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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LAND TITLES LEGISLATION AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

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BACKGROUND

In order to achieve a greater degree of flexibility and to clarify some aspects of the law, some changes to both the *Land Titles Act 1925* and the *Land Titles (Unit titles) Act 1970* are necessary. As well some practical problems have arisen relating to the operation of the legislation. This Bill contains a package of measures. There are some reforms to make ACT law consistent with that in New South Wales, some clarifying provisions and solutions to operational problems including removal of outdated provisions and extension of current provisions.

SUMMARY

The Bill removes the need for the Registrar-General to publish a notice in the *Canberra Times* each time a replacement grant or certificate of title is required. Publication will still be possible if the circumstances warrant it, but delays in conveyancing will be avoided because the notice will no longer be compulsory.

The Bill repeals section 70A of the *Land Titles Act 1925* as the provision no longer co-ordinates properly with the provisions of sections 171 and 172 of the *Land (Planning and Environment) Act 1991*. Extension of lease terms is now achieved through surrender and regrant of leases so that there are none of the documents referred to in section 70A LTA.

The Bill includes provisions to allow a mortgagor of property to apply for a court order to sell the property. Everywhere else in Australia this power is already given by legislation. Occasionally a mortgagor will want to sell mortgaged property but the mortgagee will not agree to the sale. An example of such a situation could occur when property prices are falling as the mortgagee may fear that the sale price will not fully repay the debt secured by the property. These new provisions allow the mortgagor to ask the Supreme Court to examine the situation and, if the court thinks it is just to do so, make an order that the property be sold.

The Bill repeals section 172 of the *Land Titles Act*. That section provides for the method of execution by corporations of documents dealing with land. As the Commonwealth Corporations Law provides for execution of documents by corporations there is no need for the *Land Titles Act* to do so.

Provisions in the Bill make it clear that the Registrar-General is authorised to make a record in the Register when land or an interest in land is affected by the operation of another law, whether of the Act or of the Commonwealth.

The Bill contains provisions to clarify the law relating to easements connected to land divided into unit titles. An easement is a right enjoyed by the owner of land over land owned by another person. Some easements give a right to cross the land while others allow for utilities such as gas, water or electricity to be connected. While it is clear that current provisions allow for an easement over land divided into units to be converted into easements over each of the units and the common property for the benefit of the proprietor of another piece of land, if the easement is in favour of the land to be converted into units over another piece of land, it is presently not clear that the benefit of the easement passes to the owners of the new units. The new provisions clarify the law to ensure that the benefit of the easement carries forward in each case. Easements noted on unit titles in the past are confirmed in their effect.

Existing provisions in the *Land Titles Act* provide for mortgages and subleases to be carried forward when there is a surrender and regrant of a lease but do not provide for other interests in the land to be retained. A surrender and regrant of a Crown lease is now used whenever the term of the lease is to be extended. Sometimes a surrender and regrant is used to make adjustments to the area of land covered by a lease, or to re-organise a lessee's land holdings. The Bill provides for the Registrar-General to carry forward the notation of interests on the title where the regrant contains land which was in the surrendered lease and the lessee remains the same. Those interests will include caveats, writs, easements and notations under various Acts such as the *Guardianship and Management of Property Act 1991* and the *Rates and Land Rent (Relief) Act 1970*.

The *Land Titles Act* provides that an easement is extinguished by the surrender of the lease of the land which is benefited by the easement. In order to accommodate the policy of using surrender and regrant to extend the term of a lease, the Bill contains a provision that an easement is not extinguished on surrender if there is a regrant which covers land which was in the surrendered lease.

REVENUE/COST IMPLICATIONS

There are no cost implications.

SUMMARY OF CLAUSES

Formal Clauses

Clauses 1 and 2 are formal clauses. They set out the name of the Bill and provide for its commencement.

Clause 3 says that Part 2 of the Bill, comprising clauses 3 to 19, amends the *Land Titles Act 1925*.

Interpretation

Clause 4 amends the interpretation provision of the *Land Titles Act 1925*. It means that a reference to the surrender of a lease and the grant of a new lease includes a situation where the new grant contains part of the land contained in the surrendered lease.

Powers of the Registrar-General

Clause 5 amends section 14 of the *Land Titles Act 1925* to give the Registrar-General clear authority to note on the Register anything which arises under a law of the ACT or the Commonwealth and affects land or an interest in land. Notice in writing that the land is affected must be given to the Registrar-General. New subsection 14(5A) gives effect to any notation made prior to the amendments in the Bill. This is to remove any doubt about the effect of notations arising out of the effect of other legislation or arising from a particular interpretation of land titles legislation. New subsection (5C) provides for these notations to be carried forward on to the new lease when there is a surrender and regrant.

Replacement of lost grant or certificate

Clause 6 amends section 62 of the *Land Titles Act 1925* to give the Registrar-General the discretion to decide whether or not to publish a notice of intention to replace a lost or destroyed grant or certificate of title.

Surrender and regrant

Clause 7 repeals section 70A of the *Land Titles Act 1925* because it deals with the process for extension of grants of Crown leases. That process is no longer used. Instead a lease is surrendered and a new lease for a longer period is issued in its place.

Clause 8 amends section 86 to put in references to section 91B, which is contained in the new Division, in place of references to section 90A. Clause 9 amends section 90 by replacing references to section 90A with references to section 91A.

Clause 10 repeals section 90A.

New Division

A new Division 10.2A "Surrender of lease" is created by clause 11.

Surrender of a lease

The new Division inserted by clause 11 contains a new section 91A, a new section 91B and a new section 91C.

Sections 91A and 91B contain the provisions from the repealed section 90A. They have been redrafted into a more accessible style. Section 91A contains the provisions dealing with subleases while section 91B deals with mortgages. They provide for subleases and mortgages to continue to operate despite the

surrender of the lease relating to the mortgaged land provided the lessee obtains a new lease over the land. Subleases can only continue if the whole of the land contained in the sublease is contained in the new lease.

Section 91C provides that where there is a surrender and a grant of a new lease over the land comprised in the surrendered lease, any interest in the land noted on the title to the surrendered lease must be noted on the new lease, and, unless it is varied, terminated or discharged, the interest will apply to the new lease in the same way as it did to the old one.

Correction

Clause 12 corrects a reference in section 92A.

Mortgagor's power to sell

Clause 13 inserts a new section 95A which provides mortgagors with the right to apply to the Supreme Court for an order for the sale of a mortgaged property. It is inserted to deal with situations where, perhaps because of a drop in property values, mortgagees may be reluctant to allow a mortgagor to sell a property and discharge a mortgage.

Section 95A will allow a mortgagor or encumbrancer of land to apply to the Supreme Court for an order that the land be sold and for the Court to order the sale on such terms as it thinks just. Those terms can include payment into Court of a specified sum of money to cover the expenses of the sale and to secure the performance of the terms of the order.

The Court can make an order for sale even if action has already been taken to foreclose the mortgage or to sell the land. In addition the Court does not have to determine the priorities of the mortgages or encumbrances before making the order.

Easements

Clause 14 inserts a new section 103DA which authorises the registering on the title of easements which, by the operation of section 10A of the *Land Titles (Unit Titles) Act 1970*, subsist for the benefit of units in a units plan.

Clause 15 amends section 103E by inserting a new subsection (1A). The new subsection provides that an easement is not extinguished on the surrender of a lease if there is a new lease granted to the lessee of land comprised in the surrendered lease. This is contrary to the usual rule, set out in paragraph 103E(1)(b), that an easement is extinguished by the surrender of the lease of the land benefited by the easement.

Caveats

Clause 16 inserts a new section 105A after section 105. It continues the operation of caveats on title to land where the lease to the land is surrendered

and a new lease is granted to the lessee in respect of the land. The section operates subject to any court order in respect of the caveat. Sub-section 105A(3) requires the Registrar-General to make a record of the caveat on the new title if the new lease is registered.

Clause 17 amends section 106 by adding a new subsection (3). The new subsection extends the operation of the section to situations where the lease of the land to which a caveat related has been surrendered and a new lease over the land has been granted to the lessee. Section 106 allows a caveat to lapse in order to allow registration of a document relating to the land referred to in the caveat. The caveat is then reinstated.

Writs

Clause 18 inserts a new section 170A after section 170. The new section provides that the operation of a writ of *fieri facias* or other writ of execution noted in a title is not affected by the surrender of the lease of the land if a new lease over the land is granted to the lessee. It also requires the Registrar-General to note the writ on the title for the new lease.

Execution of documents

Clause 19 repeals section 172. That section, which sets out the manner in which a corporation can execute documents under the Act, is no longer necessary because the Commonwealth Corporations Law deals has equivalent provisions.

Amendment of the *Land Titles (Unit Titles) Act 1970*

Clause 20 is a formal provision about amending the *Land Titles (Unit Titles) Act 1970*.

Clause 21 inserts a new section 10A after section 10 of the *Land Titles (Unit Titles) Act 1970*. The new section balances the operation of subsection 10(2) of that Act. Section 10A operates in situations where a piece of land which has the benefit of an easement over other land is subdivided into units by registration of a units plan. The easement will continue to subsist for the benefit of all the units in that units plan.

Clause 14 inserts new section 103DA to the *Land Titles Act 1925* to allow such an easement to be registered on the titles to those units.