

AUSTRALIAN CAPITAL TERRITORY

REAL PROPERTY ORDINANCE 1972

EXPLANATORY MEMORANDUM

This proposed amendment of the Real Property Ordinance 1925-1970 of the Australian Capital Territory provides for the postponement of a registered mortgage on land to another mortgage registered after it.

Sub-section (3.) of section 48 of the principal Ordinance provides that instruments registered in respect of or affecting the same estate or interest in land shall be entitled in priority the one over the other according to the date of registration.

There are occasions when a lender of money who is prepared to agree to advance money on first mortgage is unable to do so at once. In that situation the borrower frequently obtains what is known as bridging finance - that is, a temporary loan, secured by first mortgage, until the long term mortgage money becomes available. When the long term loan becomes available the short term mortgage is discharged and the long term lender has his loan secured by first mortgage over the land.

It is often happens, however, that the borrower needs a second loan, which he obtains by giving a second mortgage over his land. Under existing law, when the long term loan becomes available this second mortgage must also be

discharged if the long term lender requires, as a condition of his loan, priority over any existing mortgage.. The borrower, having given a first mortgage to the long-term lender, then enters into a new second mortgage.

This amendment is designed to avoid the cost and inconvenience involved in discharging the second mortgage and re-granting it, by permitting, with the consent of all parties whose interests are affected, the lodgment of a 'memorandum of variation of priorities of mortgages'. Upon registration of this memorandum, registered mortgages are entitled to priority in the order specified in the memorandum instead of according to the date of registration.

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