

Information Bulletin No 32

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Real Property and Conveyancing (Amendment) Act 1991

Variations of Lease

The Real Property and Conveyancing (Amendment) Act 1991 commenced on 1 December 1991.

This legislation provides that a lease registered under the Real Property Act 1900 may be varied so as:

- a) to increase or reduce the rent payable under the lease; or
- b) to increase or reduce the period for which the lease is to have effect; or
- c) to otherwise vary, omit or add to the provisions of the lease.

Such variations are not valid or binding against the registered proprietor of any prior registered interest in respect of the land to which the lease relates unless that proprietor has consented to the variation before it is registered. For the purposes of registration, it will not be necessary to establish that such consent has been given.

Variations of leases which are subject to a mortgage will not be registered unless the mortgagee joins in or expressly consents to the variation.

It should be noted that section 55A of the Real Property Act 1900 provides that a variation of lease may not operate so as to vary the land to which the lease relates.

The approved form is 07VL Variation of Lease and is available from the usual outlets. Variations of lease are liable to stamp duty.

Variations of Mortgage

The provisions regarding the variation of mortgages contained in section 91 of the Conveyancing Act 1919 have been expanded by the Real Property and Conveyancing (Amendment) Act 1991 so that any of the provisions of a mortgage may be varied, omitted or added to. The variation of mortgage provisions apply to both common law and Torrens title land.

A Memorandum of Variation of Mortgage may not operate to vary the land to which the mortgage relates.

Variations of mortgage need not be presented to the Office of State Revenue.

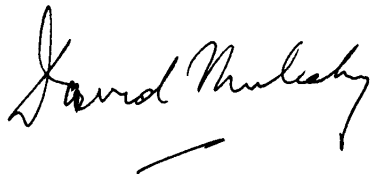
Service of Notices

The Act also amends section 170 of the Conveyancing Act 1919 and section 135Q of the Real Property Act 1900 which relate to the service of notice by providing, inter alia, that service may be effected through a document exchange facility where the person on whom a notice is to be served is a member of the document exchange.

Section 170 is also updated by providing simply that service may be effected by post. The former reference to registered mail has been omitted.

Further inquiries regarding the provisions of the Real Property and Conveyancing (Amendment) Act 1991 should be directed to the Legal Division of Land and Property Information New South Wales (LPINSW).

Inquiries relating to dealings may be made in person at the Client Service Counter, ground floor, by telephone on 9228 6713 or fax 9223 9464. Inquiries relating to plans should be made at the Plan Support Counter, level 2, North wing, Land and Property Information, 1 Prince Albert Road, Queens Square, Sydney by telephone on 9228 6798 or by fax on 9221 4405.



David Mulcahy
Registrar General

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Land and Property Information New South Wales
1 Prince Albert Road, Queens Square
Sydney NSW 2000 Australia
Telephone 61 2 9228 6666 • Facsimile 61 2 9233 4357