

NORTHERN TERRITORY OF AUSTRALIA
REAL PROPERTY AMENDMENT ACT 1988

No. 38 of 1988

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Instruments to be according to Act or Regulations
5. Certificate of title
6. Transfers
7. Transfer on sale under writ, warrant, decree or order
8. Land, how leased
9. Surrender of lease
10. Registrar-General may enter surrender
11. Lands, how mortgaged or encumbered
12. Discharge of mortgages and encumbrances
13. Repeal of section 144
14. Entry of satisfaction of annuity
15. Registrar-General may enter discharge in certain cases
16. Transfer of mortgage, lease or encumbrance
17. Extension of mortgage, &c.
18. Power of attorney
19. Revocation of power of attorney
20. Application to be made on transmission on death
21. Survivor of joint proprietors, and of remainder man entitled to estate in possession
22. Caveats
23. Repeal of sections 255 to 257
24. New section:

"265A. RECORDING AND USE OF COMMON FORM PROVISIONS"
25. Repeal and substitution:

"267. ATTESTATION OF INSTRUMENTS EXECUTED BY INDIVIDUALS"
26. Execution of instrument by corporation
27. Authority to register
28. Repeal and substitution:

"275. PRESCRIBED FORMS"
29. New section:

"275A. DELIVERY OF INSTRUMENTS IN CUSTODY OF REGISTRAR-GENERAL"
30. Repeal of Schedules



NORTHERN TERRITORY OF AUSTRALIA

No. 38 of 1988

AN ACT

to amend the *Real Property Act*

[Assented to 14 September 1988]

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 1988*.

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. INSTRUMENTS TO BE ACCORDING TO ACT OR REGULATIONS

Section 54 of the Principal Act is amended by omitting "the provisions hereof" and substituting "this Act or the Regulations".

5. CERTIFICATE OF TITLE

Section 73(1) of the Principal Act is amended by omitting "form in the Fourth Schedule hereto, or in a form to the like effect," and substituting "prescribed form".

Real Property Amendment

6. TRANSFERS

Section 96 of the Principal Act is amended by omitting all words after "transferred, the" and substituting "dealing shall be effected by a transfer in the prescribed form which shall be executed -

- (a) by the registered proprietor or, in the case of a transfer of land by a mortgagee, encumbrancee or receiver exercising a power of sale, that mortgagee, encumbrancee or receiver; and
- (b) unless the Registrar-General has directed otherwise with respect to the dealing in question or dealings of a class to which it belongs, by the transferee or grantee."

7. TRANSFER ON SALE UNDER WRIT, WARRANT, DECREE OR ORDER

Section 107 of the Principal Act is amended by omitting "forms of the Seventh Schedule hereto" and substituting "prescribed forms".

8. LAND, HOW LEASED

Section 116 of the Principal Act is amended by omitting "form of the Eighth Schedule hereto" and substituting "prescribed form".

9. SURRENDER OF LEASE

Section 120 of the Principal Act is amended by omitting all words after "statutory assignment" and substituting "the lease shall be surrendered by an instrument in the prescribed form, signed by the lessee and the lessor; and upon registering any such instrument, the Registrar-General shall enter in the Register Book a memorial recording the date of the surrender, and may if he considers it necessary or desirable to do so indorse that date on the duplicate certificate, on the lease registered in his office, and on the lessor's and lessee's copies of the lease."

10. REGISTRAR-GENERAL MAY ENTER SURRENDER

Section 121 of the Principal Act is amended by inserting after "upon application" the words "in the prescribed form".

11. LANDS, HOW MORTGAGED OR ENCUMBERED

Section 128 of the Principal Act is amended -

- (a) by omitting "form of the Ninth Schedule hereto" and substituting "prescribed form"; and
- (b) by omitting "form of the Tenth Schedule hereto" and substituting "prescribed form".

Real Property Amendment

12. DISCHARGE OF MORTGAGES AND ENCUMBRANCES

Section 143 of the Principal Act is amended -

- (a) by omitting "a receipt or memorandum" and substituting "an instrument in the prescribed form";
- (b) by omitting "and on the mortgage or encumbrance" and substituting "and on the duplicate certificate or other instrument produced to him for that purpose"; and
- (c) by omitting all words after "Registrar-General" (last occurring) and substituting "may if he considers it necessary or desirable to do so make a similar entry on the mortgage or encumbrance and on any duplicate or other copy thereof.".

13. REPEAL OF SECTION 144

Section 144 of the Principal Act is repealed.

14. ENTRY OF SATISFACTION OF ANNUITY

Section 145 of the Principal Act is amended -

- (a) by omitting "Upon the proof" and substituting "Upon the making of an application in the prescribed form and proof";
- (b) by omitting "and on the encumbrance" and substituting "and on the duplicate certificate or other instrument produced to him for that purpose";
- (c) by omitting ", and shall cancel the encumbrance"; and
- (d) by omitting all words after "Registrar-General" (last occurring) and substituting "may if he considers it necessary or desirable to do so make a similar entry on the encumbrance and on any duplicate or other copy thereof.".

15. REGISTRAR-GENERAL MAY ENTER DISCHARGE IN CERTAIN CASES

Section 148 of the Principal Act is amended by omitting "notwithstanding the duplicate mortgage shall not contain any discharge of the mortgage debt" and substituting "without the production pursuant to section 143 of the prescribed form signed by the mortgagee".

Real Property Amendment

16. TRANSFER OF MORTGAGE, LEASE OR ENCUMBRANCE

Section 150 of the Principal Act is amended by omitting "form of the Eleventh Schedule hereto" and substituting "prescribed form".

17. EXTENSION OF MORTGAGE, &c.

Section 153 of the Principal Act is amended -

- (a) by inserting in subsection (1) after "instrument of extension" the words "in the prescribed form"; and
- (b) by omitting from that subsection all words after "or lease" (second occurring).

18. POWER OF ATTORNEY

Section 155 of the Principal Act is amended by omitting "form in the Thirteenth Schedule hereto" and substituting "prescribed form".

19. REVOCATION OF POWER OF ATTORNEY

Section 157 of the Principal Act is amended by omitting "form of the Fourteenth Schedule hereto" and substituting "prescribed form".

20. APPLICATION TO BE MADE ON TRANSMISSION ON DEATH

Section 176 of the Principal Act is amended by omitting "in writing" and substituting "in the prescribed form".

21. SURVIVOR OF JOINT PROPRIETORS, AND OF REMAINDER MAN ENTITLED TO ESTATE IN POSSESSION

Section 188 of the Principal Act is amended by omitting "the application of" and substituting "an application in the prescribed form by".

22. CAVEATS

Section 191 of the Principal Act is amended -

- (a) by omitting from paragraph I "Twelfth Schedule hereto" and substituting "prescribed form"; and
- (b) by omitting from paragraph V "in writing" (first occurring) and substituting "in the prescribed form".

23. REPEAL OF SECTIONS 255 TO 257

Sections 255, 256 and 257 of the Principal Act are repealed.

Real Property Amendment

24. NEW SECTION

The Principal Act is amended by inserting after section 265 the following:

"265A. RECORDING AND USE OF COMMON FORM PROVISIONS

"(1) A person may lodge with the Registrar-General, and the Registrar-General may retain, a memorandum in the prescribed form containing one or more provisions which are intended for incorporation by reference in instruments subsequently lodged for registration under this Act.

"(2) The Registrar-General may prepare such a memorandum and retain it.

"(3) A memorandum retained by the Registrar-General under subsection (1) or (2) shall be deemed to be part of the Register Book kept under section 47.

"(4) An instrument under this Act may provide that a provision in a memorandum retained under subsection (1) or (2) is incorporated in the instrument, or is incorporated in it subject to specified modifications.

"(5) Where a provision is incorporated in an instrument by virtue of subsection (4), the party by or on behalf of whom the incorporation is effected shall, before the instrument is executed, provide the other party or parties with a copy of the provision or, as the case may be, of the provision and the modifications thereof.

Penalty: \$1,000.

"(6) A failure to comply with subsection (5) in respect of an instrument does not affect the validity or effect of the instrument."

25. REPEAL AND SUBSTITUTION

Sections 267 and 268 of the Principal Act are repealed and the following substituted:

"267. ATTESTATION OF INSTRUMENTS EXECUTED BY INDIVIDUALS

"The execution of an instrument under this Act by a person other than a corporation shall be attested by one witness, being a person who has attained the age of 18 years and is of a description prescribed for the purposes of this section, by endorsing on the instrument a certificate in the prescribed form."

26. EXECUTION OF INSTRUMENT BY CORPORATION

Section 270 of the Principal Act is amended -

- (a) by omitting "A Corporation" and substituting "(1) A corporation"; and

Real Property Amendment

(b) by adding at the end the following:

"(2) Instruments under this Act may, instead of being executed by a corporation as mentioned in subsection (1), be executed or authenticated by, or made on behalf of, the corporation in any manner permitted to that corporation by law."

27. AUTHORITY TO REGISTER

Section 273 of the Principal Act is amended -

(a) by omitting "The Registrar-General" and substituting "(1) The Registrar-General"; and

(b) by adding at the end the following:

"(2) Where the applicant or party referred to in subsection (1) is a corporation, the requirement that the certificate be signed by the applicant or party is a requirement that it be authenticated by or on behalf of the corporation in any manner permitted to that corporation by law."

28. REPEAL AND SUBSTITUTION

Section 275 of the Principal Act is repealed and the following substituted:

"275. PRESCRIBED FORMS

"(1) The Registrar-General may make arrangements with a person for the printing by that person of forms prescribed for the purposes of this Act, and the Registrar-General and any other person authorized by the Minister to do so by notice in the *Gazette* may sell to the public forms printed in accordance with any such arrangements.

"(2) A direction in or under this Act that a prescribed form is to be used shall apply equally to any form to the like effect or for a similar purpose authorized in conformity with the provisions of this Act."

29. NEW SECTION

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

"275A. DELIVERY OF INSTRUMENTS IN CUSTODY OF REGISTRAR-GENERAL

"(1) Subject to subsection (2), the Registrar-General may deliver an instrument in his custody to the person by whom the instrument was lodged, or to that person's legal practitioner, known agent or attorney.

Real Property Amendment

"(2) Where the person by whom an instrument was lodged has given written instructions to the Registrar-General for the delivery of the instrument otherwise than as mentioned in subsection (1), the Registrar-General shall deliver it only in accordance with those instructions.

"(3) Where, but for this subsection, the Registrar-General would be unable to determine to whom an instrument in his custody should be delivered, he may deliver it to the person he considers best entitled to the instrument.

"(4) Where a person has authorized the Registrar-General in writing to deliver instruments to him by placing them in a delivery box (whether at the Registrar-General's office or elsewhere), the placing of an instrument in the box by or on behalf of the Registrar-General shall be treated as its delivery to that person."

30. REPEAL OF SCHEDULES

The Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Eighteenth and Nineteenth Schedules to the Principal Act are repealed.
