

Customer Information

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1. Registrar's Practice Note No. 1

1.1 Discharge of Mortgage (Part of money and some of the Mortgagees)

In addition to currently being able to discharge a mortgage as to the whole or part of land or as to the whole or part of the principle sum on a form D1, mortgagees can now discharge a mortgage:

- a) as to part of the principle sum; and
- b) as to some of the mortgagees

on a new form, Form D3, instead of having to lodge a transfer of mortgage and a partial discharge of mortgage.

In such cases:

1. All mortgagees must sign the discharge; and
2. The D3 form must be assessed by the Commissioner of State Taxation to determine if a transfer has been effected and if stamp duty is payable or be marked by an authorised person as to the stamp duty position.

The new form D3 is available from the State Law Publisher, 10 William Street, Perth. For enquiries telephone 9321 7688.

Requests for form approvals can be submitted to the Manager Examination, Registration Services Branch, Service Delivery Division, DOLA, PO Box 2222, Midland, Western Australia 6936.

1.2 Execution of Documents under the Corporations Law

The *Company Law Review Act 1998*, which commenced on 1 July 1998, has made significant changes to the *Corporations Law*. Under section 127 of the new provisions, a company may:

- execute documents under seal; or
- choose not to have a company seal and therefore execute documents without using a seal.

Customer Information Bulletin No. 102 dated 25 September 1998 set out DOLA's requirements concerning the execution by companies without a seal.

Upon further consideration relating to that information, the practice of the Registrar of Titles is now as follows.

Execution with a Common Seal

A Company with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- a) 2 directors of the company; or
- b) a director and a company secretary of the company; or
- c) for a proprietary company that has a sole director who is also the sole company secretary that director/company secretary.

Refer s.127 (2) of the *Corporations Law*

If a company executes a document in accordance with s. 127 (2) of the *Corporations Law*, persons dealing with the company can rely on the assumptions of regularity in s. 129 (6) of the *Corporations Law*.

Execution without a Common Seal

A Company may execute a document without using a common seal if the document is signed by:

- a) 2 directors of the company; or
- b) a director and a company secretary of the company; or
- c) for a proprietary company that has a sole director who is also the sole company secretary that director/company secretary.

Refer s. 127 (2) of the *Corporation Law*.

Where a company executes a document in accordance with s. 127 (2), persons dealing with the company can rely on the assumptions of regularity in s. 129 (5) of the *Corporations Law*.

Other Forms for Execution

A company may execute a document in a different form to that set out above: for example s. 127 (4) of the *Corporations Law*, but persons dealing with the company would not have the benefit of the assumptions in either s.129 (5) or s. 129 (6) of the *Corporation Law*.

Examples of Execution without a Seal

For dealings without a seal, the persons signing should show the position they hold in the company, their initials and surname e.g.

- (a) Executed by ABCD Pty Ltd)
 ACN.....)
 Signature: _____
 Director (Name)
- Signature: _____
 Director (Name)
- (b) Executed by ABCD Pty Ltd)
 ACN.....)
 Signature: _____
 Director (Name)
- Signature: _____
 Secretary (Name)
- (c) Executed by ABCD Pty Ltd)
 ACN.....)
 Signature: _____
 Sole Director and Sole Secretary
 (Full Name)

2. Registrar's Practice Note No. 2

Powers of Attorney

Appointment of Positions As Donees

Section 143 of the Transfer of Land Act (TLA) provides that the proprietor of any land, lease, mortgage or charge may appoint any person to act for him/her by signing a power of attorney document in the form of the 19th schedule of the TLA.

A practice has arisen within DOLA of accepting the depositing of powers of attorney documents from some large institutions, appointing positions and not persons as required by section 143 of the TLA. This practice is inequitable and inconsistent with DOLA's published policy at paragraph 5.40 of the Land Titles Registration Practice Manual.

Because of this inconsistency DOLA has reviewed its policy in relation to the acceptance of such powers of attorney documents. For DOLA to be able to accept the appointment of a named position within a corporation, a clause to the following effect must be included in such powers of attorney documents.

"Any person, including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere, dealing with the attorney or a person purporting to be an attorney under this power, is:

- (1) Entitled to rely on execution of any document by that person as conclusive evidence that:
 - a) the person holds the office set out in the power;
 - b) that the power of attorney has come into effect;
 - c) that the power of attorney has not been revoked; and
 - d) that the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorize the exercise of that right and power.
- (2) Not required to make any enquiries in respect of any of the above matters."

Trustees

Where a trust deed empowers the Trustee of a trust to delegate the exercise of the trusts, the Trustee may execute a power of attorney. If it is in an approved form it may be recorded under the TLA.

As the Register under the Transfer of Land Act is based on the legal proprietorship it does not note trusts on the Register. Accordingly, any power of attorney lodged with the Register of Titles must enable the Registrar to register transactions on properties registered or otherwise held in the name of the grantor without reference to the terms of any trust.

If the attorney executes a document that affects the grantor in some capacity other than that in respect of which the attorney is authorised to act, that should be an issue solely between grantor and the attorney.

For a Power of Attorney to be registered under the Transfer of Act, it is essential that the grantor, whether in their own right, as trustee of a particular fund or in any other capacity be bound by such document and that the Registrar of Titles and others not be bound to enquire whether the attorney or purported attorney has acted within power.

If the grant of the power of attorney is restricted, as between the grantor and the grantee, to the grantor's powers as a trustee then a clause to the same effect as that referred to in respect of appointment of positions as donees will be necessary.

Accordingly, references to the "Trustee" as describing the grantor should be omitted. Instead reference to "Grantor" or some similar term should be used.

See item 5.60 of the Land Titles Registration Practice Manual as to powers of attorney by trustees where section 54 of the *Trustees Act* enables delegation of trusts.

3. Restructure of Land Administration Services

In keeping with DOLA's vision to provide a dynamic customer focussed service, the Land Administration Services Branch has recently been restructured. The restructure will ensure improved service by giving complete responsibility for particular regions to specific teams.

The introduction of the Land Administration Act 1997 on 30 March 1998, along with the use of new technology and the move towards a single registration system for freehold and Crown Land, provides a conducive environment for the restructure.

As at 7 December 1998, the Land Administration Services Branch was restructured to form six multi-skilled regional teams, each headed by a Regional Manager with a Team Leader and support staff. Each team will have complete ownership of customers' requests from start to finish. Key improvements in the way we now operate will allow greater efficiencies in the areas of documentation and quality control. This will translate into better customer service through improved processing of requests. And each team will be better placed to answer queries concerning the disposition of Crown land within each region.

Customers will be advised in the near future of the practices and procedures of the restructured teams to ensure that your business with DOLA is not adversely affected.

The Customer Information Centre is always available to assist you with any enquiries you have regarding Crown Land.

4. Customer Remote Searching

Over the coming 4 to 6 weeks DOLA will be upgrading the Customer Remote Search – Fax Back facility (Image System). The upgrade is to provide current supported versions and Year 2000 compliant versions of the many applications that comprise the system.

We wish to advise customers that delivery time for facsimiles may be impacted from time to time. All efforts are being made to minimise any effect on your business. Extensive testing has been conducted in an attempt to avoid delays. We apologise for any inconvenience that may arise and thank you for your patience in this matter.

5. Guidelines for Crown Land Register

The Land Administration Act (LAA) has been in operation since 30 March 1998 introducing a new era in the administration of Crown Land in Western Australia. An area of significant change is the implementation of a single registration system for all interests in Crown land, with a requirement for all interests in Crown land to be registered under the Transfer of Land Act (TLA) to be effectual. Under the LAA Crown land is now defined to be all land other than freehold land. Furthermore any transactions relating to Crown land and any interest in Crown land must have prior approval of the Minister for Lands and all documentation concerning such transactions must be in a format acceptable for registration under the TLA.

DOLA is presently producing a set of guidelines for the preparation and registration of dealings in interests over Crown land. The guidelines will cover registration processes for both existing interests granted pre-LAA and for new interests. The publication of these guidelines is scheduled for approximately June 1999.

Subjects to be addressed in the guidelines include the following:

- Lodgement of documents for registration;
- Minister's consent;
- Registration of Pre-LAA documents;
- Registration of new interests under the LAA;
- Document forms to be used;
- Caveats over Crown land;
- Crown land for sale or lease;
- Crown leases; and
- Removal of expired leases from the Register.

If you are interested in receiving a set of these guidelines please complete the form attached and return it to DOLA by 1 June 1999.



IAN HYDE
A/DIRECTOR, SERVICE DELIVERY

To: The Registrar of Titles,
P. O. Box 2222
Midland 6936

Please supply a copy of the guidelines for the Crown Land Register.

To: _____

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