



NORFOLK ISLAND

LIMITATION OF ACTIONS (REAL PROPERTY) ACT 1988

Act No 28 of 1988

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NORFOLK ISLAND

LIMITATION OF ACTIONS (REAL PROPERTY) ACT 1988

Act No 28 of 1988

An Act relating to the limitation of actions for
the recovery of land

[Assented to 15 December 1988]

BE IT ENACTED by the Legislative Assembly of Norfolk
Island as follows -

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Limitation of Actions
(Real Property) Act 1988.

Commencement

2. This Act shall come into operation on a date fixed
by the Administrator by notice published in the Gazette.

Repeals

3. An Imperial Act specified in an item in the
Schedule is, to the extent expressed in that item,
repealed so far as it applies to Norfolk Island.

Interpretation

4. (1) In this Act, unless the contrary intention
appears -

"action" includes any proceeding in a Court;

"Crown" means the Crown in right of Norfolk Island,
the Commonwealth or a State or Territory, and
includes the Administration;

"land" includes -

- (a) a corporeal hereditament or rentcharge or an estate or interest therein whether freehold or leasehold and whether at law or in equity; and
- (b) where land (including an incorporeal hereditament) is held on trust for sale - the interest pending sale of a person having an interest in the proceeds of the sale,

but does not include a profit a prendre or, subject to paragraphs (a) and (b), other incorporeal hereditaments;

"mortgagee" includes a person claiming a mortgage through an original mortgagee;

"mortgagor" includes a person claiming land subject to a mortgage through an original mortgagor;

"rent" includes a rentcharge or rent service;

"rentcharge" means an annuity or periodical sum of money charged on or payable out of land, other than a rent service or interest under a mortgage of land;

"trust for sale", in relation to land, means an immediate binding trust for sale whether or not exercisable at the request of, or with the consent of, a person and with or without a power at discretion to postpone the sale.

(2) In this Act, a reference to a cause of action to recover land includes a reference to a right to enter into possession of the land.

(3) For the purposes of this Act, a person shall be taken to claim through another person if the person became entitled by, through or under, or by the act of, the other person to the right claimed, but a person entitled to an estate or interest in land by virtue of a power of appointment shall not be taken to claim through the appointor.

(4) In this Act, in its application to a rentcharge -

- (a) a reference to the possession of land is a reference to the receipt of the rent; and
- (b) a reference to the date of dispossession or discontinuance of possession of land is a reference to the date when rent first becomes overdue.

Application of Act to counterclaims

5. Where in this Act a period of time is limited for the bringing of an action, that period of limitation also applies to the making of a counterclaim and, for the purpose of determining whether or not a period of limitation has expired, the date of the filing of a pleading asserting the counterclaim is deemed to be the date of the bringing of an action based on the matter of the counterclaim.

Act not to affect equitable doctrines

6. Nothing in this Act affects the rules of equity about the refusal of relief on the grounds of laches, acquiescence or otherwise.

Transfers, assignments, etc, not to affect periods of limitation

7. Subject to this Act, where a period of limitation fixed under this Act in respect of a right to bring an action begins to run and by virtue of -

- (a) an assignment, transfer or other act of the person first having the right to bring the action; or
- (b) the transmission of the right or of an estate or interest in property on the death of the person,

another person succeeds to the right, the period of limitation is not terminated, extended or affected by the assignment, transfer, act or transmission, but continues to run.

PART II - PERIODS OF LIMITATION

Period of limitation for action by Crown to recover land
8. (1) An action to recover land is not maintainable by the Crown after the expiration of a period of 30 years commencing on the date on which the Crown first became entitled to bring the action.

(2) Where the Crown is entitled to bring an action to recover land, an action to recover the land is not maintainable by a person claiming through the Crown after the expiration of -

- (a) a period of 30 years commencing on the date on which the Crown first became entitled to bring the action; or
- (b) a period of 12 years commencing on the date on which the person first became entitled to bring the action,

whichever period first expires.

(3) The periods of limitation specified in this section are not affected by section 5 of the Suits by and against the Administration Ordinance 1979.

Period of limitation where person claims other than through the Crown

9. An action to recover land is not maintainable by a person other than the Crown after the expiration of a period of 12 years commencing on the date on which the person first became entitled to bring the action.

General provision as to commencement of period of limitation

10. Where a person or another person through whom the first-mentioned person claims -

- (a) has been in possession of land; and
- (b) while entitled to the possession of the land is dispossessed or discontinues the person's possession,

the first-mentioned person first becomes entitled to bring an action for recovery of the land on the date of the dispossession or discontinuance.

Provision as to commencement where land passes on death

11. In the case of an estate or interest in land -

- (a) that passed as an estate or interest in possession under the will of, or on the intestacy of, a deceased person;
- (b) of which, or which was derived from an estate or interest of which, the deceased person was in possession at the date of the person's death; and
- (c) of which no person after the date of the death of the deceased person has been in possession under or by virtue of the will or the intestacy,

the right to bring an action to recover the land first arises on the date of the death of the deceased person.

Provision as to commencement where estate or interest is transferred

12. Where -

- (a) an estate or interest in land is granted or transferred as an estate or interest in possession;
- (b) the person granting or transferring the estate or interest was in possession of the land by virtue of that estate or interest or an estate or interest from which it was derived; and
- (c) no person has been in possession of the land, after the date on which the grant or transfer took effect, by virtue of the estate or interest granted or transferred,

a right of action to recover the land first arises on the date on which the grant or transfer took effect.

Provision as to commencement - future interests

13. Subject to section 21, where an estate or interest in land -

- (a) is an estate or interest in reversion or remainder or any other future estate or interest; and

- (b) no person is in possession of the land by virtue of the estate or interest at any time after it becomes a present estate or interest,

a right of action to recover the land first arises on the date on which the estate or interest becomes a present estate or interest.

Forfeiture and breach of condition

14. (1) Subject to subsection (2), a cause of action to recover land by virtue of a forfeiture or breach of condition first arises on the date on which the person who has the benefit of the right of forfeiture or condition, or a person through whom the person claims, first discovers, or may with reasonable diligence have discovered, the facts giving the right of forfeiture or showing that the condition is broken.

(2) Subject to section 15, where a cause of action referred to in subsection (1) arises in favour of a person entitled to an estate in reversion or remainder or any other future estate or interest, and neither the person nor a person claiming through the person recovers the land by virtue of the forfeiture or breach of condition, a fresh cause of action arises on the date on which that estate or interest becomes a present interest, in favour of the person entitled on that date to that estate or interest.

Where rent of not less than 1 fee unit a year is wrongly paid

15. Where -

- (a) a lessee is in possession of land under a lease for a term reserving rent amounting to a yearly sum equal to not less than 1 fee unit;
- (b) rent is received by a person wrongfully claiming to be entitled to the land subject to the lease; and
- (c) no rent is afterwards received by the lessor and in consequence the term becomes liable to determination by virtue of a forfeiture or breach of condition,

the lessor's right to bring an action to recover the land from the lessee or the person wrongfully claiming to be entitled to the land arises on the date on which the term first becomes liable to determination by reason of the fact that the lessor has not received rent.

Land subject to a periodic lease or tenancy at will

16. (1) Where land is subject to a periodic lease, the cause of action of a person entitled to the land to recover the land from the lessee, or from a person claiming through the lessee, arises -

(a) on the date -

(i) of expiration of the first period of the lease; or

(ii) on which the rent first becomes overdue,

whichever is the later date; or

(b) on the date of the making of a demand of possession or on the date on which a cause of action to recover the land by virtue of a forfeiture or breach of condition first arises, where either date is earlier than the date that would otherwise be applicable under paragraph (a).

(2) Where land is subject to a tenancy at will, the cause of action of a person entitled to the land to recover the land from the tenant, or from a person claiming through the tenant, arises -

(a) on the date -

(i) of expiration of the first year of the tenancy; or

(ii) on which the rent first becomes overdue,

whichever is the later date; or

(b) on the date of the making of a demand of possession or on the date on which a cause of action to recover the land by virtue of a forfeiture or breach of condition first

arises, where either date is earlier than the date that would otherwise be applicable under paragraph (a).

Application to equitable estates and interests

17. (1) This Act applies to an action to enforce an equitable estate or interest in land as if it were an action to recover land by virtue of a legal estate or interest.

(2) For the purposes of this Act, but without limiting the generality of subsection (1), a cause of action to enforce an equitable estate or interest in land accrues in the same manner and circumstances and on the same date as a cause of action to recover the land would accrue if the estate or interest were a legal estate or interest.

Application in the case of settled land

18. (1) Where land is held on trust under a settlement, while there is in existence, or there may come into existence, a beneficiary whose right to bring an action to enforce the beneficiary's estate or interest in the land under the settlement has not arisen or has not been barred by this Act, nothing in this Act bars the trustee under the settlement from bringing an action to recover the land or to enforce the estate or interest of the beneficiary, so far as the bringing of the action is necessary to support or give effect to the estate or interest of the beneficiary.

(2) Subject to subsection (3), where land is held on trust under a settlement and a person entitled to a present estate or interest in the land under the settlement is in possession of the land, no right to bring an action to recover the land or to enforce an estate or interest under the settlement arises in the trustee or in a person entitled to an estate or interest in the land under the settlement against the person in possession of the land while the latter person is entitled to the first-mentioned estate or interest and is in possession of the land.

(3) Subsection (2) does not apply to a right to bring an action against -

- (a) a person in possession who is solely and absolutely entitled under the settlement to the land; or

- (b) 2 or more persons in possession who are absolutely entitled under the settlement to the land as joint tenants or tenants in common.

(4) For the purposes, and notwithstanding any other provision, of this Act, a cause of action by a trustee, a beneficiary or a person claiming through a beneficiary under a settlement, to recover land that is trust property under the settlement, arises on the date on which the trustee, beneficiary or person claiming through a beneficiary, as the case requires, first discovers, or may with reasonable diligence have first discovered, facts giving rise to the cause of action.

(5) In this section, "settlement" means a disposition, inter vivos or by will, of property on trust where no person is, immediately after the disposition takes effect, beneficially entitled to the trust property absolutely.

Adverse possession

19. (1) Where -

- (a) a cause of action would, but for this section, arise under this Act in relation to land on a date; and
- (b) the land is not in adverse possession on that date,

the cause of action arises on the date on which the land is first in adverse possession.

(2) Subject to subsection (3), where a cause of action arises to recover land from a person in adverse possession of the land, and the land is afterwards in the adverse possession of a second person, whether the second person claims through the first person or not, the cause of action to recover the land from the second person is deemed to have arisen on the same date as the cause of action arose in relation to the adverse possession of the first person.

(3) Where a cause of action to recover land arises and afterwards, but before the cause of action is barred by this Act, the land ceases to be in adverse possession, for the purposes of this Act -

- (a) the former adverse possession has no effect; and
 - (b) a fresh cause of action arises on the date when the land is first again in adverse possession.
- (4) For the purposes of this section -
- (a) "adverse possession" is possession by a person in whose favour the limitation period can run;
 - (b) possession of land subject to a rentcharge by a person who does not pay the rent is possession by the person of the rentcharge; and
 - (c) in a case to which section 15 applies, receipt of the rent by a person wrongfully claiming to be entitled to the land subject to the lease is, as against the lessor, adverse possession of the land.

Formal entry and claim

20. For the purposes of this Act -

- (a) a formal entry on land does not of itself establish possession of the land; and
- (b) a claim posted or notified on or near land does not -
 - (i) preserve a cause of action to recover land; or
 - (ii) constitute an act of possession of the land.

Extinguishment of future estates

21. (1) Where -

- (a) the title of a person to land for an estate or interest in possession is extinguished by this Act;
- (b) at any time while the person has had that title the person has been entitled to the same land for a future estate or interest; and

- (c) the land is not, before that future estate or interest becomes a present estate or interest, recovered by virtue of an intermediate estate or interest,

that future estate or interest is, on the date on which it becomes a present estate or interest, extinguished.

(2) For the purposes of this section, a person contingently entitled to an estate or interest in reversion or remainder or any other future estate or interest, or having such an estate or interest vested in the person subject to divesting in any event, is entitled to the estate or interest.

PART III - MORTGAGES

Redemption

22. An action to redeem mortgaged land in the possession of a person as, or claiming through, a mortgagee is not maintainable against the person after the expiration of a period of 12 years commencing on the date on which the person, or a person through whom the person claims -

- (a) last goes into possession of the mortgaged land; or
- (b) last receives a payment or a credit of principal money or interest secured by the mortgage,

whichever is the later date.

Period of limitation for actions by mortgagee

23. (1) An action -

- (a) to recover principal money or interest secured by a mortgage;
- (b) to recover possession of mortgaged land from a mortgagor; or
- (c) of foreclosure,

is not maintainable by a mortgagee after the expiration of a period of 12 years commencing on the date on which the mortgagee first became entitled to bring the action.

(2) Paragraph (1)(a) applies to a cause of action -

- (a) to recover principal money from a person, whether as principal, surety or otherwise; or
- (b) to recover principal money by way of -
 - (i) the appointment of a receiver of mortgaged land or of the income or profits of mortgaged land;
 - (ii) the sale, lease or other disposition or realisation of mortgaged land; or
 - (iii) any other remedy affecting mortgaged land.

Action for interest

24. (1) An action to recover interest secured by a mortgage is not maintainable by a mortgagee under the mortgage if brought after the expiration of -

- (a) a period of 6 years commencing on -
 - (i) the date on which the cause of action first arises; or
 - (ii) where a mortgagee under a prior mortgage is, on the date referred to in subparagraph (i), in possession of all or any of the property comprised in the mortgage securing the interest, and after that date discontinues possession - the date of discontinuance,

whichever is the later; or

- (b) the limitation period under this Act for an action between the same parties on a cause of action to recover the principal money bearing the interest,

whichever period expires first.

(2) For the purposes of subsection (1), a cause of action to recover interest secured by a mortgage includes -

- (a) a cause of action to recover the interest from a person, whether as principal, surety or otherwise; and
- (b) a cause of action to recover the interest by way of -
 - (i) the appointment of a receiver of mortgaged land or of the income or profits of mortgaged land;
 - (ii) the sale, lease or other disposition or realisation of mortgaged land; or
 - (iii) any other remedy affecting mortgaged land.

Adjustment of interest

25. (1) In an action in respect of a mortgage of land, including an action for redemption or in respect of the proceeds of sale or other realisation of land subject to a mortgage -

- (a) a mortgagor shall not, as against a mortgagee, be required to pay or bear interest which could not, by reason of a period of limitation fixed under this Act, be recovered in an action by the mortgagee against that mortgagor brought on the date on which the first-mentioned action is brought; and
 - (b) in adjusting the rights of a mortgagor and a mortgagee the mortgagee is not entitled to interest referred to in paragraph (a).
- (2) Where -
- (a) interest becomes due under a mortgage;
 - (b) a mortgagee -
 - (i) holds money on the date on which the interest becomes due; or

- (ii) after that date but before the expiration of the limitation period fixed under this Act for an action to recover the interest by that mortgagee against the mortgagor, receives money; and
- (c) before or after the bringing of an action to which subsection (1) applies, the mortgagee or a person claiming through the mortgagee applies that money in or towards satisfaction of that interest,

subsection (1) does not, as against the person so applying the money or a person claiming through the person, apply to the interest to the extent to which it is so satisfied.

Other remedies not to be used to recover money irrecoverable by action as mortgagee

26. A mortgagee shall not, after the last date on which the mortgagee may bring an action to which section 23 applies against a person to recover principal money or interest secured by the mortgage, exercise against that person or a person claiming through the person a power -

- (a) of sale, lease or other disposition or realisation of the mortgaged land;
- (b) to appoint a receiver; or
- (c) otherwise affecting the mortgaged land.

PART IV - MISCELLANEOUS

Confirmation of a cause of action

27. (1) Where -

- (a) a cause of action lies against a person, either alone or with another person;
- (b) the limitation period fixed under this Act in respect of the cause of action has commenced but not expired; and
- (c) the person confirms the cause of action,

the time during which the period runs before the date of the confirmation does not count as part of the limitation period for an action brought by a person having the benefit of the confirmation against the person bound by the confirmation.

(2) For the purposes of this section, a person shall not be considered to have confirmed a cause of action unless the person -

- (a) acknowledges, to a person having (either alone or with another person) the cause of action, the estate or interest of the person to whom the acknowledgement is made; or
- (b) makes, to a person having (either alone or with another person) the cause of action, a payment in respect of the estate or interest of the person to whom the payment is made.

(3) For the purposes of this section, a confirmation of a cause of action must be in writing and signed by the maker.

(4) For the purposes of this section, a confirmation of a cause of action -

- (a) to recover interest on principal money operates also as a confirmation of a cause of action to recover the principal money;
- (b) to recover income falling due at any time operates also as a confirmation of a cause of action to recover income falling due at a later time on the same account; and
- (c) to recover principal money or interest secured by a mortgage operates also as a confirmation of the mortgagee's cause of action of foreclosure or recovery of possession of the mortgaged land.

(5) For the purposes of this section, a person does not have the benefit of a confirmation of a cause of action unless the confirmation is made to the person or another person through whom the person claims.

(6) For the purposes of this section, a person, other than the person confirming the cause of action, is not bound by a confirmation of a cause of action unless -

- (a) the person is, in relation to the cause of action, a successor of the person making the confirmation under a devolution that occurs after the making of the confirmation;
- (b) where the person confirming the cause of action was at the time of confirmation (either alone or with another person) a trustee, including a trustee of a will or of the estate of a deceased person - the first - mentioned person is at the time of confirmation, or afterwards becomes, a trustee of the same trust; or
- (c) the person is bound under subsection (7).

(7) Where a person confirming a cause of action is, on the date of the confirmation, in possession of the land to which the cause of action relates, the confirmation binds a person in possession of that land during the ensuing part of the limitation period, other than a person who is, or claims through, a person who was, on the date of confirmation, in possession of the land and was not the person confirming the cause of action.

Persons under a disability

28. For the purposes of this Act, a person is under a disability if -

- (a) the person has not attained the age of 18 years;
- (b) the person is found, under the Lunacy Act, 1898 of the State of New South Wales in its application to Norfolk Island, to be incapable of managing the person's affairs; or
- (c) the person is incapable of, or substantially impeded in, managing the person's affairs because of -
 - (i) disease or impairment of the person's physical or mental condition;
 - (ii) war or warlike operations; or

- (iii) lawful or unlawful restraint of the person.

Time not to run while a person is under a disability

29. (1) Subject to subsection (2) and section 30, where -

- (a) a person has a cause of action;
- (b) the limitation period fixed by this Act for the cause of action has commenced to run; and
- (c) the person is under a disability,

the running of the limitation period is suspended for the duration of the disability and if, but for this section, the limitation period would expire before the lapse of 3 years after -

- (d) the date on which the person last (before the expiration of the limitation period) ceases to be under a disability; or
- (e) the date of the person's death,

whichever is the earlier, the limitation period is extended so as to expire 3 years after the earlier of those dates.

(2) This section applies whenever a person is under a disability, whether or not the person is under the same or another disability at any time during the limitation period.

Notice to proceed in case of person incapable of managing his or her affairs

30. (1) Where, for the purposes of this Act -

- (a) a person is under a disability referred to in paragraph 28(b); and
- (b) the Master in Lunacy or a committee of that person's estate is entitled, under section 126 or 150 of the Lunacy Act, 1898 of the State of New South Wales in its application to Norfolk Island, to bring an action on the person's behalf,

a person against whom the person under a disability is entitled to bring an action, being an action to which this Act but for section 29 would apply, may serve on the Master in Lunacy or the committee, as the case may be, a notice to proceed with the action.

(2) A notice under subsection (1) to proceed with an action shall specify the facts constituting the cause of action.

(3) Where a notice to proceed with an action is served under subsection (1), section 29 ceases to apply and the period of limitation applicable under this Act to that action shall, on the date of the service of the notice, commence or recommence to run.

Extinction of rights at end of period of limitation

31. At the expiration of the period limited by this Act within which a person may bring an action to recover land, the right and title of that person to the land is extinguished.

Allegation of extinction of rights

32. Where in an action to recover land a question arises as to the extinction under this Act of a person's right or title, a party to the proceedings shall not have the benefit of the extinction unless the person pleads or otherwise expressly claims in the proceedings that the right or title has been so extinguished.

Ultimate bar

33. Notwithstanding any provision of this Act, an action to which this Act applies is not maintainable by a person after the expiration of a period of 30 years commencing on the date on which that person, or a person through whom the person claims, first became entitled to bring the action.

Transitional

34. (1) Nothing in this Act -

- (a) enables an action to be commenced or maintained if that action was barred immediately prior to the commencement of this Act by an Imperial Act repealed by this Act; or
- (b) prevents the commencement and maintenance of an action within the relevant time on a cause of action which accrued before the commencement of this Act.

(2) For the purposes of subsection (1), the relevant time is the shorter of -

- (a) the time allowed by an Imperial Act repealed by this Act; or
- (b) the time that would have been allowed by this Act if the cause of action had accrued on the date of commencement of this Act.

SCHEDULE

Section 3

Repeal of Imperial Acts

Column 1 Item	Column 2 Year and Chapter	Column 3 Subject	Column 4 Extent of Repeal
1	4 Hen. 7, c. 24	Statute of Fines, 1488	Whole Act
2	32 Hen. 8, c. 2	Statute of Limitation on Real Actions, 1540	Whole Act
3	21 Jac. 1, c. 16	Limitation Act, 1623	Sections 1 and 2
4	9 Geo. 3, c. 16	Crown Suits Act, 1769	Whole Act

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