

AUSTRALIAN CAPITAL TERRITORY.

No. 15 of 1942.

AN ORDINANCE

To amend the Real Property Ordinance 1925-1940.

BE it ordained by the Deputy of the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909-1938* and the *Seat of Government (Administration) Act 1910-1940*, as follows:—

1.—(1.) This Ordinance may be cited as the *Real Property Ordinance 1942*.^{* Short title and citation.}

(2.) The *Real Property Ordinance 1925-1940* is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Real Property Ordinance 1925-1942*.

2. Section eighty-six of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:— ^{Surrender of leases.}

“ (7.) Where a lease out of which any registered sub-lease is derived is intended to be surrendered with a view to the acceptance of a new lease in place thereof, the endorsement to be made upon the lease or the counterpart thereof shall be the words ‘Surrendered with a view to the acceptance of a new lease’, with the date of the surrender.

“ (8.) Upon production to him of the endorsement, the Registrar shall not make any entry in the Register Book or endorsement on the duplicate lease until there is presented for registration a new lease from the same lessor to the same lessee of the whole or part of the land comprised in the surrendered lease which new lease is, subject to registration of the surrender of the surrendered lease, in every respect entitled to registration.

“ (9.) Immediately after making an entry in the Register Book of the surrender of a lease pursuant to an endorsement made in accordance with sub-section (7.) of this section, the Registrar shall register the new lease and shall endorse thereon, and on the duplicate thereof, a memorial of every sub-lease which is continued in force by section ninety A of this Ordinance, and shall include in the memorial the words ‘Continued in force by section ninety A of the *Real Property Ordinance 1925-1942*’, or words to the like effect.”.

* Notified in the *Commonwealth Gazette* on 2nd July, 1942.

Amendment of
section 90.

3. Section ninety of the Principal Ordinance is amended by inserting, before the word "If", the words "Subject to section ninety A of this Ordinance,".

4. After section ninety of the Principal Ordinance the following section is inserted:—

Surrender
of a lease
without
prejudice to
sub-leases
with a view
to the grant
of a new
lease.

"90A.—(1.) A lease may be surrendered with a view to the acceptance of a new lease in place thereof, without a surrender of any sub-lease derived thereout, and any such surrender of a lease shall not cause the determination of any such sub-lease.

"(2.) A new lease may be granted and accepted, in place of any lease so surrendered, without the surrender of any sub-lease derived thereout, and, subject to this section, the new lease shall operate as if all sub-leases derived out of the surrendered lease had been surrendered before the surrender of that lease was effected.

"(3.) The lessee under the new lease and any person deriving title under him shall be entitled to the same rights and remedies in respect of the rent reserved by, and the covenants, agreements and conditions contained in, any sub-lease as if the original lease had not been surrendered but was or remained vested in him.

"(4.) Each sub-lessee and any person deriving title under him shall be entitled to hold and enjoy the land comprised in his sub-lease (subject to the payment of any rent reserved by, and to the observance of the covenants, agreements and conditions contained in, the sub-lease) as if the lease out of which the sub-lease was derived had not been surrendered.

"(5.) The lessor granting the new lease and any person deriving title under him shall be entitled to the same remedies, by distress or entry in and upon the land comprised in any such sub-lease for rent reserved by or for breach of any covenant, agreement or condition contained in the new lease (so far only as the rents reserved by or the covenants, agreements or conditions contained in the new lease do not exceed or impose greater burdens than those reserved by or contained in the original lease out of which the sub-lease is derived) as he would have had—

- (a) if the original lease had remained on foot; or
- (b) if a new sub-lease derived out of the new lease had been granted to the sub-lessee or a person deriving title under him,

as the case may require.

"(6.) Notwithstanding anything contained in this section—

- (a) where the boundaries of the land comprised in the new lease differ in any way from those of the land comprised in the surrendered lease, this section shall apply only in relation to sub-leases of land which is wholly included in the new lease; and

(b) where any easement is reserved in the new lease which was not reserved in the surrendered lease, this section shall apply only in relation to any sub-lease of land which is not in whole or in part subject to the easement.

“(7.) This section shall apply only to leases and sub-leases of land which is under the provisions of this Ordinance.”.

Dated this twenty-ninth day of June, 1942.

WAKEHURST

Deputy of the Governor-General.

By His Excellency's Command,

JOHN A. BEASLEY

for Minister of State for the Interior.