole by its corporate designation without words of limitation shall pass to the corporation the whole interest which the transferor had power to convey, unless a contrary intention appears in the conveyance.

(3) A conveyance of an interest in land to two or more persons, except a conveyance in trust, shall create an interest in common and not in joint tenancy, unless it is expressed in such conveyance that the transferees shall take jointly, or as joint tenants, or to them and the survivor of them, or unless it manifestly appears from the tenor of the instrument that it was intended to create an interest in joint tenancy.

Persons taking who are not parties.

15. A person may take an interest in land, or the benefit of any condition, right of entry, covenant or agreement over or respecting land, although he may not be named as a party to the conveyance.

Effect of extinguishment of reversion.

16. Where a reversion expectant on a lease of land is surrendered or merged, the immediately following reversion shall as against the lessee be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

Voidable conveyances.

17. (1) Subject to subsection (2), every conveyance of an interest in land made with intent to defraud creditors shall be voidable at the instance of any person thereby prejudiced.

(2) Subsection (1) shall not affect the law of insolvency for the time being in force, and shall not extend to any conveyance of an interest in land where the transferee took the interest in good faith and for valuable consideration.

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(3) Every disposition for no consideration of an interest in land made with intent to defraud a subsequent purchaser shall be voidable at the instance of that purchaser:

Provided that no such disposition shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made.

18. The court shall have power to set aside or modify an agreement to convey or a conveyance of an interest in land on the ground of unconscionability where it is satisfied after considering all the circumstances, including the bargaining conduct of the parties, their relative bargaining positions, the value to each party of the agreement reached, and evidence as to the commercial setting, purpose and effect of their agreement, that the transaction is unconscionable.

19. (1) An interest in land may be conveyed by a person to himself jointly with another person in the same manner as it may be conveyed by him to another person.

(2) A person may in one capacity convey an interest in land to himself in another capacity.

(3) Two or more persons may convey any property vested in them to any one or more of themselves in the same manner as they could have conveyed such property to a third party.

(4) Notwithstanding subsection (3), the court shall have power to set aside a conveyance in order to prevent the commission or continuance of a breach of a fiduciary duty.

20. (1) Any agreement made with two or more persons jointly to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall 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 or obligation devolves, and shall be construed as being also made with each of them.

(2) Subsection (1) applies only so far as a contrary intention is not expressed in the agreement, and has effect subject to the provisions contained in the agreement.

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

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Apportionment of conditions on severance.

21. (1) Where the reversionary interest in any land comprised in a lease is severed, or where the term granted by a lease is avoided or ceases in respect of part of the land comprised in the lease, every condition contained in the lease shall be apportioned and shall continue to apply to the severed parts of the reversionary interest as severed.

(2) Every such condition shall apply to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in the same 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.

PART III—COVENANTS

Implied covenants by transferor.

22. (1) In a conveyance for valuable consideration there shall be implied the covenants for right to convey, quiet enjoyment, freedom from encumbrances and further assurance, in the terms set out in Part I of the Second Schedule.

(2) In a conveyance by way of assignment or sublease of leasehold property for valuable consideration there shall be implied the further covenants relating to validity and past observance of the head lease, in the terms set out in Part II of the Second Schedule.

(3) In a conveyance by way of sublease of leasehold property for valuable consideration there shall be implied the further covenants relating to future observance of the head lease and production of title deeds and delivery of copies, in the terms set out in Part III of the Second Schedule.

(4) In any conveyance there shall be implied a covenant by every person who conveys as trustee or under an order of the court that he has not himself encumbered the subject-matter of the conveyance, in the terms set out in Part IV of the Second Schedule, which covenant shall be deemed to extend to every such person's own acts only.

(5) The aforesaid covenants shall be deemed to be made 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 or each of the persons to whom the conveyance is made, or, where it is made to joint tenants, to each such person jointly.

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(6) Where a conveyance states that by direction of a person another person conveys, then for the purposes of this section the person giving the direction shall be deemed to convey the subject-matter, and covenants on his part shall be implied accordingly.

(7) A covenant implied under this section may be varied or extended by the conveyance and, as so varied or extended, shall operate as far as may be in the same manner and with the same consequences as if such variations or extensions were implied under this section:

Provided that any such variation or extension which wholly removes the personal liability of the covenantor shall be void.

23. (1) In a conveyance by way of lease for valuable consideration there shall be implied the covenants relating to payment of rent, repair to adjoining premises, alterations and additions, injury to walls, assignment and subletting, illegal or immoral user, nuisance or annoyance, and yielding up the premises, in the terms set out in Part I of the Third Schedule. Implied covenants by transferee.

(2) In a conveyance by way of sublease for valuable consideration there shall be implied the further covenants relating to future observance of the head lease and permitting repair under the head lease, in the terms set out in Part II of the Third Schedule.

(3) In a conveyance by way of assignment for valuable consideration of all the land comprised in a lease, there shall be implied the covenants relating to payment of rent, future observance of the head lease, and indemnity, in the terms set out in Part III of the Third Schedule; and where a rent has been apportioned in respect of any land, with the consent of the lessor, the covenants in this subsection shall be implied in the conveyance of that land in the same manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land.

(4) The aforesaid covenants shall be deemed to be made by each transferee, as far as regards the subject-matter or share of subject-matter expressed to be conveyed to him, with each transferor, if more than one.

(5) A covenant implied under this section may be varied or extended by the conveyance and, as so varied or extended, shall operate as far as may be in the same manner and with the same consequences as if such variations or extensions were implied under this section.

24. The benefit of a covenant implied under section 22 or 23 shall be attached to the interest of the implied covenantee, and shall be capable of being enforced by every person in whom that interest or any part thereof is from time to time vested. Persons to take benefit of implied covenant.

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Benefit of
covenants
relating
to land.

25. (1) A covenant relating to an interest in 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 be enforceable by such successors to the same extent as by the covenantee.

(2) For the purposes of subsection (1) in connection with covenants restrictive of the user of land, "successors in title" shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

(3) The benefit of a covenant relating to an interest in land may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Decree.

(4) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

Burden of
covenants
relating
to land.

26. (1) A covenant relating to an interest in land of a covenantor or land 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 shall be enforceable against such successors to the same extent as against the covenantor.

(2) This section extends to a covenant to do some act relating to the land, although the subject-matter may not be in existence when the covenant is made.

(3) For the purposes of this section in connection 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.

Benefit of
covenants
to run with
reversion.

27. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and required to be observed or performed on the part of the lessee, and every condition of re-entry and other condition therein contained, shall be attached to the reversionary interest in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary interest.

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(2) Any such rent, covenant, right of re-entry or provision may be recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(3) When that person becomes entitled by conveyance or otherwise, such rent, covenant, right of re-entry 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 shall not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

(4) This section shall have effect without prejudice to any liability affecting a covenantor or his estate on his death.

28. (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, to the extent that the lessor has power to bind the reversionary interest immediately expectant on the term granted by the lease, be attached to that reversionary interest, or any part thereof, notwithstanding severance of that reversionary interest, and may be taken advantage of and enforced by the person in whom the term is from time to time vested, and to the extent that the lessor has power to bind the person from time to time entitled to that reversionary interest the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Burden of covenants to run with reversion.

(2) This section shall have effect without prejudice to any liability affecting a covenantor or his estate on his death.

29. (1) A right of re-entry or forfeiture under any provision in a lease for a breach of any covenant, condition or agreement in the lease shall not be enforceable, by action or otherwise, until—

Restriction on re-entry and forfeiture.

(a) the lessor serves on the lessee a notice:

- (i) specifying the particular breach complained of;
- (ii) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
- (iii) (except where the breach consists of a non-payment of rent) requiring the lessee to make reasonable compensation in money for the breach; and

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(b) the lessee has knowledge of the fact that such notice has been served;

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and (except where the breach consists of a non-payment of rent) to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a notice has been sent by registered post addressed to a person at his last known postal address in Ghana, then, for the purposes of subsection (1), that person shall be deemed, unless the contrary is proved, to have had knowledge of the fact that the notice had been served as from the time at which the letter would have been delivered in the ordinary course of post.

(3) This section applies notwithstanding any provision to the contrary in the lease.

Relief
against
re-entry
and
forfeiture.

30. (1) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any provision in a lease, or for non-payment of rent, the lessee of the property and also a sublessee of the property comprised in the lease or any part thereof may, either in the lessor's action (if any) or in any action brought by such person for that purpose, apply to the court for relief.

(2) Subject to subsection (1) of section 29, where a lessee applies to the court for relief, the court may grant or refuse relief as it thinks fit having regard to the proceedings and conduct of the parties and to all the other circumstances; and relief when granted may be upon such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any similar breach in the future, as the court in the circumstances of each case thinks fit.

(3) Where a sublessee applies to the court for relief, the court may make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in that sublessee upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise as the court in the circumstances of each case may think fit; but in no case shall any such sublessee be entitled to require a lease to be granted to him for any longer term than he had under his original sublease.

Covenants
to repair.

31. (1) Damages or compensation for a breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease, whether such covenant or agreement is expressed or implied,

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and whether general or specific, shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to that breach.

(2) No damages or compensation shall be recovered for a breach of any such covenant or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the tenancy have been pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement.

32. Where a lessor or the person deriving title under him waives the benefit of any covenant or condition in a lease, such waiver shall be deemed to extend only to a breach of the covenant or condition to which such waiver specifically relates and shall not operate as a general waiver of the benefit of any such covenant or condition, unless a contrary intention appears.

Waiver of
covenant
in a lease.

33. (1) A licence granted to a lessee shall, unless a contrary intention is expressed, extend only—

Effect of
licence
granted to
lessee.

- (a) to any matter specifically authorised to be done or to be omitted to be done, or
- (b) to the specific breach of any provision expressly referred to;

and shall not bar any proceeding for any subsequent breach of the lease.

(2) Notwithstanding any such licence—

- (a) all rights under covenants and powers of re-entry contained in the lease remain in force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and
- (b) the condition or right of entry remains in force in all respects as if the licence had not been granted, except in respect of the particular matter authorised to be done.

34. (1) It shall not be lawful to require the payment of any money for or in respect of a licence or consent to assign, sublet, or part with the possession of, or dispose of, any land or property leased, unless the lease contains an express provision requiring such payment.

No payment
to be exacted
for consent
to assign.

(2) The prohibition imposed by this section shall not preclude the right to require the payment of a reasonable sum in respect of any legal expense incurred in relation to such licence or consent.

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PART IV—MISCELLANEOUS

Production
and safe
custody of
documents.

35. (1) A person in possession or control of documents of title shall not be entitled to retain them when he has conveyed his whole interest in the subject-matter of the conveyance, but shall deliver them at the time of the conveyance to the transferee.

(2) Where a person lawfully retains possession of documents and gives to another a written undertaking for production, delivery of copies or safe custody of those documents, he as long only as he had possession or control thereof and every other person so having possession or control from time to time shall be under an obligation, except for good cause shown,—

(a) to produce the documents or any of them—

(i) at all reasonable times for inspection or comparison with abstracts or copies by the person entitled to request production or by any person authorised by him in writing;

(ii) in any proceedings of a court or Commission of Inquiry, or on any occasion on which production may reasonably 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;

(b) to deliver to the person entitled to request them true copies or extracts, attested or unattested, of or from the documents or any of them;

(c) to keep the documents safe, whole, uncancelled and undefaced.

(3) A written undertaking for production or delivery of copies shall be performed at the written request of the person to whom the undertaking is given, or of any person (other than a lessee at a rent) having or claiming any 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 that undertaking relates.

(4) All costs and expenses of or incidental to the specific performance of any obligation imposed under subsection (2) by a written undertaking for production or delivery of copies shall be paid by the person requesting performance, except where the person requesting performance apart from the undertaking would be entitled to possession thereof.

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(5) A written undertaking for production or delivery of copies 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.

(6) Any person claiming to be entitled to the benefit of a written undertaking for production or delivery of copies may apply to the court for an order directing production of the documents to which it relates, or delivery of copies or extracts, to him or some person on his behalf; and the court may make an order accordingly and give directions respecting the time, place, terms and manner of production or delivery, and make such order as it thinks fit as to costs or any other matter connected with the application.

(7) Any person claiming to be entitled to the benefit of a written undertaking for safe custody of documents may apply to the court to assess damages for any loss or destruction of, or injury to, any of those documents, and the court may direct an inquiry into the amount of damages, and order payment thereof by the person liable, and may make such other order as it thinks fit as to costs or any other matter connected with the application.

(8) A written undertaking for production, delivery of copies or safe custody of documents shall satisfy any liability to give a covenant for production, delivery of copies or extracts, or safe custody of documents, as the case may be.

(9) This section applies only so far as a contrary intention is not expressed in the written undertaking; and the rights conferred by such 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 satisfied by the giving of the undertaking, and shall have effect subject to the terms of the undertaking and to any provision therein.

36. (1) The period of commencement of title whether documentary or otherwise which a purchaser of land may require shall be thirty years.

Statutory
commence-
ment of
title.

(2) An intending assignee of a term of years may require the instrument creating the term, however old.

(3) The intending purchaser of a reversion may require the instrument under which the reversionary interest arises, however old.

(4) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which he might have had notice if he had investigated the title or made inquiries in regard to matters prior to the period of commencement of title ascertained in accordance with subsection (1), (2) or (3), unless he actually makes such investigation or inquiries.

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(5) Under a contract to grant or assign a term exceeding three years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assignee shall be entitled to call for the title to the freehold.

(6) Under a contract to sell and assign a term exceeding three years derived out of a leasehold interest in land, the intended assignee shall have the right to call for the title to the leasehold reversion.

(7) Under a contract to grant or assign a term of three years or less, 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.

(8) Under a contract to sell and assign a term of three years or less, 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.

(9) Where by reason of subsection (4), (7) or (8) 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 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.

(10) Where a lease is made under a power contained in a will, enactment or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title down to an intended assignee, form part of the title, or evidence of the title, to the lease.

(11) This section applies to contracts for exchange in the same manner as to contracts for sale.

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

Other
statutory
conditions
of sale.

37. (1) A purchaser of any interest in land 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 section 36, or stipulated, for the commencement of the title, even though it creates a power subsequently exercised by an instrument abstracted in the abstract given to the purchaser; or

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- (b) require any information or make any requisition, objection or inquiry, with respect to any such deed, will or document, or the title prior to that time, notwithstanding that any such deed, will or other document, or that prior title, is recited, agreed to be produced, or noticed;

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will or other document, forming part of that prior title, are correct and give all the material contents of the deed, will or other document so recited, and that every document so recited was duly executed by all necessary parties.

(2) Subsection (1) shall not deprive a purchaser of the right to require the production or an abstract or copy of—

- (a) any power of attorney under which any abstracted document is executed;
- (b) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document;
- (c) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

(3) Where an interest in land sold is held by lease (other than a sublease), 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 that 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 the actual completion of the purchase.

(4) Where an interest in land sold is held by sublease, the purchaser shall assume, unless the contrary appears, that the sublease and every superior lease was duly granted; and, on production of the receipt for the last payment due for rent under the sublease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the sublease 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.

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(5) Recitals, statements, and descriptions of fact, matters and parties contained in deeds, instruments or statutory declarations, twenty years old at the date of the contract, shall, 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.

(6) The inability of a vendor to give a purchaser a covenant or other undertaking to produce and deliver copies of documents of title shall not be an objection to title if the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

(7) Such undertakings and covenants to produce and for safe custody of documents as the purchaser can and does require shall be given at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

(8) 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.

(9) This section applies to contracts for exchange in the same manner as to contracts for sale.

(10) This section applies subject to any contrary intention expressed in the contract.

(11) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing provisions similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

Supplemental instruments. 38. (1) Any instrument expressed to be supplemental to a previous instrument shall be read and have effect as far as may be as if it contained a full recital of the previous instrument.

(2) This section shall not give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplement instrument.

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39. Unless otherwise provided in a conveyance, any notice required to be given under the conveyance shall be in writing and any notice to the transferee shall be sufficiently served if left addressed to him on the premises conveyed or sent to him by registered post or left at his last known address in Ghana or in the case of a company to its registered office in Ghana and any notice to the transferor shall be sufficiently served if delivered to him personally or sent to him by registered post or left at his last known address in Ghana or in the case of a company to its registered office in Ghana.

Giving of notices.

40. (1) Every conveyance shall be executed in the presence of and attested by at least one witness

Execution of conveyances.

(2) Where an individual executes a conveyance, he shall either sign or place his mark upon it, and sealing shall not be necessary.

(3) Where a company to which the Companies Code, 1963 (Act 179) applies executes a conveyance, that conveyance shall be executed in accordance with the provisions of that Code.

(4) A conveyance shall be deemed, in favour of a purchaser, to have been duly executed by a corporation aggregate, other than a company referred to in subsection (2), if its seal is affixed thereto in the presence of and attested by its secretary or other permanent officer or his deputy, and a member of the board of directors or other governing body of the corporation or otherwise in accordance with the terms of any instrument or enactment establishing or regulating that corporation.

(5) The transferee under a conveyance shall be entitled to have that conveyance delivered to him by the transferor as soon as practicable after execution of the conveyance by the transferor and all persons whose consent or concurrence is required.

41. (1) A receipt for consideration money or securities in the body of a conveyance shall be a sufficient discharge for them to the person paying or delivering them, without any further receipt for them being endorsed on the conveyance.

Receipt in conveyance sufficient.

(2) A receipt for consideration money or other consideration in the body of a conveyance or endorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole thereof.

42. (1) Any conveyance of whatever nature may be described, at its commencement or otherwise, as a conveyance, assignment, lease, sublease, trust instrument, appointment or otherwise according to the nature of the transaction intended to be effected.

Rules for conveyances.

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(2) Every conveyance shall be expressed in clear terms and modern language, and in particular the words "lease", "conveys to", "interest", "land", "all" and "at" may be used in preference to the words "demise", "grants and conveys unto", "estate", "piece or parcel of land", "all and singular" and "situate lying and being at" respectively.

(3) In every conveyance, so far as practicable—

- (a) months shall be written in words without abbreviation and years shall be written in figures;
- (b) the names of the parties to the conveyance shall be written in full without abbreviation followed by their full residential and postal address or, in the case of a body corporate, its registered office or principal place of business;
- (c) where any other conveyance is recited, its registered number, if any, shall be stated;
- (d) sums of money shall be written fully in words without abbreviation, followed by the same amount expressed in figures within brackets.

(4) Every conveyance shall be made upon durable paper.

(5) Failure to observe any of the foregoing provisions of this section shall not invalidate any conveyance or provision of a conveyance.

(6) Where any date or sum of money is expressed both in words and in figures, and there is a discrepancy between the words and the figures, the words shall prevail over the figures unless a contrary intention appears in the conveyance.

Model precedents.

43. Instruments in the form of the model precedents contained in the Fourth Schedule, or in similar form or using expressions to a similar effect, shall, in regard to form and expression, be sufficient.

Damages and penalty for fraudulent concealment.

44. (1) Any person disposing of property or any interest therein for valuable consideration to a purchaser, or the agent of such person, who with intent to defraud conceals from the purchaser any instrument or encumbrance material to the title, or falsifies any such instrument, shall be liable to an action for damages by the purchaser or the person deriving title under him for any loss sustained by reason of the concealment or falsification of the instrument or the encumbrance.

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

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(3) Without prejudice to subsections (1) and (2) of this section, any person disposing of property or any interest therein for valuable consideration to a purchaser, or the agent of such person, who with intent to defraud conceals from the purchaser any instrument or encumbrance material to the title, or falsifies any such instrument, shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand cedis or to imprisonment not exceeding two years or to both.

45. (1) In this Decree, unless the context otherwise requires:

Interpre-
tation.

“assignment” means the transfer of the residue of a term or interest created by lease;

“conveyance” includes any document in writing by which an interest in land is transferred, an oral grant under customary law duly recorded in accordance with this Decree, a lease, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will;

“encumbrance” includes a legal or equitable mortgage, a trust for securing money, a lien, and a charge of a capital or annual sum;

“land” includes land covered by water, any house, building or structure whatsoever, and any interest or right in, to or over land or water;

“lease” includes a sublease or other tenancy;

“purchaser” means a purchaser in good faith for valuable consideration and includes a lessee or other person who for valuable consideration acquires an interest in property; and where the context so requires “purchaser” includes an intending purchaser;

“rent” includes any periodical payment in money or money’s worth, reserved or issued out of or charged upon land.

30— (2) Without prejudice to subsection (1), in sections 29 and

“lease” includes an original or derivative sublease, and an agreement for a lease where the lessee has become entitled to have his lease granted;

“lessee” and “lessor” include an original or derivative sublessee and sublessor, and those deriving title under the lessee or lessor;

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3. Names and addresses of transferees:

- (a)
- (b)
- (c)

4. Names of persons whose consent is required and who have given consent:

- (a)
- (d)
- (c)

5. Consideration given for the transfer:

- (a) Money (state amount).....
- (b) Drink or goods (specify).....
- (c) Other (specify)

6. Extent of the land to which transfer relates (the land should be clearly described so that it can be readily identified):

.....

.....

.....

.....

.....

7. Duration of the interest given to the transferee:

- (a) Permanent
- (b) For a limited time (specify period)

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8. Any other important matters relating to the transaction:

.....
.....
.....
.....

9. Date from which the transfer is to have effect:

.....

The signature/mark of

..... (transferor)

.....
.....
.....

After I had read and explained the contents of the above Record to the transferor, he informed me that he understood it clearly and that it incorporated the essential features of the transaction. He signed/marked it in my presence.

(Signed)
Registrar

Date.....

CERTIFICATE

I, Registrar of Customary
Land Transfers for the Registration District
in the Region of Ghana, hereby certify that
the above record of a transfer of an interest in land under customary law incor-
porates the essential features of the transaction sought to be effected.

.....
Registrar

Dated at this day of , 19.....

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SECOND SCHEDULE (section 22)

IMPLIED COVENANTS BY TRANSFEROR

PART I

Covenants implied in any conveyance for valuable consideration

Right to convey: That notwithstanding anything done, omitted or knowingly suffered by the covenantor or anyone through whom he derives title otherwise than by purchase for value, the covenantor 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, in the manner in which it is expressed to be conveyed.

Quiet enjoyment: That notwithstanding anything done, omitted or knowingly suffered by the covenantor or anyone through whom he derives title otherwise than by purchase for value, the subject-matter expressed to be conveyed shall remain to and be quietly entered upon, received, held, occupied and enjoyed by the covenantee and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without interruption or disturbance by the covenantor or any person conveying by his direction, or any person through whom the covenantor derives title otherwise than by purchase for value, or any person rightfully claiming (not being a person claiming in respect of an interest to which the conveyance is expressly made subject) by, through, under or in trust for any of the foregoing persons.

Freedom from encumbrances: That the subject-matter expressed to be conveyed is freed and discharged from or otherwise sufficiently indemnified by the covenantor against all such interests, encumbrances, claims and demands (other than those to which the conveyance is expressly made subject) as have been or shall at any time be made, caused or suffered by the covenantor or any person conveying by his direction, or any person through whom the covenantor derives title (otherwise than by purchase for value) or any person rightfully claiming by, through, under or in trust for any of the foregoing persons.

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**Further
assurance:**

That the covenantor and every person conveying by his direction, and every person through whom the covenantor derives title otherwise than by purchase for value, and every person rightfully claiming (not being a person claiming in respect of an interest to which the conveyance is expressly made subject) by, through, under or in trust for any of the foregoing persons, will from time to time and at all times, on the request and at the cost of any covenantee 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 conveyance to the covenantee and those deriving title under him in the manner in which it is expressed to be conveyed, as he or they or any of them may reasonably require.

PART II

*Further covenants implied in an assignment or sublease for valuable consideration***Validity
of head
lease:**

That notwithstanding anything done, omitted or knowingly suffered by the covenantor or anyone through whom he derives title otherwise than by purchase for value, the head lease is at the time of conveyance a good, valid and effectual lease of the property conveyed, and is in full force, unforfeited and unsurrendered, and has not become void or voidable.

**Past
observance
of head
lease:**

That notwithstanding anything done, omitted or knowingly suffered by the covenantor or anyone through whom he derives title otherwise than by purchase for value—

- (a) all rent payable under the head lease by the lessee and the persons deriving title under him has been paid up to the time of conveyance;
- (b) all the covenants, conditions and agreements contained in the head lease and to be observed and performed by the lessee and the persons deriving title under him have been observed and performed up to the time of conveyance.

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PART III

Further covenants implied in a sublease for valuable consideration

Future observance of head lease:

During the term of the sublease and any renewal thereof to pay the rent reserved by the head lease and to perform (so far as the covenantee is not liable for such performance under the covenants on his part implied or otherwise contained in this sublease) all the lessee's covenants contained in the head lease.

Production of title deeds and delivery of copies:

To produce the head lease and to deliver copies thereof, which covenant shall be deemed to be a written undertaking in accordance with section 35 (2) of the Conveyancing Decree, 1973.

PART IV

Implied covenant by person conveying as trustee 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 the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or encumbered in title, interest or otherwise, or whereby the person who so conveys is in any way hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to conveyed.

THIRD SCHEDULE (section 23)

IMPLIED COVENANTS BY TRANSFEREE

PART I

Covenants implied in a lease for valuable consideration

Payment of rent:

To pay the reserved rent at the times and in the manner specified in the lease.

Repair to adjoining premises:

To permit the covenantee and his agents with all necessary workmen and appliances at all reasonable times after having given written notice to the covenantor to enter upon the premises leased to execute repairs or alterations on any adjoining premises now or hereafter belonging to the covenantee who shall make good all damage occasioned to the covenantor by such entry.

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*Alterations
and additions:*

Not without the previous written consent of the covenantee to erect any new buildings on the premises leased or make any alterations or additions to the premises leased.

*Injury to
walls:*

Not without the previous written consent of the covenantee to cut or injure any of the walls or timbers of the premises leased or permit such cutting or injury to be done.

*Assignment
and subletting:*

Not without the previous written consent of the covenantee to assign, sublet or part with the possession of the premises leased or any part thereof, such consent however not to be unreasonably withheld in the case of a respectable and responsible person.

*Illegal or
immoral user:*

Not to use or permit the premises leased or any part thereof to be used for any illegal or immoral purpose.

*Nuisance or
annoyance:*

Not to do or permit anything to be done in or upon the premises leased or any part thereof which may become a nuisance or annoyance or cause damage to the covenantee, his tenants, or the occupiers of adjacent or neighbouring premises.

*Yielding up
the premises:*

At the determination of the term of the lease to yield up to the covenantee the premises leased and all additions thereto and all fittings and covenantee's fixtures therein in good and tenantable repair.

PART II

*Further covenants implied in a sublease for valuable consideration**Future
observance
of head
lease:*

During the term of the sublease and any renewal thereof to perform and observe the covenants on the lessee's part contained in the head lease (insofar as they are applicable to the premises subleased) except only the covenant for payment of the rent reserved by the head lease and any covenant for the performance of which the covenantee is liable under the covenants on his part implied or otherwise contained in this sublease, and to keep the covenantee indemnified against all claims, damages, costs and expenses in any way relating thereto, insofar as they relate to the premises subleased.

*Permitting
repair under
head lease:*

To permit the covenantee and his agents with all necessary workmen and appliances at all reasonable times after giving written notice to the covenantor to enter upon the premises subleased for any purpose which in the opinion of the covenantee is necessary to enable him to comply with the covenants on the lessee's part contained in the head lease so far as such covenants are not to be performed by the covenantor.

CONVEYANCING DECREE, 1973

3. The vendor acknowledges the receipt from the purchaser of ten thousand cedis (₵10,000) the purchase price of the property.

The property consists of a house and land bounded (*description of boundaries*) and is indicated by the colour red on the attached plan which shows the relevant measurements.

Signed by KWAME ADU

in the presence of:

Signed by JOHN MENSAH

in the presence of:

2—PRECEDENT OF CONVEYANCE OF PROPERTY AS A GIFT

THIS CONVEYANCE is made the first day of January, 1975, between the donor JOHN QUARTEY of 5, Black Star Square, Accra and the donee MABEL PETERSON of 10, St. George's Square, Winneba in the Central Region of Ghana.

1. By a conveyance made the first day of August, 1970 between Albert Ankrah of Accra and the donor (registered number 6543/70) the property known as 10, Sahara Street, Accra (hereinafter called "the property") was conveyed to the donor for ever.

2. The donor as owner conveys the property to the donee for ever as a gift.

3. The property consists of a house and land bounded (*description of boundaries*) and is indicated by the colour red on the attached plan which shows the relevant measurements.

Signed by JOHN QUARTEY

in the presence of:

3—PRECEDENT OF A LEASE

THIS LEASE is made the first day of January, 1975 between the lessor YAKUBU DAGOMBA of House A/6543, P.O. Box 18250, Tamale in the Northern Region of Ghana and the lessee AKOSUA OKAI of 5, Market Road, Accra in the Eastern Region of Ghana.

1. The lessor leases to the lessee the property known as Flat 2, Roman Road, Accra (hereinafter called "the property") for a term of 20 years from the first day of February, 1975.

2. The lessee shall pay to the lessor a yearly rent of five hundred cedis (₵500) payable half-yearly in advance on 1st February and 1st August every year.

CONVEYANCING DECREE, 1973

3. The property consists of (*here describe the property by reference to an attached plan*).

4. The lessee shall have the following rights:—

(*Here set out rights to be enjoyed by the lessee either concurrently with or to the exclusion of the lessor, e.g. rights of way, etc.*)

5. The lessor shall have the following rights to the exclusion of the lessee:—

(*Here set out rights of way, etc. to be enjoyed by the lessor to the exclusion of the lessee.*)

6. The lessee covenants with the lessor as follows:—

(*Here set out any express covenants, and any variation, extension or exclusion of the implied statutory covenants, that may be required.*)

7. The lessor covenants with the lessee as follows:—

(*Here set out any express covenants, and any permissible variation or extension of the implied statutory covenants, that may be required.*)

8. (*Here set out any further provisions required, e.g. right of re-entry for breach, option to renew.*)

Signed by YAKUBU DAGOMBA

in the presence of:

THE MARK

of AKOSUA OKAI:

After I had read and explained the contents of the above conveyance to Akosua Okai she informed me that she understood the document clearly and she signed the conveyance by making her mark in my presence.

.....
Witness

4—PRECEDENT OF A SUBLEASE

THIS SUBLEASE is made the first day of January, 1975 between the tessor KOJO MENSAH of Palm Grove, P.O. Box 18250, Elmina in the Central Region of Ghana and the lessee KWASI AMOAH of 18, Fifth Avenue, P.O. Box 18250, Sunyani in the Brong-Ahafo Region of Ghana.

1. By a head lease made the first day of June, 1965 between Albert Ankrah of Accra and the lessor (registered number 6543/65) the property at Church Street, Elmina (hereinafter called "the property") was leased to the lessor for a term of 50 years from the first day of January, 1966.

CONVEYANCING DECREE, 1973

2. The lessor sublets the property to the lessee for a term of 20 years from the first day of January, 1975.

3. The lessee shall pay to the lessor a yearly rent of two hundred cedis (¢200) payable quarterly in advance on 1st January, 1st April, 1st July, and 1st October every year.

4. The lessor acknowledges the receipt from the lessee of fifty cedis (¢50) being rent paid by the lessee up to and including 31st March, 1975.

5. The property consists of (*Here describe the property by reference to an attached plan*).

6.-10. (*Here set out lessee's rights, lessor's rights, lessee's covenants, lessor's covenants, and any further provisions, as in clauses 4 to 8 of the foregoing model precedent of a lease.*)

Signed by KOJO MENSAH

in the presence of:

Signed by KWASI AMOAH

in the presence of:

5—PRECEDENT OF AN ASSIGNMENT

THIS ASSIGNMENT is made the first day of January, 1975 between the vendor QUICK PROFITS LIMITED a company incorporated under the laws of Ghana whose registered office is at 5 Cornmill Road, Takoradi in the Western Region of Ghana and the purchaser KOFI DARKO of 12, Castle Road, Elmina in the Central Region of Ghana.

1. By a lease (hereinafter called "the lease") made the first day of June, 1969 between Tim Garrard of Accra and the vendor (registered number 5643/69) the property known as the Castle, Elmina (hereinafter called "the property") was leased to the vendor for a term of 50 years from the first day of June, 1969.

2. The vendor assigns to the purchaser his leasehold interest in the property in consideration of ten thousand cedis (¢10,000) paid by the purchaser to the vendor.

3. The vendor acknowledges the receipt from the purchaser of ten thousand cedis (¢10,000) the purchase price of the property.

4. The property consists of a building and land bounded (*description of boundaries*) and is indicated by the colour red on the attached plan which shows the relevant measurements.

CONVEYANCING DECREE, 1973

5. The property is subject to a yearly rent of five hundred cedis (Q500) made payable by the lease and to the covenants and restrictions contained in the lease.

THE COMMON SEAL OF QUICK PROFITS LIMITED was affixed to this conveyance in the presence of:—

.....
Director

.....
Secretary

Signed by KOFI DARKO

in the presence of—

6—EXPLANATION OF IMPLIED COVENANTS

1. In the precedent of conveyance on sale of freehold, being for valuable consideration, there are implied the vendor's covenants for right to convey, quiet enjoyment, freedom from encumbrances and further assurance, by virtue of section 22 (1).

2. In the case of conveyance of property as a gift, no covenants are implied.

3. In the precedent of a lease, being for valuable consideration, there are implied—

(a) the lessor's covenants for right to convey, quiet enjoyment, freedom from encumbrances and further assurance, by virtue of section 22 (1);

(b) the lessee's covenants relating to payment of rent, repair to adjoining premises, alterations and additions, injury to walls, assignment and subletting, illegal or immoral user, nuisance or annoyance, and yielding up the premises, by virtue of section 23 (1).

4. In the precedent of a sublease, being for valuable consideration, there are implied—

(a) the lessor's covenants relating to right to convey, quiet enjoyment, freedom from encumbrances, further assurance, validity of the head lease, past observance of the head lease, future observance of the head lease, and production of title deeds and delivery of copies, by virtue of sections 22 (1), 22 (2) and 22 (3);

CONVEYANCING DECREE, 1973

- (b) the lessee's covenants relating to payment of rent, repair to adjoining premises, alterations and additions, injury to walls, assignment and subletting, illegal or immoral user, nuisance or annoyance, yielding up the premises, future observance of the head lease, and permitting repair under the head lease, by virtue of sections 23 (1) and 23 (2).

5. In the precedent of an assignment, being for valuable consideration, there are implied:—

- (a) the vendor's covenants relating to right to convey, quiet enjoyment, freedom from encumbrances, further assurance, validity of the head lease, and past observance of the head lease, by virtue of sections 22 (1) and 22 (2);
- (b) the purchaser's covenants relating to payment of rent, future observance of the head lease, and indemnity, by virtue of section 23 (3).

Made this 1st day of May, 1973.

COLONEL I. K. ACHEAMPONG
Chairman of the National Redemption Council

Date of Gazette notification: 4th May, 1973.