

Notice

To Lodging Parties

29 May 2009

No 158

Statutes Amendment (Real Property) Act 2008

Further to Notice to Lodging Parties No. 157.

The commencement date for the *Statutes Amendment (Real Property) Act 2008* (the Act) has been set as 1 June 2009.

The purpose of this notice is to provide clients with information on changes to documentation to be lodged in this office for the commencement of the Act.

Documents prepared and executed prior to that date can still be lodged. Clients will be notified when these documents will no longer be accepted.

Any documentation prepared and executed after the commencement of the Act must be in the new format.

1. PANEL FORMS

Changes made to the *Real Property Act 1886* (RPA), *Community Titles Act 1996* (CTA) and *Strata Titles Act 1988* (STA) required new panel forms and modification of a number of existing panel forms and guidance notes. These new and amended forms and their guidance notes will be available through the LTO Forms Online application on the Land Services Group (LSG) website.

The following identifies the new forms and modifications made to existing panel forms.

1.1 Standard Terms and Conditions for Encumbrances

1.1.1 Panel form

Panel form M4, with a prefix of TC, is the approved form to be used to lodge standard terms and conditions for encumbrances. As with other standard terms and conditions documents the:

- Terms and conditions are to be set out in the panel form or attached to the form.
- Certification and signing clause to be completed.

1.1.2 Encumbrance panel form

The existing encumbrance panel form M2 has been amended to allow for reference to standard terms and conditions.

1.2 Grant of Easement

To extend or discharge a mortgage or encumbrance over an easement pursuant to sections 90F and 144 of the RPA, the mortgagee or encumbrancee must consent to any extension or discharge. The consent form approved for this purpose has been included in the Form TG. Any completed consent forms are to form part of the panel form TG used to grant the easement.

Any other interests such as a Caveat or Land Management Agreement must be dealt with by the lodgement of separate documentation for example a Partial Withdrawal of a Caveat as regards the easement.

1.3 Application to amend a community plan by two or more lot owners

Section 52 of the CTA has been amended to provide, subject to certain restrictions set out in section 52(1a) of the CTA, for the owners of two or more community lots in the same community scheme to apply to amend the boundaries between their lots.

Where the applicants are the lot owners, there is no requirement for the community corporation to pass a unanimous resolution agreeing to the amendment, but the lot owners are required to notify the corporation of the amendment.

1.3.1 Panel form

Panel form AP3, lodged when amending a deposited community plan pursuant to section 52 of the CTA, has been modified to allow the application to be made, depending on the circumstances, by the community corporation or by lot owners.

1.4 Applications

As a consequence of amendments made to the CTA, RPA and STA the panel forms for various applications have been modified to make them more consistent.

The modifications to the panel forms include:

- a) Changes to the operative clauses due to the schedule of lot or unit entitlements no longer being part of the plan – see 2.0 Schedule of Lot and Unit Entitlements.
- b) A specific separate consent form included in each application – see 1.4.1 Amended forms.

1.4.1 Amended forms

The following is a list of the affected documents and their panel forms.

<i>Type of document</i>	Panel form
Deposit a plan of Community Division	ACT
Amendment of a deposited Community Plan	AP3
Amendment of a deposited Community Plan – pursuant to a development contract	AP4
Amendment of a deposited Community Plan by adding or removing land	AP5
Amendment to the Schedule of Lot entitlements	AP2CP
Amalgamation of Community Plans	SM2
Cancellation of a Community Plan	CS2
Deposit a plan of division – uncertified	RTU
Deposit a plan of division – certified	RTC
Amalgamation of Allotments	RTA
Amendment of a deposited Strata Plan	A7
Amendment of a deposited Strata Plan by adding or removing land	AP6
Amendment to the Schedule of Unit entitlements	AP2SP
Amalgamation of Strata Plans	A8
Cancellation of a Strata Plan	CS1
Grant of Easement	TG
Extinguishment/Variation of Easement	VE

1.4.2 Consent forms

If there is insufficient space for all of the consenting parties on the consent form included in the above panel forms, additional consents must be completed on the panel form's consent form available through the LTO Forms Online application referred to above.

Note: From the date of commencement of the Act, any of the above panel forms prepared and executed after that date must use the relevant consent form and not consent forms Form 1, Form 2 and Form 3.

1.5 **LTO Forms Online**

From the date of commencement of the Act the new and modified forms referred to in 1.2 and 1.4.1 will be available through the LTO Forms Online application in a standard blank form for duplex printing and not in the interactive version.

2. SCHEDULE OF LOT AND UNIT ENTITLEMENTS

2.1 Lodgement of Schedule

The schedules of Lot and Unit entitlements no longer form part of the plan but are to be annexed to the plan. The relevant schedule is to be lodged as an attachment to the appropriate application.

2.2 Format of schedule

All schedules must be certified correct by a licensed valuer and for the required format for the:

- a) Schedule of Lot Entitlements – see Annexure A.
- b) Schedule of Unit Entitlements – see Annexure B.

From the date of commencement of the Act the schedules and their guidance notes will be available through the LTO Forms Online application on the LSG website.

2.3 Panel forms

With the schedules no longer forming part of the plan, the CTA and STA applications, and their applicable consent forms, have been modified to request the schedule be annexed to the plan.

The affected applications, and their consent forms, are:

Deposit a plan of Community Division
Amendment of a deposited Community Plan
Amendment of a deposited Community Plan – pursuant to a development contract
Amendment of a deposited Community Plan by adding or removing land
Amendment to the Schedule of Lot entitlements
Amalgamation of Community Plans
Cancellation of a Community Plan
Amendment of a deposited Strata Plan
Amendment of a deposited Strata Plan by adding or removing land
Amendment to the Schedule of Unit entitlements
Amalgamation of Strata Plans
Cancellation of a Strata Plan

2.3.1 No change to schedule of lot entitlements

Where as part of the amendment to a community plan there is no change to the schedule of lot entitlements:

- The inapplicable part of the application and the consent forms (if any) are to be deleted.
- The application is to be accompanied by a certification from a land valuer as set out in Form No. 3 in the *Community Titles Regulations 1996*.

2.3.2 No change to schedule of unit entitlements

Where as part of the amendment to a strata plan there is no change to the schedule of unit entitlements:

- The inapplicable part of the application and the consent forms (if any) are to be deleted.
- The application is to be accompanied by a certification from a land valuer referring to there being no change to the unit entitlements. The required form of certification is:

“Ibeing a land valuer within the meaning of the Land Valuers Act 1994 certify that the application [here identify the application] for the amendment of deposited Strata Plan No..... does not affect the value of the units into which the plan as amended divides the strata site.

.....
[Signature land valuer]”

3. APPURTENANCE OF EASEMENTS

RPA, STA and CTA provides for the appurtenance of an easement to be reduced without the consent of the servient proprietor, or those with an interest in the servient land, provided the easement remains appurtenant to other dominant land, for:

- A plan of division lodged under Part 19AB of the RPA.
- A community plan lodged under the CTA.
- An amendment to a deposited community plan lodged under the CTA.
- An amendment to a deposited strata plan lodged under the STA.

3.1 Documentation requirements

Where the appurtenance of an easement is to be reduced:

- a) The servient owner and those with an interest in the servient land are not required to consent to the extinguishment. The servient –
 - i) Duplicate certificate of title is not required to be produced

- ii) Title reference is not required to be included in the application or on the plan unless required to, due to some other transaction within the application or if produced by the servient owner.
- b) The registered proprietor, and those with an interest in the dominant land, affected by the reduction are required to consent to the change in the appurtenance by including reference to the reduction –
 - i) In the Statement of Effect panel, if completing a consent form.
 - ii) In the Details of Transactions, where the Applicant is the registered proprietor of land affected by the change.
 - iii) As part of the execution for a Strata Corporation, where the common property is affected and panel form being used is Form A7.

4. ADJUSTMENT OF STATUTORY ENCUMBRANCES

The RPA, CTA and STA have been amended to provide for the adjustment of the land subject to a statutory encumbrance within an application lodged for the purpose of:

- a) Depositing a plan of division lodged under part 19AB of the RPA.
- b) Depositing a community plan or amending a deposited community plan under the CTA.
- c) Amending a deposited strata plan under the STA.

4.1 Form of Adjustment

The adjustment involves:

- a) Varying or amending the encumbrance to increase the extent of the land subject to the statutory encumbrance, or
- b) Terminating or revoking the encumbrance over specific land, so the land is not subject to the statutory encumbrance.

4.2 When termination is required

Where as part of a division or amendment any land, including a reserve, public road or private easement is **not** to be subject to the statutory encumbrance. The encumbrance must be terminated or revoked as regards that land or easement as part of the application.

4.3 Documentation requirements

To vary or terminate a statutory encumbrance the holder of the encumbrance as part of their consent must:

- Include reference to the variation or termination in the Statement of Effect panel.

- Have a certification from the holder of the encumbrance that the requirements to vary or terminate under the relevant Act has been complied with. The certification can be incorporated as part of the holder’s consent or on a B1 Annexure form.

4.3.1 Certification

The suggested form of certification for:

- a) Variation is -

“I [name and address] certify that the requirements of section [section number and Act] to vary Agreement [number of Statutory Encumbrance] have been complied with.

[Signature of person certifying]”

- b) Termination is –

“I [name and address] certify that the requirements of section [section number and Act] to terminate Agreement [number of Statutory Encumbrance] have been complied with.

[Signature of person certifying]”

5. CERTIFICATION FOR SCHEME DESCRIPTIONS, BY-LAWS AND DEVELOPMENT CONTRACTS

The CTA now requires the person preparing any scheme description, by-laws or development contract to certify that the document has been correctly prepared in accordance with the CTA. Similarly any amendment to a scheme description or variation to by-laws or development contract must be certified as being correctly prepared in accordance with the CTA by the person preparing them or by an officer of the Community Corporation on behalf of the Corporation.

5.1 Form of certification

The required form of certification will be set out in Form No. 10 of the *Community Titles Regulations 1996*

6. LEASES AND COMMON PROPERTY

As part of the amendment to the CTA an existing lease, and any interest in that lease, is not automatically extinguished over the common property on deposit or amendment of a community plan. To extinguish the lease, and interest in the lease over the common property, reference to the surrender of the lease over the common property is to be included in the Statement of Effect panel for the consent forms to be completed by the:

- Lessor
- Lessor’s registered mortgage(s), if any

- Lessee
- Lessee's registered interest(s), if any

7. LODGEMENT OF DUPLICATE INSTRUMENTS

As from the commencement date of the Act lodging parties will no longer be required to produce duplicate instruments when dealing with that interest. (E.g. in the case of a discharge of a mortgage the duplicate mortgage (if any) will no longer need to be produced.)

Documents lodged prior to the commencement date must comply with existing requirements. Any document referred for correction requesting the production of the duplicate instrument must still be complied with, or an application to dispense with its production lodged.



Brenton Pike
A/ Registrar-General
Land Services Group

LOT ENTITLEMENT SHEET

SCHEDULE OF LOT ENTITLEMENTS		
LOT	LOT ENTITLEMENTS	SUBDIVIDED
AGGREGATE		

COMMUNITY PLAN NUMBER C
SHEET OF
ACCEPTED
PRO REGISTRAR-GENERAL
DEV. No. : :

APPLICATION

CERTIFICATE OF LAND VALUER
 I
 being a land valuer within the meaning of the
 Land Valuers Act 1994 certify that the
 schedule is correct for the purposes of the
 Community Titles Act 1996.
 Dated the day of 20

 Signature of Land Valuer

UNIT ENTITLEMENT SHEET

SCHEDULE OF UNIT ENTITLEMENTS	
UNIT	UNIT ENTITLEMENT
AGGREGATE	10000

STRATA PLAN NUMBER

S

SHEET OF

ACCEPTED

PRO REGISTRAR-GENERAL

APPLICATION

CERTIFICATE OF LAND VALUER

I
 being a land valuer within the meaning of the
 Land Valuers Act 1994 certify that the
 schedule is correct for the purposes of the
 Strata Titles Act 1988.

Dated the day of 20

.....
 Signature of Land Valuer