

Serial 75
Land Legislation Amendment Bill 2022
Mr Paech

A Bill for an Act to amend the *Electronic Conveyancing (National Uniform Legislation) Act 2013*, the *Land Title Act 2000* and the *Law of Property Act 2000*

NORTHERN TERRITORY OF AUSTRALIA

LAND LEGISLATION AMENDMENT ACT 2022

Act No. [] of 2022

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
Part 2	Amendment of Electronic Conveyancing (National Uniform Legislation) Act 2013	
3	Act amended	1
4	Section 8 amended (Meaning of generic terms).....	2
Part 3	Amendment of Land Title Act 2000	
5	Act amended	2
6	Section 4 amended (Definitions).....	2
7	Section 5A inserted	4
	5A Application of Criminal Code	
8	Section 7 amended (Form of instruments)	4
9	Section 10 amended (Execution of certain instruments)	5
10	Section 11 amended (Consent to be written on instrument etc.)	5
11	Section 14A inserted	6
	14A Registration of, or dealing with, particular instruments or other documents	
12	Part 2, Division 2A inserted	6
	Division 2A Electronic conveyancing documents	
	15A Reference to particular type of document includes its electronic conveyancing form	
	15B Meaning of <i>electronic conveyancing document</i>	
	15C Signing or executing electronic conveyancing document	
	15D Registering electronic conveyancing document	
13	Section 25 replaced	7
	25 Offence by witness	
14	Section 27 amended (Referral to Supreme Court from inquiry).....	8
15	Section 32 replaced.....	9
	31A Particulars Registrar-General may remove	
	32 Entitlement to search land register	

	32A	Fee required to produce document under subpoena	
16		Section 44 amended (Issuing of certificates as to title).....	10
17		Section 54A amended (Plan of subdivision and plan of consolidation)	11
18		Section 64A inserted	11
	64A	Disclaimer in bankruptcy – land	
19		Section 71 amended (Surrendering a lease)	12
20		Section 72 amended (Disclaimer in bankruptcy)	12
21		Section 78A inserted	13
	78A	Original mortgagee to confirm identity of mortgagor	
22		Section 81A inserted	15
	81A	Mortgage transferee to confirm identity of mortgagor	
23		Section 85A inserted	17
	85A	Cancellation of registration of mortgage by Registrar-General	
24		Section 125 amended (How trusts may be registered).....	18
25		Section 136A inserted	18
	136A	Effect on writ of execution of transfer after sale by mortgagee	
26		Section 138 amended (Lodging a caveat)	19
27		Section 140 amended (Effect of lodging caveat)	19
28		Section 142 amended (Automatic lapsing of caveat).....	20
29		Section 145 replaced	20
	145	Further caveat	
30		Section 155 amended (Requisitions).....	20
31		Section 156 amended (Rejecting instrument for failure to comply with requisition)	22
32		Section 157 amended (Withdrawing lodged instrument before registration).....	23
33		Section 159 amended (Execution and proof)	23
34		Section 162 amended (Dispensing with production of instrument).....	23
35		Section 172 replaced	24
	172	Standard terms document to be provided to other parties	
36		Section 187 amended (Provision for registration in case of death of party executing instrument)	24
37		Section 189 amended (Exceptions to section 188).....	25
38		Part 10A inserted.....	26
	Part 10A	Client authorisation	
	197A	Definition	
	197B	Verification of identity requirements	
	197C	Effect of client authorisation	
	197D	Termination of client authorisation	
	197E	Instruments to be executed by natural persons	
	197F	Client authorisation may be given by Territory or statutory corporation	
	197G	Legal practitioner and conveyancing agent must obtain authorisation	
	197H	Retention of client authorisation	

39	Section 197J inserted	30
	197J Review by NTCAT	
40	Section 206 amended (Service)	30
41	Section 210 amended (Registrar-General's directions)	31
42	Section 210A inserted	31
	210A Verification of authority guidelines	
43	Part 15 inserted	32
	Part 15 Transitional matters for Land Legislation Amendment Act 2022	
	221 Definition	
	222 Application of section 78A	
	223 Application of section 81A	
	224 Offences – before and after commencement	
	225 NTCAT jurisdiction applies after commencement	
44	Schedule 1 amended (Witnesses to instruments)	33
 Part 4 Amendment of Law of Property Act 2000		
45	Act amended	33
46	Section 89A inserted	33
	89A Exercise of power of sale in relation to disclaimed properties	
47	Section 90 amended (Duty of mortgagee as to sale price).....	35
48	Section 93 amended (Application of proceeds of sale).....	35
49	Part 17 heading replaced	35
50	Part 17, Division 2 inserted.....	36
	Division 2 Transitional matters for Land Legislation Amendment Act 2022	
	222 Definition	
	223 Application of section 89A	
	224 Application of proceeds of sales that took place before commencement	
 Part 5 Repeal of Act		
51	Repeal of Act.....	36



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2022

An Act to amend the *Electronic Conveyancing (National Uniform Legislation) Act 2013*, the *Land Title Act 2000* and the *Law of Property Act 2000*

[Assented to [] 2022]
[Introduced [] 2022]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Land Legislation Amendment Act 2022*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Electronic Conveyancing (National Uniform Legislation) Act 2013

3 Act amended

This Part amends the *Electronic Conveyancing (National Uniform Legislation) Act 2013*.

4 Section 8 amended (Meaning of generic terms)

Section 8, definition *responsible tribunal*

omit

the Supreme Court

insert

NTCAT

Part 3 Amendment of Land Title Act 2000**5 Act amended**

This Part amends the *Land Title Act 2000*.

6 Section 4 amended (Definitions)

(1) Section 4, definitions *approved form* and *lodge*

omit

(2) Section 4

insert

approved form means:

- (a) for an electronic conveyancing document – a form approved by the Registrar-General under section 7 of the *Electronic Conveyancing National Law (NT)*; or
- (b) a form prescribed by the Regulations or the Registrar-General's directions.

client authorisation is a document:

- (a) that is a client authorisation for the purposes of the *Electronic Conveyancing National Law (NT)*; or
- (b) that is in the appropriate form and by which the client of a law practice, legal practitioner or conveyancing agent authorises the practice, practitioner or agent to execute one or more instruments, or do one or more things, on behalf of the client in connection with a specified transaction or for a specified period of time.

conveyancing agent, see section 5(2)(c) of the *Agents Licensing Act 1979*.

copy, of a document, if the document is an electronic conveyancing document, means:

- (a) a representation of the document in paper form; or
- (b) a reproduction or representation of the document in digital form.

electronic communication means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy.

electronic conveyancing document, see section 15B.

Electronic Conveyancing National Law (NT), see section 3(2) of the *Electronic Conveyancing (National Uniform Legislation) Act 2013*.

endorse, in relation to endorsing information on a document, if the document is an electronic conveyancing document, means record the information in electronic form as part of the document in such a way that it is reasonable to expect the information will be readily accessible as part of the document so as to be usable for subsequent reference.

law practice, see section 4 of the *Legal Profession Act 2006*.

lodge, in relation to a document, means:

- (a) if the document is an electronic conveyancing document – lodging the document electronically under section 7 of the *Electronic Conveyancing National Law (NT)*; or
- (b) if the document is not an electronic conveyancing document:
 - (i) depositing or lodging the document in the Land Titles Office; or
 - (ii) depositing or lodging the document in any other way permitted by the Registrar-General under section 14.

requisition means a notice given by the Registrar-General under section 155(1) or (7).

standard terms document, for Part 8, Division 2, see section 167.

verification of authority guidelines means the guidelines issued under section 210A.

verification of identity requirements, for Part 10A, see section 197B.

- (3) Section 4, definition **instrument**, paragraph (j)

omit

54G(1)(a).

insert

54G(1)(a); and

- (4) Section 4, definition **instrument**, after paragraph (j)

insert

(k) an electronic conveyancing document.

7 Section 5A inserted

After section 5, in Part 1

insert

5A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

8 Section 7 amended (Form of instruments)

After section 7(3)

insert

- (4) Subsection (3) does not apply to an instrument that is an electronic conveyancing document.

9 Section 10 amended (Execution of certain instruments)

After section 10(2)

insert

- (3) For an instrument that is an electronic conveyancing document, subsections (1), (1A) and (2) apply subject to the form approved for the instrument under section 7 of the *Electronic Conveyancing National Law (NT)*.

10 Section 11 amended (Consent to be written on instrument etc.)

After section 11(1)

insert

- (2) If the relevant instrument is an electronic conveyancing document, a person is taken to have complied with subsection (1) if the consent:
- (a) is in the form of an electronic conveyancing document; and
 - (b) is lodged with the relevant instrument.
- (3) Subsection (4) applies if the relevant instrument is lodged in an electronic form by an electronic communication under:
- (a) this Act or another law, other than the *Electronic Conveyancing National Law (NT)*; and
 - (b) the *Electronic Transactions (Northern Territory) Act 2000*.
- (4) A person is taken to have complied with subsection (1) if:
- (a) a method is used to identify the person and to indicate the person's consent; and
 - (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the consent was communicated; and
 - (c) the Registrar-General consents to the requirement being met by using the method.

11 Section 14A inserted

After section 14

insert

14A Registration of, or dealing with, particular instruments or other documents

- (1) This section applies if an instrument or other document is lodged or deposited other than in compliance with a requirement under this Act.
- (2) The Registrar-General may register, or otherwise deal with, the instrument or document if the Registrar-General is satisfied it is reasonable not to require the compliance.

12 Part 2, Division 2A inserted

After section 15

insert

Division 2A Electronic conveyancing documents**15A Reference to particular type of document includes its electronic conveyancing form**

A reference in this Act to a document of a type that may be lodged or deposited under this Act includes a reference to the document in the form of an electronic conveyancing document.

15B Meaning of *electronic conveyancing document*

- (1) An ***electronic conveyancing document*** is a document under the *Electronic Conveyancing National Law (NT)* that is lodged electronically under section 7 of that Law, in the land register.

Note for subsection (1)

*Under the Electronic Conveyancing National Law (NT), Schedule, section 12(1), definition **document**, a document includes any record of information that exists in a digital form and is capable of being reproduced, transmitted, stored and duplicated by electronic means.*

- (2) To avoid doubt, a document is not an electronic conveyancing document if it is lodged or deposited in an electronic form by an electronic communication under:
 - (a) this Act or another law, other than the *Electronic Conveyancing National Law (NT)*; and

(b) the *Electronic Transactions (Northern Territory) Act 2000*.

15C Signing or executing electronic conveyancing document

If this Act provides for a document to be signed or executed and the document is an electronic conveyancing document, the document must be digitally signed as provided for under the *Electronic Conveyancing National Law (NT)*.

15D Registering electronic conveyancing document

For registering an electronic conveyancing document, the Registrar-General may rely on a certification made under the participation rules determined under the *Electronic Conveyancing National Law (NT)*.

13 Section 25 replaced

Section 25

repeal, insert

25 Offence by witness

- (1) A person commits an offence if the person is given a notice under section 24 and the person fails to comply with the notice.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if:

- (a) the person appears as a witness at an inquiry; and
- (b) the person does not:
- (i) take an oath when required by the Registrar-General; or
 - (ii) answer a question the person is required to answer by the Registrar-General; or
 - (iii) produce a document or thing the person is required to produce by the Registrar-General.

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the person has a reasonable excuse.

Note for subsection (4)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

14 Section 27 amended (Referral to Supreme Court from inquiry)

- (1) Section 27, heading

omit

Supreme Court

insert

NTCAT

- (2) Section 27(1) and (2)

omit

the Supreme Court

insert

NTCAT

- (3) Section 27(2)

omit

The Supreme Court

insert

NTCAT

15 Section 32 replaced

Section 32

repeal, insert

31A Particulars Registrar-General may remove

The Registrar-General may remove from the land register anything recorded under section 30(2) or 31 if:

- (a) the Registrar-General no longer considers the thing should be recorded to ensure the land register is an accurate, comprehensive and usable record of land in the Territory; and
- (b) the removal of the thing will not prejudice the rights of the holder of an interest recorded in the land register.

32 Entitlement to search land register

- (1) A person may, on payment of the prescribed fee:
 - (a) search and obtain a copy of:
 - (i) the indefeasible title of a lot; or
 - (ii) a registered instrument; or
 - (iii) an instrument that has been lodged but is not registered (whether or not it has been cancelled); or
 - (iv) information kept under this Act; and
 - (b) obtain a copy of the indefeasible title of a lot, or a registered instrument, certified by the Registrar-General to be an accurate copy.
- (2) Subsection (1)(a)(iii) does not apply to an instrument that has been disposed of by the Registrar-General under section 165.
- (3) A search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, the Land Titles Office during business hours on a day the office is open for business.
- (4) In addition, a search under subsection (1) may be carried out by, or a copy mentioned in subsection (1) obtained from, an entity engaged by the Registrar-General for allowing persons to search the land register or obtain copies of indefeasible titles, registered or other instruments, or information, kept in the land register.

- (5) The Registrar-General may allow a person to carry out a search under subsection (1)(a) for:
- (a) part of an indefeasible title for a lot; or
 - (b) part of an instrument; or
 - (c) part of the information about an instrument.
- (6) Subject to subsection (7), the Registrar-General may enter into an arrangement with an Agency allowing the Agency to carry out a search, or obtain a copy, under this section without payment of the fee mentioned in subsection (1).
- (7) The Registrar-General may enter into an arrangement under subsection (6) only if the Registrar-General is reasonably satisfied the information obtained from the search or the copy will not be:
- (a) used for a commercial purpose, including, for example, the marketing or sale of the information or other information; or
 - (b) included in another database of information, in any form, other than with approval from the Registrar-General.

32A Fee required to produce document under subpoena

- (1) This section applies in relation to:
- (a) a fee payable under section 32(1) for a person to obtain a copy of an indefeasible title, registered or other instrument, or information; and
 - (b) a subpoena that requires the title, instrument or information to be produced.
- (2) Despite any other law or rule of court, the Registrar-General is not required to produce, or provide a copy of, the document until the fee mentioned in section 32(1) is paid.
- (3) Subsection (2) does not apply if an Agency is not required to pay a fee for the document under an agreement mentioned in section 32(6).

16 Section 44 amended (Issuing of certificates as to title)

Section 44(1)(c)

omit

, within the meaning of section 5(2)(c) of the *Agents Licensing Act 1979*,

17 Section 54A amended (Plan of subdivision and plan of consolidation)

Section 54A(2), after "65(2)"

insert

of the *Unit Title Schemes Act 2009*

18 Section 64A inserted

After section 64, in Part 6, Division 1

insert

64A Disclaimer in bankruptcy – land

- (1) The Registrar-General may register a disclaimer of a lot or an interest in a lot (except a lease) under a law about bankruptcy only if the disclaimer and a request to register it is lodged.
- (2) The disclaimer operates as a surrender of the lot or interest in the lot on it being registered.
- (3) If the lot or the interest in the lot is mortgaged, a mortgagee may apply to the Registrar-General to register a notice of foreclosure.
- (4) A notice of foreclosure must be accompanied by the disclaimer.
- (5) On the notice of foreclosure being registered:
 - (a) the estate or interest of the bankrupt in the lot or interest in the lot vests in the mortgagee free from all other charges; and
 - (b) the Registrar-General must register the mortgagee as registered proprietor of the lot or interest in the lot.
- (6) A notice of foreclosure must not be registered unless the Registrar-General is satisfied that the mortgagee:
 - (a) has given 14 days written notice of the mortgagee's intended application to every subsequent mortgagee of the lot or interest in the lot; or
 - (b) has obtained the written consent of every subsequent mortgagee of the lot or interest in the lot.
- (7) A subsequent mortgagee may pay to the mortgagee the amount due to the mortgagee under the mortgage, with costs, at any time before foreclosure.

- (8) On paying the amount under subsection (7), the subsequent mortgagee is entitled to a transfer from the mortgagee of the mortgage.

19 Section 71 amended (Surrendering a lease)

- (1) Section 71, heading

omit

a

- (2) Section 71(2)

omit

mortgagee and sublessee

insert

registered mortgagee and registered sublessee

- (3) After section 71(2)

insert

- (2A) In addition, if a registered lease (the **surrendered lease**) has been wholly or partly surrendered by operation of law, the Registrar-General may register an instrument evidencing the surrender if satisfied every registered mortgagee and registered sublessee of the lessee under the surrendered lease has been given written notice of the surrender.

20 Section 72 amended (Disclaimer in bankruptcy)

- (1) Section 72, heading, after "**bankruptcy**"

insert

– leases

- (2) Section 72(1)

omit

all words from "or other" to "and"

insert

only if the disclaimer and

21 Section 78A inserted

After section 78

insert

78A Original mortgagee to confirm identity of mortgagor

- (1) This section applies to:
 - (a) the mortgaging of a lot or an interest in a lot; and
 - (b) an amendment of a mortgage mentioned in paragraph (a).
- (2) Before the instrument of mortgage or amendment of mortgage is registered, the mortgagee under the instrument (the **original mortgagee**) must ensure the person who is the mortgagor under the instrument is identical to the person who is, or who is about to become, the registered proprietor of the lot or the interest in a lot.
- (3) For subsection (2):
 - (a) a person is the mortgagor under an instrument of mortgage or amendment of mortgage if the person executes the instrument as mortgagor, including, if the instrument is an electronic conveyancing document, through a subscriber digitally signing the instrument under the *Electronic Conveyancing National Law (NT)*; and
 - (b) a person is the mortgagor under an instrument of mortgage or amendment of mortgage if the instrument is an electronic conveyancing document and the person signs, as mortgagor, a document that under the participation rules under the *Electronic Conveyancing National Law (NT)*:
 - (i) is required as a supporting document for the instrument of mortgage or instrument of amendment of mortgage; and
 - (ii) is required to be kept by the original mortgagee.
- (4) An original mortgagee commits an offence if the original mortgagee does not comply with subsection (2).

Maximum penalty: 200 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

Note for subsection (6)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (7) An original mortgagee must, for 7 years after the instrument is registered, and whether or not there is registered a transfer of the interest constituted by the mortgage:

- (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
- (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the original mortgagee in complying with subsection (2).

- (8) An original mortgagee commits an offence if the original mortgagee does not comply with subsection (7).

Maximum penalty: 50 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.

- (10) It is a defence to a prosecution for an offence against subsection (8) if:

- (a) the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence; or
- (b) circumstances beyond the control of the defendant prevented the defendant from complying with subsection (7).

Note for subsection (10)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (11) The Registrar-General may, whether before or after the registration of the instrument and whether or not there has been registered a transfer of the interest constituted by the mortgage, ask an original mortgagee:

- (a) to advise the Registrar-General about the steps taken by the original mortgagee under subsection (2); and
- (b) to produce for the Registrar-General's inspection the written record mentioned in subsection (7)(a) or the originals or copies mentioned in subsection (7)(b).

- (12) An original mortgagee commits an offence if the original mortgagee does not comply with a request under subsection (11).

Maximum penalty: 20 penalty units.

- (13) An offence against subsection (12) is an offence of strict liability.

- (14) It is a defence to a prosecution for an offence against subsection (12) if the defendant has a reasonable excuse.

Note for subsection (14)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

22 Section 81A inserted

After section 81

insert

81A Mortgage transferee to confirm identity of mortgagor

- (1) This section applies to the transfer of the interest constituted by the mortgage of a lot or an interest in a lot.
- (2) Before the instrument of transfer is lodged for registration, the transferee under the instrument of transfer (the **mortgage transferee**) must take reasonable steps to ensure the person who was the mortgagor under the instrument of mortgage was identical to the person who, when the instrument of mortgage was registered, was the registered proprietor of the lot, or the interest in a lot.
- (3) For subsection (2):
- (a) a person was the mortgagor under an instrument of mortgage if the person executed the instrument as mortgagor, including, if the instrument is an electronic conveyancing document, through a subscriber digitally signing the instrument under the *Electronic Conveyancing National Law (NT)*; and
 - (b) a person was the mortgagor under an instrument of mortgage if the instrument is an electronic conveyancing document and the person signed, as mortgagor, a document that under the participation rules under the *Electronic Conveyancing National Law (NT)*:
 - (i) was required as a supporting document for the instrument of mortgage; and

(ii) was required to be kept by the original mortgagee mentioned in section 78A(2).

- (4) A mortgage transferee commits an offence if the mortgage transferee does not comply with subsection (2).

Maximum penalty: 200 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) A mortgage transferee must, for 7 years after the instrument of transfer of the mortgage is registered and whether or not there is registered a further transfer of the interest constituted by the mortgage:
- (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
 - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgage transferee in complying with subsection (2).

- (7) A mortgage transferee commits an offence if the mortgage transferee does not comply with subsection (6).

Maximum penalty: 50 penalty units.

- (8) An offence against subsection (7) is an offence of strict liability.
- (9) It is a defence to a prosecution for an offence against subsection (7) if:
- (a) the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence; or
 - (b) circumstances beyond the control of the defendant prevented the defendant from complying with subsection (6).

Note for subsection (9)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (10) The Registrar-General may, whether before or after the registration of the instrument of transfer of the mortgage, and whether or not there has been registered a further transfer of the interest constituted by the mortgage, ask the mortgage transferee:
- (a) to advise the Registrar-General about the steps taken by the mortgage transferee under subsection (2); and

- (b) to produce for the Registrar-General's inspection the written record mentioned in subsection (6)(a) or the originals or copies mentioned in subsection (6)(b).
- (11) A mortgage transferee commits an offence if the mortgage transferee does not comply with a request under subsection (10).
- Maximum penalty 20 penalty units.
- (12) An offence against subsection (11) is an offence of strict liability.
- (13) It is a defence to a prosecution for an offence against subsection (11) if the mortgage transferee has a reasonable excuse.

Note for subsection (13)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

23 Section 85A inserted

After section 85, in Part 6, Division 3, Subdivision 1

insert

85A Cancellation of registration of mortgage by Registrar-General

The Registrar-General may cancel the registration of a mortgage if:

- (a) the person by or on whose behalf the mortgage was signed or executed as mortgagor (the ***purported mortgagor***) is not the registered proprietor of land subject to the mortgage; and
- (b) the mortgagee:
- (i) failed to comply with a requirement under this Act or the *Electronic Conveyancing National Law (NT)* to verify the purported mortgagor's identity or authority to enter into the mortgage; or
 - (ii) if the mortgage was transferred to the mortgagee – failed to comply with a requirement under this Act to establish that the transferor complied with an obligation imposed on the transferor, as mortgagee, to verify the purported mortgagor's identity or authority to enter into the mortgage.

24 Section 125 amended (How trusts may be registered)

- (1) Section 125, heading
- omit*
- trusts**
- insert*
- interest as trustee**
- (2) Section 125, before "A"
- insert*
- (1)
- (3) Section 125(a)
- omit, insert*
- (a) an instrument transferring the interest to, or creating the interest in favour of, the person as trustee; or
- (4) Section 125, at the end
- insert*
- (2) For subsection (1)(b), a request to vest an interest in a lot in a person as trustee includes a request to give effect to an order of a court appointing the person as trustee for the sale of the lot.

25 Section 136A inserted

After section 136, in Part 7, Division 1

insert

136A Effect on writ of execution of transfer after sale by mortgagee

- (1) Subsection (2) applies to a lot over which:
- (a) a mortgage is registered; and
- (b) a writ of execution is later registered in relation to the lot.

- (2) If the mortgagee of the lot signs a transfer of the lot after exercising power of sale under the mortgage:
- (a) registration of the writ of execution does not prevent registration of the transfer; and
 - (b) on registration of the transfer, the Registrar-General must cancel registration of the writ of execution.

26 Section 138 amended (Lodging a caveat)

- (1) Section 138, heading
- omit*
- a**
- (2) After section 138(1)
- insert*
- (1A) A caveat lodged under subsection (1)(a), (c), (d) or (e) may be accepted by the Registrar-General.
- (1B) A caveat lodged under subsection (1)(b) is taken to be accepted by the Registrar-General.

27 Section 140 amended (Effect of lodging caveat)

- (1) After section 140(3)(d)
- insert*
- (da) if the caveator is a person who has the benefit of an order mentioned in section 138(1)(e) – an instrument for a dealing other than a dealing restrained by the order;
- (2) After section 140(3)
- insert*
- Example for subsection (3)(da)*
- A caveat lodged by a person who has the benefit of an order mentioned in section 138(1)(e) restrains the registered owner of a lot from transferring or mortgaging the lot. The lodgement of the caveat does not prevent registration of an instrument of lease for the lot.*

28 Section 142 amended (Automatic lapsing of caveat)

- (1) Section 142(1)(b), after "owner"
insert
, in the approved form,
- (2) After section 142(1)
insert
- (1A) In addition to subsection (1), this section applies to a caveat lodged by the registered owner of a lot if:
- (a) the lot is subject to a mortgage; and
 - (b) the grounds stated in the caveat relate to the actions of the mortgagee in relation to:
 - (i) if the mortgage is registered – registration of the mortgage; or
 - (ii) the mortgagee's power of sale.

29 Section 145 replaced

Section 145

repeal, insert

145 Further caveat

- (1) A caveator or a person who was a caveator may not lodge another caveat for the lot on the same, or substantially the same, grounds unless the caveator or the person has the Supreme Court's leave to lodge the other caveat.
- (2) Subsection (1) applies irrespective of whether the caveat for the lot has lapsed or is withdrawn, cancelled or removed from the lot.

30 Section 155 amended (Requisitions)

- (1) Section 155(1)

omit

by written notice given to a person who has lodged or deposited an instrument or other document, require

insert

in writing, give a requisition to a person who has lodged or deposited an instrument or other document requiring

- (2) Section 155(3)

omit, insert

- (3) The notice may:

- (a) specify when, and the place where, it must be complied with; and
- (b) if it relates to an electronic conveyancing document – be accompanied by a copy of the document.

- (3) After section 155(5)

insert

- (6) The Registrar-General may give a requisition under subsection (7) in relation to an instrument or other document that is lodged if the Registrar-General is satisfied:

- (a) the instrument or document is not capable of registration; and
- (b) the reason the instrument or document is not capable of registration is not a matter for which a requisition may be given under subsection (1).

- (7) The Registrar-General may, in writing, give a requisition to the person who lodged the instrument or document, or to another person who reasonably appears to the Registrar-General to be relevantly associated with the instrument or document, stating:

- (a) that the instrument or document is not capable of registration; and
- (b) why the instrument or document is not capable of registration.

- (8) A requisition given under subsection (7) may, if it relates to an electronic conveyancing document, be accompanied by a copy of the document.

31 Section 156 amended (Rejecting instrument for failure to comply with requisition)

- (1) Section 156, heading

omit

for failure to comply with requisition

insert

or document after requisition given

- (2) Section 156(1)

omit, insert

- (1) The Registrar-General may reject an instrument or document to which a requisition relates and any instrument that depends on it for registration if:

(a) for a requisition given under section 155(1) – the requisition is not complied with by a person within the time stated or extended by the Registrar-General; or

(b) the requisition is given under section 155(7).

- (3) Section 156(2) and (3), after "instrument"

insert

or document

- (4) Section 156(4)

omit, insert

- (4) An electronic conveyancing document that has been rejected under subsection (1) cannot be re-lodged.

- (5) Subject to subsection (4), this section does not prevent an instrument rejected under subsection (1)(a) being re-lodged after the requisition has been complied with.

32 Section 157 amended (Withdrawing lodged instrument before registration)

- (1) Section 157(1)(b), after "lodged"

insert

or cannot be given legal effect

- (2) Section 157(1), at the end

Example for subsection (1)(b)

An example of an instrument that cannot be given legal effect is a power of attorney that names the same person as principal and attorney.

33 Section 159 amended (Execution and proof)

Section 159, at the end

insert

Note for section 159

Under section 9(3)(b) of the Electronic Conveyancing National Law (NT), if an instrument in the registry is digitally signed in accordance with the participation rules applicable to the instrument, the requirements of any other Territory law relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.

34 Section 162 amended (Dispensing with production of instrument)

After section 162(1)

insert

- (1A) In addition, the Registrar-General may dispense with the production of a certificate of title of a lot if the Registrar-General is satisfied the certificate of title is held by a legal practitioner or conveyancing agent.

35 Section 172 replaced

Section 172

repeal, insert

172 Standard terms document to be provided to other parties

(1) If a standard terms document forms part of an instrument, the party who applies the document to the instrument must provide all other parties to the instrument with a copy of the document before the instrument is executed.

(2) A person commits an offence if the person fails to comply with subsection (1).

Maximum penalty: 20 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) Despite this section, a failure to provide all other parties with a copy of the standard terms instrument before the instrument is executed does not affect the validity or effect of the instrument.

36 Section 187 amended (Provision for registration in case of death of party executing instrument)

(1) Section 187, before "If"

insert

(1)

(2) Section 187, at the end

insert

(2) If a person dies after completing a client authorisation, an instrument executed in accordance with the client authorisation after the person's death may be registered and is valid despite the person's death.

37 Section 189 amended (Exceptions to section 188)

After section 189(1)

insert

- (1A) A registered proprietor of a lot (the **relevant mortgagee**) who is recorded in the land register as a mortgagee of the lot or an interest in the lot does not obtain the benefit of section 188 for the relevant mortgagee's interest as mortgagee if:
- (a) the relevant mortgagee:
 - (i) in relation to the instrument of mortgage or amendment of mortgage – failed to comply with section 78A(2); or
 - (ii) in relation to a transfer of the instrument of mortgage – failed to comply with section 81A(2); and
 - (b) the person who was the mortgagor under the instrument of mortgage or amendment of mortgage was not the person who was, or who was about to become, the registered proprietor of the lot or the interest in a lot for which the instrument was registered.
- (1B) For subsection (1A)(b), a person was the mortgagor under an instrument of mortgage or amendment of mortgage if:
- (a) the instrument is an electronic conveyancing document, through a subscriber digitally signing the instrument under the *Electronic Conveyancing National Law (NT)*; or
 - (b) the instrument is an electronic conveyancing document and the person signed, as mortgagor, a document that under the participation rules under the *Electronic Conveyancing National Law (NT)*:
 - (a) was required as a supporting document for the instrument of mortgage or amendment of mortgage; and
 - (b) was required to be kept by the original mortgagee mentioned in section 78A(2).

38 Part 10A inserted

After section 197

insert

Part 10A Client authorisation**197A Definition**

In this Part:

verification of identity requirements, see section 197B.

197B Verification of identity requirements

- (1) The identity of the following must be verified in accordance with any prescribed requirements (the ***verification of identity requirements***):
 - (a) a party to an instrument;
 - (b) a person executing a document for this Act (other than a legal practitioner or conveyancing agent acting under a client authorisation).
- (2) The verification of identity requirements prescribed under subsection (1) may adopt or apply requirements determined, in writing, by the Registrar-General, as in force at a particular time or from time to time.
- (3) If requirements determined by the Registrar-General are adopted or applied by the regulations:
 - (a) the Registrar-General must ensure the following are published on the Agency's website:
 - (i) the current verification of identity requirements;
 - (ii) all superseded versions of the verification of identity requirements; and
 - (b) if the regulations adopt or apply the requirements as in force from time to time, any new version of the requirements will come into force:
 - (i) on the day on which the version is published on the Agency's website; or

- (ii) on a later day specified by the Registrar-General in the requirements.
- (4) The verification of identity requirements may:
 - (a) require verification of identity in relation to all, or specified classes of, instruments or documents; and
 - (b) include a requirement for a person to retain a document or record produced in connection with the verification of another person's identity for a period specified in the requirements.
- (5) A reference in this Act to the verification of identity requirements, in relation to an instrument or other document, is a reference to the verification of identity requirements in force under this section at the time the identity of a party to the instrument or other document is verified (or purportedly verified).
- (6) In civil proceedings (other than review proceedings under this Act) if it is alleged that a person failed to comply with a requirement under the verification of identity requirements, that person bears the onus of proving the person's compliance with the requirement.
- (7) In this section:

party to an instrument includes a person executing an instrument on behalf of another (whether under a power of attorney or otherwise) but does not include a legal practitioner or conveyancing agent acting under a client authorisation.

197C Effect of client authorisation

- (1) A properly completed client authorisation has effect according to its terms.
- (2) If a client authorisation is properly completed, the requirements of any other law of the Territory relating to the execution, signing, witnessing, attestation or sealing of documents must be regarded as having been fully satisfied.
- (3) This section does not apply in relation to a client authorisation under the *Electronic Conveyancing National Law (NT)*.

Note for section 197C

Section 11 of the Electronic Conveyancing National Law (NT) deals with the effect of client authorisations under the Law.

197D Termination of client authorisation

- (1) A client authorisation terminates if a party to the authorisation advises the other party by written notice that the authorisation is terminated.
- (2) Termination of a client authorisation has effect on receipt of the termination notice, or on the date and at the time or happening of an event specified in the termination notice, whichever occurs first.

197E Instruments to be executed by natural persons

- (1) If a law practice is authorised under a client authorisation to execute instruments on behalf of a natural person, the instruments must be executed by:
 - (a) a person who is a legal practitioner of the law practice; or
 - (b) a conveyancing agent who is an employee of the law practice.
- (2) If a conveyancing agent that is a body corporate is authorised under a client authorisation to execute instruments on behalf of a natural person, the instrument must be executed by a conveyancing agent who is a director or employee of the agent.

197F Client authorisation may be given by Territory or statutory corporation

The Territory (including an instrumentality of the Territory) or a statutory corporation may provide for a representative to execute instruments on its behalf by completing a client authorisation (irrespective of whether it has the capacity to delegate its powers).

197G Legal practitioner and conveyancing agent must obtain authorisation

- (1) A person commits an offence if:
 - (a) the person is a legal practitioner or conveyancing agent; and
 - (b) the person intentionally executes an instrument for the purposes of this Act or the *Electronic Conveyancing National Law (NT)* on behalf of a party to the instrument; and
 - (c) the execution is not in accordance with a properly completed client authorisation and the person is reckless in relation to that result.

Maximum penalty: 200 penalty units.

(2) A person commits an offence if:

- (a) the person is a legal practitioner or conveyancing agent; and
- (b) the person intentionally executes an instrument for the purposes of this Act or the *Electronic Conveyancing National Law (NT)* on behalf of a party to the instrument in accordance with a properly completed client authorisation; and
- (c) the person did not verify the identity of the party in accordance with the verification of identity requirements and the person is reckless in relation to that circumstance.

Maximum penalty: 200 penalty units.

(3) A person commits an offence if:

- (a) the person is a legal practitioner or conveyancing agent; and
- (b) the person intentionally executes an instrument for the purposes of this Act or the *Electronic Conveyancing National Law (NT)* on behalf of a party to the instrument in accordance with a properly completed client authorisation; and
- (c) the person did not verify the authority of the party, in accordance with the verification of authority guidelines, to be a party to the instrument authorised by or under the client authorisation and the person is reckless in relation to that circumstance.

Maximum penalty: 200 penalty units.

(4) Strict liability applies to subsections (1)(a), (2)(a) and (3)(a).

(5) This section does not apply to a legal practitioner or conveyancing agent:

- (a) who executes a caveat as agent of a caveator otherwise than under a client authorisation; or
- (b) in other circumstances prescribed by regulation.

197H Retention of client authorisation

(1) A client authorisation must be retained by the law practice, legal practitioner or conveyancing agent for:

- (a) 7 years from the time of the last use of the authorisation; or
- (b) if there is a period prescribed by the regulations – that period.

- (2) A person commits an offence if the person does not comply with subsection (1).

Maximum penalty: 200 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

- (4) It is a defence to a prosecution for an offence against subsection (2) if:

- (a) the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence; or
- (b) circumstances beyond the control of the defendant prevented the defendant from complying with subsection (1).

Note for subsection (4)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

39 Section 197J inserted

Before section 198, in Part 11

insert

197J Review by NTCAT

A person who is aggrieved by a decision of the Registrar-General made in the performance or purported performance of a function under this Act, except under section 27, 28, 190, 191 or 194, may apply to NTCAT for review of the decision.

Note for section 197J

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews.

40 Section 206 amended (Service)

- (1) Section 206(1)(a) and (b)(iii), at the end

insert

or

- (2) Section 206(1)(b)

omit

or telex

(3) After section 206(1)(b)

insert

(ba) sent by electronic communication in accordance with the requirements of the *Electronic Transactions (Northern Territory) Act 2000*; or

41 Section 210 amended (Registrar-General's directions)

Section 210(1)

omit, insert

- (1) The Registrar-General may issue directions relating to the requirements to be followed in:
- (a) lodging, registering, serving or publishing documents and plans under this Act or any other Act; and
 - (b) giving a notice in the approved form or any other type of document under this Act to the Registrar-General or any other person.

42 Section 210A inserted

After section 210

insert

210A Verification of authority guidelines

- (1) The Registrar-General may issue guidelines to be observed by a party to a transaction, or the legal practitioner or conveyancing agent representing a party to a transaction.
- (2) If a party, legal practitioner or conveyancing agent representing a party is required under this Act to verify the party, legal practitioner or conveyancing agent's authority, or the authority of a party to the transaction, the party, legal practitioner or conveyancing agent must follow the verification of authority guidelines before entering into the transaction or executing an instrument or document in connection with the transaction.
- (3) The Registrar-General must ensure that current and superseded versions of the verification of authority guidelines are published on the Agency's website.

43 Part 15 inserted

After section 220

insert

Part 15 Transitional matters for Land Legislation Amendment Act 2022**221 Definition**

In this Part:

amending Act means the *Land Legislation Amendment Act 2022*.

222 Application of section 78A

Section 78A applies to an instrument of transfer of a mortgage if the instrument is executed after the commencement of that section.

223 Application of section 81A

Section 81A applies to:

- (a) an instrument of transfer of a mortgage if the instrument is executed after the commencement of section 81A; and
- (b) an instrument of mortgage irrespective of whether the mortgage was executed before or after the commencement of section 81A.

224 Offences – before and after commencement

- (1) Sections 25 and 172, as in force before the commencement of Part 3 of the amending Act (the ***commencement***), apply in relation to an offence committed before the commencement.
- (2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

225 NTCAT jurisdiction applies after commencement

Section 197J applies only in relation to a decision made after the commencement of that section.

44 Schedule 1 amended (Witnesses to instruments)

Schedule 1

omit

a person licensed as a conveyancing agent or

insert

a conveyancing agent or a person licensed as a

Part 4 Amendment of Law of Property Act 2000**45 Act amended**

This Part amends the *Law of Property Act 2000*.

46 Section 89A inserted

After section 89

insert

89A Exercise of power of sale in relation to disclaimed properties

- (1) This section applies in relation to the mortgaged freehold property of a bankrupt that has been disclaimed by the trustee of the estate of the bankrupt under the section 133(1) of the *Bankruptcy Act 1966* (Cth) if:
- (a) for property in relation to which section 133(3) of that Act applies – the trustee has given notice of the disclaimer under section 133(3) of that Act; and
 - (b) an application to a court for an order under section 133(9) of that Act in relation to the property:
 - (i) has not been made; or
 - (ii) has been finally dealt with by the court or withdrawn; and
 - (c) a court has not made an order in relation to the property under section 133(9) of that Act, other than an order vesting the property in the mortgagee.

- (2) In addition, this section applies in relation to the mortgaged freehold property of a company that has been disclaimed by a liquidator of the company under section 568(1) of the *Corporations Act 2001* (Cth) if:
- (a) the liquidator has complied with section 568A of that Act in relation to the disclaimer; and
 - (b) the disclaimer is in effect under that Act; and
 - (c) an application to a court under section 568E or 568F of that Act in relation to the property:
 - (i) has not been made; or
 - (ii) has been finally dealt with by the court or withdrawn; and
 - (d) a court has not made an order in relation to the property under section 568F(1) of that Act, other than an order vesting the property in the mortgagee.
- (3) The disclaimer does not affect the right of the mortgagee to exercise the mortgagee's power of sale conferred by this Act or otherwise in relation to the property.
- (4) Despite section 89(1), the mortgagee may exercise the mortgagee's power of sale conferred by this Act or otherwise in relation to the property if the mortgagee has given notice, in the approved form, of the mortgagee's intention to exercise the power of sale to:
- (a) each person who has an interest in the property; and
 - (b) the Registrar-General for recording in the land register.
- (5) The mortgagee must not exercise the power of sale until 30 days after the last of the notices mentioned in subsection (4) has been given.
- (6) Despite subsections (1) and (2), this section does not apply in relation to the exercise of a power of sale conferred on the mortgagee under the *Land Title Act 2000*.
- (7) In this section:
- bankrupt**, see section 5(1) of the *Bankruptcy Act 1966* (Cth).
- company** means a company registered under the *Corporations Act 2001* (Cth).

47 Section 90 amended (Duty of mortgagee as to sale price)

Section 90(6)

omit

all words from "if" to "Act."

insert

in relation to the exercise of a power of sale if:

- (a) the exercise of the power arises upon or in consequence of a default, mentioned in section 89(1), that happens after the commencement of this Act; or
- (b) the power is being exercised under section 89A(4).

48 Section 93 amended (Application of proceeds of sale)

After section 93(2)

insert

- (3) Despite this section, if the money arises from the sale of mortgaged freehold property that has been disclaimed under section 133(1) of the *Bankruptcy Act 1966* (Cth) or section 568(1) of the *Corporations Act 2001* (Cth), the residue of the money mentioned in subsection (2)(g) must be paid into the court.

49 Part 17 heading replaced

Part 17, heading

repeal, insert

Part 17 Repeals and transitional matters**Division 1 Repeals**

50 Part 17, Division 2 inserted

After section 221

insert

Division 2 Transitional matters for Land Legislation Amendment Act 2022**222 Definition**

In this Division:

amending Act means the *Land Legislation Amendment Act 2022*.

223 Application of section 89A

Section 89A applies in relation to a mortgaged freehold property disclaimed under section 133(1) of the *Bankruptcy Act 1966* (Cth), or section 568(1) of the *Corporations Act 2001* (Cth) whether the mortgage was made before or after the commencement of section 46 of the amending Act (the ***commencement***) if:

- (a) for a disclaimer under section 133(1) of the *Bankruptcy Act 1966* (Cth) – the disclaimer was made on or after the commencement; or
- (b) for a disclaimer under section 568(1) of the *Corporations Act 2001* (Cth) – the disclaimer took effect on or after the commencement.

224 Application of proceeds of sales that took place before commencement

Section 93(3) does not apply in relation to the sale of a mortgaged freehold property that took place before the commencement of section 48 of the amending Act.

Part 5 Repeal of Act**51 Repeal of Act**

This Act is repealed on the day after it commences.