

NORTHERN TERRITORY OF AUSTRALIA
REAL PROPERTY AMENDMENT ACT (NO. 2) 1993

No. 76 of 1993

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NORTHERN TERRITORY OF AUSTRALIA

No. 76 of 1993

AN ACT

to amend the *Real Property Act* by providing for
statutory charges and for related purposes

[Assented to 23 November 1993]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Real Property Amendment Act (No. 2) 1993*.

2. PRINCIPAL ACT

The *Real Property Act* is in this Act referred to as the Principal Act.

3. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

4. INTERPRETATION

Section 3 of the Principal Act is amended -

(a) by inserting after the definition of "Mortgagor" the following:

"'overriding statutory charge', in relation to land, means a statutory charge that is expressed in the Act by or under which it is established to be an overriding charge within the meaning of this Act or to have priority over all other charges on the land;"; and

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- (b) by inserting after the definition of "Statutory assignment" the following:

"'statutory charge' means a charge on land (other than a mortgage or encumbrance) established by or under a law in force in the Territory that is expressed in the Act by or under which it is established to be a statutory charge within the meaning of this Act or which, after it is registered -

- (a) imposes a restriction on the use of or dealing with the land; or
- (b) gives a right to a person to deal with the land, including the right of sale,

and, for the purposes of sections 48A, 53, 142A, 142B, 143 and 277 includes an overriding statutory charge;".

5. NEW SECTION

The Principal Act is amended by inserting after section 48 the following:

"48A. REGISTRATION OF STATUTORY CHARGES

"(1) A person for whose benefit a statutory charge is established by or under a law in force in the Territory may, in accordance with the prescribed form and on payment of the prescribed fee, apply to the Registrar-General to have the charge registered.

"(2) On receiving an application under subsection (1), the Registrar-General shall register the statutory charge in the prescribed manner.

"(3) The Registrar-General shall give notice of the registration of a statutory charge to all persons who have a registered interest in the land the subject of the charge.".

6. SUBMISSION OF DOCUMENTS TO FACILITATE REGISTRATION

Section 53 of the Principal Act is amended -

- (a) by omitting "The Registrar-General" and substituting "(1) Subject to subsection (2), the Registrar-General"; and

- (b) by adding at the end the following:

"(2) The Registrar-General may, under section 48A, register a statutory charge without the certificate as to title for the land concerned being produced.".

7. TITLE OF REGISTERED PROPRIETORS INDEFEASIBLE

The Principal Act is amended by inserting after section 56A the following:

"56B. PRIORITY AND EFFECT OF STATUTORY CHARGES

"(1) An overriding statutory charge prevails over all other interests in the land to which it relates, except a pre-existing overriding statutory charge recorded in the register.

"(2) Unless a statutory charge, not being an overriding statutory charge, has been registered -

- (a) a restriction imposed by the statutory charge on the use of or dealing with the land does not exist; or
- (b) a power arising under the statutory charge in relation to the land is not exercisable."

8. LANDS, HOW MORTGAGED OR ENCUMBERED

Section 128 of the Principal Act is amended by adding at the end the following:

"(2) For the purposes of this Part the registered proprietor of land shall be deemed to have executed an encumbrance to secure the payment of any statutory charge to which the land is subject, subject to the terms and conditions, if any, under the law by which the statutory charge was established."

9. REPEAL AND SUBSTITUTION

Section 135 of the Principal Act is repealed and the following substituted:

"135. APPROPRIATION OF PROCEEDS

"(1) The proceeds from the sale of land by a person entitled to the benefit of an overriding statutory charge shall be applied -

- (a) first - in payment of the expenses of the sale;
- (b) secondly - in payment of any money owing to a person entitled under a law of the Commonwealth to priority over an overriding statutory charge;
- (c) thirdly - in payment of any money owing to a person entitled to the benefit of a prior overriding statutory charge having priority;

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- (d) fourthly - in payment of the money then owing to the person entitled to the benefit of the overriding statutory charge; and
- (e) further, in accordance with subsection (2)(b), (c), (d) and (e).

"(2) The proceeds from the sale of land by a mortgagee, encumbrancee or person entitled to the benefit of a statutory charge, not being an overriding statutory charge, shall be applied -

- (a) first - in payment of the expenses of the sale;
- (b) secondly - in payment of any money owing to a person entitled under a law of the Commonwealth to priority over a statutory charge;
- (c) thirdly - in payment of any money owing to a person entitled to the benefit of a registered overriding statutory charge;
- (d) fourthly - in payment of a prior mortgage, encumbrance or statutory charge, if any, where the mortgagee, encumbrancee or person entitled to the benefit of the prior statutory charge, who have concurred in the sale, have executed a discharge of their respective mortgage, security or charge;
- (e) fifthly - in payment of the money then owing to the mortgagee, encumbrancee or person entitled to the benefit of the statutory charge; and
- (f) sixthly - in payment of subsequent mortgages, encumbrances and statutory charges, if any, in order of their priority."

10. NEW SECTIONS

The Principal Act is amended by inserting after section 142 the following:

"142A. STATUTORY CHARGES

"(1) In the absence of anything to the contrary in an Act by or under which a statutory charge is established, section 132 applies to the person entitled to the benefit of the statutory charge as if the reference to the mortgagee and the mortgage were a reference to that person and that charge.

"(2) Before the person entitled to the benefit of a statutory charge exercises a power of sale pursuant to the charge, the person shall give to the registered proprietor of the land not less than 28 days notice, in the prescribed form, of the proposed exercise of the power.

"(3) The notice referred to in subsection (2) shall contain particulars of the action that the registered proprietor may take in order to avoid the exercise of the power of sale and the period within which the action may be taken.

"(4) If the registered proprietor does not take the action specified in the notice referred to in subsection (2) within the time specified in the notice, the person entitled to the benefit of the statutory charge -

- (a) may lodge with the Registrar-General a notice of the proposed exercise of the power of sale; and
- (b) having lodged such a notice, may, subject to the Regulations, proceed to exercise the power of sale.

"(5) Nothing in this Act affects the accrual of statutory charges under this or any other Act before the exercise of a power pursuant to a statutory charge.

"142B. APPLICATION OF OTHER PROVISIONS

"The following sections, with the necessary changes, apply to a sale of land in pursuance of a statutory charge:

- (a) section 133;
- (b) section 134, as if the sale had taken place pursuant to section 133;
- (c) section 136, as if the sale were a sale by a mortgagee and the reference to estates in section 136(1)(b) were a reference to an over-riding statutory charge;
- (d) section 137, as if a reference to -
 - (i) the mortgagee were a reference to the person entitled to the benefit of the statutory charge; and
 - (ii) the default in payment of the principal sum, interest, annuity or rent-charge were a reference to the failure of the registered proprietor of the land the subject of the statutory charge to comply with a notice under section 142A(2);
- (e) section 139, as if a reference to the mortgagee were a reference to the person entitled to the benefit of the statutory charge;

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- (f) section 140, as if a reference to -
 - (i) payment of the principal or interest secured by a mortgage were a reference to compliance by the registered proprietor with a notice under section 142A(2);
 - (ii) a mortgagee were a reference to the person entitled to the benefit of the statutory charge;
 - (iii) mortgaged were a reference to charged; and
 - (iv) mortgagor were a reference to the registered proprietor of the land;
- (g) section 141, as if the reference to principal and interest on moneys due were a reference to the statutory charge; and
- (h) section 142, as if the reference to -
 - (i) a mortgage were a reference to a statutory charge;
 - (ii) a mortgagor were a reference to the registered proprietor of the land; and
 - (iii) a mortgagee were a reference to the person entitled to the benefit of the statutory charge."

11. DISCHARGE OF MORTGAGES AND ENCUMBRANCES, &c.

Section 143 of the Principal Act is amended by adding at the end the following:

"(2) If the Registrar-General, on the production of an instrument in the prescribed form signed by the person entitled to the benefit of a statutory charge and accompanied by the prescribed fee, is satisfied that the charge has been spent, the Registrar-General shall cancel the registration of the charge and on that cancellation the land ceases to be subject to the charge.

"(3) The Registrar-General shall -

- (a) on the application of a person who has a registered interest in land that has been subject, for more than 5 years, to a registered statutory charge or encumbrance; and
- (b) on payment of the prescribed fee,

give notice in writing to the person entitled to the benefit of the charge or encumbrance that, on the expiration of a period of not less than 28 days specified in the notice, the Registrar-General will remove the

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statutory charge or encumbrance from the Register unless the person entitled to the benefit of the charge or encumbrance gives to the Registrar-General, within the period, a notice in the prescribed form accompanied by the prescribed fee, and, if the person does not do so, the Registrar-General may remove the statutory charge or encumbrance from the Register accordingly."

12. REGULATIONS

Section 277 of the Principal Act is amended by adding at the end the following:

"(3) Without limiting the generality of subsection (1), the Regulations may prescribe the procedures to be followed in exercising a power (including a power of sale) pursuant to a statutory charge, mortgage or encumbrance".

13. REPEAL

(1) The Real Property Amendment Act, 1887 (1887, No. 403) of the State of South Australia, in its application to the Territory as a law of the Territory, is repealed.

(2) The *Real Property Ordinance* 1955 is repealed.
