

Part 30 – Mortgage Priority

Table of Contents

- General Law[30-0000]
- Amendment of Priority of Mortgages[30-0010]
- Legislation[30-1000]
- Practice
- Order of Priority.....[30-2010]
- Multiple Mortgages[30-2020]
- Forms
- General Guide to Completion of Forms[30-4000]
- Guide to Completion of Form 30
- Item 1[30-4010]
- Item 2[30-4020]
- Item 3[30-4030]
- Item 4[30-4040]
- Item 5[30-4050]
- Item 6[30-4060]
- Duty[30-4070]
- Case Law[30-7000]
- Fees[30-8000]
- Cross References and Further Reading[30-9000]
- Notes in text[30-9050]

Part 30 – Mortgage Priority

General Law

[30-0000]

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

Section 77 of the *Land Title Act* 1994 allows the priority of registered mortgages to be amended by registration of an instrument of amendment of priority. Form 30 is the appropriate form.

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 ss 150(1) and 151 of the *Water Act* 2000, subject to the exceptions provided in ss 150(2), 151(1) and (5) of the *Water Act* 2000, the *Land Title Act* 1994 applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act* 2000 an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act* 1994 and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act* 1994:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act* 2000; 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) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

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 instrument. 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, esp ¶[59-2000].

Dealing Number

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

Lodger Code
459



OFFICE USE ONLY

BEST & CO.
209 ADELAIDE STREET
BRISBANE QLD 4000
info@bests.com.au
(07) 3227 2325

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy 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

County

Parish

Title Reference

LOT 33 ON RP67670

MARCH

WEYBA

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]

²Freehold 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.

The entire panel of Item 2 must be completed. All information needed to complete Item 2 will appear on a search of the title.

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on RP 204939	Stanley	South Brisbane	11223078

Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. A water allocation has no reference to County or Parish, hence these fields are not completed. All plans referring to water allocations are Administrative Plans. Administrative Plan is abbreviated to AP as the prefix of the plan identifier.

All information needed to complete Item 2 will appear on a search of the water allocation title.

eg	Lot on Plan Description	County	Parish	Title reference
	WA 27 on AP 7900			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 payable on a Form 30 – Mortgage Priority.

¶[30-6000] deleted

Case Law

[30-7000]

Nil.

Fees

[30-8000]

Fees payable to the registries are subject to an annual review. See the current:

- ²*Land Title Regulation 2005* – Schedule 2, item numbers 2(h) and 2(m); and
- *Water Regulation 2002* – Schedule 16, item numbers 11 and 15.

Cross References and Further Reading

[30-9000]

Part 2 – Mortgage

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]

Note ² – This paragraph or statement is not applicable to water allocations or the Water Allocations Register.