

Notice

To Lodging Parties

12 August 2016

No 191

Electronic Conveyancing – A Month in Review

Electronic Conveyancing was introduced on 4 July 2016, together with the new Conveyancing Requirements which apply to both paper and electronic transactions.

In the month of July, 226 dealings were lodged electronically – 7 of which were Transfers.

Priority Notices

The Priority Notice is an important industry tool to ensure the interests of parties to a transaction are protected. The use of the Priority Notice should be viewed as part of standard prudent conveyancing practice.

With the removal of the Duplicate Certificate of Title, there has been a significant increase in the lodgement of Priority Notices, with 395 Priority Notices lodged in July.

The increase in lodgements has led to a high volume of Priority Notice enquiries through our Customer Service Centre. I would like to reinforce that the majority of information being sought is detailed in [NTLP #177](#) – clients are encouraged to familiarise themselves with the practice of lodging Priority Notices.

The [Lodge a Priority Notice](#) and [Manage a Priority Notice](#) video tutorials have been updated to include the new “Applicant” field and certifications. These changes were also addressed in [NTLP #185](#).

LTO Forms

It has been pleasing to see a number of practitioners lodging dealings aligned with the new Conveyancing Requirements and LTO Form templates.

As part of our ongoing review of the LTO Forms, the below forms have been revised and re-published on the sa.gov.au website as **Version 2**.

| Certification Clause Amended | |
|--|--|
| E1A | Extension of Mortgage (hybrid) |
| M1A | Mortgage (hybrid) |
| T1 | Transfer |
| T2 | Transfer (Dealing with Rights) |
| T3 | Transfer of Mortgage Encumbrance or Lease |
| T4 | Transfer by Mortgagee Exercising Power of Sale |
| | |
| Certification / Execution Clause Amended | |
| CA | Application to Note Change / Correction of Address |
| RT | Application for New Certificate(s) of Title |
| | |
| Coversheet Amended | |
| RX | Removal of Caveat |
| | |

Land Services

GPO Box 1354 Adelaide South Australia 5001

ABN 71 967 041 422

www.sa.gov.au/landservices



@DPTI_LSG

T: (08) 8226 3983

F: (08) 8226 3998

E: LSGFeedback@sa.gov.au

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| Editable Features Amended – No Content Change | |
|--|---|
| A3 | Blank Application |
| B2 | Blank Form |
| BT1, BT2, BT3, BT4 | Blank Transitional Annexure(s) |
| C1 | Caveat |
| E1 | Extension of Mortgage |
| E2 | Extension of Lease |
| L1 | Lease |
| L2 | Underlease |
| L3 | Standard Terms and Conditions of Lease |
| M1 | Mortgage |
| M2 | Encumbrance |
| M3 | Standard Terms and Conditions of Mortgage |
| M4 | Standard Terms and Conditions of Encumbrance |
| RP | Revocation of Power of Attorney |
| RTU | Application for the Deposit of a Plan of Division |

Additional instructions have also been published on the new [LTO Forms webpage](#) for those clients who may be experiencing difficulty in downloading the new Form templates, or are unsure on how to print in the new format.

The old LTO Forms Online application and related Division Form listing will be decommissioned and removed from the www.sa.gov.au website on **Friday 4 November 2016**.

The information below addresses some of the frequently asked questions since the introduction of the new conveyancing requirements.

New Conveyancing Requirements

Certifications

In the majority of situations where a solicitor or registered conveyancer certifies a non-division instrument on behalf of their client – all four certifications are required. Instruments that do not contain the correct certifications will be requisitioned.

The LTO Form Guidance Notes have been updated to include further instruction around Certifications to assist industry.

Pick-Up Slips

With the removal of Duplicate Certificates of Title and Crown Leases, LTO Pick-Up Slips are no longer required.

Discharge of Mortgage

If certification under section 273(1) is provided by a Mortgagee in relation to a Discharge of Mortgage, the Discharge of Mortgage will be taken to have been executed by the Mortgagee and as such will be accepted for registration in the LTO.

This practice aligns with 128(4) of the *Real Property Act 1886* as it relates to mortgages

Leases

Under Part 11 of the *Real Property Act 1886*, dual certification applies to Leases, Extension of Leases and Surrender of Leases, except where the Lessee is unrepresented.

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In such instances, the Lease should include either on annexure or the last page of the covenants:

- the properly witnessed signature of the Lessee
- the execution of the incorporated body in accordance with any prescribed formalities.

The Lessee's certification clause should then be struck-through and the text "Lessee is self-represented" inserted.

Personal Declarations

The new relevant certifications duly made by the authorised person removes the need for personal declarations to be included on LTO Forms, with some exceptions such as Applications to Note Re-entry of Lease and Appointment of New Trustee(s).

There remains a requirement in the relevant instruments (e.g. an application to register an order of court) where there is a discrepancy in names for a statement similar to below to be included:

"<John Smith> named in the <i.e order/warrant etc.> and the <John James Smith> named in the Certificate of Title is one and the same person."

Transitional Arrangements

Verification of Identity Requirements

The scope of dealings for which Verification of Identity (VOI) Requirements apply will depend on whether clients deal with the conveyancing transaction under the old or new legislative requirements. For example:

- **Version 2** of the VOI Requirements would apply if dealing with the conveyancing transaction under the **old legislative requirements**. Version 2 of the VOI Requirements only applies to Transfers, Mortgages, Transmission Applications and Applications to Register Death.
- **Version 3** of the VOI Requirements would be applied if dealing with the conveyancing transaction under the **new legislative requirements**. Version 3 of the VOI Requirements broaden the scope of applicable transactions.

These arrangements are only in place during the transition period. Version 3 of the VOI Requirements will apply to any dealings certified on or after **5 November 2016**.

Certifications on Annexures

'Hybrid' forms will be accepted during the transition period in instances where one party to the transaction wishes to sign the dealing under Client Authorisation, and the other to execute and witness under the old requirements.

In such circumstances, either the new certification or existing execution(s)/witnessing will need to be securely attached to the dealing in the form of an annexure. Four new transitional annexures were developed for this purpose and these can be found [here](#).

Where clients have created their own annexure which include the execution and witnessing under the old legislative requirements – they must ensure they certify the dealing "**is correct for the purposes of the *Real Property Act 1886***". Annexures which do not include this certification will be requisitioned.

Brenton Pike
REGISTRAR-GENERAL
Lands Titles Office

Land Services

GPO Box 1354 Adelaide South Australia 5001

ABN 71 967 041 422

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