

NORTHERN TERRITORY OF AUSTRALIA
REAL PROPERTY AMENDMENT ACT (No. 2) 1989

No. 66 of 1989

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. New section:
 "56A. VARIATION OF PRIORITY BETWEEN MORTGAGES
 AND ENCUMBRANCES"
5. Repeal and substitution:
 "101. SUBDIVISIONS OF LAND"
6. Repeal and substitution:
 "146. PAYMENT OF MORTGAGE MONEYS TO PUBLIC
 TRUSTEE
 "147. DISCHARGE OF MORTGAGE BY PUBLIC TRUSTEE"
7. New section:
 "151A. ALTERATIONS OF TITLE AFFECTING
 MORTGAGES, LEASES AND ENCUMBRANCES"
8. Variations of mortgages, encumbrances and leases
9. Miscellaneous special powers
10. New section:
 "220A. POWERS WHERE CERTIFICATE OR INSTRUMENT
 LOST, DAMAGED, &c."
11. Repeal and substitution:
 "241. PLANS AND MAPS"
12. New section:
 "275B. DISPOSAL OF OBSOLETE DOCUMENTS"
13. Repeal and substitution:
 "276. SERVICE OF NOTICES"
14. Further amendments
15. Savings

SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. 66 of 1989

AN ACT

to amend the *Real Property Act*

[Assented to 10 November 1989]

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) 1989*.

2. COMMENCEMENT

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

3. PRINCIPAL ACT

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

4. NEW SECTION

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

"56A. VARIATION OF PRIORITY BETWEEN MORTGAGES AND ENCUMBRANCES

"(1) Subject to subsection (2), the Registrar-General may register a memorandum in the prescribed form executed by the holders of 2 or more registered mortgages and purporting to vary the priority of those mortgages as between themselves.

Real Property Amendment (No. 2)

"(2) Where there is a registered mortgage intervening between any 2 mortgages whose priority a memorandum under subsection (1) purports to vary, the Registrar-General shall not register the memorandum unless the proprietor of the intervening mortgage is also a party to it.

"(3) On the registration of a memorandum under subsection (1), the mortgages held by the parties to the memorandum shall be entitled to priority as between each other as if they had been registered in the order in which they are expressed by the memorandum to have priority.

"(4) The Registrar-General shall record the registration of a memorandum under subsection (1) on the certificate of title affected by the mortgages in question.

"(5) Nothing in this section affects the validity of any other contractual arrangement between mortgagees relating to priorities between themselves.

"(6) In this section, references to a mortgage include an encumbrance or other security for the payment of money."

5. REPEAL AND SUBSTITUTION

Section 101 of the Principal Act is repealed and the following substituted:

"101. SUBDIVISIONS OF LAND

"(1) Where the Surveyor-General has approved under section 49(3) of the *Licensed Surveyors Act* a plan of survey relating to a subdivision of land in respect of which consent has been given under Part V of the *Planning Act*, then, subject to subsection (4) -

(a) the registered proprietor or registered proprietors of the whole of the land included in the subdivision may deposit with the Registrar-General -

- (i) a copy of the plan;
- (ii) the duplicate certificate or certificates of title to the land;
- (iii) the prescribed fee; and
- (iv) the written consent of any person who, being the registered proprietor of an interest in any part of the land, has not signed the plan itself; and

(b) the Registrar-General shall thereupon -

Real Property Amendment (No. 2)

- (i) register the copy;
- (ii) issue a new certificate of title or, as the case may require, certificates of title in accordance with the plan; and
- (iii) make such entries in the Register Book as he may consider necessary.

"(2) If the Surveyor-General deposits with the Registrar-General the plan of survey referred to in subsection (1), or a copy of that plan, then, subject to subsection (4) -

- (a) the registered proprietor or registered proprietors of the whole of the land included in the subdivision may deposit with the Registrar-General the items specified in subsection (1)(a)(ii), (iii) and (iv); and
- (b) the Registrar-General shall thereupon register the plan or copy and comply with subsection (1)(b)(ii) and (iii).

"(3) Where a copy of a plan of survey is registered by virtue of subsection (1) or (2) -

- (a) section 99(2) and (7) of the *Planning Act* shall take effect as if the plan itself had been deposited under this section and registered; and
- (b) the Registrar-General shall accordingly make such entries in the Register Book as he thinks fit to record the vesting of any land under, or to evidence any easement arising by virtue of, either of the provisions referred to in paragraph (a).

"(4) Subsections (1) and (2) do not apply where the consent to a subdivision has lapsed under section 101 of the *Planning Act*.

"(5) Sections 267 and 273 do not apply to or in relation to a plan, plan of survey or copy of a plan of survey to which this section applies.

"(6) In this section 'subdivision' has the same meaning as in the *Planning Act*."

6. REPEAL AND SUBSTITUTION

Sections 146, 147 and 148 of the Principal Act are repealed and the following substituted:-

Real Property Amendment (No. 2)

"146. PAYMENT OF MORTGAGE MONEYS TO PUBLIC TRUSTEE

"(1) The Public Trustee may, in his absolute discretion, receive moneys on behalf of a mortgagee, or the estate of a mortgagee, who -

- (a) is dead;
- (b) cannot be found; or
- (c) is incapable of executing a discharge of the mortgage.

"(2) The Public Trustee may if he thinks fit require a person at whose instance he proposes to exercise his power under subsection (1) to undertake to indemnify him in respect of any costs or liabilities incurred in connection with or by reason of that exercise.

"(3) Moneys received by the Public Trustee under subsection (1) shall -

- (a) be deemed for the purposes of the mortgage and of section 147 to have been paid to the mortgagee; and
- (b) be held by the Public Trustee upon trust for the mortgagee or other person entitled thereto.

"147. DISCHARGE OF MORTGAGE BY PUBLIC TRUSTEE

"(1) Where all the moneys secured by a mortgage have been paid by the mortgagor, and the mortgagee -

- (a) is dead;
- (b) cannot be found; or
- (c) is incapable of executing a discharge of the mortgage,

the Public Trustee may, in his absolute discretion, execute a discharge of the mortgage.

"(2) The Public Trustee may if he thinks fit require a person at whose instance he proposes to exercise his power under subsection (1) to undertake to indemnify him in respect of any costs or liabilities incurred in connection with or by reason of that exercise.

"(3) A discharge executed under subsection (1) shall have the same effect as a discharge executed by the mortgagee, save that it shall not operate as a discharge of the personal covenants of the mortgage.

"(4) In the case of a mortgage to secure contingent liabilities, or to secure both the payment of moneys and

Real Property Amendment (No. 2)

contingent liabilities, the reference in subsection (1) to all the moneys secured by a mortgage having been paid is or includes (as the case may require) a reference to the contingency or contingencies in question having become incapable of occurring."

7. NEW SECTION

The Principal Act is amended by inserting after section 151 the following:

"151A. ALTERATIONS OF TITLE AFFECTING MORTGAGES, LEASES AND ENCUMBRANCES

"(1) Where the land comprised in a grant in fee simple or a Crown lease ('the new Crown lease') -

- (a) is or includes the land, or part of the land, comprised in an existing Crown lease ('the old Crown lease'); and
- (b) so far as comprised in the old Crown lease, is subject to one or more leases, mortgages or other encumbrances,

the Registrar-General, on an application made in the prescribed form by the registered proprietor of the old Crown lease and (subject to subsection (5)) if satisfied that the registered proprietor of each such interest as is referred to in paragraph (b) has consented to the transfer of his interest to the land comprised in the grant in fee simple or new Crown lease, or to a part of that land specified in the application, shall -

- (c) notwithstanding that the interests referred to in paragraph (b) have not been surrendered or discharged, register the surrender of the old Crown lease in relation to the land comprised in the grant in fee simple or new Crown lease; and
- (d) register the grant in fee simple or new Crown lease subject to those interests (limited where appropriate to the land specified in the application).

"(2) Where an instrument adds land to, or removes land from, land which is -

- (a) comprised in a registered title; and
- (b) subject to one or more leases, mortgages or other encumbrances,

the Registrar-General may, on an application made in the prescribed form by the registered proprietor of the land so comprised and (subject to subsection (5)) if satisfied that the registered proprietor of each such interest as is

Real Property Amendment (No. 2)

referred to in paragraph (b) has consented to the application, register the instrument notwithstanding that those interests are not expressed to relate to the land to be added or, as the case may be, have not been surrendered or discharged in relation to the land to be removed.

"(3) On the registration of an instrument pursuant to subsection (2), the interests referred to in paragraph (b) of that subsection shall, subject to subsection (4), apply to the land thereby added to the title or, as the case may be, cease to apply to the land removed therefrom.

"(4) Subsection (3) does not have the effect of extending to land added to a title a lease relating to a part only of the land formerly included in the title unless an intention that the lease be so extended is indicated in the application for registration.

"(5) The consents required by subsection (1) and, in a case where land is added to land comprised in a registered title but not where it is removed therefrom, the consents required by subsection (2) do not include the consent of the Territory, the Commonwealth, or a body corporate established by or under an Act (including an Act of the Commonwealth) as registered proprietor of any encumbrance other than a mortgage.

"(6) In this section, references to a lease include a sublease."

8. VARIATIONS OF MORTGAGES, ENCUMBRANCES AND LEASES

Section 153 of the Principal Act is amended -

(a) by omitting "extended" and "extension" (wherever occurring) and substituting "varied" and "variation" respectively; and

(b) by adding at the end the following:

"(4) The power conferred by this section to vary a mortgage, encumbrance or lease includes power to vary the land to which the mortgage, lease or encumbrance applies."

9. MISCELLANEOUS SPECIAL POWERS

Section 220 of the Principal Act is amended by inserting after paragraph (4) the following:

"(4A) He may, on an application made in the prescribed form and supported by such evidence as he considers appropriate, make such alterations in the Register Book as are necessary by reason of a change in the name or address of a registered proprietor;"

Real Property Amendment (No. 2)

10. NEW SECTION

The Principal Act is amended by inserting after section 220 the following:

"220A. POWERS WHERE CERTIFICATE OR INSTRUMENT LOST, DAMAGED, &c.

"(1) Where -

(a) the Registrar-General is satisfied on an application made in the prescribed form that -

(i) a duplicate certificate of title;

(ii) a duplicate Crown lease; or

(iii) a copy of any other instrument registered under this Act,

has been lost, mislaid or destroyed; or

(b) it appears to the Registrar-General, either on an application in the prescribed form or of his own motion, that the condition of any such duplicate or copy is such as to make its replacement necessary or desirable,

the Registrar-General may, in the case of a duplicate certificate of title, issue a new certificate of title, and, in any other case, issue such certificate as is appropriate under subsection (2).

"(2) The appropriate certificate is -

(a) in the case of a duplicate Crown lease, a certificate identifying the lease by its number in the Register Book of Crown Leases, and stating that the person named in the certificate is the registered proprietor thereof; and

(b) in the case of any other instrument, a certificate describing its nature, naming the parties to it, and identifying it by reference to its number in the Register Book.

"(3) The Registrar-General shall note on -

(a) any new certificate of title issued under subsection (1); and

(b) any certificate issued under that subsection in respect of a Crown lease,

all registered interests subsisting in the land in question and, so far as still capable of having effect, any instrument lodged in relation thereto.

Real Property Amendment (No. 2)

"(4) Before issuing any certificate under this section, the Registrar-General may if he considers it necessary or desirable to do so give notice of his intention to issue it in the *Gazette* or in a newspaper circulating in the locality in which the land in question is situated.

"(5) References in this Act to a duplicate Crown lease or a copy of any instrument registered under this Act include where appropriate references to a certificate issued in place of such a duplicate or copy in accordance with subsection (2).

"(6) A certificate issued under subsection (1) is not liable to duty under the *Taxation (Administration) Act*."

11. REPEAL AND SUBSTITUTION

Section 241 of the Principal Act is repealed and the following substituted:

"241. PLANS AND MAPS

"(1) Where, in his opinion a plan or map is necessary or desirable for the purpose of registering or recording any dealing with land, the Registrar-General may require the person who has lodged documents in connection with the dealing to lodge an appropriate plan or map.

"(2) A plan or map lodged with the Registrar-General pursuant to subsection (1) must comply with his requirements as to its dimensions, the scale to which it is drawn and the information that it includes.

"(3) The Registrar-General may reject a plan or map which does not comply with his requirements under this section or is inaccurate or deficient in any respect."

12. NEW SECTION

The Principal Act is amended by inserting after section 275A the following:

"275B. DISPOSAL OF OBSOLETE DOCUMENTS

"(1) The Registrar-General may, in accordance with a scheme to be prepared by him in consultation with the Northern Territory Archives Service, dispose of any instrument, plan, map or other document registered or deposited at the Land Titles Office which appears to him to be unnecessary for the purpose of establishing or evidencing any interest or right in or over land.

"(2) The scheme may provide for the disposal of documents by their destruction, their sale, their delivery to a former registered proprietor, or their delivery to

any person or body for preservation as being of historic interest.

"(3) The disposal of documents by virtue of this section shall be subject to any restrictions or limitations prescribed by regulations."

13. REPEAL AND SUBSTITUTION

Section 276 of the Principal Act is repealed and the following substituted:

"276. SERVICE OF NOTICES

"(1) Where this Act requires a notice to be served on or given to a person the requirement is satisfied if the notice is -

- (a) served personally;
- (b) sent by registered or certified post, or by facsimile or telex -
 - (i) to the address for service noted in the Register Book;
 - (ii) in the case of a company - either to that address or to the address of the company's registered office for the purposes of the *Companies (Northern Territory) Code*; or
 - (iii) where the address or addresses authorized by subparagraphs (i) and (ii) appear to the Registrar-General to be unsatisfactory - to any other address which he may consider appropriate; or
- (c) published in such manner as the Registrar-General may direct.

"(2) The address for service noted in the Register Book may be a post office box, and may in the case of any person be a business address."

14. FURTHER AMENDMENTS

The Principal Act is further amended as provided in the Schedule.

15. SAVINGS

Notwithstanding their repeal by this Act, sections 27 to 46 (inclusive) of, and Schedules 2 and 3 to, the Principal Act shall continue to have effect in relation to land alienated in fee from the Crown before 1 January 1887 (the commencement of that Act).

SCHEDULE

Section 14

AMENDMENTS

Provision	Amendment	
	omit	substitute
Section 2	the whole section	
Section 3 - definition of "Court"	"of the province, or any Judge thereof"	
- definition of "Registrar- General"	"Registration Ordinance"	"Registration Act"
- definition of "Statutory assignment"	"Division VI of 'The Insolvent Act, 1860'"	"the <i>Bankruptcy Act 1966</i> of the Commonwealth, the <i>Companies</i> (<i>Northern Territory</i>) Code"
Sections 25 and 27 to 46 (inclusive)	the whole sections	
Section 56	"be entitled"	"but subject to section 56A, be entitled"
Section 61	"a warrant authorizing and directing the person so summoned to be apprehended and brought before the Court for examination"	"a warrant of arrest"
Section 64	"the Court" (first occurring)	"a court"
	"it shall be lawful for the Court to"	"the court in question may"
	"of such Court"	
Section 69 IX	the whole paragraph	
Section 71 I	"the Sheriff"	"an officer of a court"

Real Property Amendment (No. 2)

SCHEDULE - continued

Provision	Amendment
	<div>omit</div> <div>substitute</div>
	<div>"a writ of <u>fieri facias</u> or other writ of execution"</div> <div>"a warrant of execution"</div>
Section 71 II	<div>"the Court"</div> <div>"a court"</div>
Section 71 VI	<div>the whole paragraph</div>
Section 71A(2)	<div>"or under the Registration Ordinance,"</div>
Section 78	<div>"Upon"</div> <div>"Subject to the <i>Planning Act</i>, upon"</div>
Section 79	<div>the whole section</div>
Section 90	<div>"of sub-division"</div>
Section 102	<div>all words before "made an order"</div> <div>"Where a court has"</div>
Section 104	<div>the whole section</div>
Section 105	<div>"writ of <u>fieri facias</u> or other writ or"</div> <div>"the Court, or any Court of Insolvency or other Court of competent jurisdiction"</div> <div>"a court"</div>
	<div>"such writ," (twice occurring)</div> <div>"such"</div>
Section 106	<div>"writ," (twice occurring)</div>
Section 107	<div>"writ," (wherever occurring)</div>
Section 108	<div>"writ or warrant of execution of a Court"</div> <div>"warrant of execution"</div>
Section 109	<div>"writ," (twice occurring)</div>
Section 110	<div>"writ," (twice occurring)</div>

Real Property Amendment (No. 2)

SCHEDULE - continued

Provision	Amendment
	<div>omit</div> <div>substitute</div>
Section 125(1)	the whole paragraph
Section 127	the whole section
Section 132	"South Australia" "the Territory"
Section 137	"or may distrain upon the occupier or tenant of the land under the power hereinafter contained,"
	"or making any distress as aforesaid,"
Section 138	the whole section
Heading to Part XIII	"EXTENSIONS" "VARIATIONS"
Section 172	"of Insolvency" "insolvent" (twice occurring) "bankrupt" "insolvency" (twice occurring) "bankruptcy"
Section 173	"insolvent" (twice occurring) "bankrupt" "insolvency" (whenever occurring) "bankruptcy"
Section 174	"insolvent" (twice occurring) "bankrupt"
Section 175	the whole section
Section 176	"such estate or interest" "the estate or interest in land of a deceased registered proprietor"
Section 180	"insolvent" "bankrupt"

Real Property Amendment (No. 2)

SCHEDULE - continued

Provision	Amendment	
	omit	substitute
Sections 181 to 183 (inclusive)	the whole sections	
Section 184	"'The Trustee Act, 1855,'"	" <i>The Trustee Act</i> "
Sections 189 and 190	the whole sections	
Section 191 I	"City of Adelaide"	"Territory"
Section 191 II	"through the post office"	
Section 191 V	"under Part XX"	
	"Adelaide"	"the Territory"
Sections 192 to 200 (inclusive)	the whole sections	
Section 220(5)	"province"	"Territory"
Section 220(9)	"in the city of Adelaide"	"in that part of the Territory where the land is situated"
Section 221	" , in writing under his hand,"	
Sections 224 and 225	the whole sections	
Section 227	"a Judge"	"the Court"
	"any Judge"	"the Court"
	"in the premises as he shall think fit, and unless the Judge"	"as it thinks fit, and unless the Court"
	"the said Judge"	"the Court"
Section 228	"Justice of the Peace, or Commissioner for taking Affidavits in the Supreme Court."	"or a Justice of the Peace."

Real Property Amendment (No. 2)

SCHEDULE - continued

Provision	Amendment
	<div>omit</div> <div>substitute</div>
Sections 229 to 231 (inclusive)	the whole sections
Section 233	<div data-bbox="447 546 803 653">"If any person is guilty of any of the following offences, that is to say -"</div> <div data-bbox="854 546 1178 598">"A person commits an offence if he -"</div>
	<div data-bbox="447 681 814 761">all words from "Such person" to "3 years." (inclusive)</div> <div data-bbox="854 681 1178 761">"Penalty: \$1,000 or imprisonment for 3 years."</div>
Sections 235 to 240 (inclusive), 242 to 245 (inclusive), 252 to 254 (inclusive), 258, 259 and 274	
Schedules 2, 3 and 21	the whole Schedules