

# NOTICE TO LODGING PARTIES

LAND SERVICES GROUP

Colonel Light Centre  
25 Pirie Street, ADELAIDE 5000

No.110

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### 1. **Easement Text on new Certificates of Title**

Section 89a of the Real Property Act 1886 effectively provides that where an easement is expressed in an instrument in a "short form" description specified in the Sixth Schedule to the Act, the easement actually created by that instrument will be the corresponding "long form" set out in the Sixth Schedule.

When issuing new certificates of title as the result of the creation of an easement, it has been the practice of this office to state the purpose of the easement using the appropriate short form description in the following circumstances:

- when the short form words have actually been included in the creation instrument; or
- when the easement is described in the instrument in the exact words used in one of the long form descriptions appearing in the Sixth Schedule.

In virtually all other cases, the purpose of the easement has not been stated in the text of the new certificates of title.

The practice of describing an easement by the use of the short form in the second of the above circumstances is time consuming, requires this office to place an interpretation upon what the parties believe they have created and can lead to inconsistencies in the issue of new certificates of title.

To avoid these difficulties, I have amended our current practice. As from the date of this notice, **the purpose of an easement will (apart from some minor exceptions) be indicated on a new certificate of title only when the instrument which creates it has itself employed the short form description.** In all other cases, the purpose will not be stated.

I encourage all clients who prepare instruments for the creation of easements to use the short form descriptions contained in the Sixth Schedule. The use of the short form will reduce work both for yourselves and this office and clearly defines the intention and scope of the easement being created.

## **2 Self Adhesive Common Seals**

Real Property Act instruments which have been executed by a company will be accepted for registration where that execution is by means of affixing a self adhesive label to the instrument.

The label, in effect, is the physical implement for impressing the company's seal upon the instrument. The label must set out in legible characters the name of the company. Australian Company Number (A.C.N.) requirements remain unchanged.

The Australian Securities Commission have advised that the Corporations Law does not exclude or invalidate the execution of a document in this way. It appears that such execution will be binding upon the relevant company, provided that the label is affixed in accordance with its Articles of Association.

As with any common seal, the adhesive labels should be in the custody and control of the directors (or other authorised person) of the company and be used only as permitted.

The seals which have been presented to this office to date have been tamper proof. That is, they disintegrate if any attempt is made to remove them from the document. If the adhesive seal does not have this "built-in" protection, it would be prudent for the person(s) affixing the seal to ensure that his or her signature takes in a part of the seal. However, an instrument bearing a seal which has not been signed across in this way and which is not otherwise tamper proof will not be referred for correction merely on that ground.

Clients should note that the use of adhesive labels applies to companies which are incorporated under the Corporations Law. Their use by other bodies which are incorporated under different legislation is a matter for appropriate advice. It is conceivable that their usage may be excluded by the relevant terms of that legislation.

## **3 Single Director Companies: Execution under Common Seal**

Clients will be aware that the Corporations Law was amended by the First Corporate Law Simplification Act 1995. One consequence of this amendment, which commenced on 9 December, 1995, is that proprietary companies are no longer required to have a minimum of two directors. A proprietary company can now, upon incorporation, have only one director and only one member. Existing proprietary companies may convert to a single director company.

The Articles of Association of a company generally provide the manner in which the seal of the company can be affixed and which officers of the company are required to witness its placement on documentation.

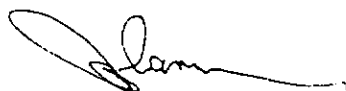
Prior to 9 December, 1995, where the sealing of a Real Property Act instrument was witnessed by two people, one of whom was a director and the other either a director or secretary, the execution was accepted by this office without question. Certain statutory presumptions (including a presumption that a document had been duly sealed by the company) could and still can be made under the Corporations Law when the sealing was witnessed in this way. However, if the placement of the seal was witnessed in a manner differing to the above (for example, by one director only) the lodging party of the relevant instrument was requested either to provide a certification that the seal had been affixed in accordance with the company's articles or to provide a copy of any relevant documentation which authorised the particular method adopted.

As a consequence of the introduction of the First Corporate Law Simplification Act on the above date, the execution by a proprietary company will not be queried if the instrument bears the impression of the company's seal and the sealing is witnessed by one person. **However, this applies only if it is stated next to the signature of the witness that he or she witnesses the sealing in the capacity of sole director and sole secretary of the company.** If these words are not present, the document will be referred with an appropriate requisition. If the company is a sole director company, the above wording should be inserted. Otherwise, the existing procedure as outlined above will apply and an appropriate certification or evidence should be produced.

#### 4 Application for Substituted Certificate Of Title by a Registered Mortgagee

Clients are reminded that an application by a registered mortgagee for the issue of a substituted certificate of title must be accompanied by both the concurrence of **and a short supporting declaration by the mortgagor.** The only exception to this requirement is where the mortgagee is exercising powers under the mortgage as a consequence of the mortgagor's default. A suitable precedent and comprehensive guidance notes can be found in Forms and Practice at paragraphs [3513] and [3514].

Although this is a long standing practice of this office, on odd occasions exceptions have been permitted. It is pointed out that the Lands Titles Office is not an office of convenience and the enforcement of the above requirement is in keeping with a general trend in all Australian jurisdictions to tighten up procedures in connection with the issue of substituted certificates of title.



ALAN J. SHARMAN  
REGISTRAR-GENERAL  
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