

**EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
REAL PROPERTY (AMENDMENT) ORDINANCE 1985**

NO. 71 OF 1985

Section 52(1) of the Real Property Ordinance 1925 ("the principal Ordinance") provides that the Registrar shall not register certain instruments unless stamp duty has been paid or the instruments bear a stamp to the effect that no duty is payable. Previously the Section did not extend to loan security documents such as mortgages.

As part of the 1985 Commonwealth budget review of fees and charges, the Australian Capital Territory Stamp Duty (Amendment) Act 1985 ('the amending Act') amends the Australian Capital Territory Stamp Duty Act 1969 ("the principal Act") to provide for the imposition of stamp duty on mortgages over land in the Territory. The amending Act inserts into the First Schedule of the principal Act item 9, which provides for stamp duty to be paid on loan security instruments.

The Real Property (Amendment) Ordinance 1985 ("the amending Ordinance") amends section 52(1) of the principal Ordinance to prohibit the Registrar from registering loan security instruments executed on or after the commencement of the amending Ordinance unless stamp duty has been paid, or the instrument bears a stamp to the effect that no duty is payable.

The amending Ordinance also amends section 90A of the principal Ordinance to provide for the continuation of a mortgage security where a lease is surrendered in exchange for the grant of a new lease. This enables the alteration of lease covenants or lease boundaries without the execution of a new mortgage and payment of stamp duty. Prior to the Commencement of the amending Ordinance, the alteration of lease covenants or lease boundaries required the execution of a new mortgage, even though the new mortgage was, in substance, identical to the old.

An explanation of sections is set out in the attachment.

Explanation of Sections

Section 1 cites the short title of the amending Ordinance.

Section 2 deals with commencement.

Section 3 amends section 51(2) of the principal Ordinance to provide that the Registrar shall not register loan security instruments executed on or after 1 December 1985 unless -

- . stamp duty has been paid on the instrument;
- . the instrument has been stamped as being exempt from duty; or
- . the instrument has been stamped as being a copy of another instrument which has been subject to duty.

Section 4 amends section 90A of the principal Ordinance to provide that the surrender of a lease in exchange for the grant of a replacement lease will not require the discharge and re-execution of any mortgages over that held over the lease.