

CUSTOMER INFORMATION

BULLETIN



DOLA

Department of LAND ADMINISTRATION

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A. Taxes and Charges (Land Subdivision) Legislation Amendment Act 1996 (Deferral of Charges and Headworks Contributions).

In an effort to reduce costs and improve the availability of developed residential land, changes have been made in the way the Water Corporation and other water agencies, collect water charges and headworks contributions for newly subdivided land.

The Taxes and Charges (Land Subdivision) Legislation Amendment Bill 1996 (Act) was recently introduced into Parliament and becomes effective on 1 July, 1996.

The Act amends the Land Tax Assessment Act 1976, the Water Agencies (Powers) Act 1984, the Water Boards Act 1904 and the Water Services Co-ordination Act 1995.

Developers of residential land may apply to the Water Corporation or other water agencies for:-

- Exemption of charges for residential lots created by subdivision approved by The Western Australian Planning Commission after 30 June, 1996.
- Deferral of headworks contributions for subdivisions that have headwork contributions unpaid after 30 June, 1996.

In order to obtain a deferral of headworks contributions the developer must agree to a Memorial being placed in favour of the Water Corporation, over each lot where it is proposed to defer headworks contributions.

The deferral applies only if the lot:-

- (a) is not serviced and is not a habitable lot.

- (b) is created to be used solely or principally for residential purposes.
- (c) has an area of not more than 2000m² or if its area is more than 2000m², is to be used for a building or group of buildings that:-
 - (i) is solely for residential purposes; and
 - (ii) contains a number of separate residential units.

Payment is deferred until the lot becomes serviced, becomes a habitable lot or one year passes after the subdivisional plan or diagram is approved by The Western Australian Planning Commission. For the purposes of the Act the definition of a lot does not include a lot depicted on a Strata Plan unless it is a lot in a Survey - Strata scheme.

1. Memorials:

The Memorials created by the Act can be either lodged in document form or created automatically on the lodgement of the subdivisional plan or diagram.

1.1 Manual Memorial:

Those lodged in document form will follow the same procedures and costs (\$60.00) as for any other document lodged in the Land Titles Division. The land description must make reference to the parent title and plan or diagram. The Memorial will be endorsed on the parent title and brought forward onto the new titles for the lots when an application is lodged. Sample copies of the Memorial are available from the Manager, Examination.

1.2 Automatic Memorial:

When a plan or diagram is lodged with an endorsement that Section 67B of the Water Agencies (Powers) Act 1984 or Section 62D of the Water Boards Act 1904 applies to certain lots the following will apply:-

- 1.2.1 The Surveyor will pay a memorial fee of \$60.00 when he pays the survey registration fee.
- 1.2.2 Freehold Plan Registration staff will check that the fee has been paid and if not will issue a Miscellaneous Ledger notice to the Surveyor.
- 1.2.3 The parent title will be endorsed by an officer in the Freehold Plan Registration with a notation that either Section 67B or Section 62D applies. The endorsement examples are listed on the following page.
- 1.2.4 When the survey is in order for dealings and an application lodged New Title Services will ensure that the new titles have a Memorial endorsed upon them.

2. Removing the Memorials:

2.1 Manual Memorial:

Those Memorials lodged in document form will be removed by the lodging of a Withdrawal of Memorial form that has been prepared for that purpose by DOLA for use by Water Corporation. Samples of the forms are available from Manager Examination, Registration Branch.

2.2 Automatic Memorial:

Memorials lodged automatically will be removed by the lodging of an application requesting the Registrar to remove a Memorial created either by Section 67B of the Water Agencies (Powers) Act 1984 or Section 62D of the Water Boards Act 1904.

The Water Corporation is currently having forms printed for these purposes. Samples of the forms are available from Manager Examination, Registration Branch.

For each Memorial removed the registration fee will be \$60.00.

3. NOTATION ON SURVEY (Example)

Save and except Lots 521, 1004 and 1005
All lots hereon are subject to a Memorial
Under Sec. 67B of the Water Agencies
(Powers) Act 1984

ENDORSEMENTS - (EXAMPLES)

4.1 Manual Memorial

Memorial G112774. Water Agencies (Powers) Act 1984. Registered.....

Memorial G112775. Water Boards Act 1904. Registered.....

4.2 Withdrawal of Memorial

Mini Title - Cancellation Panel
Withdrawn G112776

4.3 Parent Title (Notation)

4.3.1 Water Agencies (Powers) Act 1984

Lots 1 to 9 inclusive and Lot 11 on Plan 20995 are subject to Section 67B

4.3.2 Water Boards Act 1904

Lots 1 to 9 inclusive and Lot 11 on Plan 20995 are subject to Section 62D

4.4 Automatic Memorial

(a) Memorial. Water Agencies (Powers) Act 1984 as shown on Plan 20995.

(b) Memorial. Water Boards Act 1904 as shown on Plan 20995.

4:5 Application to remove Memorial.

Mini Title - Cancellation Panel
Application G112777. Registered.....

B. Enduring Powers of Attorney (Conditional and Alternate Appointments of Attorneys)

DOLA has received advice from the Crown Solicitors Office that Enduring Power of Attorney which provide for conditional alternate appointments of Attorneys may be invalid on the basis that such appointments are not permitted by the provisions of the Guardianship Administration Act 1990 ("the GA Act").

An example of these types of Attorney's would be where a donor has appointed two or more Attorneys in clause one of the Schedule form contained in the GA Act. However, in clause 3 of the Schedule form, the donor has indicated conditions upon which the second or third Attorney may exercise the powers granted to that Attorney. An example of such conditions would be where the second or third Attorney may exercise the powers granted to that Attorney. An example of such conditions would be where the second or third Attorney could not exercise the powers granted to them unless the first Attorney:

1. dies;
2. becomes incapacitated
3. is removed by the donor (whilst retaining capacity);
4. is removed by an order of the Guardianship Administration Board.

Whilst it is arguable as to whether or not such Enduring Powers of Attorney are permitted by the GA Act, the Deputy Commissioner of Titles has taken the view that until the matter is determined by either the Supreme Court or the legislation amending the GA Act expressly permitting the appointment of alternate Attorney's on conditions, such Attorney documents will no longer be accepted for filing and noting at DOLA on the Power of Attorney Register from the date of this Bulletin.


Further, from 31 July 1996, any of these Enduring Power of Attorney documents which have been filed and noted at DOLA will not be permitted to be relied upon as authority for the execution of any documents by any Attorney appointed under these documents. Any documents signed by them will not be registered.

A request has been forwarded by DOLA, to the Public Guardian's Office that the GA Act be amended to expressly permit the appointment of substitute Attorneys in the circumstances referred to above. Further, that all previous attorney documents which have these provisions in them for the appointment of conditional alternate Attorney's be validated retrospectively. It is understood that the Attorney General's Office supports this request for amending legislation. However, it is unlikely that any such amending legislation will become law this year.

In the meantime, unless or until such amending legislation is enacted, it is considered that Attorneys that have been appointed under the appointment provisions referred to above, will not be entitled to exercise their powers and execute and register documents signed by them under the Transfer of Land Act 1893.

In the circumstances, where the donor is still capable then a new Enduring Power of Attorney will need to be executed without these types of conditional appointment provisions contained in them.

In circumstances where the donor is not capable then the Attorney appointed under the document should apply to the Guardianship Administration Board for a substitute Attorney to be appointed under the provisions of Section 109 of the GA Act.


GEOFF SACH
DIVISIONAL MANAGER
REGISTRAR OF TITLES

19 July 1996