

Part 30 – Mortgage Priority

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Part 30 – Mortgage Priority

General Law

[30-0000]

Under the provisions of the *Land Title Act 1994* and the *Land Act 1994*, the priority of mortgages may be altered. Form 30 – Mortgage Priority is the appropriate form.

Amendment of Priority of Mortgages

[30-0010]

Section 177(1) of the *Land Title Act 1994* and s. 297(1) of the *Land Act 1994* provide that instruments or documents must be registered in the order in which they are lodged. Section 178(1) of the *Land Title Act* and s 298(1) of the *Land Act* provide that registered instruments or documents have priority according to when each of them were lodged and not according to when they were executed. Section 178(2) of the *Land Title Act* and s. 298(2) of the *Land Act* provide that an instrument or document is taken to be lodged on the date and at the time endorsed on the instrument or document by the Registrar unless the contrary is proved.

Section 77 of the *Land Title Act* and s. 344 of the *Land Act* allow the priority of registered mortgages to be amended by registration of a Form 30 – Mortgage Priority.

For further information see ¶[30-2010] and ¶[30-2020].

Legislation

[30-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the *Water Act*, the *Land Title Act* applies to the registration of an interest or dealings for a water allocation on the water allocations register subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the *Land Title Act* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar of Water Allocations; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) with any other necessary changes.

Reference to the Chief Executive in the *Land Act 1994*

The functions of the Chief Executive under the *Land Act* relating to the keeping of registers are carried out by the Registrar of Titles under delegation made under s. 393 of that Act.

Practice

Amendment of Priority of Mortgages

¶[30-2000] deleted

Order of Priority

[30-2010]

The Form 30 must specify the order of priority of all affected registered mortgages and be executed by all mortgagees affected by the Form 30. On registration of the Form 30, the mortgages have priority in the order specified.

The granting of priority to a mortgage, over another that was registered before it, involves the grantor (the mortgagee in the mortgage being postponed – hence ‘giving priority’) agreeing with the grantee (the mortgagee receiving priority) to the re-arranged priority.

Multiple Mortgages

[30-2020]

Where more than one mortgagee agrees to the priority of their mortgages being postponed in favour of another mortgagee, a separate Form 30 is not required for each postponed mortgage, provided the same title or group of titles are affected by all mortgages involved.

Details of all mortgages postponing priority and the one receiving priority are to be set out in Item 2. However, the grantee (mortgagee receiving priority) must execute separately with each grantor (mortgagee postponing priority) at Item 6. That is, if two mortgages postpone priority in favour of another, the correct number and order of executions would be:

- the first postponing mortgagee;
- the mortgagee receiving priority;
- the second postponing mortgagee; and
- the mortgagee receiving priority a second time.

Generally, multiple executions at Item 6 would require the use of a Form 20 – Schedule to accommodate all the executions.

Forms

General Guide to Completion of Forms

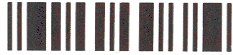
[30-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number

Lodger (Name, address, E-mail & phone number)

Lodger Code
459



OFFICE USE ONLY

BEST & CO.
209 ADELAIDE STREET
BRISBANE QLD 4000
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Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Priority particulars

Mortgage No. being postponed 700896408.....
Mortgage No. receiving priority 720000282.....

2. Consequent Order of Priority

Dealing Nos. 720000282.....
700896408.....

3. Lot on Plan Description

LOT 33 ON RP67670

Title Reference

11943034

4. Grantor (Mortgagee of the mortgage being postponed)

XYZ SECURITIES PTY LTD ACN 400 736 948

5. Grantee (Mortgagee of the mortgage receiving priority)

ZZ ADVANCES PTY LTD ACN 307 489 643

6. Request/Execution

The Grantor grants to the Grantee the priority of mortgages as indicated in item 2.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

A D Lien

..... Signature
ARNOLD DOUGLAS LIEN
..... full name
JUSTICE OF THE PEACE (C.DEC) 89339
..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

..... signature
..... full name
..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

J E Bourke

XYZ SECURITIES PTY LTD
by its duly authorised attorney
JAMES EDGAR BOURKE under
Power of Attorney No. 701001010

Grantor's Signature

12/10/2007
Execution Date

(seal)
or full name of company
to be shown

15/10/2007
Execution Date

D J Tomlins, Director
DOUGLAS JOHN TOMLINS

D Harris, Director/Secretary
DAVID IAN HARRIS

Grantee's Signature

Guide to Completion of Form 30

Item 1 [30-4010]

Insert dealing number of mortgages being postponed and receiving priority.

Item 2 [30-4020]

Show the consequent priority.

Item 3 [30-4030]

^{1,2}Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for crown plans). The area of the lot/s is not shown.

e.g. Lot on Plan Description	Title reference
Lot 27 on RP 204939	11223078

^{2,3}Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are administrative plans. Administrative plan is abbreviated to AP as the prefix of the plan identifier.

e.g. Lot on Plan Description	Title reference
WA 27 on AP 7900	46012345

^{1,3}State Land

The description of the relevant State tenure should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘CP’ for crown plans).

e.g. Lot on Plan Description	Title reference
Lot 27 on CP LIV1234	46012345

Item 4 [30-4040]

Insert full name of grantor (mortgagee granting the priority).

Item 5 [30-4050]

Insert full name of grantee (mortgagee receiving the priority).

Item 6 [30-4060]

Execute as indicated.

Duty [30-4070]

There is no duty notation required.

¶[30-6000] deleted

Case Law

[30-7000]

Nil.

Fees

[30-8000]

Fees payable to the registries are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current:

- ^{1,2}Land Title Regulation;
- ^{1,3}Land Regulation; and
- ^{2,3}Water Regulation.

Cross References and Further Reading

[30-9000]

Part 2 – Mortgage (National Mortgage Form)

Duncan and Vann, *Property Law and Practice*, Law Book Company Limited (loose-leaf service)

Queensland Conveyancing Law and Practice, CCH Australia Limited (loose-leaf service)

Notes in text

[30-9050]

Note¹ – This numbered section, paragraph or statement does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.