

REGISTRATION SERVICES**Customer Information
Bulletin**BULLETIN No. 135
23 DECEMBER 2003**CONTENTS:**

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1. APPOINTMENT OF NEW REGISTRAR OF TITLES

After many years at the helm, Ian Hyde has relinquished the position of Registrar of Titles. Ian's decision is a result of the workload associated with leading business development within DLI. Subsequently, Executive Council approval was granted on 19 September 2003 to remove Ian Hyde as Registrar of Titles and appoint Bruce Roberts to that position.

The new Registrar of Titles is Mr Bruce Roberts, the current Acting Manager, Registration Services Branch. Bruce is a qualified lawyer with many years' experience in the legal aspects of our Torrens system.

The Honourable Justice Kevin H. Parker conducted the official swearing in ceremony, appointing Bruce Roberts as the Registrar of Titles, on Thursday October 16.

2. MORTGAGE FRAUD – REGISTRAR OF TITLES WARNING

There have been recent incidences in New South Wales of mortgage related fraud. The occurrence of this type of fraud is becoming more prevalent and harder to detect.

Unencumbered property has typically been the target of these scams. To achieve their purpose, the fraudsters have, among other things, provided forged identification documents for the purpose of completing a loan application, forged duplicate certificates of title or falsely obtained a duplicate certificate of title.

While these scams have occurred in New South Wales, there is no evidence to date that such scams have occurred in Western Australia. Having said that, this would be an ideal opportunity for lenders and their agents to review their due diligence practices to ensure that any such scams are avoided in Western Australia.

The Land Registry has a number of mechanisms in place to monitor transactions and may be able to prevent a fraudulently obtained mortgage from being registered on a title. However, this is too late for the mortgagee who has already lent money on the strength of their mortgage over a property.

Lenders and their agents may wish to consider whether the following procedures should be included when approving a loan application:

- If a duplicate certificate of title is received from a borrower, prior to releasing the funds, peruse the certificate to verify its authenticity (e.g. quality and thickness of paper) and check its edition number against that shown on a search;
- Ensure a 100 points of identification or the like is received, including photo identification (however, the lender must be mindful of the fact that some of these schemes in New South Wales involved people forging identification documents such as drivers licence);
- Keep copies of the identification evidence (this may also be appropriate for witnesses).

It may also be prudent at this time for lenders and their agents to review their witnessing provisions required for land registry documents. It is suggested that reasonable steps or enquiries be taken to ensure that the individual is the person who is entitled to sign the mortgage and that the witness to the individual's signature takes reasonable steps to identify that the individual signing is the individual named in the mortgage. One way to achieve this is for the mortgagor to attend the bank, with 100 point evidence and the officer witness the document.

Lenders may also wish to consider having a witness sign a statement confirming what identification has been sighted.

Any concerns about mortgage related fraud should be reported directly to the Registrar of Titles office on 9273 7054.

3. CAVEATS – PREVENTING IMPROPER DEALINGS

The textbooks state that a registered proprietor of land or an interest in land may lodge a caveat, but not merely because the caveator is the registered proprietor. Such caveats should not attempt to prevent a pending transaction with the land (ie. exercise of mortgagee's power of sale or as unpaid vendor).

A registered proprietor may also lodge a caveat for the purpose of preventing improper dealings or fraudulent transactions with the land. These caveat types must be supported by a statutory declaration made pursuant to section 137 of the Transfer of Land Act ("TLA") (stating the grounds for concerns relating to an improper or fraudulent dealing).

Caveats lodged by a registered proprietor against their own land stating the claim only as, "in order to prevent improper dealings" are not acceptable unless the claim is worded "as registered proprietor – in order to prevent improper dealings" and the statutory declaration states the grounds for concerns relating to an improper or fraudulent dealing.

For many years DLI, Land Registration Officers have correctly refused to accept a claim in a caveat stating simply "in order to prevent improper dealings". However, recently there has been an increase in the lodgement of these types of caveats that simply claim "in order to prevent improper dealings".

As a result, when these types of caveats are accepted into the registration process, requisition notices will be sent and requisitions fees will apply, pursuant to section 137 of TLA.

4. DEPOSITED PLANS – IN ORDER FOR DEALINGS – WHERE RESTRICTIVE COVENANTS APPLY

Recently the Commissioner and Deputy Commissioner of Titles reviewed DLI practices in relation to restrictive covenants affecting the subdivision of land. Following this review it has been agreed that the following practice will apply where a deposited plan or strata plan is lodged in respect of land the subject of a restrictive covenant.

1. Where the restrictive covenant imposes a restriction:
 - (a) on subdivision; or
 - (b) limiting the number of buildings to a single dwelling or single building but does not prevent subdivision and the plan shows a built strata with two or more dwellings or buildings respectivelythe following note will be shown in the “In Order for Dealings” panel, following the words “subject to”:

“Modification or removal of restrictive covenant.”

2. Where the restrictive covenant:
 - (a) does not prevent subdivision; but
 - (b) imposes a restriction limiting the number of buildings to a single dwelling or building; and
 - (c) only one dwelling or building respectively is shown on a strata plan or the plan is a deposited plan or a survey-strata plan,the following note will be shown in the “ In Order for Dealings” panel, following the words “subject to”:

“Modification or removal of restrictive covenant, or note in statement with C/Ts of facts with potential for covenant breach.”

The insertion of the above will draw the attention of coveyancers, developers and prospective purchasers to the fact that the restrictive covenant may be an issue in construction of a future dwelling or building or subsequent dealings with the land. In the case of a single dwelling or single building covenant, that is not suitably modified, titles will be issued with the following note in the statement section.

“The land the subject of restrictive covenant.....when it was registered was Lot..... on Plan..... . That lot has been subdivided into Lots,, on DP/SP See restrictions on Lot (original lot) as to buildings/dwellings.”



5. NOTIFICATIONS UNDER SECTION 70A – TRANSFER OF LAND ACT 1893 AND SECTION 12A – TOWN PLANNING AND DEVELOPMENT ACT 1928

An issue has arisen as to whether a notifications created under section 70A of the *Transfer of Land Act 1893* (“TLA”) and section 12A of the *Town Planning and Development Act 1893* (“TP & D Act) are encumbrances under the provisions of the TLA.

Both notifications created under these sections of the TLA and the TP & D Act are not encumbrances. Notifications are merely records of factors affecting the use and enjoyment of land. Notifications do not fall within the definition of an “encumbrance” under section 4 of the TLA. The definition of “encumbrances” refers to prior estates, interests, claims and demands upon or in respect of land. This does not include notifications.

Accordingly, notifications created under both the TLA and the TP & D Act, and noted in an encumbrance panel, will not:

1. be required to be removed from lots or portions of lots that are vesting to the Crown under the provisions of section 20A of the *Town Planning and Development Act 1928*;
2. prevent a mortgagee sale occurring and will not be required to be removed before the mortgagee transfer is registered; or
3. prevent the registration of any other instrument.

6. CHRISTMAS MESSAGE

This year has been another challenging one as the land industry has experienced continuing record levels of activity. Management and staff of DLI are appreciative of the participation and patience shown by all of our customers during the past year.

On behalf of myself, the management and staff of DLI, I would like to take this opportunity to wish you all a Happy and Safe Christmas and a Prosperous New Year.

**BRUCE ROBERTS
REGISTRAR OF TITLES
A/MANAGER
REGISTRATION SERVICES BRANCH**

23 December 2003