NOTICE TO LODGING PARTIES

LAND SERVICES GROUP
101 Grenfell Street
ADELAIDE 5000

No. 123

PANEL FORMS

Real Property Act panel forms have been reviewed and redesigned. The new forms depart from the existing forms in a number of aspects. The most important of these changes are discussed below. The forms will appear in the Government Gazette on 16 December 1999 and will be available from 4 January 2000 from Information SA at 77 Grenfell Street Adelaide. A list of the new forms is annexed to this notice.

Clients who have the existing forms in hard copy or digital format will be given until 30 June 2000 to exhaust supplies and obtain approval for the new formats. Existing forms will only be accepted for lodgment after that time if they were executed prior to that date.

New forms for Change of Name of Natural Person and Caveat

An application to note the change of name of a **natural person** will now be completed on Form A4. An application to note the change of name of a body corporate will continue to be made on Form A3.

The caveat form C1 has been redesigned and now contains a pre-printed **permissive** operative clause. That is, the effect of the clause is the reverse of the current caveat form. If a client intends to lodge an absolute caveat, it will be necessary to delete the permissive part of the clause.

Notice to Lodging Parties No. 122 explains the new change of name and modified caveat forms in greater detail.

Execution Requirements

The new forms incorporate a pre-printed execution and attestation clause that expressly provides for the inclusion of the details required by section 267 of the Real Property Act. In addition, the attestation by the witness contains a statement to the following effect:

> "Signed in my presence by the [*party dealing, eg Transferor*] who is either personally known to me or has satisfied me as to his or her identity."

This statement constitutes a part of the approved form and must be incorporated in any additional executions that are completed on annexure forms. It must be included also in the execution and attestation of any narrative style forms. Failure to include it will lead to a requisition. However, in the preparation of either annexure forms or narrative style documents, clients may, when typing the statement, delete that portion which is inapplicable. (For example, if it is known that the party executing is personally known to the intended witness, the words "either" and "or has satisfied me as to his or her identity" may be deleted).

The pre-printed execution and attestation clause need not be included on the proofs of private forms when they are submitted for approval. However, it must be included whenever a form is lodged for registration and the relevant party is a natural person. An important note concerning the approval of private forms appears at the end of this Notice.

The requirements apply only to the execution of an instrument. They do not generally apply to a party who is merely consenting to a transaction. Neither do they apply to the acceptance of a transfer. In this last case, the witness need only include his or her address. The occupation of the witness is no longer required. If the witness to a transferee's acceptance is an authorised functionary, it is sufficient that his or her capacity is stated in lieu of an address.

Several of the new forms include a space to the right of the pre-printed execution and attestation clause for the execution by parties that are an incorporated body. The space can be used also for executions by an attorney, the administrator of a mentally incapacitated person, the guardian of a minor or by a person making his or her mark.

Clients will note that an additional statement is included at the foot of the page on which the execution and attestation clause is printed. This states "A penalty of up to $2000 or 6 months imprisonment applies for improper witnessing." The statement is intended to impress upon witnesses the solemnity of the act of witnessing the execution of a Real Property Act instrument. This additional statement must be included on privately printed forms, narrative documents and annexure sheets.

Guidance Notes

Apart from the changes to the forms that are designed to comply with the current execution requirements, the most obvious alteration is the deletion of all guidance notes for the completion of the document from the forms themselves. Guidance Notes for each form are now printed separately and will be available at the point of sale of the forms.

Because there have been several changes to the existing practice, clients are advised to read the new notes carefully. A number of the more significant changes are described in the remainder of this Notice.

1. Land Description

When dealing with the **whole** of the land comprised in a Certificate of Title or Crown Lease, the following abbreviated description is acceptable:

> "Whole of land in CT Volume ..... Folio ....." or
> "Whole of land in CL Volume ..... Folio ....."

When dealing with **portion** of the land comprised in a Certificate of Title or Crown Lease, the following description is acceptable:

> "Allotment 1 in DP 12345 (or Piece marked A in GRO No. 1 of 1997) being portion of the land in CT (or CL) Volume ..... Folio ....."

2. Execution which incorporates a Statutory Declaration

A number of instruments must be supported by a statutory declaration. One example is an Application for a Substituted Certificate of Title. In these cases, the instrument consists of two distinct components: the application that is made to the Registrar-General and the supporting declaration. Different execution requirements apply to each of these components. The application is made under the Real Property Act and must be executed in accordance with section 267. The declaration must, if executed in South Australia, comply with the Oaths Act 1936 and be made before an authorised functionary (ie. a Justice of the Peace, etc.).

It is possible to draft and execute each component separately. However, many clients find it convenient to combine the two components and incorporate in the one execution both the signing of the application and the making of the declaration. When this option is adopted, the requirements of both the Real Property Act and the Oaths Act must be complied with. In this case, the following execution/attestation clause should be used:

Declared and subscribed at)
by the said AB who *is personally)
known to me (or who has) [*signed by AB*]
satisfied me as to his or her)
identity) this day of)
20 before me

[*signed by authorised functionary*] JP, etc

.....
Print Full Name of Witness (Authorised Functionary)
.....
Address of Witness (Authorised Functionary)
.....
Business Hours Telephone Number
(*Delete the inapplicable)

The procedure for those executions which incorporate a statutory declaration is explained in some detail in Jessup's Forms and Practice at paragraphs [1203] and [3502] note 7.

3. Execution under a Power of Attorney

The following clause is the recommended form of execution by the attorney of a party to a dealing:

Signed in my presence by CD of)	AB
[*insert address*] who *is personally)	by his or her attorney
known to me or has satisfied me)	[*signed by CD*]
as to his or her identity, as)	Power of Attorney No. [*insert number*]
attorney for AB)	

[*signed by witness*]

.....
Print Full Name of Witness

.....
Address of Witness

.....
Business Hours Telephone Number
* Delete the inapplicable

4. Current Address

When the address of a registered proprietor has changed from that which is registered on the Certificate of Title, it has been the practice of this office to require any dealing by the proprietor to include a reference to the change of address *unless* he or she was disposing entirely of his or her interest in the land. The reference was made in the following manner: "AB of (new address) formerly of (address as registered on the Certificate of Title)". If the proprietor was disposing entirely of his or her interest in the land, it was sufficient merely to state the new address. The same principle applied to incorporated bodies.

The practice outlined above has now changed. From the date of this Notice, **it will be sufficient in all cases to refer to the current address of the registered proprietor only**. This principle applies irrespective of whether the proprietor is disposing of the entirety of his or her interest in the land. For instance, a mortgage need refer only to the mortgagor's current address.

Clients should note that the address contained in the most recent instrument registered over the Certificate of Title is taken as the current address of that proprietor for the purpose of issuing new certificates of title or sending notices. Naturally, when instruments are lodged in series, the address shown for a particular person should be identical. Failure to observe this practice will result in a requisition.

When new Certificates of Title issue from a plan of division or community division, or from a strata plan, the address which will be shown for the registered proprietor will be that which is contained in the respective RTU/RTC, ACT or SA application.

Approval of Private Forms

Clients who currently print their own forms will be required to obtain approval to print new forms. An application accompanied by a hard copy of the proposed form and an indemnity should be submitted for approval. All inquiries concerning the approval of private forms should be directed to Mr Les Falkai on 82263983.

Because the imposition of the new requirements will require substantial alterations to all panel forms, the usual application fee will be waived from the date of this notice until 30 June 2000.

ALAN J. SHARMAN
REGISTRAR-GENERAL
13 December 1999

PANEL FORMS

A1 Transmission Application
A2 Application to Register Death by Survivor
A3 Application (blank)
A4 Application to Note Change of Name (of a natural person)
A5 Application for the Variation of Order of Priority
B1 Annexure
B2 Blank Instrument (single)
B3 Blank Instrument (bi-fold)
C1 Caveat
D1 Discharge of Mortgage
D2 Discharge of Mortgage (bi-fold)
D3 Discharge of Encumbrance
E1 Memorandum of Extension of Mortgage
E2 Memorandum of Extension of Lease
L1 Memorandum of Lease
L2 Memorandum of Underlease
L3 Memorandum of Standard Terms and Conditions of Lease
M1 Memorandum of Mortgage
M2 Memorandum of Encumbrance
M3 Memorandum of Standard Terms and Conditions of Mortgage
S1 Surrender of Lease
T1 Memorandum of Transfer (single)
T2 Memorandum of Transfer (bi-fold)
T3 Memorandum of Transfer of Mortgage, Encumbrance or Lease
T4 Memorandum of Transfer by Mortgagee Exercising Power of Sale
W1 Withdrawal of Caveat
W2 Withdrawal of Lien
W3 Cessation of Lien
RTC Application for Deposit of Plan of Division
AP6 Application for Amendment of a Deposited Strata Plan
Form 2 Certificate of Consent for the Deposit of a Plan of Division
Form 3 Certificate of Consent for the Amendment of a Plan of Strata Division