

Customer Information Bulletin

TITLE REGISTRATION SERVICES (Land Registry) No 77 December 2000

283 Queen St., Melbourne 3000 PO Box 500 East Melbourne Victoria 3002 / Tel 03 9603 5555 / Fax 03 9603 5556 / DX 250639 ISSN 1441-1504

Note: This document has been amended in "The Subdivision (Body Corporate) (Interim) Regulation 2000, Summary of the New Law" point 2.

from: Most of the new forms need to be signed by the applicant, being the relevant Body Corporate or sealed by the Body Corporate

to: Most of the new forms need to be signed by the applicant, or sealed by the Body Corporate.

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In line with the ongoing review of practices within Title Registration Services, Land Registry, the following changes have been made to current practices in order to reduce processing times.

Conversion Plans Pursuant to Section 98CA(1) Transfer of Land Act 1958 (TLA)

Duplicate Instruments

The requirement that duplicate Service Agreements, Charges, Mortgages, Leases and Sub-leases be lodged with Conversion Plans is removed. The Registrar has decided that he will no longer require production of these in every case.

Accordingly, in ordinary circumstances, duplicates of these instruments WILL NO LONGER BE REQUIRED on the lodgement of a Conversion Plan.

Residual Land Titles

Where the residual land title is lost or destroyed and cannot be produced on lodgement of a Conversion Plan, it will no longer be necessary to apply under Section 31 TLA for its replacement .

Instead, an application under Section 104(5) TLA to dispense with its production may be lodged.

These changes will take effect immediately.

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Leases Pursuant to Section 66 TLA

An increasing number of leases are being lodged that do not conform with Form 26 as set out in the Transfer of Land (General) Regulations 1994.

AS FROM 1 JANUARY 2001, leases that do not conform with Form 26 will not be accepted for lodgement in this office.

Where leases are lodged in duplicate or triplicate, each copy must be the same as the original.

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Application by Legal Personal Representative - Section 49 TLA

At present, supporting evidence for an application by Legal Personal Representative can be satisfied by two means:

- A certified copy of the front page of the probate or letters of administration;
- A statutory declaration by someone with means of knowledge which states that the applicant is the Legal Personal Representative together with other statements to support this.

An increasing number of statutory declarations are not being completed correctly, with panels not being completed and limitations not being set out.

To ensure it is properly evidenced that the applicant is the Legal Personal Representative, and to reduce the number of requisitions, the following must be provided in support of an application FROM 1 JANUARY 2001:

- A certified copy of the front page of the grant of probate or letters of administration; OR
- A statutory declaration by someone with means of knowledge which states that the applicant is the Legal Personal Representative together with a copy of the front page of the grant exhibited to the statutory declaration. (NOTE the copy need not be certified.)

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Recording the Transferee as a Legal Personal Representative of a Deceased Person

Section 49 TLA authorises the Registrar to record the Legal Personal Representative of a deceased registered proprietor as proprietor of land owned by the deceased. This is the only section in the Act which expressly authorises the recording of a representative capacity.

Section 49 authorises only the recording of a Legal Personal Representative of a *deceased registered*

proprietor. Thus, it is a condition precedent to the operation of Section 49 that the deceased was the registered proprietor of the land. If the deceased was not the registered proprietor, then Section 49 has no operation.

Present Practice

The Office has a practice of recording the representative capacity where, in a transfer, the Transferee is described as being a Legal Personal Representative of a deceased person, usually a purchaser who did not become proprietor during their lifetime.

Change of Practice

The present practice is not justified by Section 49, as the deceased never was the registered proprietor of the land.

Practitioners and customers are advised that when preparing a transfer to a person who is the Legal Personal Representative of a deceased purchaser, the transferee panel should be completed with *no reference to the representative capacity of the transferee*. If the representative capacity is set out, it will not be recorded on the Register.

Transfer by a Proprietor whose Representative Capacity is not shown on the Register

If the consideration panel refers to a devise in the Will of a deceased person not known to the Register, then the words "of whose estate the within land forms part" should be included in the consideration.

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Caveat Notices

A further review of sending notice under Section 90(1) TLA has been made.

In the dealing types set out below, the registered proprietor(s) are not dealing with the land, and, upon registration of these dealing types, the Caveat(s) do not lapse. As a result, Notice to Caveator(s) under Section 90 (1) TLA will no longer be sent on the dealing types set out below.

Section 173	Planning and Environment Act - Agreement
Section 162	Building Act - Agreement
Section 110	Planning and Environment Act - Statement compensation paid
Section 183	Planning and Environment Act - Remove

Section 64	Housing Act - Declaration and Removal of Declaration Land Tax Act - Charge
Section 20	Vermin and Noxious Weeds Act - Charge
Section 32(2)	Gift Duty Act - Charge
Section 67(2)	Housing Act - Charge
Section 21(4)	Crimes (Confiscation of Profits) Act - Charge
Section 16	Crimes (Confiscation of Profits) Act - Restraining Order
Section 18	Confiscation Act - Order
Section 43(2)	Proceeds of Crime Act (Commonwealth) - Order
Section 47	Legal Aid Commission (Amendment) Act - Charge
Section 9	Retirement Village Act - Retirement Village Notice
Section 29	Retirement Village Act - Charge
Section 8	Forest Rights Act - Agreement
Section 89	Conservation Forests and Lands Act - Agreement
Section 3A	Conservation Trust Act - Covenant

Section 90	Domestic Building Contracts and Tribunal Act - Order
Section 41	Historical Building Act - Recording Covenant
Section 91(2)	Heritage Act 1995 Recording Covenant
Section 86	Acquisition and Compensation Act - APA Notice of Intention

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The Subdivision (Body Corporate) (Interim) Regulation 2000

("The Interim Regulations")

Background

The Subdivision (Body Corporate) Regulations 1989 ("the Old Regulations") expired on 16 October 2000. They were replaced by the Interim Regulations, which came into effect on 17 October 2000 and are due to expire on 16 April 2001.

The Interim Regulations make a number of changes to the Old Regulations.

Summary of the New Law

1. The Interim Regulations have created new forms. You must ensure that you use the new forms, which can be found in the Schedule to the Interim Regulations. Land Registry is unable to accept any old forms.

The only exception to this is that Land Registry will accept an old Form 3 providing notification that the rules of a Body Corporate were changed or adopted prior to 17 October 2000. In this case, Land Registry would need evidence confirming the date on which the rules were made, amended or revoked. It may be possible to do this by providing a copy of a minute of the meeting at which it was resolved that the rules be made, amended or revoked.

2. Most of the new forms need to be signed by the applicant, or sealed by the Body Corporate. The exceptions are new Form 2, which must be sealed by the Body Corporate and new Form 5, which can be signed by the Body Corporate's delegate. In this case, the delegate should print his/her full name next to his/her signature and state that s/he is a delegate of the Body Corporate.

3. A Body Corporate's common seal must be affixed in the presence of two members of the Body Corporate, who must sign when the seal is affixed. This function cannot be delegated. In addition, the common seal can only be affixed in accordance with a resolution of the Body Corporate. Reference to the resolution should form part of any

attestation clause.

Acceptable execution clauses would be as follows:

i) "The Common Seal of Body Corporate [No.] Plan No [No.] was hereto affixed in accordance with Regulation 310 of the Subdivision (Body Corporate) (Interim) Regulations 2000 and in accordance with a special resolution dated [date] in the presence of:

Member of Body Corporate

Member of Body Corporate"

Or in the case where there is only one member of the Body Corporate:

ii) "The Common Seal of Body Corporate [No.] Plan No [No.] was hereto affixed in accordance with Regulation 310 of the Subdivision (Body Corporate) (Interim) Regulations 2000 and in accordance with a special resolution dated [date] in the presence of the sole member of the Body Corporate:

*Sole Member of Body Corporate"

* *must be the sole registered proprietor of all units/lots*

Where a witnessing member or the sole member is a company, in addition to the Body Corporate's seal, the company should execute the document in accordance with Section 127(1) of the Company Law Review Act 1998. See *Customer Information Bulletin No 72*, December 1998 for further information.

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Return of Paper (Parchment) Duplicates Titles

Land Registry is to commence a process on 15 January 2001 where duplicate titles will be returned to the customer, following their replacement by a computer title.

The significance of this decision arises from customer requests for the return of these historical documents for various family and personal reasons.

Land Registry intends completing this process for all titles presented for transaction where the paper duplicate title would have otherwise been physically destroyed due to the transformation to a computer title.

The paper duplicate title will be delivered along with the computer title at the completion of the transaction and will be clearly marked as follows:

"DESTROYED – CANNOT BE USED FOR ANY LEGAL PURPOSE"

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Subdivision (Procedures) Regulations 2000

Background

The Subdivision (Procedures) Regulations 1989 (“the Old Regulations”) have been replaced by the Subdivision (Procedures) Regulations 2000 (“the New Regulations”), which came into effect on 10 October 2000.

Summary of new Law

1. A copy of the New Regulations can be accessed at the following web site: www.dms.dpc.vic.gov.au. You then need to select the following: “Law Today”, “continue”, “S” and then scroll down to the heading “Statutory Rules”.
2. The Old Regulations contained example plans. These have been removed from the New Regulations and they can now be found in the Survey Practice Handbook Victoria (located in the Surveying Section of land.vic.gov.au under Products and Services). The Handbook is no longer produced in hard copy.
3. Land Registry is able to accept the old application forms until 10 April 2001.
4. Please note that the New Regulations amend some of the forms and that many have been renumbered.
5. A statement of compliance issued under the Old Regulations will be valid for the life of the plan, that is, five years.
6. The New Regulations require that all Bodies Corporate be numbered, even where a plan contains only one. This is to avoid any possible ambiguity, which could arise if further Bodies Corporate are created in the same plan at some time in the future. It is strongly recommended that Common Properties should also be numbered for the same reason.

Customer Information Bulletin on E-Mail

If you are currently on the mailing list to receive the Title Registration Services (Land Registry) Customer Information Bulletin but would like to receive it electronically by e-mail, please contact Sally Lynch of Land Registry’s Communications Unit on sally.lynch@dse.vic.gov.au, telephone 9603 5480 or fax 9603 5400.

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This document was reviewed on 8/06/2004.

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