

Notice

To Lodging Parties

30 September 2020 No 237

Regulations under sections 7 and 16 of the *COVID-19 Emergency Response Act 2020*

[NTLP 230](#) advised that the Government of South Australia introduced the [COVID-19 Emergency Response Act 2020](#) (COVID-19 Act) to make various temporary amendments of the law of the State in response to the COVID-19 pandemic. These temporary modifications have now been extended under the COVID-19 Emergency Response (Expiry and Rent) Amendment Bill 2020.

In addition, the Registrar-General wishes to advise that the following Regulations have therefore also been extended pursuant to the COVID-19 Act:

Commercial Leases

The [COVID-19 Emergency Response \(Commercial Leases No 2\) Regulations 2020](#) (Commercial Leases No 2 Regulations) have been made pursuant to section 7. Regulation 7 provides that in certain circumstances if a lessee is suffering financial hardship as result of the COVID-19 pandemic, a lessor cannot take a prescribed action against them for a breach of the lease on grounds such as failure to pay rent or outgoings. This modifies the provisions under the [Real Property Act 1886](#) (RPA) in relation to implied covenants of the lessee to pay rent (section 124(a)), the implied power of the lessor to re-enter and take possession of leased premises where rent is in arrears (section 125(c)) and the powers of the Registrar-General to note re-entry by the lessor in the Register Book (section 126).

Any application to note re-entry of lease is therefore being scrutinised by the Registrar-General in light of the Regulations.

Statutory Declarations

The [COVID-19 Emergency Response \(Section 16\) Regulations 2020](#) (Section 16 Regulations) have been made pursuant to section 16. Regulation 4 expands the categories of persons who may witness statutory declarations (listed in Schedule 1 of the Section 16 Regulations). This applies wherever a statutory declaration is provided to the Lands Titles Office as supporting evidence including for:

- An Appointment of New Trustee(s)
- An Application for Re-entry of Lease under section 126 RPA
- An Application to Discharge a Mortgage under section 146 of the RPA

Execution of corresponding mortgage

Further, under the Section 16 Regulations, Regulation 5 suspends the requirement that the Registrar-General be satisfied that a corresponding mortgage has been executed by the mortgagee when a mortgage is executed pursuant to section 128(5) of the RPA.

Witnessing requirements

Section 16 Regulations, Regulation 5 also suspends the requirement to witness the signing of an instrument in accordance with section 267 of the RPA.

As most instruments are executed under a Client Authorisation, section 267 only applies to limited instruments (predominantly division instruments). However to facilitate social distancing requirements or difficulties with witnessing during the COVID-19 pandemic, requirements for witnessing for the instruments that still require witnessing under this section is suspended. As this is a temporary change to this requirement the approved forms will not be updated to remove the witnessing sections.

Expiry

Pursuant to section 6 of the COVID-19 Act, the Commercial Leases No 2 Regulations will now expire on 6 February 2021. The Section 16 Regulations will expire on 6 February 2021, or 28 days after the day on which all the relevant declarations relating to the outbreak of the human disease named COVID-19 have ceased, whichever is earlier (unless a date is otherwise fixed by the Minister by notice in the Gazette in accordance with section 6 of the COVID-19 Act).

Verification of Identity Standard

Advice issued in [NTLP 230](#) relating to Verification of Identity Standard amendments, will continue to be applicable for the period in which the COVID-19 Act is operable (now extended), unless revoked earlier by the Registrar-General.

For further information please contact the Office of the Registrar-General via DIT.RegistrarGeneral@sa.gov.au.



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