

Notice

To Lodging Parties

7 April 2010

No 162

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1. Non disclosure of “Consideration”

An emerging trend in the preparation of transfer documents is becoming evident. It appears that, on occasions, practitioners are choosing not to disclose a consideration within the consideration panel on the transfer document.

This practice is not optimal for those property professionals who rely on this information. Under all situations where a consideration has been paid, it is imperative that the consideration should be disclosed within the appropriate panel to ensure transparency of property transactions.

It is vital in a functioning and stable property market for which we are important participants, that relevant information is easily accessed. The consideration is utilised by many property practitioners in undertaking their professional duties and this information should continue to be made available.

2. Discharge of Mortgage Changes

In response to a suggestion raised through the Lands Titles SA Advisory Committee and in keeping with the Government's commitment to reducing red tape for business, I have recently approved changes in relation to the completion of a Discharge of Mortgage.

The requirement to disclose whether the whole or part of the land is being discharged is no longer required. This part of the panel form can be struck through.

It is still a requirement to complete the whole/part monies component of the form.

3. Dispense with Consents

Several sections in the *Real Property Act 1886*, *Community Titles Act 1996* and *Strata Titles Act 1988* allow for the consents of a person required by the relevant Act to be dispensed with by the Registrar-General.

The power to waive consents is a discretionary one, and will not be utilised without compelling reasons being provided. **Only** in exceptional circumstances where the proprietor's estate or interest in the land will not be detrimentally affected will consideration be given to dispensing with consents.



**Government
of South Australia**

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Conveyancers should be aware that documents lodged with applications to dispense attached usually relate to complex matters that may, with legislative requirements and procedural fairness, take several months to process.

Notice to Lodging Parties (NTLP) No. 103 and 140 should be studied and clearly understood before preparing any application to dispense with consent under section 90B of the *Real Property Act 1886*.

In all cases the document, and attached application to dispense, must comply with the following requirements before it will be considered.

- Document must be in registrable form.
- A letter must be attached from the certifying party, on their letterhead addressed to the Registrar-General, requesting that consents be dispensed with, quoting the relevant section of the relevant Act the application is being made under and setting out the situation.
- Must have evidence attached of the attempts made to contact the person whose consent is being requested be dispensed with.
- In most circumstances a statutory declaration from the servient registered proprietor is required (see NTLP 103 for more information).
- Where a right/easement is to be extinguished a thorough search must be carried out, prior to the application being lodged, to identify all titles affected by the extinguishment.
- New certificate of title fees are required where a right/easement is to be extinguished for both the dominant and servient land.

All relevant parties will be notified in writing once a decision has been made on the application to dispense.

Lodging parties should be aware that the document is a public record and may be viewed and or copied by interested parties prior to and after registration.

4. Use of Correct format for documents

Further to Notice to Lodging Parties No. 158, dealing with documentary requirements for the *Statutes Amendment (Real Property) Act 2008*, clients were advised that as from 1 June 2009 all documents to be lodged with the Lands Titles Office must be in the new format. Documents prepared and executed prior to that date could still be lodged; however there would be a cut off date when these documents would no longer be accepted.

Clients are advised that as from 1 June 2010 documents in the old format will no longer be accepted.



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A/ Registrar-General
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