

No. 11 of 1972

AN ORDINANCE

To amend the *Real Property Ordinance 1925-1970*.

I THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1970*.

Dated this twenty-third day of March, 1972.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

IVOR J. GREENWOOD
Attorney-General, acting for and on behalf of the
Minister of State for the Interior.

REAL PROPERTY ORDINANCE 1972

1.—(1.) This Ordinance may be cited as the *Real Property Ordinance 1972*.*

Short title
and citation.

(2.) The *Real Property Ordinance 1925-1970*† 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 1925-1972*.

2. After section 92 of the Principal Ordinance the following section is inserted:—

Variation of
priority of
mortgage or
encumbrance.

“ 92A.—(1.) In this section—

‘mortgage’ includes an encumbrance, and ‘mortgagee’ and ‘mortgagor’ have corresponding meanings.

“ (2.) Where—

(a) two or more memoranda of mortgage on land, or on an estate or interest in land, under the provisions of this Ordinance have been registered under this Ordinance; and

(b) the land charged by each of those mortgages is the same and no other land is charged by any one of those mortgages,

* Notified in the *Commonwealth Gazette* on 29 March 1972.

† Ordinance No. 1, 1925, as amended by 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; No. 9, 1969; and No. 6, 1970.

the relative priorities that those two or any two or more of those memoranda have by reason of sub-section (3.) of section forty-eight of this Ordinance or of this section may, by memorandum of variation in accordance with the form in the Twenty-fourth Schedule, be varied so that those memoranda shall be entitled in priority the one over the other in the order in which, by the memorandum of variation, they are expressed to have priority.

‘ (3.) A memorandum of variation referred to in the last preceding sub-section shall be signed in the presence of a witness—

- (a) by the mortgagee under each of the mortgages the priority of the memorandum of which is to be varied; and
- (b) where the assent of the mortgagor is necessary in order to render the variation effective against him, by the mortgagor.

“ (4.) If—

- (a) in addition to the memoranda of mortgage the priorities of which are to be varied, there is registered under this Ordinance another memorandum of mortgage charging the whole or any part of the land charged by those memoranda;
- (b) that other memorandum of mortgage has priority over one or more of those memoranda of mortgage but not over the remaining memorandum or memoranda of mortgage; and
- (c) it is not intended that the priority that that other memorandum of mortgage has by reason of sub-section (3.) of section forty-eight of this Ordinance or of this section be varied by the memorandum of variation,

the memorandum of variation shall also be signed in the presence of a witness by the mortgagee under that other memorandum of mortgage.

“ (5.) Upon the production of—

- (a) a memorandum of variation; and
- (b) such number of copies of that memorandum as is equal to the number of memoranda of mortgage the priorities of which are to be varied and of any other memorandum or memoranda of mortgage of the kind referred to in the last preceding sub-section,

the Registrar shall register the memorandum of variation and shall make such entries in the Register Book and upon the memoranda of mortgage the relative priorities of which are to be varied and on any other memorandum or memoranda of mortgage of the kind referred to in the last preceding sub-section as are necessary.

“ (6.) After the registration of a memorandum of variation, the memoranda of mortgage the relative priorities of which are affected by the memorandum shall be entitled in priority the one over the other in the order in which, by the memorandum of variation, they are expressed to have priority.

“ (7.) This section applies to and in relation to a memorandum of mortgage registered before or after the commencement of this section.”.

3. The Principal Ordinance is amended by adding at the end thereof the following Schedule:—

THE TWENTY-FOURTH SCHEDULE.

Section 92A.

AUSTRALIAN CAPITAL TERRITORY.

Real Property Ordinance 1925-1972.

MEMORANDUM OF VARIATION OF PRIORITIES OF MORTGAGES OR ENCUMBRANCES.

The undermentioned memoranda of mortgage or encumbrance shall have priority the one over the other in the following order:—

- 1. Mortgage (or Encumbrance) No. _____, dated _____
from _____ to _____ .
- 2. Mortgage (or Encumbrance) No. _____, dated _____
from _____ to _____ .

[Insert necessary particulars if more than two mortgages or encumbrances are affected]

We hereby certify that this instrument is correct for the purposes of the *Real Property Ordinance 1925-1972*.

Dated this _____ day of _____, 19 _____ .

Signed at said known to me.	in my presence by the , who is personally	}	Mortgagor (or Encumbrancer)

Signed at said known to me.	in my presence by the , who is personally	}	Mortgagee (or Encumbrancee) under Mortgage (or Encumbrance) No.

Signed at said known to me.	in my presence by the , who is personally	}	Mortgagee (or Encumbrancee) under Mortgage (or Encumbrance) No.

[Repeat if any further mortgages or encumbrances are affected]