

# Customer INFORMATION Bulletin

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**TITLE REGISTRATION SERVICES (Land Registry)** No 72 December 1998  
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## PRACTICE NOTE Execution by Corporations

The *Company Law Review Act 1998 (Commonwealth)* which commenced on 1 July 1998 made major changes to the Corporations Law 1989.

After consultation with Land Titles Offices in other States, this Practice Note will take effect immediately.

### Means of Execution

The *Company Law Review Act 1998* ("the Act") alters in particular the means by which a company may execute documents. By section 123 of the Act, it is no longer compulsory for a company to have a common seal. Subject to its Memorandum and Articles of Association which section 136 of the Act calls its "Constitution", a company now has the option to execute documents either with or without a common seal.

A company may execute a document that is lodged in Land Registry in two ways that are acceptable—

#### 1. If a company does not have a common seal

it should execute without a common seal in accordance with Section 127(1) of the Act.

#### 2. If a company has a common seal

- it may execute by affixing the common seal in accordance with Section 127(2) of the Act; or
- it may execute without a common seal in accordance with Section 127(1) of the Act.

#### When does a company have a common seal?

A company has a common seal if—  
1. it existed before 1 July 1998 AND

- has not resolved in a meeting of the shareholders to change its constitution and dispense with a common seal OR
- it was created after 1 July 1998 but has not adopted the model Constitution set out in the Act.

#### When does a company not have a common seal?

A company does not have a common seal if—

- it was created after 1 July 1998 and has adopted the model Constitution set out in the Act.

#### OR

- it existed before 1 July 1998 AND it has resolved in a meeting of the shareholders to change its constitution and dispense with a common seal.

#### How does a company execute using a common seal?

Under section 127(2) of the Act, a company which has a common seal may execute a document by affixing the common seal of the company in the presence of—

- two directors of the company
- a director and a company secretary of the company
- the sole director of a proprietary company that has a sole director who is also a sole secretary.

So that the persons signing can be identified, the Registrar requires that persons signing on the affixing of the common seal of a company print under their signature their name, usual address



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and the office they hold in the company.

### How does a company execute without a common seal?

Under section 127(1) of the Act, a company may execute a document without a common seal if the document is signed by:

- two directors of the company
- a director and a company secretary of the company
- the sole director of a proprietary company that has a sole director who is also a sole secretary.

Persons signing for a company must print under their signature their name, usual address and the office they hold in the company.

### Other Matters

The *Company Law Review Act 1998* sets out the means by which a company may execute a document.

Registration is not merely a matter of lodging a dealing with an appropriate type of execution. The Registrar will only register a dealing when satisfied that it is in registrable form and ought to be registered. Therefore, as pointed out in previous *Customer Information Bulletins*, customers will still be required to provide up to date company searches for large transactions. As is the current practice of Land Registry, customers may also be required to provide other information should this be thought necessary under section 104(1) of the *Transfer of Land Act 1958*.

The requirement that the full names and usual address for each person signing for the company be set out under their signature, comes into effect from 1 March 1999. This requirement applies to ALL companies, regardless of the date of incorporation.

## 1 Suggested execution clauses

### 1.1 Company executing without using a common seal

#### 1.1.1 Multi-person company – Director & Director or Director & Secretary execute

Executed by XYZ Pty Ltd by being signed by those persons who are authorised to sign for the company.

Director ..... Full Name .....  
Usual Address.....  
Director..... Full Name .....  
Usual Address.....

#### 1.1.2 Sole Person Company

Executed by XYZ Pty Ltd by being signed by the person who is authorised to sign for the company.

.....  
Sole Director and Sole Company Secretary  
  
Full Name ..... Usual Address .....

#### 1.1.3 Multi-person company – One director only executes

### 1.2 Company executing by using a common seal

#### 1.2.1 Multi-person company – Director & Director or Director & Secretary execute

The common seal of XYZ Pty Ltd was affixed in the presence of authorised persons:

Director ..... Full Name .....  
Usual Address.....  
  
Director ..... Full Name .....  
(or Secretary) .....  
Usual Address.....

#### 1.2.2 Sole Person Company

The common seal of XYZ Pty Ltd was affixed in the presence of the authorised person:

.....  
Sole Director and Sole Company Secretary  
  
Full Name ..... Usual Address .....

#### 1.2.3 Multi-person company – One director only executes

The common seal of XYZ Pty Ltd was affixed in the presence of an authorised person:

Director ..... Full Name .....  
Usual Address.....

The office also requires a letter from the company's current practitioner or company secretary that the company is a multi-director company which has a Constitution permitting the seal to be affixed in the presence of one director only.

### For further information

Customers requiring further information should contact Steve Hardy of Title Registration Services on 9603 5484.



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## Expiry Dates in Covenants

### Period of Covenant shown – Expiry Date not shown

An increased number of transfers are being lodged with covenants that are expressed as or have the effect of being in the following form:

“.....the covenants in this transfer shall cease to apply or affect the burdened land from *the expiration of 15 years after the date of this transfer*”

Land Registry believes that this statement is indefinite and that a calculation of the date is open to interpretation. In these cases this office will not attempt to make a judgement as to the expiry date of the covenant(s) and reference to an expiry date will not be included in the Register.

As a consequence the covenant will be held on the Register until a formal application under Section 106 (E), with the payment of an appropriate fee, is lodged to remove the covenant providing it can be shown that the time for the covenant has in fact expired.

### Expiry Date shown

For the expiry date to be shown on the register the following criteria should be met when preparing your document:

- the date set out is definite (i.e. ...expires on 15 January 2002) and the whole of the covenant is affected.
- the expiry date affects the whole of the covenant, and
- if there is more than one expiry date, the latest date is shown providing it applies to the whole of the covenant, otherwise no date is shown.

## Change of Payment Process Acceptance of Debit / Credit Cards

**From Monday 10 August 1998 Land Registry customers have been able to pay for the provision of services by way of a debit or credit card facility at either of the following locations:**

**283 Queen Street**  
Ground Floor  
Customer Services Centre -  
Cashiers Area

**456 Lonsdale Street**  
Ground Floor  
Land and Survey Information  
Centre  
Level 5  
Registrar General's Office

Land Registry customers will also have the facility to make payments through the mail providing credit card details. Unfortunately, American Express and Diners Club cards cannot be accepted and the facility to withdraw cash will not be available.

If you have any queries relating to the use of the debit / credit card facility within Land Registry please contact Christine Rogers on 9603 5313 or Charlie McIntyre on 9603 5301.

## Landata is now on the Internet

Access to LANDATA's services is now available through the Internet.

Land professionals can visit our site at [www.landata.com.au](http://www.landata.com.au) to find out how we simplify dealing in land and provide quick direct access to land information at economical prices.

Existing customers can access LANDATA's services through the Internet using their existing accounts.

If you are not an existing customer of LANDATA and would like to take advantage of using our quick, direct access to land information, you can lodge an application form on-line through our site at [www.landata.com.au](http://www.landata.com.au).

For further information on the Internet access or other access options, visit LANDATA on [www.landata.com.au](http://www.landata.com.au) or contact (03) 9603 5103.

## General Law Conversion Projects Community Education Program

Title Registration Services has a number of projects in place to assist landowners with applications for conversion of their land under the General Law:

Changes to the Transfer of Land Act 1958 resulting from the Transfer of Land (Single Register) Bill 1998, which take effect from 1 January 1999, include the closing of the memorials register under the *Property Law Act 1958*, requiring all dealings with land to be registered on the TLA Register, and streamlining the conversion schemes under the TLA.

**A General Law search library is being established and a search subsidy scheme is operating, to reduce the costs of conversion for owners of land under the General Law.**

Title Plans have been prepared for most marketable parcels of General Law Land and these can be used free of charge by applicants for General Law Conversion.

Since the end of last year a reduced fee of \$59 applies to conversion applications.

A community education campaign commenced in August to let people know about the search subsidy and the library.



A 1800 FREECALL number (1800 224 189) is operating for people to call with enquiries and requests for further information.

The campaign has been trialed in the municipal areas of Greater Bendigo and adjacent Mt. Alexander. The towns in these areas include Bendigo, Eaglehawk, Castlemaine, Maldon and Chewton. Advertisements on the need to convert appeared in the *Bendigo Advertiser*.

Letters have also been sent advising of the project to legal practices, banks and other lenders, and real estate agents in these areas. Following evaluation of the trial campaign a decision will be made on further roll-out of the campaign in other areas. Glynis Edwards has been appointed to the position of Project Administration Officer and has responsibility for administration of the General Law Conversion projects, including the Library Search Contract, and for liaison and reporting to the Project Working Group.

An after-hours message will operate on the Freecall number and callers will be able to leave their name and contact details for return calls.

If you have any queries on the Program, please contact Glynis Edwards (03) 9603-5231.

## Titles Automation Project

**Substantial progress has been made on the three major projects occurring as part of the automation of the register.**

Contracts have been finalised for the enhancement and facilities management of the Automated Land Title System. The successful tenderer is the Hanson's Corporation who will ensure that the system operates to optimum service delivery levels over the next two years.

The contract for the data conversion of the Register is being finalised and an appointment of the successful tenderer is expected to be announced shortly. As a result conversion is expected to commence immediately and 80% of titles will be converted by the end of next year.

Best and final offers have been received to build the new automated system to replace ALTS and URDS. An evaluation of the best and final offers is occurring. It is expected that the

new system will be operational in early 2000.

Organisational changes have been made in the TRSD to ensure that production targets are met and training of staff occurs in preparation for immediate registration of dealings using the new system. It is a requirement of Government that existing systems achieve Year 2000 Compliance. Both the URDS and ALTS have already been or are currently in the final stages of Year 2000 compliance.

## Customer Service Committees Update

As highlighted in the last *Customer Information Bulletin* three Customer Service Committees have been established. The members of the Committees are:

### Searchers and Surveyors

Graham McKenzie  
Brian Fraser  
Julie Waddingham  
Tony Newell  
Steven Wood  
Judy Kennedy  
Lorie Werner  
Michael Toll  
Alan Norman  
Ian Clarke  
Robert Bertoli

RH Oglivie  
B&A Fraser & Co  
Search Well  
Feigl & Newell  
Lawpoint  
Lawpoint  
VISA  
Land Management Surveys  
KA Reed & Co  
Ian Clarke & Assoc  
Bertoli & Wellington

### Banks and Financial Institutions

Carole Serong  
Bruno Grosso  
Paul Scerri  
Carolyn Luck  
Lorraine Burns  
Mark Hall  
Claude Calea  
Rebecca Tutor

Commonwealth Bank  
National Australia Bank  
Westpac  
Westpac  
Bank of Melbourne  
Bendigo Bank  
St George Bank  
ANZ

### Solicitors and Conveyancers

Bob Hatch  
Angela Barrett  
Cathy Tow  
Jim Mahoney  
Jill Ludwell  
Tony Rogers

Minter Ellison  
Baker & McKenzie  
Corrs Chambers Westgarth  
Hodgson & Finlayson  
Vic. Conveyancers Assoc  
McKean Park

Each Committee has met twice and been briefed about the progress of the Titles Automation Project and Land Victoria's customer service policy. Committee members have provided feedback about a range of topics in relation to the business of Title Registration Services. These include: that this Bulletin be published more frequently; notices be posted in the Customer Service Centre at 283 Queen Street to notify customers if the Land Registry Computer systems are not fully operational; and the need to ensure that correct information is available on Vicmap (formerly named the the State Digital Map Base).

Committee members will continue to meet with management representatives of Title Registration Services on a bi-monthly basis. A summary of discussions will be provided in each edition of this Bulletin.

For further information contact Celia Robinson, Project Officer on 9603 528, email [crobinson@mre.vic.gov.au](mailto:crobinson@mre.vic.gov.au)

