

## REGISTRATION SERVICES

# Customer Information Bulletin

BULLETIN No. 179  
29 JUNE 2007

### CONTENTS:

1.	EXECUTION BY DIRECTOR/SECRETARY OF DOCUMENTS BY A COMPANY WITHOUT A COMMON SEAL	1
2.	BALANCE TITLES	2
3.	IMPROVEMENTS TO EAS2	2
4.	NOTICE FROM THE WATER CORPORATION FOR ALL CONVEYANCERS USING EAS2	3
5.	NUMBER OF CLAIMS AGAINST REGISTERED INTERESTS SETTLED BY THE CROWN	4
6.	ON LINE POWER OF ATTORNEY SEARCH INFORMATION – NEW FEES FROM 2 JULY 2007	5

  

1.	EXECUTION BY DIRECTOR/SECRETARY OF DOCUMENTS BY A COMPANY WITHOUT A COMMON SEAL	
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### BACKGROUND

There has been some confusion as to the Landgate requirements of persons signing on behalf of companies as a Director/Secretary. The following is the outcome which the Registrar of Titles has directed will now be Landgate Practice.

### CONSIDERATION

The question is whether a document signed by two persons each describing themselves as Director/Secretary constitutes valid execution of a document on behalf of a company.

It is not uncommon for documents to be executed by two persons both of whom are described as being director/secretary of the particular company without indicating which office they actually hold. In these circumstances, it is not possible to ascertain whether the document has been signed by two directors of the company or by a director and company secretary. Section 127 of the *Corporations Act 2001* provides that a company may execute a document without using a common seal if the document is signed by:

- (a) two directors of the company; or
- (b) a director and company secretary of the company; or
- (c) for a proprietary company that has a sole director who is also the sole company secretary – that director.

It is preferable for each of the persons signing to indicate whether they are signing in the capacity of director or secretary of the company. Where two persons have signed in the capacity of director/secretary without indicating which of those two offices they actually hold,



a person dealing with the company is entitled to assume that the document has been signed either by two directors or by a director and a secretary of the company. In these circumstances the document has been validly executed on behalf of the body corporate either under (a) or (b) above.

In these circumstances if the document is executed by two persons both of whom describe themselves as secretary/director of the particular company, that a person dealing with the company is entitled to make the assumptions provided for in section 129 of the *Corporations Act 2001*.

## **SUMMARY**

It is preferred that the correct office of either Director or Secretary be shown, however where a document is signed on behalf of a body corporate by two persons each or whom describe themselves as being a director/secretary then Landgate considers that the assumption provided by section 129 of the *Corporations Act 2001* will operate. For this reason the Registrar will accept Director/Secretary without requisition.

However, it is important that the persons signing on behalf of the company comply with the Registrar's requirement (see par. 1.10.9 of practice manual) to print their name beneath or adjacent to their signature to allow any person searching the Register to ascertain the identity of the persons signing and to check ASIC records should they so wish. As per the existing procedures, documents that do not contain the printed name of the person signing on behalf of a body corporate will not be accepted for registration.

## **2. BALANCE TITLES**

In the past if an Application for a balance title or a transfer of part of the land in a title created a balance of land remaining in the title, Landgate would create a "Conversion Deposited Plan" to facilitate the issuing of a duplicate title for the balance land.

As a result of legal advice just received from the State Solicitor, effective from the 22<sup>nd</sup> May 2007 Landgate will no longer produce the conversion deposited plan. Therefore, where a proprietor wants a title for the balance land remaining, they must first have a conversion deposited plan drafted by a Surveyor and lodged at Landgate. This plan is to be prepared at the proprietor's expense. However, the Registrar of Titles will require no fees for its lodgement or auditing (see Notice to Surveyors T2/2001 and T9/2001). There is also no requirement for this plan to be approved by the Local Government or the Western Australian Planning Commission.

If there are any queries as to whether a Conversion Deposited Plan is required for any reason then please ring the Survey Advice Officer on 92737044.

## **3. IMPROVEMENTS TO EAS2**

Landgate is always looking to improve its services to Industry and Government and one way of achieving this is to improve the functionality of our online applications.

On 2 June 2007 EAS2 was enhanced to meet the changing needs of business and government, these are:

1. The ability to change a conveyancer after a request has been submitted; and
2. Capturing the Offer and Acceptance date.

Each of these changes is outlined below.



## CHANGING A CONVEYANCER AFTER A REQUEST HAS BEEN SUBMITTED

Where a conveyancer is changed after an Advice of Sale request has been lodged the original conveyancer, whether acting for the vendor or purchaser, will be able to access the EAS2 application and enter the details of the new conveyancer. The new conveyancer will then be able to view the original request; any items already processed by the Office of State Revenue or the Water Corporation using the View Request function and use the Re-enquire Function.

An email will also be sent to the participating Local Government advising of the change of conveyancer. Depending on the timing of the change in agents and the subsequent notification, the Local Government will send their response to the new conveyancer. However, if a response has already been posted then it will remain the responsibility of the old conveyance to forward the information to the new conveyancer, as happens now.

At this stage it is not possible to adjust our financial records to record this change in conveyancer, so where the change has occurred for the purchaser's agent then the new conveyancer must arrange for a disbursement of the EAS2 fees to the original conveyancer to cover the costs incurred. We are working on changes that will enable Landgate's financial records to be changed to reflect the new conveyancer. We will keep you informed when we have a solution.

## CAPTURING THE OFFER AND ACCEPTANCE DATE

To meet the demands for timely information the EAS2 application will be modified to capture the date the offer is accepted by the vendor. The capture of this date will accurately link the sale price to the date the sale actually occurs, rather than the date of settlement that is generally 3 to 4 weeks later.

This information will improve the quality of the statistical information used by government in relation to property sales data.

The Offer and Acceptance date field will be shown on the Buyers Details Screen. Information on either of these changes can be obtained by phoning David Parry, Account Manager Land & Property Market, on 9237 7274.

## 4. NOTICE FROM THE WATER CORPORATION FOR ALL CONVEYANCERS USING EAS2

If you have submitted an Advice of Sale to the Water Corporation for a property with a settlement date in July, August or September 2007 you may have already received a Certificate of Charges from the Corporation. This Certificate will be displaying the Annual Service Charges (ASC) payable for the 2006/07 year only.

To receive an up-to-date Certificate for the 2007/08 ASC you will have to use the RE-ENQUIRE function in EAS2. If you choose to do this please ensure that you do not submit the RE-ENQUIRE until **after Tuesday 3rd July 2007** which is when our 2007/08 ASC will become available. No Certificates of Charges will be issued by the Corporation between the 1st and 2nd of July 2007 as our billing system will be unavailable due to the raising of the 2007/08 Annual Service Charges.



The RE-ENQUIRE function was utilised successfully for this purpose last year and does not attract any additional fees when new Certificates of Charges are re-issued.

Also please be aware that all bills for 2007/08 Annual Service Charges will be issued direct to the property Owner/s as at 1st July 2007. Where a Date of Sale occurs after 01/07/07 the Corporation cannot re-issue the 2007/08 ASC bill to the new owner

## **5. NUMBER OF CLAIMS AGAINST REGISTERED INTERESTS SETTLED BY THE CROWN**

The State of Western Australia guarantees certainty of ownership and other interests in land. During the ten year period 1997/98 to 2006/07 only five claims by registered interests, as a result of fraud, negligence or errors, were settled by the Crown.

Although there have been successful claims, there is no indication of an underlying trend involving, fraud, negligence or errors in Western Australia.

<b>Year</b>	<b>No of Claims</b>
1997/1998	1
1998/1999	0
1999/2000	1
2000/2001	0
2001/2002	1
2002/2003	1
2003/2004	0
2004/2005	0
2005/2006	1
2006/2007	0

## 6. ON LINE POWER OF ATTORNEY SEARCH INFORMATION – NEW FEES FROM 2 JULY 2007

As part of our annual fee review, from 2 July 2007 charges will apply for online Power of Attorney searches conducted on My Landgate.

This means that if you receive a positive result for your Power of Attorney enquiry, a \$1 charge will apply.

This is not a charge per screen however, so where your enquiry by name produces two or more screens - only \$1 will be charged.

An enquiry by document number will incur a \$1 charge.

If you visit one of our offices and request this information from our counter staff, a lookup fee of \$6.75 will apply.

Please note that a copy of a Power of Attorney document will cost \$13.50 per document.



**BRUCE ROBERTS**  
**REGISTRAR OF TITLES**  
**MANAGER**  
**REGISTRATION SERVICES BRANCH**  
29 June 2007

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