

**CHAPTER 12:01**  
**TACIT HYPOTHECS**  
ARRANGEMENT OF SECTIONS

SECTION

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Cap. 14, 1959,  
L.N. 84, 1966.

**An Act to amend the law relating to tacit hypothecations.**

*[Date of Commencement: 10th June, 1891]*

**1. Short title**

This Act may be cited as the Tacit Hypothecs Act.

**2. Tacit hypothecation of the State for arrear rents or taxes limited**

The tacit hypothecation possessed by the State upon the estates of persons indebted to the State for the arrears of any rent or other periodical payment issuing out of land, or for the arrears of any tax or other periodical payment of a like nature, shall in no case be claimable for any sum exceeding a sum equal to three whole years of such rent, tax or other payment.

**3. Hypothecation of minors and insane persons on the estates of guardians and curators**

The tacit hypothecation possessed by minors upon the estates of their guardians, and by insane persons, persons adjudged prodigals and interdicted persons, upon the estates of their curators, in security of the debts due and owing by such guardians or curators in their said capacities, shall only subsist for and during a period of three years, reckoned, in the case of minors, from the day on which they attained their majority, and in the case of the other persons aforesaid, from the day on which they ceased to be under curatorship:

Provided that should the person entitled to any such hypothecation be absent from Botswana at the time when he became of age or ceased to be under curatorship (as the case may be) he shall be entitled to such hypothecation for and during a period of three years from the day of his return to Botswana:

Provided further, however, that in no case shall any such hypothecation subsist for a longer period than five years, whether the person who was absent at the time aforesaid returns to Botswana or not.

**4. Of legatees on estates of testators**

The tacit hypothecation possessed by legatees in security of their legacies upon the estates of the testators by whom the legacies were bequeathed shall subsist only for a period of 12 months, reckoned from the day on which such legacies became due or demandable:

Provided that if upon such last-mentioned day any legatee is a minor, or under coverture, or absent from Botswana, such legatee shall be entitled to such hypothecation for a period of 12 months, reckoned from the period when such disability ceased:

Provided further, however, that in no case shall any such hypothecation subsist for a longer period than five years, whether such disability has ceased during that period or not;

unless in the case of a person who is a minor when such period of five years expires, in which case such person shall have a further term of three years, after attaining his majority, in which to claim the benefit of the tacit hypothecation.

**5. Tacit hypothecation of landlords to hire of premises limited**

The tacit hypothecation possessed by landlords or letters to hire of fixed property shall not be claimable for any sum greater than one whole year's rent or hire of the premises in regard to which such hypothecation is being claimed.

**6. Hypothecation to survive in favour of heir**

If any person entitled to any such tacit hypothecation as aforesaid dies at any time before such hypothecation expires, under the provisions of this Act, the heirs or executors of such person shall possess such hypothecation for the same time that the person so dying would, if living, have possessed it:

Provided that every such heir and executor shall have a term of not less than 12 months next after the death of such person so dying within which to claim the benefit of such tacit hypothecation.

**7. Act not to give rights of hypothecation not possessed by law**

Nothing contained in this Act shall be construed so as to give to any person whomsoever any greater or other tacit hypothecation than he would by law have possessed in case this Act had not been passed, nor to impair or affect the validity of any debt considered as a concurrent debt which may be due to any person who by virtue of this Act ceases to possess a tacit hypothecation in security for such debt.

**8. Certain tacit hypothecations abolished**

The following hypothecations are hereby abolished, that is to say-

- (a) the tacit hypothecation of the State upon the estates of auctioneers and deputy postmasters considered as collectors or receivers of the public revenue, in security of any debts or demands due by them in their said capacities to the State;
- (b) the tacit hypothecation of the State upon the estates of persons who have entered into contracts with the State in security for the performance of such contracts or for any damages sustained by the non-performance thereof:

Provided that no person liable for any rent or other periodical payment issuing out of land as mentioned in section 2 shall be deemed to be a contractor within the meaning of this paragraph;

- (c) the tacit hypothecation of minors upon the estates of their protutors, and upon the estates of agents or others (not being their guardians) inter-meddling with the property or affairs of such minors, and upon the estates of tutors who have been substituted, assumed, or surrogated, or who have been appointed by order of court, in security for the debts due and owing by such persons in such capacities to such minors:

Provided that nothing contained in this paragraph shall be construed so as to deprive any child of any tacit hypothecation which he may now by law possess upon the estate of either of his parents after the death of either of them or upon the estate of any stepfather of such minor, in security of any property of such minor in the hands of and not duly accounted for by his surviving parent;

- (d) the tacit hypothecation possessed by municipalities, churches, and generally any public body or institution whatsoever upon the estates of persons entrusted with the collection, custody, or administration of their revenues, in security for the revenues not accounted for by such persons;
- (e) the tacit hypothecation of persons by whom houses have been built or repaired, for the costs and charges thereby incurred;
- (f) the tacit hypothecation possessed by persons who have lent money for the purpose of being expended in the repair of houses and other property, in security for the money so lent; and

(g) the tacit hypothecation which certain classes of servants have upon the estates of their masters, in security of their wages in arrears.

**9. Tacit hypothecation on fixed property extinguished by sale**

No house, farm or other fixed property shall, after transfer thereto to a purchaser who purchased the same by a true and *bona fide* bargain, be subject to any tacit hypothecation to which it might have been subject in the hands of some former owner of the said property:

Provided that no bargain shall for the purposes of this section be deemed to be true and *bona fide* in regard to which it shall be made to appear by the person claiming such tacit hypothecation that the purchaser, when he so purchased, acted in collusion with the person selling the same and for the purpose of defeating wholly or in part the claim of the person entitled to such tacit hypothecation, or purchased with notice that a certain or probable consequence of his so purchasing would be that the said claim would be so defeated:

Provided further that no mortgagee shall for the purposes of this section be deemed to be a purchaser.