

Property Law Amendment Bill

(Divided from the Judicature Modernisation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Judicature Modernisation Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Senior Courts Bill comprising clauses 1 and 2, Part 1, and Schedules 1A to 4
- District Court Bill comprising Part 2 and Schedules 5 to 7
- Judicial Review Procedure Bill comprising Part 3 and Schedule 8
- Interest on Money Claims Bill comprising Part 4 and Schedules 9AAA, 9AA, and 9
- Electronic Courts and Tribunals Bill comprising Part 5
- Arbitration Amendment Bill comprising subpart 1 of Part 6
- Bills of Exchange Amendment Bill comprising subpart 2 of Part 6
- Building Societies Amendment Bill comprising subpart 3 of Part 6
- Children, Young Persons, and Their Families Amendment Bill comprising subpart 4 of Part 6
- Companies Amendment Bill (No 2) comprising subpart 5 of Part 6 and Schedule 10
- Contractual Remedies Amendment Bill comprising subpart 6 of Part 6
- Copyright Amendment Bill (No 2) comprising subpart 7 of Part 6
- Courts (Remote Participation) Amendment Bill comprising subpart 8 of Part 6
- Criminal Procedure Amendment Bill comprising subpart 9 of Part 6
- Employment Relations Amendment Bill (No 4) comprising subpart 10 of Part 6
- Family Courts Amendment Bill comprising subpart 11 of Part 6

- Insolvency Amendment Bill comprising subpart 12 of Part 6
- Local Government (Rating) Amendment Bill comprising subpart 13 of Part 6
- this Bill comprising subpart 14 of Part 6
- Remuneration Authority Amendment Bill (No 2) comprising subpart 14A of Part 6
- Resource Management Amendment Bill comprising subpart 15 of Part 6
- Te Ture Whenua Maori Amendment Bill comprising subpart 16 of Part 6
- Trans-Tasman Proceedings Amendment Bill comprising subpart 17 of Part 6

Property Law Amendment Bill

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

Hon Amy Adams

Property Law Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Property Law Amendment Act **2016**.

2 Commencement

This Act comes into force on **1 March 2017**.

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555 Principal Act

This **Act** amends the Property Law Act 2007 (the **principal Act**).

556 New section 27A inserted (Writing required for discharge of debt by acceptance of part in satisfaction)

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After section 27, insert:

27A Writing required for discharge of debt by acceptance of part in satisfaction

(1) An acknowledgement in writing by a creditor, or by any person authorised by the creditor in writing, of the receipt of a part of the creditor's debt in satisfaction of the whole debt operates as a discharge of the debt.

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(2) This section applies despite anything to the contrary in any rule of law.

Compare: 1908 No 89 s 92

557 New subpart 5A of Part 2 inserted

After section 53, insert:

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Subpart 5A—Assignment of securities and rights of creditor to surety
who pays debt

53A Interpretation

In this subpart, **debt** and **payment of a debt** have the same meanings as in section 48.

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53B Surety who pays debt entitled to assignment of all securities held by creditor

(1) Every person (**person A**) who pays the debt of another person (being surety for the debt or liable with another person for the debt) is entitled to have assigned to person A, or a trustee for person A, every judgment, specialty, or other security held by the creditor in respect of the debt.

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- (2) **Subsection (1)** applies whether the judgment, specialty, or other security is or is not deemed at law to be satisfied by the payment of the debt.

Compare: 1908 No 89 s 84

53C Rights of surety

- (1) Person A is entitled to stand in the place of the creditor, and to use all the remedies, and if need be, and upon a proper indemnity, to use the name of the creditor in any civil proceedings in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by person A in paying the debt. 5
- (2) The payment by person A may not be pleaded as a defence against any action or other proceeding by person A referred to in **subsection (1)**. 10
- (3) In this section, **person A** means the person referred to as person A in **section 53B**.

Compare: 1908 No 89 s 85

53D Rights of co-sureties, etc, as between themselves 15

A co-surety, co-contractor, or co-debtor is not entitled to recover from any other co-surety, co-contractor, or co-debtor (**person B**) by the means referred to in **section 53C** more than the proportion to which, as between those parties themselves, person B is liable.

Compare: 1908 No 89 s 86 20

558 New sections 74A and 74B inserted

After section 74, insert:

74A Recovery of payments made under mistake of law

- (1) If relief in respect of any payment that has been made under mistake is sought in any court (whether in civil proceedings or by way of defence, set-off, counterclaim, or otherwise) and that relief could be granted if the mistake were wholly one of fact, that relief must not be denied by reason only that the mistake is one of law, whether or not it is in any degree also one of fact. 25
- (2) Nothing in this section enables relief to be given in respect of any payment made at a time when the law required, or allowed, or was commonly understood to require or allow, the payment to be made or enforced, by reason only that the law was subsequently changed or shown not to have been as it was commonly understood to have been at the time of the payment. 30

Compare: 1908 No 89 s 94A

74B Payments made under mistake of law or fact not always recoverable 35

Relief, whether under **section 74A** or in equity or otherwise, in respect of any payment made under mistake, whether of law or of fact, must be denied wholly or in part if the person from whom relief is sought received the payment in

good faith and has so altered his or her position in reliance on the validity of the payment that in the opinion of the court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.

Compare: 1908 No 89 s 94B

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Consequential amendments

558A Amendment to Contractual Mistakes Act 1977

- (1) This section amends the Contractual Mistakes Act 1977.
- (2) In section 5(2)(d), replace “sections 94A and 94B of the Judicature Act 1908” with “**sections 74A and 74B** of the Property Law Act 2007”.

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558B Amendment to Energy Resources Levy Act 1976

- (1) This section amends the Energy Resources Levy Act 1976.
- (2) Replace section 31(5) with:
- (5) **Section 74A(1)** of the Property Law Act 2007 applies to any money paid by a purchaser to a seller in excess of the amount payable under this section (despite **section 74A(2)** of that Act).

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588C Amendment to Social Security Act 1964

- (1) This section amends the Social Security Act 1964.
- (2) In section 86(1B), replace “section 94B of the Judicature Act 1908” with “**section 74B** of the Property Law Act 2007”.

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Legislative history

14 September 2016

Divided from Judicature Modernisation Bill (Bill 178–2) as
Bill 178–3S