

NOTICE TO LODGING PARTIES

LAND SERVICES GROUP

Colonel Light Centre
25 Pirie Street ADELAIDE 5000

APPLICATIONS TO DISPENSE WITH THE PRODUCTION OF DUPLICATE INSTRUMENTS No.100

Clients were advised in Notice to Lodging Parties No.99 of the commencement of the Real Property (Miscellaneous) Amendment Act 1994. One effect of that legislation is to amend section 220(9) of the Real Property Act 1886. As a consequence thereof, the procedure with respect to the registration of a dealing with a subsidiary interest such as a mortgage or lease without the production of the relevant duplicate instrument has been altered.

The Registrar-General's former 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 duplicate instrument has been removed. As a result, no advertising fee will be chargeable and there will be a considerable reduction in the time taken to register such dealings.

However, commencing on the 8th September, 1994, it will be a requirement that the **applicant** place an advertisement in a newspaper circulating throughout the State (at present this means the Advertiser) of their intention to lodge a dealing for registration without the production of the duplicate instrument. The advertisement must be in a form approved by the Registrar-General. The approved format is as follows:

Lost Memorandum of (Mortgage etc) No.
Reward offered.* A dealing with the above (mortgage) by
(name of party dealing) will be lodged at the Lands Titles Office
without production of the duplicate instrument on
or thereafter. Solicitor/Licensed Land Broker etc
(* Optional)

For those rare instances where the dealing with the interest is by a party other than the registered proprietor, the words "in the name of (registered proprietor's name)." should be included after the mortgage number.

The advertisement should appear in the "Public Notices" section of the newspaper and a period of one week allowed for response from anyone claiming an interest in the mortgage (or lease or encumbrance) prior to the declaration being made as to the loss.

A copy of the notice should be attached to the Application to Dispense and the name of the newspaper in which it appeared (currently The Advertiser) and the date of circulation included beneath.

In effect, the above changes bring the advertising procedures for lost instruments in line with those already in place for substituted title applications.

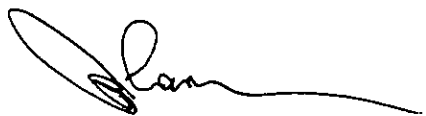
Section 220(9) now also requires that the declaration be in a form approved by the Registrar-General and specifies certain matters which must be included. The approved format which should be used when the applicant is a natural person applying in their own name and right is included as an annexure to this Notice and should be prepared on either a form B5 or B2. Variations to the factual circumstances of a particular application can be accommodated by the inclusion of additional points in the approved declaration.

As with Applications to Dispense made under the former section 220(9), there is no requirement for either certification as to correctness or proof of signature. The Application should be securely and permanently affixed to the top left hand inside corner of the instrument reflecting the dealing (eg the Discharge of Mortgage).

Applications by a corporate body, attorney of the registered proprietor of the interest being dealt with, by a surviving joint tenant or by a personal representative (executor/administrator) should follow the basic format included on the annexure and include the matters specified by section 220(9). However, in these cases the execution requirements and/or the contents of the declaration will have to be suitably varied (see Notice to Lodging Parties No. 98 which covers similar applications with respect to substituted certificates of title).

It is anticipated that Jessup's Forms and Practice will be updated to incorporate the above material together with more detailed instructional notes in the near future.

Clients should note that, although the above amendments come into force on the 8th September, 1994, Applications prepared in accordance with the former requirements will continue to be accepted up to and including the 31st October, 1994.



ALAN J SHARMAN
REGISTRAR-GENERAL
12th September, 1994

ANNEXURE

APPLICATION TO DISPENSE WITH THE PRODUCTION
OF THE DUPLICATE OF MEMORANDUM OF
MORTGAGE (or Lease etc) No.....

(Pursuant to s.220(9) of the *Real Property Act* 1886)

In the matter of
Discharge of
Mortgage (etc) No.....
without the production of
the duplicate copy.

To the Registrar-General

I, A.B., of [insert address as registered, or identify as "formerly"] the Mortgagee (or Lessee etc) under and by virtue of Memorandum of Mortgage (or Lease) No..... request you to register the accompanying Discharge (or, as the case may be) of the said Memorandum of Mortgage (or Lease) without the production of the duplicate instrument and in support I solemnly and sincerely declare:

- (1) That I am the registered proprietor of the said Memorandum of Mortgage (or Lease)
- (2) That the duplicate of the said Memorandum of Mortgage (or Lease) was delivered by the Registrar-General to CD on the day of 19.....
- (3) That the said CD handed the said duplicate Memorandum of Mortgage (or Lease) to me on or about the day of 19.....
- (4) That I have made diligent search at my bankers, solicitors (and/or agents) and amongst all my papers and in every place where the said duplicate Memorandum of Mortgage (or Lease) might be, but without success.
- (5) That I have advertised the loss of the said duplicate Memorandum of Mortgage (or Lease) and my intention to lodge a dealing without producing it, a copy of which advertisement is attached hereto, but have received no reply.
- (6) That I have not deposited or pledged the said duplicate Memorandum of Mortgage (or Lease) with any person or corporation as security for the repayment of money or for any other purpose whatsoever.
- (7) That there are no encumbrances or interests of any kind affecting the said Memorandum of Mortgage (or Lease) nor is it subject to a lien (other than one appearing in the Register Book).
- (8) That I verily believe the said duplicate Memorandum of Mortgage (or Lease) has been lost or destroyed.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths Act*, 1936.

Dated the day of 19

Declared and subscribed at)
 by the said A.B. this day of)
 19 before me)

.....
J.P., etc