

# NOTICE TO LODGING PARTIES

## LAND SERVICES GROUP

Colonel Light Centre  
25 Pirie Street, ADELAIDE 5000

No. 119

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## 1. PART 19AB OF THE REAL PROPERTY ACT

The following information highlights a number of areas where clients continue to experience difficulty when preparing either an RTC or RTU form.

### 1.1. Transactions

Form **RTC** must be used whenever a transaction occurs.

Form **RTU** must be used whenever there are no transactions.

The following occur by operation of the Real Property Act 1886 and are **not** transactions which require the lodgment of an RTC:

- a) extinguishment of rights of way over public streets or roads (sec. 90e);
- b) extinguishment of easements / rights of way by the reconstitution of allotment boundaries (sec. 90c);
- c) vesting of allotments as road, street, thoroughfares, reserve or other similar open spaces in the Council for the area or the Crown;
- d) extinguishment of easements / rights of way over public streets, roads, thoroughfares, reserves or other similar open spaces (sec. 223lf(2)(b));
- e) creation of service (statutory) easements. (An easement for electricity supply purposes **must not** exceed 10 metres in width when a form RTU is being used. Easements for electricity supply which exceed this width must be created by use of the form RTC.)

Transactions which **do** require the lodgment of an RTC may include one or more of the following:

- a) creation of a private easement;
- b) extinguishment of an easement (private and statutory, but not over a public road, street, thoroughfare, reserve or other similar open space);
- c) variation of an easement (private or statutory);
- d) registered interests being adjusted (eg. discharged fully / partially, or extended);
- e) vesting (transfer) of an allotment in an acquiring authority;
- f) vesting (transfer) of land from one party to another to form an allotment.

## 1.2. Extinguishment / Variation of Easements

When a condition on a Deposited Plan (DP) requires an easement to be extinguished or varied, a reference to the section of the Real Property Act under which the extinguishment or variation is occurring must be made either in the application or on the plan. When the reference is to be included in the application, it should appear in the "Details of Transactions (Applicants Only)" panel and (where applicable) the consent form "Effect on Estates and Interests" panel.

eg.

section 90b                      Where an easement is to be varied.

or

section 223lf(2)(b)            Where an easement is being partially or fully extinguished by it not being delineated over a road etc.

## 1.3. Heritage Agreements

Any party to a Heritage Agreement is required to consent to a plan of division on an RTC or RTU consent form. Aboriginal Heritage Agreements should be checked thoroughly as consents are required from all parties to the agreement, not merely the Minister. Non consent may prevent a DP from being deposited.

Apart from the exception mentioned in point "a" below, a Heritage Agreement **cannot** be varied or terminated within an RTC. This is a change to previous practice, under which an agreement could (in certain other situations) be extinguished within an RTC.

Where as a consequence of a plan of division:

- a) a public road, street, thoroughfare (including a walkway) or service (statutory) easement is created, a termination of the agreement is **not** required to be lodged. The certificate of title which issues for the road or street etc. will not carry forward an endorsement of the agreement;
- b) a reserve or similar open space is created which is **not** to be subject to the agreement, the agreement must be terminated as regards that land by separate application lodged prior to or after the RTC or RTU;
- c) a private easement is to be created over land subject to an agreement, the agreement may need to be terminated by separate application, (if the dominant land is not subject to the same agreement or an agreement in substantially the same terms) as regards the easement **prior** to the RTC.

However, if it is intended that the easement remain subject to the agreement, the agreement need not be terminated.

#### 1.4. Land Management Agreements

Consents are required from the Minister or Local Council on an RTC or RTU consent form. Non consent may prevent a DP from being deposited.

Apart from the exception mentioned in point "a" below, a Land Management Agreement **cannot** be amended or rescinded within an RTC. This represents the same change to practice as has been made with Heritage Agreements.

Where as a consequence of a plan of division:

- a) a public road, street, thoroughfare (including a walkway) or service (statutory) easement is created, a rescission of the agreement is **not** required to be lodged. The certificate of title which issues for the road or street etc. will not carry forward an endorsement of the agreement;
- b) a reserve or similar open space is created which is **not** to be subject to the agreement, the agreement must be rescinded as regards that land by separate application lodged prior to or after the RTC or RTU;
- c) a private easement is to be created over land subject to an agreement, the agreement may need to be rescinded by separate application (if the dominant land is not subject to the same agreement or an agreement in substantially the same terms) as regards the easement **prior** to the RTC.

However, if it is intended that the easement remain subject to the agreement, the agreement need not be rescinded.

#### 1.5. Consent forms

When completing the forms, care must be taken to ensure that:

- a) all information is legible;
- b) any stamps used are not upside down, sideways etc;
- c) common seals must not be altered in any way;
- d) executions under power of attorney must:
  - include the **full name** and **address** of the attorney
  - if required by the power, state the **position** held by the attorney.(witnessing provisions of the Real Property Act also apply)

The use of "N/A" in panels is not acceptable. Show "Not Applicable", "Nil" or strike through the panel.

Parties who consent to an RTU or RTC must **date** their execution.

## 2. PARTITIONING IN STRATA APPLICATIONS

For a number of years this office has permitted partitioning to occur in Strata Applications for "**New**" schemes, provided the application was stamped by the Stamp Duties Office as a conveyance.

This practice is now considered to be in contravention of Section 8(3) of the Strata Titles Act. Pursuant to this Section, all unit titles in a new scheme are to issue in the name of the registered proprietors of the land to which the application relates.

Therefore, from the date of this notice, partitioning will **not** be accepted in Strata Applications for "new" schemes, except where the proceedings associated with the application commenced before the issue of this notice. These applications will only be accepted if they are accompanied by an appropriate letter from the certifying party. The letter must be addressed to the Registrar-General and must set out the date on which the proceedings commenced.

In all other cases involving "new" schemes, partitioning will require the lodgement of separate transfers after the application.

### 3. VARIATION AND EXTINGUISHMENT OF EASEMENTS IN A STRATA PLAN

A strata application is occasionally lodged over land which has the benefit of an easement. In the early 1990's a practice arose of permitting the easement to be **expressly excluded** from the units within the plan if an appropriate request was made on the application. The intention of this practice was to extinguish the easement as regards the units, leaving it appurtenant only to the common property.

Following the introduction of sections 90a-90e of the Real Property Act, and consequential changes made to the Strata Titles Act, this practice can no longer be used. The correct procedure to achieve the same result is by using the provisions of section 90b(1) or (7).

- a) Section 90b(1) refers to an application being made "in a form approved by the Registrar-General". In the case of a Strata Application (form SA) or an Application to amend a strata plan (form AP), the Registrar-General will accept the SA or AP as the form approved for the purposes of section 90b, with some modifications;

The SA or AP must:

- i) include the **consents** of any affected dominant and servient owners and registered interests required by section 90b.

The consent must describe the easement and include reference to "extinguishing or varying the easement pursuant to section 90b of the Real Property Act".

- ii) include a **request** to the Registrar-General, for ONE or more of the following:
  - to extinguish the easement wholly, or, as appurtenant to specific land
  - to vary the position of the easement from ..... to .....
  - to extend the appurtenance of the easement to .....
- iii) be lodged with the relevant servient and dominant duplicate titles, and any fees for new titles to issue.

- b) The alternative to the above procedure is to allow the certificates of title for the units and common property to issue together with the relevant easement. The easement can then be expressly excluded from each unit if and when it is transferred to a purchaser (see section 90b(6), (7) and (8)).

This procedure **will** require consent from the Development Assessment Commission on each transfer (see section 90b(9)). New certificates of title will be required to issue for the affected land and associated fees will be charged.

#### 4. USE OF THE WORDS "ALLOTMENT" AND "LOT"

The introduction of the Community Titles Act in November 1996 led to the creation of the parcel type "Lot" for Community Plans. As a consequence, clients who prepare documents referring to plans should be aware that the parcel identifier of:

- a) "Lot" is to be used **only** when dealing with Community Plans;
- b) "Allotment" is to be used for Deposited, Filed and old GRO subdivision Plans;
- c) Lease documents which refer to GRO plans should refer to, "The portion marked (use **exact description** as shown on the plan)...etc."

#### 5. VARIATION AND EXTINGUISHMENT OF EASEMENTS UNDER SECTION 90b

Since the introduction of section 90b of the Real Property Act in September 1994 and the issue of Notice to Lodging Parties 103, it has become clear that some clients are not aware of the following requirements:

##### 5.1. Consents of registered interests

Pursuant to section 90b(2) consents are required from all parties holding a registered interest in the dominant **and** servient parcels. The consent of all persons claiming an interest in either parcel (including any lienor or caveator) is also required.

Consents are to be witnessed in accordance with section 267 of the Real Property Act (ie. Witness to supply their **full** name, address and telephone number during business hours).

By consenting, registered interests avoid the need to lodge partial discharges, etc. and the need to produce duplicate mortgages and other instruments.

##### 5.2. Consent from the Development Assessment Commission (DAC)

Approval by DAC is required, either by endorsement in or annexure to a document (eg VE or Transfer ), where:

- a) a service easement is being extinguished or varied; or

- b) a private easement is being extinguished, varied, appurtenance extended or expressly excluded and the easement:
- i) was created as a condition on a plan of division\* with planning approval or
  - ii) was not created as a condition, but has been subsequently delineated on a deposited plan of division\*.

Approval by DAC is **NOT** required where the extinguishment, variation etc. is occurring as the result of a plan of division\* approved under section 51 of the Development Act 1993.

The following tables set out these requirements.

**Service (statutory) easements**

Is a new plan of division involved*?		Is separate DAC consent required?
Sec. 51*	Sec. 49*	
YES	NO	NO
NO	YES	YES
NO	NO	YES

**Private easements**

Easement created in or delineated on a subsequent plan of division*?	Is a new plan of division involved?		Is separate DAC consent required?
	Sec. 51*	Sec. 49*	
NO	NO	NO	NO
NO	YES	NO	NO
NO	NO	YES	NO
YES	NO	NO	YES
YES	YES	NO	NO
YES	NO	YES	YES

\*\*"plan of division" refers to plans of Division, Strata, Community and Resubdivision.

\*\*"Sec. 51" refers to plans approved by the Development Assessment Commission under section 51 of the Development Act 1993.

\*\*"Sec. 49" refers to plans **not** requiring the approval of the Development Assessment Commission in accordance with section 49 of the Development Act 1993.



**ALAN J. SHARMAN**  
**REGISTRAR-GENERAL**  
**9 April 1998**