

Notice

To Lodging Parties

21 May 2009

No 157

Statutes Amendment (Real Property) Act 2008

SUMMARY

The Statutes Amendment (Real Property) Act 2008 was introduced into Parliament on 13 February 2008 and assented to on 8 May 2008, it amends the Real Property Act 1886 (RPA), Community Titles Act 1996 (CTA), Strata Titles Act 1988 (STA), Bills of Sale Act 1886 (BSA) and the Stock Mortgages and Wool Liens Act 1924. The Act makes amendments to over 80 sections and are mostly minor in nature, but will be of benefit to this office and land related industries.

Amendments will also be made to regulations under the BSA, RPA, CTA and STA.

This Notice sets out the changes made to the various Acts. A further notice will set out the alterations made to documentation and processes by those changes.

1. The Bills of Sale Act 1886 and the Stock Mortgages and Wool Liens Act 1924

- 1.1 These Acts have both been amended to allow for standard terms and conditions to be lodged.
- 1.2 There is no prescribed form for this purpose. See Annexure A and B for sample backing sheet to be used.
- 1.3 The Regulations under the BSA will be combined into one with the colour of the paper to be used specified as white.

2. The Community Titles Act 1996

- 2.1 Statutory encumbrances can now be dealt with in an application to deposit or amend a community plan. An additional certification is required on behalf of the holder¹ of the encumbrance, that the requirements under the relevant Act that allow for the encumbrance to be varied or terminated, have been complied with.
- 2.2 The lot entitlement sheet will no longer be a sheet of the plan. This will allow the certification by the valuer to be provided closer to the time of it being lodged with the application. This sheet will still be provided with a request for the print of the plan.

¹ Section 3 of the CTA

- 2.3 With the introduction of the electronic Development Assessment Commission (DAC) certificate, the certificate is no longer required to accompany a community plan or an amendment to a community plan. However the certificate must be current at the time of lodgement of the plan and the applicable application. The LTO will access the records of DAC to obtain a copy of the approval.
- 2.4 The appurtenance of an easement can now be reduced on deposit or amendment of a community plan without the consent of those with an interest in the servient land, provided the easement remains appurtenant to other dominant land.
- 2.5 When depositing or amending a community plan an existing lease, and any subsidiary interest over the lease, can now be carried forward onto the common property title to issue. This eliminates the need for a new lease to be created over the common property by the corporation after deposit or amendment of the plan. If the lease is not to be carried forward, the lease must be surrendered in relation to the common property.
- 2.6 The owners of two or more community lots will now be able to, subject to certain restrictions², amend the boundaries between those lots without requiring a unanimous resolution of the community corporation. There is however a requirement that the Corporation be notified of the application to amend the plan. This should make it easier to carry out minor amendments between lot owners.
- 2.7 In line with amendments to the RPA the requirement for duplicate instruments to be produced when a community plan is cancelled, has been removed.
- 2.8 A scheme description and development contract will now be required to be lodged where the scheme description indicates that development “is likely to” occur.
- 2.9 The Act will require that all scheme description, by-laws or development contracts, and any amendments or variations thereof, be certified as having been prepared in accordance with the CTA by the person who prepared them or by an officer of the corporation. The required form of certification will be set out in Regulations.
- 2.10 Amendments have also been made to allow the Magistrates Court to deal with any application before it without the parties having to take a further action in another Court. This includes the ability to:
 - appoint an administrator for the corporation
 - determine actions, under the resolution of disputes provisions
 - deal with matters of relief where a unanimous or special resolution is required
- 2.11 A new section 145A is inserted into the Act to allow the Registrar-General to rely on any certificate given under the CTA. Section 232 of the RPA has also been amended to include these certifications into the penalty provisions for incorrect certification of documents.
- 2.12 A new section 151A is inserted to allow the liability for any certification by an officer of the corporation, required under the Act, to attach to the corporation rather than the person, if the person acts in good faith in the exercise of that function.
- 2.13 Several certifications set out in the CTA Regulations are to be amended. These include Forms 1, 6 and 7 with a new form 10 included as the certification required

² Section 52(1a) of the CTA

on the scheme description, by-laws or development contracts, and any amendments or variations thereof.

- 2.14 Plans of community division, amendment and amalgamation are to be prepared in accordance with the Plan Presentation Guidelines (PPG) issued by the Registrar-General.

3. The Real Property Act 1886

- 3.1 Section 3 of the RPA has been amended to include the definition of an allotment. This has been included as there are several areas outside of the provisions of Part 19AB where reference to an allotment(s) is made (eg 51E, 90B ...etc). This definition clarifies that meaning.
- 3.2 The RPA is amended to replace the term “licensed land broker” with “registered conveyancer” wherever it appears in the Act.
- 3.3 The Registrar-General now has the ability to, where it is obvious to the Registrar-General; register a series of documents lodged at the same time in the order that was intended by the parties.
- 3.4 To date duplicate instruments have been required to be produced with any dealing. The Act has now been amended to remove the requirement to register on them or for them to be produced to this office, unless specifically required by the Registrar-General. As from the commencement date of the Act, duplicate instruments will no longer be required to be produced to this Office. The need for an application to dispense with production of a duplicate instrument has also been removed from the Act.
- 3.5 In an electronic (TATS) environment it is sometimes easier when correcting a certificate of title to issue a new title rather than amending the old title. The Act has been amended to allow for this.
- 3.6 Where an easement is to be created over or appurtenant to land subject to a mortgage or encumbrance, partial discharges or collateral mortgages have needed to be lodged. The Act has now been amended to allow for where a mortgagee or encumbrancee has consented to a grant of an easement for the relevant interest to be extended or discharged over the easement without the need for separate documentation. A new consent form has been designed for this purpose and is included as part of the application.
- 3.7 It has been the practice of this office to allow easements to be created by reservation in a Transfer or Lease. Until now there has been no legislative authority for this practice. The Act has now been amended to allow for such a practice.
- 3.8 Section 115A of the Act has been amended to allow the Registrar-General to update the register, and vest an estate or interest in land in a party where that vesting has occurred by an Act of Parliament. Where this occurs a notation will be placed on the register and the Historic Search for any affected title.
- 3.9 The Act has been amended to allow for standard terms and conditions to be lodged for Encumbrances.

- 3.10 The RPA uses the term “no survivorship”, this has now been amended to the used phrase of “with no survivorship”. The Act has been amended to provide for this phrase to be used not only in Transfers but also in other documents eg. Mortgages.
- 3.11 The RPA in sections 176 and 184 has required “office copies” to be provided, these have now been amended to simply require “copies” of these documents to be lodged.
- 3.12 Statutory encumbrances can now be dealt with in an application to deposit a plan of division. An additional certification is required on behalf of the holder³ of the encumbrance that the requirements under the relevant Act that allows for the encumbrance to be varied or terminated, have been complied with.
- 3.13 The definition in section 223LB of the RPA of what can be transferred without the requirement for a plan of division, has been amended to make it clear that more than one part allotment can be transferred with one or more full allotment provided they are contiguous.
- 3.14 As with Community plans, a division plan can now be lodged without the DAC certificate accompanying it. However the certificate must be current at the time of lodgement of the plan and the applicable application. The LTO will access the records of DAC to obtain a copy of the approval.
- 3.15 The appurtenance of an easement can now be reduced on deposit of a plan of division without the consent of those with an interest in the servient land, provided the easement remains appurtenant to other dominant land.
- 3.16 The provisions associated with the incorrect certification of documents have been amended to include those documents to be certified under the CTA.
- 3.17 The heading of Schedule 5 is to be amended from “right-of-way” to “a free and unrestricted right-of-way”. This will make the definition consistent with section 89 of the Act.
- 3.18 Five additional short form easements have been included into Schedule 6 of the Act. These are:
- an easement for the transmission of telecommunications signals by underground cable
 - an easement for the transmission of telecommunications signals by overhead cable
 - an easement for support
 - an easement to park a vehicle
 - a right of way on foot
- 3.19 The three Regulations under the RPA will be combined into one Regulation, to be known as the *Real Property Regulations 2009*
- 3.20 Plans of division and amalgamation are to be prepared in accordance with the PPG.

³ Section 223LA of the RPA.

4. The Strata Titles Act 1988

- 4.1 The STA has been amended to remove sections 7 and 8 and Clause 5 of Schedule 2. The effect of this is that no new strata plans can be lodged or deposited under the Act. The provisions relating to amendment, amalgamation and cancellation still apply.
- 4.2 Statutory encumbrances can now be dealt with in an application to amend a strata plan. An additional certification is required on behalf of the holder⁴ of the encumbrance that the requirements under the relevant Act, that allow for the encumbrance to be varied or terminated, have been complied with.
- 4.3 As with the CTA, the unit entitlement sheet will no longer be a sheet of the plan. This will allow the certification by the valuer to be provided closer to the time of it being lodged with the application. This sheet will still be provided with a request for the print of the plan.
- 4.4 Amendments similar to those in the CTA and RPA now allow for an amendment to a deposited strata plan to be lodged without the DAC certificate accompanying it. However the certificate must be current at the time of lodgement of the plan and the applicable application. The LTO will access the records of DAC to obtain a copy of the approval.
- 4.5 The appurtenance of an easement can now be reduced on amendment of a strata plan without the consent of those with an interest in the servient land, provided the easement remains appurtenant to other dominant land.
- 4.6 The Act has been amended to address an anomaly. From the time of lodgement of an application to amend a strata plan, the life of the DAC certificate is extended for a further year, unless the Registrar-General chooses to extend that time.
- 4.7 The cancellation provisions of the Act have been amended to no longer require the Registrar-General to endorse the cancellation of a strata scheme on duplicate instruments.
- 4.8 Amendments have also been made to allow the Magistrates Court to deal with any application before it without the parties having to take a further action in another Court. This includes the ability to:
- appoint an administrator for the corporation
 - determine actions, under the resolution of disputes provisions
 - deal with matters of relief where a unanimous or special resolution is required.
- 4.9 Regulations are to be amended to remove the fees to be paid for lodgement of an application to deposit a new strata plan, including plan examination, as well as the certification required by a surveyor on the plan to be deposited.
- 4.10 Plans of amalgamation and amendment are to be prepared in accordance with the PPG.

⁴ Section 3 of the STA.



Brenton Pike
A/ Registrar-General
Land Services Group

ANNEXURE A

Memorandum of Standard Terms & Conditions for Bills of Sale

On Behalf of:

.....
I Certify that this Memorandum comprising pages(s), contains the standard terms and conditions which may be incorporated in such Bills of Sale as refer to this Memorandum.

.....
Signature of Authorised Agent/Grantee

These Standard Terms and Conditions for Bills of Sale was received into the Registry Office at Adelaide this day of

.....
At the hour of o'clock in the
..... noon and is deposited as provided in the the Bill of Sale Act 1886 as amended.

.....
REGISTRAR-GENERAL

ANNEXURE B

Memorandum of Standard Terms &
Conditions for Stock Mortgages and Wool
Liens

On Behalf of:

.....
I Certify that this Memorandum
comprising ___ pages(s), contains the
standard terms and conditions which may
be incorporated in such Stock Mortgages
and Wool Liens as refer to this
Memorandum.

.....
Signature of Authorised Agent/Grantee

These Standard Terms and Conditions
for Stock Mortgages and Wool Liens was
received into the Registry Office at
Adelaide this day of

.....
At the hour of o'clock in the
..... noon and is deposited as
provided in the Stock Mortgages and
Wool Liens Act 1924.

.....
Registrar-General