

NOTICE TO LODGING PARTIES

LAND SERVICES GROUP

Colonel Light Centre
25 Pirie Street ADELAIDE 5000

No. 107

Real Property (Miscellaneous) Amendment Act 1994 Commencement of Part XIXAB and Transitional Provisions

This Act came into operation on 8 September 1994 as regards all provisions except Sections 12 and 13 and Clauses 2 to 4 of the Schedule 1 inserted by Section 16 of the Act.

These excluded provisions which relate to amendments to Part XIXAB of the Real Property Act 1886 (Land Division) and associated transitional provisions will come into operation on 1 September 1995.

The various panel forms required for land division under the new provisions will be available from the State Information Centre, Australis Centre, 77 Grenfell Street Adelaide.

A comprehensive set of notes detailing how these forms should be completed are available from the Client Advice Section, 2nd Floor, Colonel Light Centre. A series of workshops will be held in the Lands Titles Office in the near future. Details of this will be released shortly.

Fees for land division applications are shown in Appendix A to this notice.

1 TRANSITIONAL PROVISIONS

Amendments to Part XIXAB commence on 1 September 1995 and all applications and plans should be lodged in accordance with those provisions on that date. The Registrar-General has decided to grant a dispensation and will accept plans and applications under the previous system until and including 31 December 1995 provided a certification is given with the document or plan that the initial application to the Development Assessment Commission for planning approval under the Development Act to divide was commenced prior to 31 August 1995.

2 PART XIXAB - LAND DIVISION

Part XIXAB of the Real Property Act defines division as "the division of land into allotments, or the alteration of the boundaries of allotments". This means that the number of allotments in a particular Certificate(s) of Title may increase, decrease or remain the same (although re-arranged). Part XIXAB of the Real Property Act 1886 provides for the deposit of a plan of division in the Lands Titles Office. In order to achieve this the registered proprietor of the land is required to make application to the Registrar-General in a form approved by the Registrar-General. The Act has provisions that make it necessary to prescribe a number of forms for various purposes explained here.

3**PRIOR APPROVAL**

PANEL FORM RDA - APPLICATION TO THE REGISTRAR-GENERAL TO DETERMINE WHETHER A PLAN OF DIVISION IS IN AN APPROPRIATE FORM FOR DEPOSIT AND TO APPROVE THE PLAN ACCORDINGLY

There is a provision for the registered proprietor(s) of land to be divided, or an agent acting on behalf of the proprietor(s), to make application for the plan to be lodged for prior examination and approved for deposit without deposit actually happening. The need for this arises because often, in land division, it is necessary for settlement of a transaction that is required to fulfil a condition of approval, to be made with a plan that is approved for deposit by the Registrar-General to minimise any possibility of a subsequent amendment or withdrawal of the plan.

To achieve this panel Form RDA is prescribed by the Registrar-General. This form is merely a request by the registered proprietor(s) of the land or by their agent (surveyor) to examine the plan to the point of approval to deposit.

The application must be accompanied by:--

- ◆ The plan examination fee prescribed by regulations under the Real Property Act 1886.
- ◆ Survey Act levy (if applicable, ie, if the plan is a certified survey). This is a fee-regulated under the Survey Act 1992
- ◆ Land Division Certificate issued by the Development Assessment Commission under the Development Act 1993.

As the consequential application to deposit must be lodged before the life of the Land Division Certificate expires under Development Act (12 months after issue by DAC) it is recommended that the application Form RDA be lodged at the earliest possible time after issue of the certificate.

On approval, the Lands Titles Office will notify the lodging party of the approval.

This form will normally be used where there is a transaction incorporated in the application and Panel Form RTC is to be lodged, however there is nothing to prevent its use where there is no transaction and Panel Form RTU is to be lodged. Note that the vesting of roads, reserves and service easements in a Local Government or other authority, are not considered to be transactions for the purpose of the single instrument provision.

4**APPLICATIONS TO DEPOSIT**

Part XIXAB provides for the registered proprietors of land to apply to the Registrar-General for deposit of a plan of division. The nature of the legislation allows an application to take one of two forms both of which are discussed here. Regardless of the type of application, items that must accompany the application are:

- ◆ The original of the plan (unless a Form RDA was lodged earlier)
- ◆ Duplicate certificates of title
- ◆ Duplicate instruments required to be produced under the Real Property Act
- ◆ Land division certificate (unless a Form RDA was lodged earlier).
- ◆ Survey Act Levy (unless a Form RDA was lodged earlier)
- ◆ Fees prescribed under the Real Property Act (Fees) Regulations for
 - ◆ The issue of certificates of title
 - ◆ Plan deposit
 - ◆ LTO registration fee
 - ◆ Postage

5 PANEL FORM RTU

PLAN WITH NO CONDITIONS TO BE COMPLIED WITH TO ENABLE DEPOSIT OTHER THAN A VESTING OF A STREET, RESERVE OR SERVICE EASEMENT

Many plans will fall into this category. They will comprise a situation where there is only one registered proprietor and all of the land will be subject to the same estates or interests and there are no internal easements created and no involvement with other land.

This form is a priority document under Section 56 of the Real Property Act 1886, however, as it does not act as an instrument of vesting (in the sense of a conveyance) and does not discharge or otherwise affect an estate or interest in the land, it is not certified correct for the purposes of the Real Property Act 1886.

It is capable of being prepared by the surveyor. As it is an instrument, the witnessing provisions of the Real Property Act must be followed.

Application is made by the registered proprietor(s) of the land. All persons with an estate or interest in the land other than the registered proprietor must give a certificate of consent

6 PANEL FORM RTC

PLAN HAS CONDITIONS TO BE COMPLIED WITH TO ENABLE DEPOSIT OR INVOLVES LAND OTHER THAN THAT DIVIDED

Where a plan of division contains requirements to be fulfilled by a transaction, those dealings are achieved by vesting in the relevant person on deposit of the plan of division.

The relevant panel form to use is Form RTC.

Some of the transactions that can occur include:

- ♦ A vesting of land between different owners of adjacent allotments to alter boundaries between them
- ♦ Partial discharge of a mortgage or encumbrance
- ♦ Partial surrender of a lease
- ♦ Creation of an easement
- ♦ Extinguishment, variation of an easement
- ♦ Extending a mortgage or encumbrance to include additional land vested in the owner of the parcel

7 ESTABLISHING REQUIREMENTS FOR FORM RTC

7.1 OTHER LAND MAY BE INCLUDED ON A PLAN OF DIVISION The division of land may, by way of conditions of approval, affect other land, (usually contiguous). Other land can only be affected by a dealing with an easement regardless of whether that land is the dominant or servient tenement.

A dealing with an easement may include the creation, extinguishment (partial or whole), variation in position, extension or reduction in length or width. It must be noted here that if the land division certificate issued by the Development Assessment Commission shows an easement to be created, extinguished or varied in position, the action becomes a condition of approval and is automatically created, etc by deposit of the plan of division. Part XIXAB of the RPA allows other land to be included in a plan of division for the purpose of creating an easement. Although such land is not part of the actual division, it must be included as part of the planning approval process. An easement may be created either through land actually divided appurtenant to other land or vice versa. A service (statutory) easement may vest in an authority through land other than land actually divided. The extinguishment or variation of a service easement is consented to in the Certificate Of Consent To Deposit Of Plan Of Division panel.

The inclusion of other land for the purpose of creating an easement can be determined from the Plan Heading. This land will be redesignated as an allotment in the plan.

The Plan Heading will read:--

"Plan of Division and Redesignation of Parcel."

An annotation will appear on the plan stating, for example:--

"Allotment 10 (CT 1234 / 56) does not form part of this division"

- 7.2 **WHERE AN EASEMENT IS NOT PART OF THE PLANNING APPROVAL**
If an easement is not shown on the land division certificate, creation, extinguishment or variation in position of the easement is optional and can only be created by separate instrument lodged either contemporaneously with the application or at some later time. The Plan Heading will read:--

"Plan of Division and Easement"

This situation is identified by an annotation on the plan stating, for example:--

"Easement A does not form part of the division"

See also notes relating to the **DETAILS OF TRANSACTION(S) (APPLICANTS ONLY)** panel and the **STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES** panel

8 DEFINING APPLICANT AND CONSENTING PARTY

Applicants are the registered proprietors of the land actually divided

Persons who must consent are:--

- ♦ registered proprietors of other land affected
- ♦ all persons having a registered estate or interest other than in fee simple in the land actually divided and other land affected
- ♦ all persons claiming to have an estate or interest other than in fee simple in the land divided and other land affected such as a caveator, or party to a land management or heritage agreement, etc.

9 FILLING IN FORM RTC

9.1 CERTIFICATES OF TITLE OF LAND AFFECTED Panel

Show all Certificates of Title references for the land actually divided and those for other land affected.

9.2 APPLICANT Panel

Here include the full name(s) address(es) of the Registered Proprietor(s) of the land actually divided. (Other persons affected must consent in the **CERTIFICATE OF CONSENT TO APPLICATION** panel).

The general rule here is:

- ◆ The applicant is always the registered proprietor(s) of the land actually divided
- ◆ Consenting party is any other person affected by the division. Eg they are always any person
 - ◆ having a registered estate or interest in the land divided or other land affected
 - ◆ claiming to have an estate or interest in the land divided or other land affected
 - ◆ the registered proprietor(s) of other land affected by the division

9.3 DETAILS OF TRANSACTION(S) (APPLICANTS ONLY) Panel

The Act requires details of transactions to be set out and the consideration expressed is used for stamp duty purposes. It is also useful evidence for a person consenting to the deposit of the plan as to what they are consenting to.

Remember, there may be numerous transactions of the same class, or of different classes. All must be stated.

Where there is only one ownership registered over the certificate or certificates of title for the land, there will be no transaction to record but a note to the effect that it is the applicants desire to create an easement should be included. This also applies where the applicant creates an easement in favour of him/herself.

Where there is more than one ownership of the land actually divided, determine from the plan, whether there is:--

- ◆ a vesting of land between separate applicants.
state as follows (with consideration)

"Vesting of land from A to B to form allotments 15 and 16".

In the Consideration/Value column state the value, eg, \$5000.00.

- ◆ a vesting of land to a Government agency
state as follows (with consideration)

"Vesting of allotment 10 in Commissioner of Highways"

In the Consideration/Value column state the value, eg, \$5000.00

- ◆ an easement created between separate applicants (or by the same applicant.
state as follows with consideration/value (if applicable)

"creation of easement over A".

In the Consideration/Value column state for stamp duty purposes the value eg, \$100 (or not applicable) or the value of easement does not exceed \$100

- ◆ Extinguishment of an easement that exists between land divided and other land.
State as follows (suitably amended to suit a particular case) with consideration/value (if applicable)

"The (state nature of easement) over the easement marked X on CT. 1234/56 appurtenant to allotment 1 is extinguished pursuant to s.90b of the Real Property Act".

- ♦ Variation in position of an easement that exists between separate applicants or between Certificates of Title owned by the same applicant. The nature of the transaction can be determined from the plan annotation panel which will state the following, or similar:--

State as follows (with consideration)

"Easement created by RE over portion of allotment 17 marked B in DP31500 is to be varied to the position of C pursuant to s.90b of the Real Property Act 1886"

In the Consideration/Value column state for stamp duty purposes the value eg, *does not exceed \$100.*

9.4 SCHEDULE OF EASEMENTS CREATED BY DEPOSIT OF THE ACCOMPANYING PLAN OF DIVISION panel

Service (Statutory) easements are not set out in this panel.

This panel makes a pre-printed reference to short form easements of ss.89 and 89a (Fifth or Sixth Schedules of the Real Property Act) set out in the plan annotation panel (if any) and all easements indicated by the plan annotation panel to be set out in a long form in the accompanying application. Easements in the short form are set out on the plan in the precise manner of the appropriate Schedule and not in this panel, however, long form easements must be set out in full.

A long form easement is one in which its terms as set out on the plan are not in accord with the Fifth and Sixth Schedules of the RPA.

A plan annotation requiring a long form easement will state, for example,

"Portion of Lot 1 marked A is to be subject to the right of way set forth in the accompanying Application"

9.4.1 HEIGHT (OR DEPTH) LIMITATIONS

Where height (or depth) limitations occur the plan annotation panel may state the following, or similar:--

"Portion of allotment 2 marked B hereon is to be subject to a free and unrestricted right of way limited in height to 44.35 metres AHD appurtenant to Allotment 1"

or

"Portion of allotment 2 marked B hereon is to be subject to the right of way set forth in the accompanying Application limited in height to 44.35 metres AHD appurtenant to Allotment 1"

In the event of multiple height (or depth) limitations the plan may contain a side elevation and the annotation panel may read:--

"Portion of allotment 2 marked B hereon is to be subject to a free and unrestricted right of way limited in height as indicated by this plan appurtenant to Allotment 1"

9.4.2 TIME LIMITATION DURING WHICH IT CAN BE EXERCISED

Where an easement is to be limited in use to a range of times or a term in time, the annotation plan panel should state:--

"Portion of allotment 1 marked A is to be subject to a right of way (or a long form right of way) limited to use as set forth in the accompanying application.

Such limitations may be set out in covenants between the parties as an alternative approach. The application now sets out the easement in the usual way with the limitations stated in the following manner, or similar:--

"A free and unrestricted right of way over that portion of allotment 1 marked A in the accompanying plan of division limited to use between the hours of 9:00am and 9:00pm on each day and to be held appurtenant to allotment 2 on the said plan

9.4.3 COVENANTS BETWEEN SEPARATE APPLICANTS

Although positive covenants are binding on the primary parties, they may not bind successors. Covenants should not be included without legal advice. Where covenants are created in an easement between separate applicants, they may be, whether the easement is expressed in the long or short form, included in this panel or the easement may be created by separate instrument. Where covenants are included in the application it may be prudent for the conveyancer to instruct the surveyor to annotate the easement on the plan in the following manner:--

"Portion of allotment 1 marked A is to be subject to the right of way (or other easement) set forth in the accompanying application"

and then complete the SCHEDULE OF EASEMENTS CREATED panel in either of the following ways.

Eg, In the case of a long form easement, *"a free and unrestricted right and liberty to pass and repass, etc....."*

(followed by)

.....and A and B, the parties to this easement, hereby covenant as follows... (here set forth the terms and conditions of the easement)....."

In the case of a short form easement, *"A free and unrestricted right of way over the portion of Lot 1 marked X,*

(followed by)

A and B, the parties to the easement, hereby covenant as follows ... (here set forth the terms and conditions of the easement)....."

Parties to the covenants should execute their signatures in this panel.

9.5 STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES panel

This panel is included in the Application Form RTC for use where the person certifying it correct is also acting for the parties consenting. The page is also available as a pre-printed annexure sheet.

This panel merely requires a cursory statement as to the effect of each transaction vested by deposit of the plan. The consideration, if any, should be stated as it is this panel the Stamp Duties Office will use to assess stamp duty.

Examples of how to complete this panel are as follows:--

ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION / VALUE
M1234567 registered on CT 1234/56	partial discharge as regards free and unrestricted right of way vested over X in the said Certificate of Title extended to include a free and unrestricted right of way vested appurtenant to the said Certificate of Title	N/A N/A
CT 1234/56	vesting of free and unrestricted right of way over X in the said Certificate of Title	not exceeding \$100
CT 1234/56	easement vested appurtenant to the said CT 1234/56	N/A
CT 1234/56	extinguishment of easement over X in the said CT or, variation of the position of easement marked X on the said CT to the position marked Y on this plan	N/A
CT 1234/56 Allotment 10	extinguishment of easement appurtenant to the said certificate of title vested in Commissioner of Highways	N/A free of cost
M34567890	partial discharge as regards allotment 10	N/A

9.6 CERTIFICATION under Sec 79 (6) of the Stamp Duty Act 1923

Complete as for normal Stamp Duty requirements, eg:--

"The highest amount secured during the currency of the Mortgage was \$ 130,000 and the Mortgage" has been duly stamped"


9.7 CERTIFICATE OF CONSENT TO DEPOSIT OF PLAN OF DIVISION (PURSUANT TO SECTION 223lh OF THE REAL PROPERTY ACT 1886) Panel

This panel will contain the consent of all persons having:--

- ♦ A registered estate or interest or who claim to have an estate or interest in the land actually divided
- ♦ The registered proprietor of other land granting an easement appurtenant to land actually divided or who is granted an easement by the applicants, and
- ♦ Any person having a registered estate or interest or who claims to have an estate or interest in the land.

A Government authority in whom is vested an estate in fee simple. This will be as the result of a planning condition such as an allotment delineated for road widening which is to vest in the Commissioner of Highways.

A sample of how this panel should be completed, follows:--

CERTIFICATE OF CONSENT TO DEPOSIT OF PLAN OF DIVISION (Pursuant to Section 2231h of the Real Property Act 1886)			
I/We the undersigned hereby certify consent to the deposit of the accompanying plan of division in the Lands Titles Registration Office and acknowledge that the deposit of the said plan will affect my/our estate or interest to the extent set out in the above Statement of Effect to deposit of plan of division panel .1			
Dated the	10	day of	September 19 94
CONSENTING PARTY (Full Name Address & Execution including Witness and nature of estate or interest)			
Big Bank Pty. Ltd. of 211 Draw Road Newton 5074 as Mortgagee (M 7891234)			
The common seal of Big Bank Pty. Ltd. was hereto affixed in the presence of			
B Banker Chairperson S BROWN Secretary			
			
John Manson of 5 Third Court North Haven 5018 as Encumbrancee (E 7891233 and 7891237) and registered proprietor of CT 7141/58			
Signed J MANSON			
Witness provisions apply			

9.8 SCHEDULE OF MODE OF ISSUE

This panel sets out a precis of the end result of the division. It tells each party to the plan all facts relevant to each allotment formed by the plan, other than allotments vesting in a council or other authority as a public street or reserve (or other similar open space). It shows details of :--

- ♦ Allotment numbers, Certificate of Title reference of other land included in the plan for the purpose of creating an easement

- ♦ Ownership {full name(s) address(es) and mode of holding (tenants in common, etc)}.
- ♦ Registered estates or interests registered or claimed, in each allotment, including those created by the plan or those carried forward from the primary Certificate of Title. Eg, Mortgages, encumbrances, leases, caveats, heritage agreements, etc.
- ♦ All easements created, or varied in position, vested in an authority and those pre-existing and carried forward. Easements should be expressed as subject to or together with

A sample of SCHEDULE OF MODE OF ISSUE panel is as follows.

Note that these examples do not relate to a particular plan and should be regarded as independent from each other.

SCHEDULE OF MODE OF ISSUE

ALLOTMENT No. / CT REFERENCE	FULL NAME(S) ADDRESS(ES) AND MODE OF HOLDING	EASEMENTS AND ESTATES OR INTERESTS
15	Happy Developments Pty. Ltd. 56 Hill Street Happy Valley 5159	M 7891566 Subject to an existing service easement (over C(T/F))
16	Happy Developments Pty. Ltd. 56 Hill Street Happy Valley 5159	M 7891566 Subject to an Easement for water supply purposes over B
17	Ian Donald Martin and June Martin both of 7 Third Court North Haven 5018 as joint tenants	E 7891233 M 7891234 Subject to a right of way over A as set out herein Together with an easement for water supply purposes over B
18	John Manson of 5 Third Court North Haven	E 7891237 Subject to an existing easement over Together with right of way over A as set out herein
CT. 1234/56	Henrietta Smith of 20 Ascot Lane Redbanks 5557	M1234567 Subject to a free and unrestricted right of way over X
Easement in gross	District of Council Redbanks of Redbanks 5999	A free and unrestricted right of way over X

9.9 EXECUTION BY APPLICANT(S) panel

Execution by the applicants is required and is the same as for any RPA instrument.

Each signature (apart from those to a Seal) must be witnessed in accordance with S.267 of the Real Property Act 1886.

10 PAGE NUMBERING OF INSTRUMENTS

All pages of instruments including annexures and inserts must be consecutively numbered at the top of each page. E.g. Page 1/10, 2/10, etc.

A handwritten signature in black ink, appearing to read 'Alan J. Sharman', with a long horizontal flourish extending to the right.

ALAN J. SHARMAN
REGISTRAR-GENERAL
31 August 1995

Appendix A

Fees

- 1 There is no fee for an application for prior approval under Panel Form RDA, however the application must be accompanied by:
 - the plan examination fee under the Real Property Act (Fees) Regulations 1991;
 - for an uncertified data plan
 - lodged prior to 1 January 1996 - \$80
 - lodged after 1 January 1996 - 120
 - for a certified plan of survey
 - lodged prior to 1 January 1996 - \$180
 - lodged after 1 January 1996 - \$250
 - Survey Act levy - \$30 (where required)

- 2 The fee for an application for the division of land is -
 - Panel Form RTU, where deposit of the plan of division will not vest an estate or interest in land (except a road reserve) in any person - \$70.00
 - \$40 for each certificate of title that will issue for an allotment formed other than for roads or reserves.
 - Plan fees stated in 1 above unless already paid on lodgement of an application for prior approval
 - Deposit fee - \$70

 - Panel Form RTC, where deposit of the plan of division will vest an estate or interest in land (except a road reserve) in any person - \$190.00
 - \$40 for each certificate of title that will issue for an allotment formed other than for roads or reserves.
 - Plan fees stated in 1 above unless already paid on lodgement of an application for prior approval
 - Deposit fee - \$70

- 3 Panel Form RTA, for an application for the amalgamation of allotments - \$70.00