

AUSTRALIAN CAPITAL TERRITORY
REAL PROPERTY (AMENDMENT) ORDINANCE (NO.2) 1983
EXPLANATORY STATEMENT

No.68,1983

The Real Property Ordinance 1925 (the principal Ordinance) governs the registration of land in the Australian Capital Territory, and provides in section 92, that where any land, estate, or interest in land, is intended to be mortgaged or encumbered, a memorandum of mortgage or encumbrance may be executed in the form prescribed in the relevant Schedule to the Ordinance. Section 82 makes similar provision for leases. Previously, all covenants between the parties to a lease, mortgage or encumbrance are included in full in such a memorandum.

The Real Property (Amendment) Ordinance (No.2) 1983 (the amending Ordinance) enables the registration of a memorandum of provisions, containing the standard clauses of a lease, mortgage or encumbrance, which may then be incorporated by reference in any subsequent lease, mortgage or encumbrance.

Details of the amending Ordinance are set out at Attachment A.

Ord. 30/82

ATTACHMENT A

REAL PROPERTY (AMENDMENT)
ORDINANCE (NO.2) 1983

Sections 1 and 2 deal with interpretation.

Section 3 amends Section 6 of the Principal Ordinance by clarifying and extending the previous definition of instrument to include memorandum of provisions, and by inserting a definition of memorandum of provisions.

Section 4 inserts a new section 47B in the Principal Ordinance to provide that a memorandum of provisions shall be deemed to be registered when a memorial of registration is endorsed upon it and it is signed by the Registrar.

Section 5 amends section 48 of the Principal Ordinance to provide that a memorandum of provisions:

- . must be lodged for registration in duplicate;
- . may be registered in an order other than that of presentation for registration;
- . need not be attested by a witness; and
- . will not be affected by the provision in section 48 which deems such instruments to be duly executed deeds.

Section 6 amends section 65 of the Principal Ordinance to require the Registrar of Titles to furnish to an applicant, upon payment of a fee, a certified copy of a memorandum of provisions, such a certified copy to be prima facie proof of the contents of the memorandum.

Section 7 amends section 82 of the Principal Ordinance to allow the provisions contained in a memorandum of provisions to be incorporated by reference into a lease which is in the form set out in Schedule Eight to the existing Ordinance, and will deem such incorporated provisions to be set out at length in the lease.

Section 8 amends section 77 of the Principal Ordinance to allow the provisions contained in a memorandum of provisions to be incorporated by reference into a sub-lease which is in the form set out in Schedule Eight to the Principal Ordinance, and deems such incorporated provisions to be set out at length in the sub-lease.

Section 9 amends section 92 of the Principal Ordinance to allow incorporation by reference of the provisions contained in a memorandum of provisions into a memorandum of mortgage or a memorandum of encumbrance where these are, respectively, in the form set out in Schedule Nine and Schedule Ten to the Principal Ordinance. Section 9 also amends section 92 to provide that provisions so incorporated are deemed to be set out at length in the memorandum of mortgage or memorandum of encumbrance.

Section 10 inserts a new Division 3A into the Principals Ordinance. Division 3A provides, by inserting a new section 103A in the Principal Ordinance, for the Registrar to register a memorandum of provisions that is to be incorporated by reference into a lease, sub-lease, memorandum of mortgage or memorandum of encumbrance which is in the prescribed form. To enable a memorandum of provisions to be so registered, amending section 103A(2) requires such a memorandum to be in the form set out in the proposed Twenty-fifth Schedule to the existing Ordinance.

Section 11 amends section 139 of the Principal Ordinance to effect a minor drafting amendment of a technical nature consequent upon the insertion of a new item 9A into the Eighteenth Schedule to the Principal Ordinance by section 12.

Section 12 amends the Eighteenth Schedule to the Principal Ordinance, which relates to those matters for which fees are payable to the Registrar by inserting a new item 9A which deals with lodging for registration a memorandum of provisions.

Section 13 inserts a new Twenty-Fifth Schedule into the existing Ordinance setting out the form of the memorandum of provisions prescribed by amending section 103A(2).

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