

Title Registration Services Customer Information Bulletin

Practice relating to powers of attorney

Confirmation of practice relating to powers of attorney given by companies and other corporate persons

Land Registry considers that the general and enduring powers of attorney provisions in the *Instruments Act 1958* (the Act) are only applicable to natural persons.

Consequently, Land Registry will not accept a general or enduring power of attorney given by a company in support of a dealing lodged for registration.

Land Registry is seeing an increasing number of examples of instruments signed under power of attorney where the donor is a company.

A general power of attorney is considered to be one which conforms with schedule 12 of the Act. An enduring power of attorney is one which conforms with schedule 13. An adaptation of these scheduled forms (eg. an addition of clauses) may result in the power of attorney not being general or enduring. In these cases the power of attorney

will be examined as a specific power of attorney. If the specific power of attorney is really what the donor intends, it should not be headed as a general or enduring one granted pursuant to section 107 or 114 of the Act. This only confuses intention and may result in Land Registry refusing to process the dealing on the basis that the donor company cannot give a general or enduring power of attorney.

If a power of attorney by a company is not expressed to be a general or enduring power of attorney but the wording in the power of attorney relied upon to justify the execution of the dealing is identical or to the effect of the general or enduring power of attorney, Land Registry may be equally concerned about the justification for such a far ranging power. It is suggested that a power of attorney by a company be tailored to specific circumstances or at least to the execution of documents related to conveyancing matters or registration of land dealings.

Plans and diagrams in dealings

A number of dealings lodged in the office have plans or diagrams attached to identify land affected (not being the whole of the land in a title). These dealings include caveats, section 173 *Planning and Environment Act* agreements, Conservation Trust covenants, *Water Act* agreements, etc.

All registered and recorded dealings are imaged and reproduction of these dealings has to be clear and readable. As a consequence the quality and clarity of dealings must

be high. Plans and diagrams must be clear and fully dimensioned. The use of colour coding or aerial photographs is not acceptable as it will not be clear on an imaged copy where the land is located within a title boundary. Plans and diagrams should be drawn on A4 sized paper.

Dealings which are not of acceptable quality and clarity will not be accepted for lodgement.

Edition 84 November 2003

INSIDE

- Practice relating to powers of attorney
- Plans and diagrams in dealings
- Signing of Land Registry documents by current practitioners
- Lodgement of duplicate mortgages with discharges

ISSN 1441 - 1504
PP 349181/01650

Department of
Sustainability and
Environment

Title Registration Services
Land Victoria
Marland House
Level 9, 570 Bourke Street
Melbourne VIC 3000
PO Box 500
East Melbourne VIC 3002

Tel (03) 8636 2010
Fax (03) 8636 2250

Signing of Land Registry documents by current practitioners

A number of dealings lodged in Land Registry are able to be signed by Current Practitioners for Applicants, Caveators in accordance with Approved and prescribed forms.

Often the identity of the stated current practitioner cannot be readily confirmed by the person's signature.

The Registrar requires any current practitioner signing a dealing for a party to legibly record their full name and the firm name under their signature.

Dealings that do not record this information will be refused.

Lodgement of duplicate mortgages with discharges

There has been some confusion recently about what to do with the duplicate registered mortgage when lodging a discharge of that mortgage. Some customers are lodging the duplicate mortgage with the discharge and expecting Land Registry to dispose of it after registration of the discharge.

The practice of this office requiring production of the duplicate mortgage in a Discharge of Mortgage dealing ceased a number of years ago. If a duplicate mortgage is produced with the discharge, it is now the practice of this office to return it to the lodging party. The controlling party may then file it or destroy it, as they see fit.

Duplicate mortgages are not required to be lodged with discharges and customers should ensure they are not presented at lodgement.

Customer Information Bulletin on email

If you'd like to receive the *Customer Information Bulletin* electronically or to unsubscribe, send your request to Nancy Mazza via email nancy.mazza@dse.vic.gov.au, or telephone (03) 8636 2812, or fax (03) 8636 2250.

© The State of Victoria, Department of Sustainability and Environment 2003

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.