

Customer Information Bulletin

BULLETIN No. 180
30 AUGUST 2007

LODGING A COURT ORDER EXTENDING THE OPERATION OF A CAVEAT PURSUANT TO SECTION 138B (2)(b) TRANSFER OF LAND ACT

A BACKGROUND

- 1 If a caveator receives a notice sent pursuant to TLA s138B (the Notice), then the caveat will lapse at the end of 21 days after the Notice has been served unless within that time (a) the caveator obtains an Order from the Supreme Court of Western Australia extending the operation of the Caveat - as required by TLA s138B(2)(a), and (b) lodges a copy of the order with the Registrar of Titles (the Registrar) – as required by TLA s138B(2)(b).
- 2 The purpose of this Customer Information Bulletin is to identify how a caveator may lodge a copy of the order with the Registrar as required by TLA s138B(2)(b).
- 3 There is a deadline by which the order must be both (a) obtained and (b) lodged with the Registrar. That deadline is 12.00 midnight on the 21st day after the Notice is served (ie at the end of the 21st day / start of the 22nd day) (the Deadline).

B LODGING A TLAs138b(2)(a) ORDER WITH THE REGISTRAR

4 Lodging an Extracted Copy of the Order

- (a) If a TLAs138B(2)(a) order (the Order) is to be lodged with the Registrar under TLAs138B(2)(b), then the Registrar requires the Order to be extracted and a copy of the extracted Order to be lodged.
- (b) WA Supreme Court Practice Direction No 1 of 2007 provides an expedited process for extracting orders on an urgent basis.
- (c) A copy of the extracted Order may be lodged with the Registrar for the attention of the Manager, Complex Dealings in one of the following 3 ways (i) in person, (ii) by fax, and (iii) by email.

5 Lodging In Person

- (a) If the Order is lodged in person, then an original copy of the extracted Order should be brought to Landgate's Midland office at the following address.

Landgate Head Office
1 Midland Square, Midland
Morrison Road (Cnr Great Northern Highway)

- (b) The person lodging the Order should advise the front counter staff that they need to see a staff member from the Complex Dealings Section to lodge an urgent court Order.
- (c) Landgate staff require certain training to receive court orders. All of the Landgate staff which have received this training are at Landgate's Midland office. Accordingly, the staff at Landgate's other offices are unable to receive court Orders.

6 Lodging by Fax

- (a) If the Order is lodged by fax, then a copy of the extracted Order should be sent by fax to the following address.

Manager, Complex Dealings, Landgate
Fax No. 08 9273 7364

- (b) The fax should be marked "URGENT" and the subject line of the fax should read as follows.

ATTN - MANAGER COMPLEX DEALINGS – TLA s138B ORDER

7 Lodging by Email

- (a) If the Order is lodged by email, then a scanned copy of the extracted Order should be sent by email to the following address.

Email: complexdealings138B@landgate.wa.gov.au

- (b) The email should be marked "URGENT" and the subject line of the email should read as follows.

ATTN - MANAGER COMPLEX DEALINGS – TLA s138B ORDER

8 Lodging After Business Hours

Where an Order is to be lodged after the close of Landgate's business hours, then it should only be lodged by fax or by email.

9 Preferred Mode of Lodging

The Registrar's preference is for Orders to be lodged by fax or email.

10 Order Successfully Lodged

If an Order is lodged before the Deadline then (a) the caveat will not lapse, and (b) the relevant title will be placed in a Registrar's Packet to monitor the Order and the Court proceedings.

11 Telephone Enquiries

All telephone enquiries about lodging an Order should be directed to the Complex Dealings Section on 08 9273 7363 or 08 9273 7355.

C LAPSING PROCEDURE

12 If a copy of the extracted Order is not lodged with the Registrar before the Deadline, then effect of TLA s138B(2) is that the caveat lapses when the Deadline expires – the Registrar has no discretion in this regard.

13 If a copy of the extracted Order is not lodged with the Registrar before the Deadline, then steps will be taken to lapse the caveat at 12.00 noon on the first business day following the Deadline. This 12 hour period between the Deadline and noon is to allow the Landgate staff sufficient time to ensure that no Orders have been lodged between the close of business and the midnight Deadline.

14 If a caveat is to be lapsed, then, generally speaking, the lapsing process will only take a few minutes to complete – the caveat should be lapsed shortly after 12.00 noon on the first business day following the Deadline.

D FAILURE TO LODGE AN ORDER BEFORE THE DEADLINE

15 If an Order is made before the Deadline but a copy of the extracted Order is not lodged with the Registrar before the Deadline then the caveat will lapse – the Registrar has no discretion in this regard.

16 The following actions are not sufficient to comply with TLA s138B(2)(b) – they will not be considered to be lodging a copy of the Order with the Registrar and they will not prevent the caveat from lapsing.

- (a) Providing a copy of the draft Order
- (b) Providing a written summary of the Order (eg a letter advising that the Order has been made)
- (c) Providing a verbal summary of the Order (eg a phone call advising that the Order has been made)
- (d) Providing a minute of proposed Orders
- (e) Providing a copy of the Order which has not been extracted

17 Taking the action referred to in the previous paragraph will not prevent the caveat from lapsing. If the caveator obtains an Order and does not lodge a copy of the Order with the Registrar (a) in person, (b) by fax or (c) by email, then the caveat will lapse.

E CONCLUSION

- 18 If a caveator receives a Notice then, to prevent the caveat from lapsing, the caveator must lodge an extracted copy of the court Order in person, by fax or by email in the manner set out in Section B above.

BR Roberts



**BRUCE ROBERTS
REGISTRAR OF TITLES
MANAGER, REGISTRATION SERVICES BRANCH
30 AUGUST 2007**