

Customer Information Bulletin

Bulletin No. 122
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1. REGISTRAR'S PRACTICE NOTE 4

ADVICE TO REGISTERED PROPRIETORS OF APPLICATIONS FOR TITLE BY ADVERSE POSSESSION

1. *Change of Practice*

The practice of not notifying registered proprietors of claims for adverse possession made against land registered in their name, unless or until the Commissioner of Titles instructs advertising of the claim, has been changed.

2. *Basis of Previous Practice*

The principal reason for the previous practice was that the Commissioner of Titles is required to make a decision on the claim on the evidence provided by the applicant. The Transfer of Land Act makes no provision for evidence to be submitted to the Commissioner of Titles by the registered proprietor.

If the Commissioner of Titles is satisfied that the applicant has provided sufficient evidence to establish the claim that can stand unless displaced by other evidence, notice is then given to the registered proprietor. At that time, the registered proprietor has the opportunity to lodge a caveat and commence court proceedings to dispute the applicant's claim.

3. *Reasons for Change*

However, in a number of cases, registered proprietors have discovered that a claim has been lodged and sought to make submissions and provide evidence disputing the claim. In those cases, the Commissioner of Titles has considered their submissions and evidence for the sole purpose of deciding if additional requisitions should be issued to the applicant and has then made a decision on the application based on the evidence submitted by the applicant.

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It is considered unfair that the opportunity for registered proprietors to have input as to what requisitions may issue depends on chance.

In addition, because of the complex nature of such applications, many sets of requisitions may be issued and it may take years between lodgment of the application and a decision on the application. A registered proprietor could enter into a contract about the property unaware that a claim has been lodged and the first information about the claim is received via a purchaser or mortgagee, after those persons have searched the certificate of title.

4. *New Practice*

A letter will be sent to registered proprietors at their address on the relevant certificate of title and a copy of the letter sent to the street address of the property, within one month of lodgment of the application.

The letter will, amongst other things, advise registered proprietors that:

- A claim has been made.
- They may lodge statutory declarations on any points in the applicant's application or statutory declaration.
- No verbal communications will be entered into with them about the details or merits of the application.
- Written communications from DOLA will probably be restricted to acknowledgement of receipt of statutory declarations.
- Any evidence submitted by them will be used only for possible issue of requisitions to the applicant and will not be considered in making a decision on the applicant's claim.
- If they dispute the claim, their opportunity to have their evidence considered will arise if the Commissioner of Titles issues a formal instruction that notice of the claim be sent to them and they commence court proceedings.

5. *Operation of New Practice*

The operation of the new practice will continue until further notice.

2. STRATA STREET ADDRESS – DIGITAL TITLES

The statements section of digital Certificates of Title contains a reference to the property street address of each land parcel.

Initially, the property street address shown on digital strata titles referred to the property street address for the whole land parcel and not to the individual street address of each lot. This street address was causing confusion to individual proprietors and to the land industry generally, especially in larger schemes that had more than one street frontage.

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After careful consideration and consultation with strata and land industry representatives, the reference to the property street address has been removed from the statements section of digital Strata Certificates of Title.

The reference to property street address in the statements section for other Certificates of Title remains unchanged.

3. AMENDMENT OF CROWN ALLOTMENT PARCEL IDENTIFIERS

Further to information contained in Customer Information Bulletin 121 regarding the conversion of non-conforming parcel identifiers to single parcel identifiers, the following information explains the process of conversion and the outcome to customers.

The process to convert the land description includes;

- The existing Crown Survey for the land parcel is dual numbered by the allocation of a Deposited Plan number. The Deposited Plan number is in addition to the existing Crown Survey number (eg. existing Crown Survey Plan 5057 dual numbered to also be known as Deposited Plan number 85057)
- The current Crown Allotment identifier number is converted to become the Lot number (eg. Williams Location 11328 will become Lot 11328)
- The land description for Williams 11328 becomes Lot 11328 on Deposited Plan 85057
- The superseded paper title is not amended in any way (only provided in searches for sketch identification purposes)
- On the digital title the land description will become Lot 11328 on Deposited Plan 85057. The reference to the previous Crown Allotment descriptor (Williams Location 11328) is shown by notation in the statements section of the digital title.

The statements section of the digital title will describe the previous Crown Allotment identifier, providing the link between the two different land descriptions contained in the Record of Certificate of Title and superseded sketch Certificate of Title.

Statement Section Notation

The statement section of digital titles will contain the following notes relating to the amendment of the parcel identifier;

Note 1: Land parcel identifier of Williams Location 11328 (or part thereof) on superseded paper Certificate of Title changed to Lot 11328 on Deposited Plan 85057 on 25.03.2002 to enable issue of a digital Certificate of Title

Note 2: The note 1 change may not be shown on the superseded paper Certificate of Title or on the current edition of the duplicate Certificate of Title

Conveyancing and Preparation of Documents

In some instances land descriptions on non-conforming titles may be amended after conveyancers have prepared documents.

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If a land description on a title is amended by DOLA and conveyancing documents have already been prepared, the non-conforming description shown in the prepared document will be acceptable. DOLA examiners will accept the non-conforming land description and make any necessary amendments to the land description panel.

Conveyancing parties do not need to amend the document nor have the parties to the document acknowledge the conversion of the land description.

If documents in a series have non-conforming and converted land descriptions, DOLA examiners will accept either description.

4. STRATA PLAN – SIMULTANEOUS LODGEMENT

DOLA introduced the simultaneous lodgement of strata plans and applications to register strata plans in December 1994. This system was designed to expedite the processing time to produce new strata titles, by allowing the examination of simple strata plans and the application to register the strata plan, simultaneously.

Recently a number of simultaneous lodgements have not complied with the basic guidelines and principles of the simultaneous lodgement system, resulting in strata plans that are not capable of being registered, rejected documents and disappointed clients.

Conveyancers and Surveyors are reminded of the guidelines for simultaneous lodgement as set out below.

The simultaneous lodgement is only available for simple strata schemes and cannot be utilised for multi-lot complicated strata schemes.

Only the A8 application to register strata plan document can be lodged with the strata plan. In some instances a management statement of other type of document may be required to be lodged to allow the application to proceed (eg. portion only caveats would require a withdrawal of caveat), these documents will be accepted if required.

No other documents (other than the documents mentioned above) are permitted to be lodged with the A8 application to register strata plan.

The strata plan and the A8 application to register strata plan, must be lodged on the same day and be identified as a simultaneous lodgement by inclusion of a written request, (advising of simultaneous lodgement) with every A8 application to register strata plan document.

Importantly, Conveyancers are reminded that documents or strata plans that are lodged (outside of the accepted simultaneous guidelines), will not be processed as a simultaneous lodgement, resulting in a delay in the issue of the Certificates of Title, loss of priority and/or rejected documents and in some instances unregistrable strata plans.

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5. PREPARATION OF DOCUMENTS – INSERT NAME OF PREPARING PARTY

DOLA requests conveyancers to insert in the appropriate panel of the cover sheet of all lodged documents, reference to the preparing party of the document as well as the lodging party. This will ensure that all parties will receive copies of Requisitions, which should result in a faster rectification of errors.

This initiative is designed to assist DOLA to improve quality control and to expedite the issue of Requisitions to the responsible party. It will also enable DOLA to collect statistical data in regard to the types and sources of errors in documents. This statistical data will also aid DOLA in the development of an educational program for conveyancers.

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