

REAL PROPERTY

No. 6 of 1970

An Ordinance to amend the *Real Property Ordinance* 1925-1969.

Short title
and citation.

1.—(1.) This Ordinance may be cited as the *Real Property Ordinance* 1970.*

(2.) The *Real Property Ordinance* 1925-1969 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* 1925-1970.

Part.

2. Section 4 of the Principal Ordinance is amended by inserting after the words and figures—

“Division 4.—Caveats Against Dealings (Sections 104-108).”
the words and figures—

“Division 5.—Determinations under the *Land Rent and Rates (Deferment) Ordinance* 1970 (Sections 108A-108D).”.

Powers of
Registrar.

3. Section 14 of the Principal Ordinance is amended—

(a) by omitting from paragraph (a) of sub-section (1.) the words “is about to be transacted,” and inserting in their stead the words “has been presented to the Registrar for registration under this Ordinance,”; and

(b) by adding at the end thereof the following sub-section:—

“ (3.) The Registrar has, and may exercise, if a notice of a determination made under section three, or a memorandum of discharge under section eighteen, of the *Land Rent and Rates (Deferment) Ordinance* 1970, is presented to him for registration, all or any of the powers conferred by sub-section (1.) of this section as if the notice were a mortgage, or the memorandum of discharge were a discharge of a mortgage, presented to him for registration under this Ordinance.”.

Instrument
entitled to
priority
according
to date of
registration.

4. Section 48 of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-sections:—

“ (1.) All grants shall be presented for registration in duplicate.

* Made on 16 February 1970; notified in the *Commonwealth Gazette* and commenced on 26 February 1970.
† Ordinance No. 1, 1925, as amended by Ordinance No. 12, 1925; No. 8, 1926; Nos. 15 and 21, 1927; No. 19, 1930; Nos. 26 and 34, 1933; No. 14, 1934; No. 15, 1936; No. 27, 1937; Nos. 15, 25 and 35, 1938; No. 16, 1940; No. 15, 1942; No. 9, 1951; No. 16, 1956; No. 12, 1957; No. 7, 1961; No. 6, 1963; No. 46, 1967; and No. 9, 1969

“(1A.) All instruments (other than grants) presented for registration—

- (a) shall, except as otherwise provided by this Ordinance, be in duplicate; and
- (b) shall be registered in the order of time in which they are presented for registration.

“(1B.) Each instrument (other than a grant, a notice of determination made under section three of the *Land Rent and Rates (Deferment) Ordinance* 1970 or a memorandum of discharge under section eighteen of that Ordinance) presented for registration shall be attested by a witness.”.

5. Section 50A of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1.) after the word “, encumbrance” (first occurring), the words “ or a duplicate notice of determination made under section three of the *Land Rent and Rates (Deferment) Ordinance* 1970 ”;
- (b) by omitting from sub-section (1.) the words “ or encumbrance ” (second occurring) and inserting in their stead the words “, encumbrance or notice of determination ”;
- (c) by omitting from sub-section (2.) the words “ or encumbrance ” (wherever occurring) and inserting in their stead the words “, encumbrance or notice of determination ”;
- (d) by inserting in sub-section (4.), after the word “ encumbrance ” (first occurring), the words “ or on the original notice of determination ”; and
- (e) by omitting from sub-section (4.) the words “ or encumbrance ” (second and third occurring) and inserting in their stead the words, “ encumbrance or notice of determination ”;

Power to issue duplicate lease, mortgage or charge in lieu of lost or destroyed duplicate.

6. Section 73 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:— Transfers.

“(2.) A reference in the last preceding sub-section to a mortgage shall be read as including a reference to a charge referred to in section one hundred and eight B of this Ordinance.”.

7. Section 94 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:— Power to sell.

“(7.) Where—

- (a) after the registration under this Ordinance of a mortgage or encumbrance on a parcel of land, there is registered under this Ordinance a notice of a determination made under section three of the *Land Rent and Rates (Deferment) Ordinance* 1970 in which the parcel of land referred to is the parcel of land subject to the mortgage or encumbrance; and

- (b) the mortgagee under the mortgage or the encumbrancee under the encumbrance exercises the rights conferred by this section in relation to the land,

the notice of the determination shall, for the purposes of this section, be deemed to be a mortgage of the land referred to in the notice to the Commonwealth having priority according to the date of its registration under this Ordinance and securing the payment to the Commonwealth of an amount equal to the amount for the time being secured by section one hundred and eight B of this Ordinance.”.

8. After section 100 of the Principal Ordinance the following section is inserted:—

“ 100A.—(1.) Where—

- (a) a determination under section three of the *Land Rent and Rates (Deferment) Ordinance 1970* has been revoked under section nine, twelve or thirteen of that Ordinance;
- (b) the amount the payment of which is secured by section one hundred and eight B of this Ordinance has not been paid in full to the Commonwealth; and
- (c) a memorandum in accordance with Form 2 in the Schedule to the *Land Rent and Rates (Deferment) Ordinance 1970* has not been presented to the Registrar for registration under this Ordinance,

the Commonwealth shall be deemed to have, on and after the date on which default has been made in the payment of the whole or part of the amount referred to in paragraph (b) of this sub-section, the rights that it would have had under sub-section (2.) of section ninety-three, and under sections ninety-four, ninety-six, ninety-seven, ninety-nine and one hundred, of this Ordinance if—

- (d) the notice of the determination had been a mortgage by the registered proprietor of the land referred to in the notice securing the payment to the Commonwealth of the amount referred to in paragraph (b) of this sub-section and registered on the date of registration of the notice;
- (e) the amount were the principal sum secured by the mortgage; and
- (f) the default in the payment of the whole or part of the amount referred to in paragraph (b) of this sub-section were default in the payment of the principal sum or part of the principal sum secured by the mortgage.

“ (2.) Sub-section (2.) of section ninety-three and sections ninety-four to one hundred (inclusive) of this Ordinance apply to and in relation to the exercise by the Commonwealth of the rights that it is to be deemed to have under the last preceding sub-section to the same extent and in the same manner as if the Commonwealth were the mortgagee under a mortgage referred to in paragraph (d) of the last preceding sub-section.

Right of Commonwealth where determination is revoked and amount secured is not paid.

“(3.) For the purposes of sub-section (1.) of this section, default shall be deemed to have been made in the payment of—

- (a) the whole of the amount referred to in paragraph (b) of sub-section (1.) of this section if an amount equal to that amount has not been paid to the Commonwealth within one month after the date on which such an amount has become payable under sub-section (1.) of section 15 of the *Land Rent and Rates (Deferment) Ordinance 1970*; and
- (b) part of the amount referred to in paragraph (b) of sub-section (1.) of this section if an amount equal to that part has not been paid to the Commonwealth within one month after the date on which such an amount has become payable to the Commonwealth under sub-section (2.) or (3.) of section 15 of that Ordinance.”

9. The Principal Ordinance is amended by inserting after Division 4 of Part X. the following Division:—

“*Division 5.—Determinations under the Land Rent and Rates (Deferment) Ordinance 1970.*

“108A.—(1.) Subject to the next succeeding sub-section, a notice of a determination made under section three, and a memorandum of discharge under section eighteen, of the *Land Rent and Rates (Deferment) Ordinance 1970* shall, on being presented to the Registrar for registration under this Ordinance, each be deemed to be, for the purposes of this Ordinance, an instrument affecting the land referred to in the notice.

Determinations under section 3, and memorandum under section 15, of the *Land Rent and Rates (Deferment) Ordinance 1969* to be an instrument affecting land.

“(2.) Section sixty-seven of this Ordinance does not apply to or in relation to a notice or memorandum referred to in the last preceding sub-section.

“108B. A notice of a determination made under section three of the *Land Rent and Rates (Deferment) Ordinance 1970* shall, when registered under this Ordinance, have effect as a charge securing the payment to the Commonwealth of an amount equal to the amount for which the person to whom the determination relates becomes, whilst the determination remains in force, indebted to the Commonwealth under that Ordinance and the payment to the Commonwealth of interest payable under sub-section (3.) of section four, or under section sixteen, or both, of that Ordinance.

Effect of registration of determination.

“108C. Upon the production to him of a memorandum in accordance with Form 2 in the Schedule to the *Land Rent and Rates (Deferment) Ordinance 1970*, the Registrar shall—

Registration of memorandum of discharge.

- (a) register the memorandum; and
- (b) make an entry in the Register Book noting that the charge created by the registration of the notice of the determination referred to in the memorandum is discharged.

“108D. A fee is not payable on the lodging for registration or for the registration of a notice of a determination or memorandum of discharge under the *Land Rent and Rates (Deferment) Ordinance 1970*.”

Fees not payable.

Transferring of land subject to mortgage, encumbrance or charge to indemnify transferor.

10. Section 117 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

“(2.) In every instrument transferring an estate or interest in land under the provisions of this Ordinance subject to a charge securing the payment of an amount to the Commonwealth under section one hundred and eight B of this Ordinance, there shall be implied the following covenant by the transferee, that is to say:—

That the transferee will pay to the Commonwealth of Australia the amount secured by the charge on the land and will indemnify and keep harmless the transferor against the amount secured by the charge, and from and against all liability in respect of the failure by the transferor to pay the amount secured by the charge within the period of one month after the transfer.”.

Registered proprietor protected against ejectment except in certain cases.

11. Section 152 of the Principal Ordinance is amended by inserting after paragraph (b) of sub-section (1.) the following paragraph:—

“(ba) The case of the Commonwealth as against the person registered as proprietor of the land if the land is subject to a charge by reason of section one hundred and eight B of this Ordinance and the person is in default in payment of the whole or any part of the amount secured by the charge;”.

Sales by order of court, &c.

12. Section 170 of the Principal Ordinance is amended by inserting after sub-section (3.) the following sub-section:—

“(3A.) The last preceding sub-section applies to and in relation to land subject to a charge securing the payment of an amount to the Commonwealth under section one hundred and eight B of this Ordinance in the same manner and to the same extent as if the notice of the determination made under section three of the *Land Rent and Rates (Deferment) Ordinance 1970* in respect of the land were a mortgage securing the payment to the Commonwealth of an amount equal to the amount for the time being secured by the charge.”.