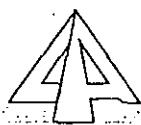


CUSTOMER INFORMATION

BULLETIN



DOLA

OFFICE OF TITLES

Department of LAND ADMINISTRATION

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RESTRICTIVE COVENANTS

Due to the increasing number of restrictive covenants being lodged at the Office of Titles for registration, this Office has undertaken a review of its registration procedures.

Documents creating restrictive covenants may be registered against fee simple land.

Restrictive Covenants must:-

- be negative in nature;
- directly restrict or control the user of the land;
- ensure that there is both land burdened and benefited by the covenant. The land to be burdened and the land receiving the benefit should be accurately defined; and
- be intended by the parties creating them to run with the land.

From January 1, 1993, any instruments creating restrictive covenants which clearly do not comply with the above requirements will not be registered.

Some examples of covenants which would not be acceptable are:

PERSONAL COVENANTS

e.g. covenants which require the covenantor to approve building works

POSITIVE COVENANTS

e.g. covenants to pay or expend money; covenants to repair or maintain buildings.

(This will include covenants which have been drafted in a negative form but which impose a positive obligation on the covenantee).

COVENANTS WHICH PURPORT TO RESTRAIN THE FEE ALIENATION OF LAND

e.g. covenants not to acquire, dispose, encumber, or otherwise deal with the land except subject to certain conditions.

The attention of all clients is drawn to Section 129A of the Transfer of Land Act. It remains the responsibility of clients to ensure that covenants sought to be lodged as restrictive covenants are binding and enforceable as between the covenantor and the covenantee. It should be noted that registration of an instrument creating restrictive covenants gives those covenants no greater legal effect or enforceability than they would otherwise have had at law.

This Office requests clients not to use customer advice officers to seek consideration or endorsement of restrictive covenants prior to their lodgement for registration. This Office recommends that clients discuss the legal effect and enforceability of restrictive covenants with their legal advisers.

Finally, as a matter of practice, clients are encouraged to create estate covenants to benefit and burden all the lots in the subdivision with the first Transfer which immediately follows the Application for subdivision. It may be easier for clients dealing with subdivisions to have all instruments following the first Transfer to show the dealing number of that first Transfer as an encumbrance.