

NOTICE TO LODGING PARTIES

LAND SERVICES GROUP

Colonel Light Centre
25 Pirie Street ADELAIDE 5000

APPLICATIONS FOR SUBSTITUTED CERTIFICATES OF TITLE No.98

As clients will be aware, section 79(1) of the Real Property Act 1886 provides for the issue of a substituted Certificate of Title or tenant's copy of Crown Lease where it has been proven to the satisfaction of the Registrar-General that the duplicate Certificate or tenant's copy (as the case may be) has been lost, mislaid or destroyed.

A precedent application and accompanying notes appear at paragraphs 3501 and 3502 of Jessup's Forms and Practice (7th Ed.). However, the form set out there consists of a combination of 2 separate components, ie. the actual application for the substituted certificate and a supporting declaration, and assumes that the applicant is the sole registered proprietor of the relevant land and is a natural person applying in their own name and right.

To assist clients in the preparation of a suitable application for those situations where either the above is not the case or a combination application and declaration is inappropriate, the following information is provided to complement the material currently appearing in Forms and Practice. It should be emphasised, however, that it is of a general nature and the circumstances of individual cases will occasionally demand that the approved format be departed from.

1.0 Application by a Corporation

Where the registered proprietor is a corporate body the form appearing at paragraph 3501 of Forms and Practice should be altered as follows:

- 1.1 The actual application should be drawn in the name of the corporation and then dated and executed under seal. (If duly authorised attorneys execute on the corporation's behalf, the format appearing at 2.0 below should be employed).
- 1.2 A statutory declaration must then be made by the Director or Secretary (etc). This should include the full name, address and capacity of the declarant. The suggested format is:
 - "I, A.B. of (address) do solemnly and sincerely declare:
 - (1) That I am the Director (or Secretary, etc) of C.D. Pty. Ltd. ("the company") which is the registered proprietor of the said land above described."

- 1.3 The remaining items of the standard declaration shown in Forms and Practice should be included, with the exception of points 3,4 and 6. These should be amended as follows:

Point 3 should normally refer to the duplicate Certificate of Title being delivered to the company rather than to the declarant.

Point 4 should recite "That I have made (or caused to be made) diligent search at the company's bankers, solicitors, (and/ or agents) and amongst all the company's papers (etc)".

Point 6 in turn should state: "That to the best of my knowledge, information and belief the company has not deposited or pledged the said duplicate (etc)".

- 1.4 There is no need for the declarant's signature to be proved.

2.0 Applications by the Attorney of a Registered Proprietor

In this case the application proper is drawn in the name of the registered proprietor(s) and then dated and executed by the attorney in the normal power of attorney format (See Forms and Practice paragraph 2702 note 9). N.B. it is now not usually necessary to include the attorney's occupation and it is acceptable if the attorney prints the principal's name rather than signing it). The form of proof is then completed by the witness/authorised functionary.

- 2.1 The declaration must then be made by the attorney in his or her own name and in their capacity as attorney of the registered proprietor. A suggested format is:

"I, A.B. of (address) do solemnly and sincerely declare:

- (1) That I am the attorney of C.D. under and by virtue of Power of Attorney No.
- (2) That the said C.D. is the registered proprietor of the land above described.

- 2.2 The remaining items of the standard declaration should then be included, with the exception of items 3, 4 and 6, which should be amended as follows:

Point 3 should normally refer to the duplicate Certificate of Title being handed or delivered to "the said C.D." (ie the registered proprietor) rather than to the declarant.

Point 4 should recite: "That I have made diligent search at both the said C.D.'s and my bankers, solicitors (and/or agents) and amongst all our papers etc".

Point 6 should then state: "That to the best of my knowledge, information and belief the said C.D. (ie the registered proprietor) has not deposited or pledged the said duplicate:..... etc".

2.3 The declarant's signature is not required to be proved.

3.0 Applications by a Surviving Joint Tenant

In this situation the application is drafted in the name of the survivor and follows the general format appearing in Forms and Practice with the following exceptions.

3.1 The application should be amended to recite:

"I, A.B. of (address) being registered as the proprietor of an estate in fee simple as a joint tenant with C.D. subject however apply for a substituted Certificate of Title to be issued to me in my name and in the name of the said C.D. in respect of the said land....."

3.2 The declaration should then be amended as follows:

"(1) That I am the registered proprietor of the said land above described as a joint tenant with the said C.D.

(2) That the said C.D. died on the (date) as is evidenced by the copy of the Certificate of Death (or, Probate or Letters of Administration) produced with the Application to Register Death dated lodged contemporaneously herewith."

3.3 The remaining items of the standard declaration should then follow, except that point 4 should be amended in the same way as suggested for an attorney's declaration at 2.2 above.

Similarly, point 6 should recite:

(6) "That I have not and to the best of my knowledge information and belief the said C.D. has not deposited or pledged etc"

3.4 The declarant's signature should then be proved.

3.5 Note: Normally the Application to Register Death will be lodged in the same series as (but after) the Application for the Substituted Certificate and will contain the relevant evidence of the death of the deceased joint tenant. The above notes assume that this is the case. For those instances where the Application to Register Death is not lodged contemporaneously with the Application, the declaration must be suitably amended and evidence of death produced.

4.0 Applications by the Personal Representative (Executor/Administrator) of a Deceased Registered Proprietor

4.1 The application is made by the personal representative in the following way:

"I, A.B. of (address) being entitled to be registered as the proprietor of an estate in fee simple as the executor (or administrator) of the estate of C.D. deceased subject however apply for a substituted Certificate of Title to be issued to me in the name of the said C.D. in respect of the said land....."

4.2 If the personal representative is a natural person the declaration should follow immediately beneath and be modelled on the following suggested format:

- "(1) That C.D. is the registered proprietor of the land above described.
- (2) That I am entitled to be registered as the executor (or administrator) of the estate of the said C.D. who died on (date) as evidenced by Probate (or Letters of Administration) granted on the (date) and produced with the Transmission Application dated lodged contemporaneously herewith".

4.3 The remaining items of the standard declaration should then be included, with the exception of points 3,4 and 6. These should be amended as follows:

Point 3 should normally refer to the duplicate Certificate of Title being handed or delivered to "the said C.D." (ie the registered proprietor) rather than to the declarant.

Point 4 should be altered in the same way as suggested for an attorney's declaration at 2.2 above.

Point 6 should state: "That I have not and to the best of my knowledge, information and belief the said C.D. has not deposited or pledged the said duplicate (etc)".

4.4 The declarant's signature should then be proved.

4.5 Note: Normally the Transmission Application will be lodged in the same series as (but after) the Application for the Substituted Certificate and will therefore be accompanied by either the Probate or Letters of Administration. The above notes assume that this is the case. However, if the Transmission Application is not lodged contemporaneously with the Application, the declaration must be suitably amended and Probate or Letters of Administration produced.

If the personal representative is a corporation then the format above should be combined with that appearing at 1.0 (Application by a Corporation).

5.0 Applications where the lost Certificate of Title is subject to a registered mortgage

In this case the application may be made either by the mortgagee or the mortgagor, with a supporting declaration being supplied by the other party: see Forms and Practice paragraph 3502 note 7. For example, if the mortgagee applies, the mortgagor should provide a declaration which supports that application. In both instances the mortgagee should declare (amongst other things) that the mortgage has not been deposited or pledged, etc (because if it has the duplicate Certificate would normally pass with it).

6.0 Advertising Requirements

Further to Notice to Lodging Parties No.74 dated 2 May 1991 clients are advised that the advertising requirements for substituted title applications have been reviewed and the following alterations made effective as from the 15th September, 1994.

6.1 Where the registered proprietor resides within South Australia

In this case it will only be necessary to advertise the loss in a major daily newspaper published in Adelaide (currently the Advertiser). The former requirement of also advertising in the local paper when the registered proprietor resides in a rural area has been relaxed for some time and will be dispensed with as of the above date.

6.2 Where the registered proprietor resides inter-State

Here the loss must be advertised in a major daily newspaper published in the relevant State or Territory and in the Advertiser.

6.3 Where the registered proprietor resides overseas

The same requirements as these appearing at 6.1 above apply.

It is anticipated that a future release of Forms and Practice will incorporate the above material in a more expanded and detailed format.



ALAN J SHARMAN
REGISTRAR-GENERAL
25 August, 1994