

NOTICE TO LODGING PARTIES

LAND SERVICES GROUP

Colonel Light Centre
25 Pirie Street. ADELAIDE 5000

No.111

PLANS OF DIVISION APPLICATIONS

Since the introduction of amendments to Part XIXAB of the Real Property Act 1886 in September 1995, it is clear that clients are having difficulties understanding the one document concept, and the use, and completion of forms RTC and RTU now required for plans of division.

The purpose of this notice is to highlight some areas of concern to this Office in an effort to make the completion of these forms easier, and hopefully eliminate some of the errors which keep on occurring.

There are three main points which need to be understood as they form the basis for Part XIXAB documentation.

1. Plan and Application "One" Instrument

Section 223ld (7). " *The plan and the application for division will, upon being lodged with the Registrar General, be taken for the purposes of this Act to be a SINGLE INSTRUMENT presented for registration and will have priority over other instruments in accordance with Section 56. "*

This means, especially with form RTC, it is NOT NECESSARY to clutter it up with information that is patently obvious from the plan. It is necessary to supply enough detail to identify the transactions involved which also facilitates the assessment of Stamp Duty. These details will also allow applicants and consenting parties to state how their interests will be affected.

2. Transactions

If transactions are required the RTC form MUST be used. If no transactions then the RTU form should be used.

A TRANSACTION IS: - Anything that would have required a further document to be registered under the superseded system eg. partial discharge, collateral mortgage, extinguishment or variation of statutory or private rights, transfers, creation of new rights etc.

'Transactions' do not include vestings for road, reserves, or other similar open space or vesting of easements to Statutory Authorities.

Note that different certificates of title in the same names but with different modes of holding, or several certificates of title in the same names and same mode of holding but with different mortgages on them will require a transaction to occur.

Note also that any documentation not necessary for the deposit of the plan, such as applications to change/correct name, note marriage etc. should be lodged PRIOR to the RTC or RTU forms.

3. Short and Long Form Easements

It is quite clear that some clients need to carefully read Sections 89 and 89a and the corresponding 5th and 6th Schedules of the Real Property Act to understand how they operate.

If the note on the plan uses the exact wording from Section 89 or the short form description set out in the margin on the 6th Schedule then a description of easements in the long form on the application is NOT necessary.

Note that "a right of way" is not a short form, it must be "a free and unrestricted right of way" to get the benefit of the full meaning set out in the 5th Schedule. Similarly "an easement for the supply of electricity" is not a short form, neither is "an easement for the maintenance of eaves and gutters". Where a right other than the short form is created, the right must be set out in full in the Schedule of Easements.

The notes which appear on the plan should be carefully compiled, giving consideration to the requirements of the parties and the words which comply with the short forms set out in the Real Property Act.

Other areas that are a cause of concern are :-

Schedule Of Mode Of Issue

This schedule is causing major concerns for practitioners mainly because of the misdescription or omission of existing and newly created easements.

Because the plan must define and set out all existing and new easements it is proposed to allow practitioners to simplify this schedule by inserting in the pertinent column "TOGETHER WITH AND SUBJECT TO SUCH RIGHTS AND LIBERTIES AS SET OUT IN THE ACCOMPANYING PLAN AND/OR DESCRIBED HEREIN"

As it is considered that the plan and schedule of easements in the application already delineates and sets out the rights, it will no longer be a requirement to repeat them in the schedule of mode of issue.

This means that a full description of these "rights" will not be required to be shown in this schedule (mortgages, leases, caveats etc. must still be shown).

From the date of this Notice practitioners are at liberty to insert the suggested wording themselves into the schedule and omit any other description of rights.

If an easement note is deleted from the plan, added, or changed in any way it is the responsibility of the certifying party to make executing parties aware of the change.

The schedule should include all new certificates of title to issue as a result of the plan. This will now also include ROADS and RESERVES and any new certificates of title for land not being an allotment in the DP, but excluding redesignations.

Every effort should be made to list the allotments in numerical order and avoid grouping allotments because of common encumbrances or rights etc.

Linking Addresses

Applicants still need to be identified with the address shown on the Register Book. "Show "formerly of" if the address has changed.

Former addresses must not be repeated in the Schedule of Mode of Issue.

Deletions

Avoid using "N/A" ;

"NOT APPLICABLE" "NIL" or striking out the panel should be employed. Any printed line or panel not required to be used must be clearly struck out.

If easements are not being created by the plan the lines relating to short and long form easements in the Schedule of Easements must be struck out.

Priority Documents

Both RTU and RTC forms are priority documents. They will be required to be temporarily withdrawn if not lodged in the proper sequence.

Extinguishing Easements

If a certificate of title for land outside of the land being divided is affected by some action, such as an extinguishment of an easement, then the duplicate certificate of title must be produced, and a new certificate of title fee paid.

Corrections

Any addition, correction or alteration to a consent must be initialled by that party. If the correction is of a serious nature re-execution of the consent will be required. A fresh schedule of consent should always be used if corrections make the required information unclear, illegible or in any other way unsuitable for scanning, copying, faxing or microfilming.

Consenting Parties

A consenting party must show their full name and address and the nature of their interest. Executions require full witnessing provisions on both RTU and RTC forms.

Where a transaction involves the duplicate certificate of title, mortgage or encumbrance, they must be produced. Avoid using the word "collateral" as mortgages are extended to cover the whole of the land in the new allotment.

Annexures

All Annexures must have the heading completed properly. All annexures must be referred to in the principal document in the space provided.

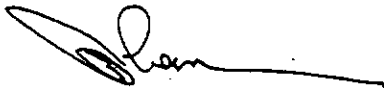
Annexures should always be used where panels have insufficient space for the data required or where numerous corrections would make the original material untidy, unreadable, or congested.

Stamp Duty

All RTC forms must be assessed for stamp duty (with all annexures attached) prior to being lodged in this Office.

All Transactions involving applicants must be shown in the panel for Details of Transactions (applicants only).

Further Notices to Lodging Parties will be issued to assist clients in preparing documents of this type.



**ALAN J. SHARMAN
REGISTRAR-GENERAL
12 September, 1996**