

2000
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Land Titles Legislation Amendment Bill 2000

CONTENTS

Section	Page
PART 1—PRELIMINARY	
1	Name of Act..... 1
2	Commencement 1
PART 2—AMENDMENTS OF LAND TITLES ACT 1925	
3	Act amended in pt 2 2
4	Interpretation..... 2
5	Powers of registrar-general 2
6	Lost grant or certificate 3
7	Repeal 3
8	Surrender of lease..... 3
9	Determination of lease to determine sublease 3
10	Repeal 3
11	Insertion—
<i>Division 10.2A—Surrender of lease</i>	
91A	Surrender of lease not to affect sublease..... 4

31815 (1999/197) (T38/2000)

Land Titles Legislation Amendment No , 2000

CONTENTS—continued

Section		Page
	91B Surrender of lease not to affect mortgage	4
	91C New lease—continuation of interests noted on surrendered lease	5
12	Mortgage or encumbrance—postponement of priority	5
13	Insertion—	
	95A Sale by court order—application by mortgagor etc	5
14	Insertion—	
	103DA Easements—subdivision of dominant tenement	6
15	Extinguishment of easement	6
16	Insertion—	
	105A Surrender and regrant of lease of land affected by caveat	6
17	Caveat lapsing	7
18	Insertion—	
	170A Surrender and regrant of lease of land affected by writ	7
19	Repeal	7
	PART 3—AMENDMENT OF LAND TITLES (UNIT TITLES)	
	ACT 1970	
20	Act amended in pt 3	8
21	Insertion—	
	10A Easements—subdivision of dominant tenement	8

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A BILL

FOR

**An Act to amend the *Land Titles Act 1925* and the
*Land Titles (Unit Titles) Act 1970***

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART 1—PRELIMINARY

1 Name of Act

5 This Act is the *Land Titles Legislation Amendment Act 2000*.

2 Commencement

This Act commences on the day it is notified in the Gazette.

PART 2—AMENDMENTS OF LAND TITLES ACT 1925

3 Act amended in pt 2

This Part amends the *Land Titles Act 1925*.

4 Interpretation

5 Section 6 is amended by inserting after subsection (1A) the following subsection:

“(1B) In this Act, a reference to the grant of a new lease of the land comprised in a surrendered lease includes a reference to the grant of a new lease of part of the land.”.

10 **5 Powers of registrar-general**

Section 14 is amended by inserting after subsection (3) the following subsections:

“(4) If notice in writing is given to the registrar-general that land, or an interest in land, is affected by—

15 (a) a Territory or Commonwealth law; or

(b) anything done under a Territory or Commonwealth law;

the registrar-general must make a record in the register that the land or interest has been so affected.

“(5) For subsection (4), the following provisions apply:

20 (a) subject to any relevant provision of the Territory or Commonwealth law, a record made under that subsection takes effect accordingly;

(b) that subsection does not apply to a matter if a provision of a Territory or Commonwealth law makes provision (however
25 expressed) for making a record in the register in respect of the matter.

“(5A) If a record—

(a) was made in the register before the date of commencement of subsection (4) (the *commencement date*); and

30 (b) was not, when made, authorised or required by a Territory or Commonwealth law to be made in the register; and

(c) could, on and after the commencement date, have been made under that subsection;

the record takes effect, on and after the commencement date, as a record made under that subsection.

“(5B) If—

- 5 (a) the register contains a record in relation to land or an interest in land; and
- (b) the lease of the land is surrendered by the lessee; and
- (c) a new lease of the land comprised in the surrendered lease is granted to the lessee;

10 the registrar-general must make a corresponding record in the register in relation to the new lease.”.

6 Lost grant or certificate

Section 62 is amended by omitting from subsection (5) “shall” and substituting “may”.

7 Repeal

15 Section 70A is repealed.

8 Surrender of lease

Section 86 is amended—

- 20 (a) by omitting from subparagraphs 86 (6A) (b) (i) and (ii) and subsection 86 (9) “90A” and substituting “91B”; and
- (b) by adding at the end the following subsection:

“(10) For subsection (9), a reference in a memorial to section 90A is taken to be a reference to section 91B.”.

9 Determination of lease to determine sublease

Section 90 is amended by omitting “90A” and substituting “91A”.

25 10 Repeal

Section 90A is repealed.

11 Insertion

After section 91 the following Division is inserted:

"Division 10.2A—Surrender of lease

"91A Surrender of lease not to affect sublease

"(1) This section applies if—

- (a) a lease of land under this Act is surrendered by the lessee; and
- 5 (b) the lessor grants to the lessee a new lease of the land comprised in the surrendered lease; and
- (c) the lessee has granted, under the surrendered lease, a sublease that is still in force when the lease is surrendered; and
- 10 (d) the whole of the land comprised in the sublease is within the new lease.

"(2) The sublease continues in force, unless otherwise terminated, as a sublease under the new lease.

"(3) The sublessor has the same rights and remedies against the sublessee, and the sublessee has the same rights and remedies against the sublessor, under the sublease as if the lease had not been surrendered.

"(4) The lessor has the same rights and remedies against the sublessee, by entry onto the land, as the lessor would have had if the surrendered lease had not been surrendered.

"(5) However, subsection (4) does not confer a right or remedy on the lessor if, or to any extent that, the lessor would not have a similar right or remedy against the sublessee of a sublease of land comprised in the new lease.

"(6) In this section, a reference to a lessor, lessee, sublessor or sublessee includes a reference to a successor in title to the lessor, lessee, sublessor or sublessee.

"91B Surrender of lease not to affect mortgage

"(1) This section applies if—

- (a) a lease of land under this Act is surrendered by the lessee; and
- 30 (b) the lessor grants to the lessee a new lease of the land comprised in the surrendered lease; and
- (c) the lessee has given a mortgage of the land comprised in the surrendered lease; and
- (d) the mortgage is still in force when the lease is surrendered.

“(2) The mortgage continues in force, unless otherwise terminated or discharged, as a mortgage of the land comprised in the new lease.

5 “(3) The mortgagor has the same rights and remedies against the mortgagee, and the mortgagee has the same rights and remedies against the mortgagor, under the mortgage as if the lease had not been surrendered.

“(4) The mortgage is to be read subject to any changes necessary to give effect to subsections (2) and (3).

10 “(5) The lessor has the same rights and remedies against the mortgagee, by entry onto the land, as the lessor would have had if the surrendered lease had not been surrendered.

“(6) However, subsection (5) does not confer a right or remedy on the lessor if, or to any extent that, the lessor would not have a similar right or remedy against the mortgagee of a mortgage of the land comprised in the new lease.

15 “(7) In this section, a reference to a lessor, lessee, mortgagor or mortgagee includes a reference to a successor in title to the lessor, lessee, mortgagor or mortgagee.

“91C New lease—continuation of interests noted on surrendered lease

20 If a lease is surrendered by the lessee and a new lease of the land comprised in the surrendered lease is granted to the lessee, the following provisions apply to any interest in the land noted on the surrendered lease at the time of the surrender:

- (a) the interest must be noted on the new lease;
- 25 (b) unless varied, terminated or discharged, the interest applies to the new lease in the same way as it applied to the surrendered lease.”.

12 Mortgage or encumbrance—postponement of priority

Section 92A is amended by omitting from subsection (2) “(3)” and substituting “(6)”.

13 Insertion

30 After section 95 the following section is inserted:

“95A Sale by court order—application by mortgagor etc

“(1) A mortgagor or encumbrancer of land may apply to the Supreme Court for an order that the land be sold.

“(2) On an application the court may order a sale of the land on any terms as the court considers just.

“(3) In particular, the court may make the operation of the order subject to payment into court of a specified sum to meet the expenses of the sale and to secure the performance of the terms.

“(4) The court may make an order even if a procedure has been taken, or proceedings have been instituted, by any person to foreclose or realise the mortgage or encumbrance or to sell the land.

“(5) The court may make an order without deciding the priority of mortgages or encumbrances over the land.”.

14 Insertion

After section 103D the following section is inserted:

“103DA Easements—subdivision of dominant tenement

If an easement subsists under section 10A of the *Land Titles (Unit Titles) Act 1970* for the benefit of units in a units plan, the easement may be registered in relation to the units.”.

15 Extinguishment of easement

Section 103E is amended by inserting after subsection (1) the following subsection:

“(1A) Despite paragraph (1) (b), a registered easement is not extinguished if, after surrender by the lessee of the lease, a new lease of the land comprised in the surrendered lease is granted to the lessee.”.

16 Insertion

After section 105 the following section is inserted:

“105A Surrender and regrant of lease of land affected by caveat

“(1) This section applies, subject to any order of the court, if—

- (a) a caveat has been registered in relation to land; and
- (b) the caveat has not lapsed or been removed; and
- (c) the lease of the land is surrendered by the lessee and a new lease of the land comprised in the surrendered lease is granted to the lessee.

“(2) The operation or effect of the caveat is not affected by the surrender of the lease and the grant of the new lease.

“(3) If the registrar-general makes a record in the register of the grant of the new lease, the registrar-general must also make a record of the caveat in relation to the new lease.”.

17 Caveat lapsing

Section 106 is amended by adding at the end the following subsection:

“(3) Subsection (2) applies even though the lease of land to which the caveat related has been surrendered by the lessee, if a new lease of the land comprised in the surrendered lease is granted to the lessee.”.

18 Insertion

After section 170 the following section is inserted:

“170A Surrender and regrant of lease of land affected by writ

“(1) This section applies, subject to any order of the court, if—

- (a) in relation to a writ of fieri facias or other writ of execution, an entry has been made in the register in relation to land; and
- (b) the lease of the land is surrendered by the lessee and a new lease of the land comprised in the surrendered lease is granted to the lessee.

“(2) The operation or effect of the writ is not affected by surrender of the lease and the grant of the new lease.

“(3) The registrar-general must make an entry in the register, in relation to the writ, in relation to the new lease.”.

19 Repeal

Section 172 is repealed.

**PART 3—AMENDMENT OF LAND TITLES
(UNIT TITLES) ACT 1970**

20 Act amended in pt 3

This Part amends the *Land Titles (Unit Titles) Act 1970*.

5 21 Insertion

After section 10 the following section is inserted:

“10A Easements—subdivision of dominant tenement

“(1) This section applies if—

- (a) a units plan is registered in relation to a parcel of land; and**
10 (b) immediately before the registration, an easement subsisted for the benefit of the parcel.

“(2) On and after the registration, the easement continues to subsist, as far as it is capable of doing so, for the benefit of each unit in the units plan.”.

Endnotes

Act amended in pt 2

- 1 Republished as in force on 1 July 1998. See also Acts 1998 No 54; 1999 No 8.**

Act amended in pt 3

- 2 Republished as in force on 31 July 1999 (Republication No 2**