

NOTICE TO LODGING PARTIES LAND SERVICES GROUP

Department for Administrative and Information Services
101 Grenfell Street Adelaide 5000



Government
of South Australia

No. 130

CERTIFICATION UNDER SECTION 273 REAL PROPERTY ACT 1886 BY ATTORNEY

Section 273(1) of the *Real Property Act 1886* ("the Act") provides that

... the Registrar-General shall not receive any application for bringing land under the provisions of this Act, or any instrument purporting to deal with or affect land, unless there shall be endorsed thereon a certificate that the same is correct for the purposes of this Act, signed by the applicant or party claiming under or in respect of such instrument, or by a solicitor, or licensed land broker.

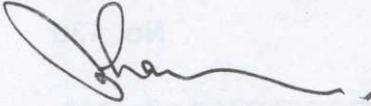
A practice of long-standing has developed where instruments, particularly those lodged by banks and other financial institutions, have been certified correct for the purposes of the Act by an attorney appointed under a Power of Attorney for that purpose.

However, a person who is merely the attorney of the applicant, or of a party claiming under or in respect of an instrument, or of a solicitor or registered conveyancer, cannot certify an instrument under section 273 of the Act.

Certification under section 273 is not merely as to the clerical correctness of the document but is primarily as to its broader bona fides. The Registrar-General is not feasibly in a position to either know, or be able to ascertain definitively, the genuineness or correctness of every instrument that is lodged for registration and which can affect interests in the land in question. The role of the certifier is to provide assurance to the Registrar-General that the instrument and the registration of the instrument would not offend the provisions and overall scheme of the Act, and other relevant statutes and laws. A mere attorney, who could be acting at arms length from all the circumstances of the instrument and the underlying transaction, cannot provide the assurance required by the Registrar-General.

Section 273 also impliedly excludes any corporation from the act of certification. An instrument of which a corporation is the applicant, or under which a corporation claims, must therefore be certified by a solicitor or registered conveyancer with the requisite knowledge of the circumstances of the instrument and the underlying transaction. A mere officer of the corporation, even with the requisite knowledge, cannot certify an instrument under section 273 as that person does not have the authority specified in that provision.

As a consequence, from 23 July 2001 the Lands Titles Office will no longer accept for registration an instrument that has been certified by an attorney of the persons specified in section 273. Instruments executed prior to this date and certified by an attorney will be accepted for registration.



ALAN J SHARMAN
REGISTRAR-GENERAL
11 July 2001