

NOTICE TO LODGING PARTIES

LAND SERVICES GROUP

Colonel Light Centre
25 Pirie Street ADELAIDE 5000

REAL PROPERTY (MISCELLANEOUS) AMENDMENT ACT 1994 No.99

COMMENCEMENT OF CERTAIN PROVISIONS AND CONSEQUENTIAL CHANGES TO PRACTICE

It is anticipated that, with the exception of the sections mentioned at point 7 below, the Real Property (Miscellaneous) Amendment Act 1994 will commence operation on the 8th September, 1994.

Clients should peruse the amendments in full. However, attention is directed to the following features of the Act and the consequential changes to Office practice.

1. Advertising in the Government Gazette for Part IV and Foreclosure Applications

Sections 33 and 141 of the Real Property Act have been amended to provide that the Registrar-General need publish only one notice in the Government Gazette of applications to bring land under the Act or for a foreclosure order.

2. Applications to Dispense with the Production of Duplicate Instruments

Section 220(9) of the Real Property Act has been amended to relieve the Registrar-General of the obligation to give fourteen days notice in the Government Gazette and a newspaper published in Adelaide of his or her intention to register a dealing without the production of the relevant duplicate instrument. As a consequence, there will be a reduction in the time taken to register such dealings.

However, for applications lodged on or after the commencement of the Amendment Act, it will be a requirement that the applicant place an advertisement of their intention to lodge a dealing for registration without production of the duplicate instrument in a newspaper circulating generally throughout the State.

Section 220(9) now also requires that the declaration be in a form approved by the Registrar-General and specifies certain matters which must be included.

Details of the alteration to procedures and examples of the approved formats for the advertisement and declaration are included in Notice to Lodging Parties No. 100.

Clients should note that applications prepared in accordance with the former requirements will continue to be accepted up to and including the 31st October, 1994.

3. Delivery of Cancelled Certificates of Title

Sections 100 and 220(10) of the Real Property Act have been amended to permit the Registrar-General to deliver cancelled duplicate certificates of title to appropriate persons. Normally this will be the registered proprietor of the relevant land, but situations may arise where some other person is deemed by the Registrar-General to be an appropriate recipient. It is stressed that the power is of a discretionary nature only.

Clients will be advised in a forthcoming Notice to Lodging Parties of the procedure to be followed when requesting the return of a duplicate certificate.

4. Cancellation of Plans for Resubdivision

Clause 1 of the new First Schedule to the Real Property Act provides that the Registrar-General may cancel either the whole or portion of a plan of resubdivision that has been accepted for filing or deposited in the L.T.R.O. under a previous enactment if certificates of title for some or all of the lots created by the plan cannot be issued due to the existence of an unfulfilled condition of approval. Currently, such plans prevent dealings with the land until either the condition has been satisfied or a new plan of division cancelling the condition has been deposited.

Before acting under this provision the Registrar-General must give at least two months notice of his or her intention to do so to the proprietor of the relevant land. The plan cannot be cancelled if the condition has been satisfied prior to the expiration of the period specified in the notice.

There is also provision for the proprietor of the subject land to apply to the Registrar-General for the cancellation.

5. Easement Provisions

The Amendment Act repeals the existing section 90a of the Real Property Act and inserts the following new sections.

Section 90a provides that the provisions of sections 90b to 90e apply to all easements regardless of whether the dominant or servient tenement is under the Real Property Act or not and whether the easement was created by instrument or by the operation of that Act or any other Act or law.

Section 90b provides for the extinguishment of an easement or its variation in position. This includes an extension or reduction of its extent either in length or width or the extension of an appurtenance to other land owned by the dominant proprietor.

Any application under this section must be accompanied by the consent of every person with a registered estate or interest in either tenement and every person who appears from the Register Book to have or claim to have an estate or interest in the land. In the case of land not under the Act, the consent of every person who is known to the Registrar-General (after he or she has made reasonable enquiry) to have or claim to have an estate or interest in the dominant or servient land will be required.

There are also provisions for the consent of a person to be waived in certain situations. For example, consent may be dispensed with where it is not reasonable to determine the identity of a successor in title or where there are multiple dominant owners and the Registrar-General is satisfied that use of the easement is no longer available to those owners.

Section 90c provides that a person may create an easement in favour of him/herself in any situation. This will be in addition to a similar provision currently contained in section 223lo of the Real Property Act. However, section 223lo will be repealed upon the commencement of the new Part XIXAB (see point 7 below) and section 90c will then become the sole authority.

Section 90d provides authority for the Registrar-General to require a survey for any easement. This provision will be useful where an easement is long and meandering in nature. Even in this case it does not imply that a fully certified survey will always be required. For example, and depending on the circumstances, a certification by a licensed surveyor that the easement has been located by a simple traverse or recent aerial photography may be deemed sufficient by the Registrar-General.

Section 90e provides that a private right of way cannot subsist or be created over a public street or road. This will allow the Registrar-General to delete rights of way from certificates of title for public streets and from any dominant land.


Further information by way of a more detailed Notice to Lodging Parties will follow at a later date.

6. Consequential Amendments to the Strata Titles Act

Clients should also note that the Schedule to the Amendment Act introduces certain consequential amendments to the easement provisions of the Strata Titles Act 1988. However, Form 9A will remain as the approved form for the creation of easements pursuant to section 17b of that Act.

7. Land Division and Amalgamation provisions to be Proclaimed in the Future

Sections 12 and 13 of the Amendment Act, which substitute new land division and amalgamation provisions for those currently contained in Part XIXAB of the Real Property Act 1886, will be proclaimed at a future date. Clauses 2 to 5 inclusive of the First Schedule inserted by section 16 of the Amendment Act will commence simultaneously with these new sections.



ALAN J SHARMAN
REGISTRAR-GENERAL
6th September 1994