

MINERS' HOMESTEAD LEASES ORDINANCE 1928-1938.⁽¹⁾

An Ordinance Relating to Miners' Homestead Leases.

BE it ordained by the Governor-General of the Commonwealth, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920-1926*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Miners' Homestead Leases Ordinance 1928-1938*,⁽¹⁾ and shall be incorporated and read as one with the *Mining Ordinance 1928*,⁽²⁾ hereinafter referred to as the Principal Ordinance.

Short title
and
incorporation.
Amended by
No. 3 of 1934,
s. 50.

2. This Ordinance is divided into Parts, as follows:—

Parts.

Part I.—Preliminary.

Part II.—Miners' Homestead Leases.

Division 1.—Power to grant leases.

Division 2.—Land available by application.

(1) The *Miners' Homestead Leases Ordinance 1928-1938* comprises the *Miners' Homestead Leases Ordinance 1928*, as amended by the other Ordinances referred to in the following Table:—

TABLE.

PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwth. Gaz.</i>	Date on which took effect.
<i>Miners' Homestead Leases Ordinance 1928</i> (No. 20 of 1928)	22.9.1928	27.9.1928	27.9.1928 (<i>Cwth. Gaz.</i> of 27.9.1928)
<i>Miners' Homestead Leases Ordinance 1933</i> (No. 10 of 1933)	10.4.1933	12.4.1933	12.4.1933 (<i>Cwth. Gaz.</i> of 12.4.1933)

PART II.—ORDINANCE OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of reservation by Administrator.	Date on which assent of Gov.-Gen. in Council published in <i>N.G. Gaz.</i>	Date on which came into operation.
<i>Miners' Homestead Leases Ordinance 1938</i> (No. 50 of 1938)	24.8.1938	15.11.1938	15.11.1938 (<i>N.G. Gaz.</i> of 15.11.1938)

(2) Now the *Mining Ordinance 1928-1940*.

MINING—

Division 3.—Land available by tender or at auction.

Division 4.—Special provisions for coal-fields.

Division 5.—Grant and conditions of leases.

Part III.—General Provisions.

Interpretation.

3. In this Ordinance, unless the contrary intention appears—

“Lessee” means the holder of a miner’s homestead lease under this Ordinance, whether such lease has been granted after application only or after application accompanied by tender or after sale by auction;

“Mining Field” means a goldfield or mineral field as defined by the Principal Ordinance;

“Miner’s Homestead” means the land comprised in a miner’s homestead lease;

“Miner’s Homestead Lease” includes any miner’s homestead lease granted under this Ordinance;

“Qualified person” means—

(i) a person who—

(a) is a resident of the mining field in which the land in question is situated;

(b) is not less than eighteen years of age; and

(c) is not already the lessee of the maximum area of land which under this Ordinance may be held by a lessee; or

(ii) an incorporated company or body corporate carrying on business on the mining field; or

(iii) if the land is to be used as a place of public worship or parsonage, any person or body corporate, whether resident on the mining field or not, desiring to hold the land for that purpose; or

(iv) if the land is in a township situated within a coal-mining field, any person or body corporate, whether resident on the coal-mining field or not; or

(v) if the land is situated within a coal-mining field and is set apart as available only to applicants or purchasers, as the case may be, under this Ordinance who are employed in or in connexion with a coal mine situated within the

Miners' Homestead Leases Ordinance 1928-1938.

field—then only such persons as are so employed;

“The Secretary for Mines” means the officer for the time being appointed or holding office as Secretary, Department of Lands, Surveys, Mines, Forests and Titles.

Added by No. 10 of 1933, s. 2.

PART II.—MINERS' HOMESTEAD LEASES.

Division 1.—Power to Grant Leases.

4.—(1.) Subject to this Ordinance, the Administrator may grant to any qualified person a lease, to be called a “miner’s homestead lease,” of any Administration land within the limits of a mining field.

Power to grant leases.

(2.) Subject to this section no person shall hold more than one miner’s homestead lease within the limits of a mining field at any one time.

Sub-section (2) added by No. 10 of 1933, s. 3.

(3.) Nothing contained in the last preceding sub-section shall apply in any case where, at the date of commencement of that sub-section, more than one miner’s homestead lease is held by any one person.

Sub-section (3) added by No. 10 of 1933, s. 3.

5.—(1.) The area that may be held under a miner’s homestead lease shall not exceed—

Area of land which may be leased.

Within the boundaries of a city, town, or township, as defined by the Administrator—Forty ares.

Sub-section (1) amended by No. 10 of 1933, s. 4.

Not more than one kilometre from the nearest boundary of a city, town, or township—Eight hectares.

More than one kilometre from the nearest boundary of a city, town, or township—Thirty-two hectares, or such greater or smaller area, not exceeding two hundred and fifty-six hectares, as the Administrator by proclamation declares.

(2.) For the purposes of this Ordinance, the Administrator may, by proclamation⁽³⁾—

(a) define the boundaries of any city, town, or township,

(b) declare the maximum area (not exceeding two hundred and fifty-six hectares) for miners’ homesteads situated

(3) The only town the boundaries of which have been defined pursuant to Section 5 is the town of Wau, the boundaries of which, for the purposes of this Ordinance, were defined in a Proclamation dated 25.5.1929 and published in *N.G. Gaz.* of 31.5.1929. The boundaries set forth in this Proclamation have been replaced by a Proclamation dated 8.5.1931, and published in *N.G. Gaz.* of 14.5.1931, which proclaimed the boundaries of the town of Wau for the purposes of this Ordinance to be the same as the boundaries of the town of Wau declared by notice (made pursuant to the *Town Boundaries Ordinance 1924-1927*) dated 26.3.1931, published in *N.G. Gaz.* of 31.3.1931, and printed below, title TOWNS.

MINING—

more than one kilometre from the nearest boundary of any city, town, or township, or

(c) reserve suitable areas for miners' commons.

(3.) If no township has been duly constituted within a mining field, the Warden shall report to the Administrator upon the necessity or otherwise of reserving a town site or town sites, and the boundaries thereof, before recommending the issue of any miner's homestead lease.

(4.) Subject to the provisions of section twenty-nine of the Principal Ordinance, no residence area or business area shall be granted in respect of any land situated within any area reserved for a town site.

Shape of land which may be leased.

6. The boundaries of the land which may be held as a miner's homestead lease shall be rectangular, and the length shall not exceed three times the breadth, and the frontage to a road, river, or creek shall not exceed one-half the length of the land:

Provided that—

- (a) the course of a river or creek may be taken as a boundary when convenient; and
- (b) when adherence to the prescribed shape would render the construction of any road difficult or impracticable, the boundaries may be surveyed to meet the requirements of the public in such manner as the Administrator approves; and
- (c) when, owing to the position of adjoining boundaries or natural features, rectangular areas are not available, any intervening or irregularly shaped pieces of land may be applied for.

Division 2.—Land Available by Application.

Application for miner's homestead lease.

7.—(1.) Any qualified person who desires to obtain a miner's homestead lease of land which has not been set apart for application by tender or sale by auction under this Ordinance shall lodge an application in the prescribed form at the Warden's office, and shall describe in the application the boundaries of the land applied for and the position of the land.

Sub-section (2) amended by No. 10 of 1933, s. 5.

(2.) With the application the applicant shall deposit at the Warden's office the amount of half a year's rent, at the rate prescribed, together with the prescribed survey fee.

Sub-section (3) omitted by No. 10 of 1933, s. 5.

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Miners' Homestead Leases Ordinance 1928-1938.

8.—(1.) Applications shall be in duplicate, signed by the applicant or his authorized agent, and shall be duly entered and numbered consecutively in a register to be kept by the Warden.

Entry and determination of applications.

(2.) The Warden shall hear all applications in the order of their numbers.

(3.) If two or more applications are simultaneous, priority between the applicants shall be determined by lot.

(4.) The Warden or his clerk shall give a written receipt for every application, specifying the number and the time at which the application was lodged.

9. The applicant shall, within seven days after lodging the application or such further time as the Warden determines, post in a conspicuous place on the land applied for, and at the Warden's office, a copy of the application; and shall keep the copy so posted until the day of the hearing of the application by the Warden.

Posting on land of application.

10. Any resident within the mining field may, at any time before the hearing of an application, lodge at the Warden's office a notice of objection to the application, specifying the grounds of objection.

Objections.

11. Applications shall be heard by the Warden, after a personal inspection of the land by him or the receipt of a report by a surveyor, inspector of mines, or person approved by the Warden. All applications and objections thereto shall be heard and determined in open court.

Manner of disposing of application.

12.—(1.) If the land applied for includes any claim or any land in the authorized occupation of any person other than the applicant, or any land not alienated by the Administrator which is owned and occupied by natives, or if the granting of the application would, in the opinion of the Warden, in any way interfere with mining or with the requirements of the public, the Warden shall make such alterations in the area and boundaries of the land as seem advisable to him, or he may reject the application.

Warden may alter or reject application.

(2.) If the land contains valuable improvements, he may impose a condition that the applicant shall pay the value of such improvements, to be fixed by the Warden.

13. If an application is rejected, the applicant shall be entitled to have the amount deposited by him as rent and survey fee repaid by the Warden forthwith.

Return of rent and survey fee when application rejected.

Division 3.—Land Available by Tender or at Auction.

14.—(1.) If the Warden is of opinion that land in any part of the mining field, on account of its quality or for other sufficient reason, should be set apart for application as miners' homestead

Reservation of land for tender or sale.

MINING—

leases by tender, or for sale as miners' homestead leases by auction, he shall, before recommending the grant of any application for such land under Division 2 of this Part, furnish the Administrator with a report, together with a plan showing the position of the land, and, if the land has not been surveyed, shall mark on the plan the land which he considers should be so set apart and the area or areas which he considers most suitable for miners' homesteads.

(2.) The Warden shall also recommend the minimum rent or upset price, as the case may be, to be notified for each such area.

(3.) On receipt of the report, the Administrator may, notwithstanding anything contained in Division 2 of this Part, by notification in the *New Guinea Gazette*, set apart the land for application by tender or for sale by auction in the manner hereinafter prescribed, and may cause the land to be surveyed or designed into portions:

Provided that no land shall be set apart for sale by auction under this Division which is situated outside the limits of a town site.

Notification
of land
available for
application by
tender or for
sale at auction.

15.—(1.) The Administrator may, by notification in the *New Guinea Gazette*, declare that land which has been surveyed or designed into portions, or any part thereof, is open for application as miners' homestead leases by tender or for sale as miners' homestead leases by public auction as he thinks advisable, and may at any time withdraw any such land from being so open.

(2.) Land may be declared so open either as surveyed or designed miners' homestead leases:

Provided that—

(a) before land is declared to be so open as surveyed land, it shall be surveyed into portions of convenient size; and

(b) before land is declared to be so open as designed land, the position of the land shall be indicated on a map or plan.

(3.) In every case, where necessary, provision shall be made for roads and reserves.

(4.) A plan of the land so surveyed or designed shall be exhibited at the Warden's office.

Tendering for
homesteads.

16.—(1.) The notification by the Administrator under the last preceding section with respect to land declared to be open for application as miners' homestead leases by tender shall specify—

(a) the portions open for application and the time at which the applications will be heard by the Warden, being not less than twenty-one days after the date of the notification;

Miners' Homestead Leases Ordinance 1928-1938.

- (b) the numbers of the portions, their respective areas, and the notified rent per are in each case;
- (c) the value to be paid for the improvements, if any, on the land.

(2.) Applications shall be made only by qualified persons. All applications shall be for a portion, as specified in the notification.

(3.) Every applicant shall with his application lodge a tender specifying an annual rent per are, which shall be equal to or higher than the notified rent, but shall not comprise any fractional part of a penny.

(4.) Every tender so lodged shall be enclosed in an envelope addressed to the Warden, and there shall be written on the face of the envelope the words "Tender for Miner's Homestead", the number of the portion, and the signature of the applicant or his authorized agent.

(5.) At the time of lodging the application the applicant shall deposit at the Warden's office the amount of half a year's notified rent, together with the prescribed survey fee.

Sub-section (5)
amended by
No. 10 of 1933,
s. 6.

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Sub-section (6)
omitted by
No. 10 of 1933,
s. 6.

(7.) All applications shall be dealt with at the same time by the Warden in open court. The tender shall be treated as part of the application, and dealt with accordingly.

(8.) The Warden, on opening each tender, shall declare the amount tendered, and shall endorse the amount on the application.

(9.) The applicant who has lodged the highest tender shall be the successful applicant, and the rent payable shall be the amount tendered by him. If two or more applicants have tendered the same amount, priority as between these applicants shall be determined by lot in the prescribed manner.

(10.) The successful applicant shall forthwith pay to the Warden the balance (if any) of the rent in accordance with his tender, otherwise his application shall forthwith be rejected.

(11.) Every unsuccessful applicant shall be entitled to have the amount of rent and survey fee deposited by him repaid by the Warden forthwith.

17.—(1.) The notification by the Administrator under section fifteen of this Ordinance with respect to land available for sale as miners' homestead leases by public auction shall specify—

Sale by auction.

- (a) the place and time of sale, being not less than sixty days after the date of the notification;
- (b) the numbers of the portions, and the area and upset price of each portion; and

MINING—

(c) the value to be paid for the improvements, if any, on the land.

(2.) The notification may—

(a) impose any special conditions with respect to the sale of any specified portion or portions;

(b) declare that any land therein mentioned which is not bid for or is not withdrawn from sale, either before or after offer at auction, shall be open for lease by the first applicant at the upset price and on such conditions as may be declared.

(3.) Bidding shall be by capital sum, and the person who makes the highest bid for a portion, not being less than the upset price, and forthwith pays one-thirtieth part of the sum bid by him for the portion (which shall be an instalment of the purchase price and in satisfaction of the first year's rent), and also pays the prescribed survey fee, shall be declared the purchaser, subject to the approval of the Administrator:

Provided that—

(a) no person shall be entitled to become a purchaser who is not a qualified person;

(b) if two or more persons make simultaneous applications for a miner's homestead lease which, having been offered at auction and not sold, is open for lease at the upset price, the lease shall be again offered at auction to such applicants and to no other persons, and the provisions of this sub-section relating to sales by public auction shall apply.

(4.) For the purpose of this section the Warden or other person authorized by the Administrator may hold an auction sale without holding an auctioneer's licence.

Division 4.—Special Provisions for Coal-fields.

Lands on coal-fields may be set apart for employees.

18.—(1.) Notwithstanding any other provision of this Ordinance, the Administrator, on the recommendation of the Warden, may from time to time, by notification in the *New Guinea Gazette*, set apart any land situated within a coal-mining field to be available by application under Division 2 of this Part, or at auction under Division 3 of this Part, only to applicants or purchasers, as the case may be, who are employed in or in connexion with a coal mine situated within the coal-mining field. Thereupon the only persons who shall be qualified to apply for or become purchasers at auction of a miner's homestead lease of any land so set apart shall be persons

who are employed in or in connexion with a coal mine situated within the coal-mining field.

(2.) In any such case the decision of the Warden on the question whether any applicant or bidder at auction is a qualified person within the meaning of this section shall be final.

(3.) The provisions of this Ordinance applicable to miners' homestead leases available by application or at auction, as the case may require, shall, so far as applicable, apply to land set apart in pursuance of this section.

Division 5.—Grant and Conditions of Leases.

19.—(1.) The Warden shall forward to the Administrator all applications for miners' homestead leases, or, if the land is sold at auction, particulars of the land and the name of the purchaser, together with his report, and the Administrator may grant the application or approve of the purchase. Approval of application.

(2.) No application shall be granted or purchase approved unless the Warden reports that he is satisfied that such application or purchase is made in good faith.

(3.) Upon grant by the Administrator of the application or approval of the purchase, the Warden shall, if the land has not been surveyed, instruct the mining surveyor or a surveyor approved by the Administrator to survey the land, and on receipt of the plans shall forward them to the Administrator with his report thereon:

Provided that any application so granted or purchase so approved before the land has been surveyed shall be deemed to be so granted or so approved, as the case may be, subject to the land being found to be available after the survey has been made.

20.—(1.) Notice of the granting of the application or of the approval of the purchase, as the case may be, shall be given by the Secretary for Mines to the applicant or purchaser, who shall thereupon be at liberty to enter upon and occupy the land. Occupation of land.
Sub-section (1) amended by No. 10 of 1933, s. 7.

(2.) If the area of land granted or purchased does not exceed eight hectares, the applicant or purchaser shall, within six months after the date of the notice—

- (a) make improvements on the land of a value of not less than Twenty-five pounds where the land is situated within the boundaries of a city, town or township, and of a value of not less than Fifty pounds where the land is not so situated, and

MINING—

Paragraph (b)
amended by
No. 10 of 1933,
s. 7.

(b) if the Administrator has declared that the condition of residence shall apply, reside on the land.

Sub-section (3)
amended by
No. 10 of 1933,
s. 7.

(3.) If the area exceeds eight hectares, the applicant or purchaser shall, within six months after the date of the notice, reside on the land, and, within twelve months after the date of the notice, enclose the land with a good and substantial fence or make substantial improvements on the land of a value equal to the cost of such fence.

Sub-section (4)
amended by
No. 10 of 1933,
s. 7.

(4.) Notwithstanding anything contained in this section, the Administrator may, on good cause being shown, grant exemption from the condition of residence prescribed by this section for such time and on such terms as he thinks fit and extend the time for the performance of any of the conditions imposed by this section on such terms as he thinks fit.

(5.) The applicant or purchaser shall notify the Warden within the time herein specified, or such extended time as may have been approved, when he has entered upon and occupied the land or when he has fenced the land or made improvements in the manner prescribed, and the Warden or some person deputed by him shall inspect the land.

(6.) If the applicant or purchaser fails to comply with this section—

- (a) he shall be deemed to have abandoned the land, and shall cease to have any interest therein;
- (b) he shall not be entitled to a return of any moneys paid by him as rent or survey fee; and
- (c) the land may be dealt with as unoccupied Administration land.

(7.) In the case of two or more contiguous miners' homesteads the aggregate area of which does not exceed five hundred and twelve hectares, and which are held by members of the same family, the enclosure by one fence of the whole area comprised in the several homesteads shall, so far as the value of such fence extends, be deemed to be a performance of the obligations of each holder in respect of improvements under this section, or the prescribed improvements may be made on any part of the area comprised in the contiguous homesteads.

(8.) If there are upon the land any improvements the value whereof is payable by the applicant or purchaser, payment by him of the value shall be deemed a performance of his obligation with respect to improvements so far as the value extends.

(9.) On receipt by the Administrator of a report from the Warden that the conditions of this section have been complied with, the applicant or purchaser shall be entitled to a miner's homestead

lease of the land, and a lease in the prescribed form may thereupon be issued.

21.—(1.) A miner's homestead lease shall be a lease for thirty years, and shall be deemed to commence on the date of the granting of the application or the approval of the purchase:

Maintaining improvements and residence on land.

Provided that the lessee shall have the right at the expiration of the period to an extension of the lease under the same conditions for a further period of thirty years.

(2.) The lessee shall, during the first period of thirty years—

(a) keep the prescribed fences or improvements on the land in good order; and

(b) in all cases where the condition of residence applies, reside on the land:

Paragraph (b) amended by No. 10 of 1933, s. 8.

Provided that the Administrator may grant exemption from the condition of residence for such time and on such terms as he thinks fit.

Proviso amended by No. 10 of 1933, s. 8.

(3.) The lease may contain such reservations and stipulations with respect to the right to cut or destroy timber on the land, whether by the lessee or any person mining thereon, as the Administrator thinks fit to impose.

22.—(1.) The annual rent reserved by a miner's homestead lease shall, during the first period of thirty years, be—

Rent.

(a) in the case of a lease set apart to be sold and sold by auction—one-thirtieth part of the purchase price;

(b) in the case of a lease obtained by tender—at the rate specified in the tender;

(c) in all other cases—at the rate of one halfpenny per are for each are or part of an are up to twenty hectares; if the area exceeds twenty hectares at the rate of one halfpenny per are for the first twenty hectares and one farthing for each are or part of an are in excess of twenty hectares up to forty hectares; if the area exceeds forty hectares, such rent as the Administrator fixes:

Provided that the rent for any area shall not be less than Five shillings per annum.

(2.) After the expiration of the first period of thirty years, the annual rent shall be One shilling and no more, if demanded.

(3.) Except as provided in the proviso to sub-section (2.) of the next succeeding section, a lessee may at any time or times pay in advance the rent reserved in his lease for the whole or any portion of the period of the lease provided that, except where the payment

Sub-section (3) substituted by No. 10 of 1933, s. 9.

MINING—

is for the whole period of the lease, such payment is in respect of any period ending on the thirty-first day of December in any year.

Manner of
paying rents.
Penalty in
default.

23.—(1.) Rent and other payments due to the Administrator under this Ordinance shall be payable to the Warden of the mining field in which the miner's homestead is situated.

(2.) Rent shall be payable on or before the thirty-first day of December in respect of the year next ensuing:

Proviso
added by
No. 10 of 1933,
s. 10.

Provided that, in the case of a new lease, the lessee shall, within one month of the date of notice of grant of application or approval of purchase, pay to the Warden such amount as, together with the amount already deposited for rent (in accordance with sub-section (2.) of section seven, sub-section (5.) of section sixteen or sub-section (3.) of section seventeen), will bring his rent up to the thirty-first day of December next following the date up to which the rent deposited with the application was paid.

(3.) The rent reserved, with any accrued penalties in respect of arrears of rent, shall be a debt due to the Administrator.

(4.) If default is made by the lessee in the payment of rent, the lease shall, at the option of the Administrator, be forfeited, but such forfeiture may be defeated by the payment within ninety days of the full amount of rent, together with such sum added by way of penalty as is provided in the lease, or such sum as the Administrator imposes.

(5.) If the full amount of rent, together with the penalty, is not paid on or before the thirty-first day of March, the lease shall, at the option of the Administrator, without any inquiry or other process, be forfeited:

Provided that the Administrator may waive the forfeiture, and reinstate the lessee on payment of the arrears of rent due and the accrued penalty.

PART III.—GENERAL PROVISIONS.

Conditions
on which
homestead may
be sublet.

24.—(1.) A lessee may, with the approval of the Administrator, after the issue of his lease, sublet the whole or any part of his miner's homestead, subject to the following conditions:—

(a) The sub-lessee shall be a qualified person;

(b) The sub-lease shall be in writing, and in duplicate, and one original shall be registered at the Warden's office.

Sub-section (2)
amended by
No. 10 of 1933,
s. 11.

(2.) If the sub-lessee of the whole of a miner's homestead exceeding in area two hectares does not reside on the land, the lessee shall be deemed to have committed a breach of condition:

Miners' Homestead Leases Ordinance 1928-1938.

Provided that the Administrator may grant exemption from the condition of residence prescribed by this section for such time and on such terms as he thinks fit.

Proviso added by No. 10 of 1933, s. 11.

25.—(1.) A miner's homestead lease, or an application therefor, may be transferred to a qualified person by the lessee signing an instrument of transfer in the prescribed form and paying a fee of Ten shillings, but during the first period of thirty years of the lease no such transfer shall have any effect unless or until it has been approved by the Administrator.

Transfer of miner's homestead lease.

(2.) Every transfer shall be entered in a register to be kept for that purpose, and the Warden or other officer of the Mines Department authorized by the Administrator shall endorse a certificate of transfer upon the back of the lease.

(3.) The transferee shall be liable to all the obligations of a lessee.

(4.) A miner's homestead lease shall not be transferred to any person other than a qualified person.

26. When a miner's homestead lease is taken in execution under the judgment of a court of competent jurisdiction and sold, the Sheriff or other proper officer shall execute a transfer of the lease to the purchaser at the sale, if he is a qualified person; and upon production of the transfer at the Warden's office and payment of a fee of Ten shillings, the lease shall be transferred to the purchaser accordingly.

Transfer by sheriff when lease taken in execution and sold.

27.—(1.) Any lessee may, with the approval of the Administrator and upon payment of the fee of Ten shillings, transfer to any qualified person any part of the lease, not being less than ten acres in area if the homestead is within a city, town, or township, and in any other case not being less than such area as the Administrator approves.

Subdivision of miner's homestead.

(2.) The application for approval shall be accompanied by correct plans and descriptions showing the proposed division of the miner's homestead, and certified by the mining surveyor or surveyor approved by the Administrator.

(3.) An endorsement shall be made on the original lease showing the portion so transferred, and the transferee shall be entitled to a fresh lease of that portion.

(4.) The rent of the portion so transferred shall, during the residue of the first period of thirty years of the original lease, be at the same rate as that reserved under the original lease; and after the expiration of that period the rent shall be One shilling, and no more, if demanded.

MINING—

(5.) During the residue of the first period of thirty years the original lessee shall be entitled to a proportionate reduction of rent in respect of the portion so transferred.

Mortgages.

28.—(1.) A miner's homestead may be charged or made security for the payment of a sum of money.

(2.) When it is intended to be so charged, the lessee shall execute a memorandum of mortgage in the form in the Schedule to this Ordinance or to the like effect.

The memorandum shall be in duplicate, and one original shall be registered in the Warden's office.

(3.) In the event of several mortgages of the same miner's homestead, they shall take effect according to priority of such registration.

A fee of Five shillings shall be payable upon every such registration.

(4.) A mortgage may be transferred on payment of a fee of Five shillings for registration of the transfer.

(5.) A memorandum of mortgage shall have effect only as a security for the sum of money intended to be secured by it, and shall not take effect as an assignment of the lease. The mortgage shall cover all buildings and improvements of the lessee upon the land, whether affixed to the soil or not.

(6.) If default is made in the payment of the money secured by the mortgage according to its tenor, or upon the happening of any event which according to the terms of the mortgage entitles the mortgagee so to do, he may—

- (i) enter upon and take and retain possession of the miner's homestead for any period not exceeding one year, or for such further period not exceeding one year as the Warden allows;
- (ii) sell the miner's homestead lease by public auction to a qualified person after not less than sixty days' notice of the intended sale published in the *New Guinea Gazette* and some newspaper generally circulating in the mining field, or, if he is unable to obtain by such auction a sum sufficient to pay or discharge the debt or liability then due to him, sell such lease to a qualified person by private contract:

Provided that—

- (a) the mortgagee, if he is a qualified person, shall at such auction be at liberty to bid for and purchase the lease;
- (b) if after sale there remains a balance of purchase money, the mortgagee shall file at the Warden's office a state-

Miners' Homestead Leases Ordinance 1928-1938.

ment of accounts, and shall pay the balance into the hands of the Warden on behalf of the persons interested—that is to say, to be paid to the mortgagor, or, if there are any other mortgagees, to be paid to them in order of production of the mortgages for registration.

(7.) Upon a sale under the power of sale conferred by this section, the mortgagee may transfer the lease to the purchaser, and the transfer shall be registered in the Warden's office upon payment of the prescribed fee.

29.—(1.) Lands acquired by any evasion of or fraud upon this Ordinance shall be liable to be forfeited. Liability to forfeiture.

(2.) Upon the breach of any of the conditions to which a miner's homestead lease is subject, or in any case where any land is held in violation of this Ordinance, or upon any mortgage, sub-letting, transfer, or assignment which is contrary to this Ordinance, whether by operation of law or otherwise, the lease shall be liable to be forfeited.

(3.) Forfeiture of a miner's homestead lease for non-payment of rent shall ensue in accordance with the provisions of section twenty-three of this Ordinance.

(4.) The acceptance by or on behalf of the Administrator of any rent or other payment under any lease shall not be held to operate as a waiver by the Administrator of any forfeiture or liability to forfeiture incurred.

30.—(1.) If at any time the Warden has reason to believe that a miner's homestead lease is liable to be forfeited for any cause other than the non-payment of rent, he shall cause to be served upon the lessee, either personally or by posting it addressed to him at the homestead, a notice in writing specifying the alleged cause of forfeiture, and calling upon the lessee to appear upon the hearing of the matter at the sitting of the Warden's court held next after the expiration of thirty days from the service of the notice. Homesteads, how forfeited.

(2.) The Warden shall proceed to hear the matter at the sitting specified in the notice or at some adjournment thereof, and shall forward the evidence with his report and recommendation to the Administrator, who, if satisfied that liability to forfeiture has been established, may forfeit the lease.

31. Every forfeiture of land under this Ordinance for any cause shall be notified by the Administrator in the *New Guinea Gazette*, and shall take effect from the date of the notification. Forfeitures to be notified in the Gazette.

MINING—

Consequence
of forfeiture
or other
premature
determination
of lease, &c.

32. If a miner's homestead lease of any land is determined by forfeiture or other cause—

- (i) the land shall become Administration land, and may be dealt with accordingly, and the former lessee shall not be entitled to the return of any moneys paid by him as rent or survey fee or otherwise howsoever; and
- (ii) if there are upon the land any improvements, such improvements shall, as from the date when the forfeiture takes effect, be deemed to be the property of the Administrator; but the former lessee shall be entitled to receive the value of such improvements which is received by the Administrator from an incoming lessee or purchaser, after the amount of all money due by the former lessee to the Administrator on any account whatsoever has been deducted.

Surrender of
miner's
homestead
lease.

33. A miner's homestead lease may be surrendered at any time provided that at the time of surrender the conditions thereof on the part of the lessee have been fulfilled so far as the time which has elapsed has permitted, and that all payments due in respect thereof up to date have been made.

Right of
miners
preserved.

34.—(1.) Any holder of a miner's right may apply for and take up for mining purposes in accordance with the Principal Ordinance, any land comprised in a miner's homestead. He may mark off the claim or land to which he is entitled, and obtain registration thereof in the same manner as if the land were unoccupied Administration land, but no residence area or business area may be acquired or held thereon.

(2.) A mining lease may be granted in accordance with the Principal Ordinance of land comprised in a miner's homestead.

(3.) When land comprised in a miner's homestead is taken up for mining purposes, or is included in a mining lease, the person entitled to mine shall be entitled to erect buildings, sink shafts, and carry on all necessary mining operations upon the surface of the land so held by him, and shall also be entitled to access thereto through the residue of the miner's homestead.

(4.) When any part of the surface is appropriated for mining purposes under this section, the lessee of the miner's homestead shall be entitled to a proportional reduction in the annual rent payable by him.

Compensation
to lessee.

35.—(1.) When land comprised in a miner's homestead is taken up for mining purposes or is included in a mining lease, the lessee of the miner's homestead may call upon the Warden to assess the value of the damage likely to be done to any improvements upon

Miners' Homestead Leases Ordinance 1928-1938.

the homestead, and the Warden shall thereupon require the miner to deposit in his hands the amount of the damage which the working is likely to do to such improvements, and until the deposit is made the miner shall not be entitled to work upon the land.

(2.) Upon receipt of the deposit, the Warden shall hold it as security to be paid either wholly or in part to the lessee if he sustains any damage, or to be returned to the miner on his leaving the land if he does no damage.

(3.) In assessing damage under this section the Warden's decision shall be final; only actual damage to improvements shall be taken into account, and no compensation shall be allowed for the value of the land or the lessee's interest therein.

(4.) When a lessee has received any money by way of compensation for damage to improvements, he shall not afterwards be entitled to claim compensation in respect of the same improvements, but shall be entitled to claim for damage to any additions made to them after the time when he received compensation.

36. If a miner has put up any building or other erection, or sunk a shaft upon land comprised in a miner's homestead and afterwards leaves the land, the lessee shall not remove or destroy or injure the building, erection, or shaft without the sanction of the Warden. Protection of
mining
improvements.

Penalty: One hundred pounds.

37.—(1.) Notwithstanding anything to the contrary contained in this Ordinance, the Administrator may, at any time after six months' notice to the lessee, resume the whole or any part of a miner's homestead. Resumption.

(2.) Upon any such resumption the lessee shall be entitled to compensation for improvements, and the amount of compensation shall be determined by the Warden as sole arbitrator.

38. In the case of the death of a lessee, the Administrator may, Transmission. if satisfied that—

- (a) a will has been left by him, and no probate of the will, or no administration with the will annexed, has been taken out within six months after his death; or
- (b) no will has been left by him, and no administration of his estate has been taken out within six months after his death; and
- (c) the value of his estate is not sufficient to justify the expense of taking out such probate or administration,

cause transmission of the miner's homestead lease to be entered up by the Warden and by the Department of Mines in favour of the

MINING—

person or persons who would have been entitled, upon the grant of such probate or administration, to be entered up as the lessee or lessees, and thereupon that person or persons shall have all the rights, powers, and liabilities in respect of the lease as if probate or administration of the estate of the deceased person had been granted to him or them.

Regulations.
Sub-section (1)
amended by
No. 50 of 1938,
s. 2.

39.—(1.) The Administrator in Council may make Regulations, (4) not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance.

(2.) The provisions of the Principal Ordinance relating to the power to make Regulations shall apply to Regulations made under this Ordinance.

THE SCHEDULE.

MEMORANDUM OF MORTGAGE.

I, A.B., of _____, being the registered lessee of [*describe the homestead and number of the lease*] under the *Miners' Homestead Leases Ordinance 1928*, in consideration of the sum of _____ lent to me by [or due by me to] C.D., of _____, hereby mortgage to him the said miner's homestead with all buildings and improvements thereon. And I do hereby covenant and agree with the said C.D. that I will pay him the said sum on [*here insert day appointed for payment, covenant for payment of interest, and such other covenants as may be agreed upon*]. And in default of performance, on my part, of the above covenants, or any of them, I authorize the said C.D. to sell the said lease in accordance with the provisions of the said Ordinance.

In witness whereof I have hereto signed my name, this _____ day of _____, 19 _____

Signed by the above-named A.B. as mortgagor, }
this _____ day of _____, 19 _____, }
in my presence— }
E.F.

(4) See the *Miners' Homestead Leases Regulations*, printed on p. 3497.