

REGISTRATION SERVICES

Customer Information Bulletin

BULLETIN No. 150

JUNE 2005

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1. NON ADVERTISING FOR REPLACEMENT DIGITAL CERTIFICATES OF TITLE

Recently the Registrar of Titles received a request from the Conveyancing and Financial industry to consider ceasing the practice of advertising the intention to issue a replacement duplicate digital Certificate of Title on the DLI website. Currently the intention to issue a replacement duplicate digital Certificate of Title is advertised on the DLI website for a period of 3 days.

Following consultation with the Law Society, Australian Institute of Conveyancers WA Division and the Conveyancing Industry Liaison Committee, the Registrar of Titles is supporting the request to cease the practice of advertising the intention to issue replacement duplicate digital Certificates of Title on the DLI website.

The change of practice commenced on Wednesday 18th May 2005 and will apply to all applications for replacement duplicate digital Certificates of Title, lodged on or after this date.

Importantly, where the original Certificate of Title is retained in the paper format, the requirement to advertise for a period of not less than 14 days remains a requirement under the Transfer of Land Act.

2. REVOCATION OF ENDURING POWER OF ATTORNEY BY NOTIFICATION OF DEATH OF DONOR

Background

A Revocation of an Enduring Power of Attorney “EPA” occurs by various acts and methods, which are fully described in chapters 5.1.15 and 5.1.16 of the Land Titles Registration Practice Manual.

Revocation of an Enduring Power of Attorney occurs by the operation of law when either party to the Enduring Power of Attorney dies. (Except where there are two attorney’s appointed jointly and severally, the remaining attorney may continue to exercise the powers expressed by the donor).

This notice deals only with the death of the donor of an EPA. Until now the DLI Power of Attorney index has not provided functionality to note the death of the donor and therefore record the Revocation of the EPA as a result of that death.

New Practice

A new procedure has been adopted to record the Revocation of an EPA when the donor dies and DLI is formally notified.

Formal notification occurs when any person notifies DLI of the death of the donor and provides proof of death and a Statutory Declaration:

Evidential Requirements

Proof of death must be the Death Certificate certified by the Registrar of Birth, Deaths and Marriages, the Original or Office Copy of the Probate document or a copy of those documents certified by a DLI officer, who has sighted the original.

The Statutory Declaration should identify the following;

- Identify the declarant and state the capacity in which he/she is making the declaration
- Identify the EPA by reference to the document number and the parties to the document
- State the fact that the donor died on the date of death shown on the death certificate or probate document and introduce the evidence of death
- Identify the deceased donor as being one and the same person shown on the evidence of death (quoting the registration number of the death certificate where applicable).
- Any differences in the name of the deceased or declarant must be explained and suitable evidence introduced.

Lodgement of Notification

Formal notification may be lodged at any DLI document acceptance office, located in Midland, Perth, Bunbury. Original evidence of death to be certified by DLI officer and returned to client at the point of lodgement.

Customers may also lodge Statutory Declaration and proof of death by post to:
 Department of Land Information
 Manager Freehold Examination
 PO Box 2222
 Midland WA 6936

3. REGISTERING INTERESTS OVER LAND

Background

The introduction of SmartRegister has removed sketches of the land, and sketches of any interests and notifications affecting the land, from the certificates of title. Reliance is now on the deposited, strata and survey-strata plans to depict spatially the parcels and any new or old spatial interests such as easements, covenants and notifications.

In March 2001 Notice to Surveyors T1/2001 was issued by the Registrar of Titles requiring surveyors to lodge "Easement Only" plans to support the documents for certain types of easements. The lodgement fee was waived for these types of plans.

It is now appropriate to extend that principle to other types of interests that affect only part of a lot to remove sketches from documents and enable automatic updates to the Spatial Cadastral Database. This is primarily because we are moving to a digital system which has a more accurate spatial definition of the land. See **Table 1** for a list of the major registerable interests to which this notice refers.

This notice is produced as advice about the new requirements to be introduced on **4 July 2005**.

The procedures for using deposited plans as the spatial definition for the many types of interests over land are based upon the principles that have already been adopted for carbon rights, carbon covenants and tree plantations as per Notice to Surveyors T6/2004 dated 17 August 2004.

Elements of the new policy

1. No sketches in documents

The principle is that documents containing sketches defining the spatial extent of interests that are to be registered will not be accepted.

The following types of interests are the only exceptions:

- Caveats (including absolute caveats),

- Freehold leases,
- Management body leases and non-LAA leases over Crown land, and
- Simple 'bore' easements between neighbours are exempt from requiring a deposited plan (DP) to define the position of the bore.

However, deposited plans for the spatial definition of these types of interests will generally be accepted if the parties to the interest wish to lodge them.

It is preferred that freehold leases of three-dimensional space within buildings are not spatially defined on deposited plans but described by words and/or sketches in documents.

It is acceptable for "drawings" to be included within the documents, as long as they don't purport to define the area of land affected by the interest. A drawing can be any type of graphic deemed necessary to be included in the documents by the parties to the interest.

Sketches that have been approved by the Survey Advice Officer and endorsed by the parties to the interest prior to 4 July 2005 will continue to be accepted indefinitely.

2. Documents to refer to DP

The principle is that the documents are only to refer to the DP number, with no reference to editions/versions.

It is essential that the DP is In Order for Dealings (IOFD) before the documents are lodged. This allows the registered proprietor to sign off on an 'IOFD' version and keep a copy of that plan. DLI will ensure that any changes to the plan after it is lodged have a proper audit trail. DLI business processes will ensure that any changes of a 'material' nature and that involve 'dimensional' and/or 'positional' aspects have appropriate authorization.

Simultaneous lodgements, documents with plans, are unacceptable because:

- this is inconsistent with the accepted approach for subdivisions,
- any problems with the DP are likely to affect the priority of the documents, and
- parties to the easement can't see a validated DP before lodging the documents.

3. Lodgement fees for Interest Only plans.

Interest Only plans will incur the normal fee for lodging a deposited plan to recover the costs of processing the deposited plans.

4. New interest – existing DP

The principle is that a new interest can be accepted that refers to an existing DP that defines a suitable area of interest.

The land description in the documents must be clear and unambiguous to be acceptable to the Registrar of Titles. A DP will be required if there is any doubt in the spatial definition of the Area of Interest (AOI) by description.

An example of an acceptable land description is as follows:

“as to the portion of land labelled ... on Deposited Plan ... “

If the conveyancer or surveyor is in any doubt about how to describe the spatial extent of the interest then a deposited plan should be lodged.

5. New interest – existing DP; retired interest

The principle is that a new interest can be accepted that refers to an existing DP where the relevant area of interest defined on that DP has been retired in SmartPlan.

The land description in the documents must be clear and unambiguous to be acceptable to the Registrar of Titles. It must refer to the subject land on an existing DP.

6. New interest – existing SmartPlan (SMP)

The principle is that a new interest can be accepted that refers to a severance polygon existing in SMP defined by a compilation of surveys.

This situation most commonly occurs in rural areas where a road was surveyed through a large parcel, but occurs in any case where some land was excised in the past from a parcel and for which a balance lot was not shown on a plan. There is no single plan that defines the severances, but the compilation of boundaries is achieved in SmartPlan. The situation can also occur in more modern surveys where parts of a lot can be “severed” by the lines from easements etc. Interests can potentially be registered over these “severances”.

The land description in the documents must be clear and unambiguous to be acceptable to the Registrar of Titles. A DP will be required if there is any doubt in the spatial definition of the AOI by description.

If the conveyancer or surveyor is in any doubt about how to describe the spatial extent of the interest then a deposited plan should be lodged.

The following is an example of an acceptable description:

“as to the portion of land within Certificate of Title Volume ... Folio ... bounded by ...”.

7. Initial Interests Table.

Interest Only plans are to include an “Initial Interests Table” to list all the interests, whether one or many, which are expected to be registered initially over the areas of interest depicted in the interest only plan. Any other interests existing on the subject land parcel would NOT be brought forward on this plan. The document number will be entered by DLI against each listed interest at the time of registration. All subsequent actions concerning interests and the areas of interest, such as surrenders, new interests using the DP, etc will be listed in the amendment schedule. Any changes to the DP, other than of administrative status, will cause an increment in the version number.

Carbon Covenant - Benefit
Carbon Covenant - Burden
Carbon Right
Caveat
Contaminated Site
Covenant – LAA 15
Easement - doc
Easement - LAA 144
Easement in Gross – LAA 195
Easement Public Access LAA 195/196
Easement STA 5D
Easement TLA 136C
Easement TLA 167A
Easement TP&D 27A Reg 5
Easement TP&D 27A Reg 6
Easement TP&D 27A Reg 7
Easement TP&D 27A Reg 8
Easement TP&D 27A Reg 9
Lease
Memorial
Notification
Profit a prendre
Restrictive Covenant – Benefit
Restrictive Covenant – Burden
Tree Plantation

Table 1

Please also refer to Notice to Surveyors T4/2005 that was released recently that provides more information about the preparation of the deposited plans

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 REGISTRATION SERVICES
 1 JUNE 2005