

Customer Information Bulletin

BULLETIN No. 185
12 SEPTEMBER 2008

1. EVIDENCE FOR CHANGE OF NAMES OF REGISTERED PROPRIETORS
2. WITNESSING DOCUMENTS
3. PLANNING AND DEVELOPMENT ACT 2005 Section 146(1)
(NOTICE TO SURVEYORS T2 / 2008)

1. EVIDENCE FOR CHANGE OF NAMES OF REGISTERED PROPRIETORS

There appears to be some confusion as to the evidential requirements to support change of name applications. The purpose of this Notice is to clarify those requirements.

The confusion relates to:

- what is defined as a “simple error” that does not need evidence (other than a statutory declaration); and
- what is defined as an actual change of name that requires evidence in addition to the mandatory statutory declaration?

DEFINITION OF SIMPLE ERRORS

A “simple error” is one where an existing Registered Proprietor’s name is being amended on a Certificate of Title due to an “Error” or “Omission” made on the original instrument or document by lodging an Application to Amend Name.

The deciding factor in determining what evidence is required is whether the Registered Proprietor is seeking to amend their full, true and correct name or to change their full, true and correct name to a new name. If a registered proprietor is seeking to amend their full, true and correct name to correct an error this is considered a Simple Error and what is required is a Statutory Declaration setting out the facts of the error or omission. There will still be a determination made the Registrar of Titles or officers working on his behalf as to whether the circumstances fit the simple error category and whether the supporting evidence is sufficient to substantiate the amendment or whether it needs to be dealt with as a change of name application.

Some examples of Simple Errors may be:

Where an Application is lodged because a Proprietor’s name has been incorrectly spelt on the original conveyance, eg: Steven being incorrectly shown as Steve, Ralph being incorrectly shown as Rolph, Maree being incorrectly shown as Marie or White being incorrectly shown as Whyte.

Where an Application is lodged to change the order of names, eg: Jeffery Robert Brown being changed to Robert Jeffery Brown or Nguyen Minh Thi being changed to Minh Thi Nguyen.

Where an Application is lodged to add an additional Christian name, eg: Brendan Jones being changed to Brendan Phillip Jones or Anne Smith being changed to Anne Joy Smith.

DEFINITION OF CHANGE OF NAME

Where a Registered Proprietor is seeking to change their full, true and correct name to a new name, then a Statutory Declaration reciting the relevant facts together with the relevant supporting information (such as a marriage certificate or Change of Name Certificate) is required.

Examples of situations in which a Registered Proprietor may seek to change their full, true and correct name to a new name include where an existing Registered Proprietor is adopting/assuming a new surname after marriage, changing their name by License, Deed Poll, Court Order or changing their name by assumption. Registered Proprietors can also change their name under the Aliens Act and the Australian Citizens Act. These circumstances, and the evidence required to support an application to change name, are set out in Section 3.5 of the Land Titles Registration Practice Manual.

2. WITNESSING DOCUMENTS

Witnessing in English Script

The *Transfer of Land Act 1893* (TLA) (Section 145) requires witnesses to the signature of parties to the document to sign their name, using their usual signature. It is a general requirement under the Land Titles Registration Practice Manual (see Para 1.10.1) that the full name, address and occupation of the witness are included within the attestation. The reason for this requirement is that it aids communication when we need to contact the witness if there is an issue regarding the execution of the form by either the witness or the person signing the form.

Witnessing where English is not used

Customer Information Bulletin 124 of August 2002 addresses these witnessing requirements. It provides that:

“The witness must sign with their usual signature which may be by using English or other language script, thumb print or other mark, or by printing their name. The full name, address and occupation of the witness must be below the witness’ signature and must be in English script and clearly readable by the Registrar and/or DOLA officers...”

It is therefore a general requirement that the witness details are to be included on the relevant form.

Form Requirements

Generally speaking each approved form has a Note on the back page setting out the witnessing requirements. Our Corporate Website stores Landgate forms for our Customers/Stakeholders to access and use (see link below).

<http://www.landgate.wa.gov.au/corporate.nsf/web/Freehold+Land+Registration+Forms>

Application documents

There are some forms, such as Applications A1, A2, A3 and A4 that are not required to be witnessed.



Documents created under other legislation

There are forms such as Memorials, Notifications, Withdrawal of Memorials and Withdrawal of Notifications that do not specify witness requirements as they do not come under the provisions of the TLA. These forms are required to be executed in accordance with the legislation under which the Memorial is being lodged or withdrawn. However it is the Registrars practice to require that these forms be completed in the same manner as all other forms including the witnessing requirements.

Form Approvals

With reference to Form Approvals, the Registrar has a requirement when approving forms for customers that the form must contain a note on the back page referring to the requirement for witness details. That is the witness must state their full name, address and occupation.

Attached is a spread sheet indicating which form types require full witness details and which do not. For form types which do not indicate that the full witness details are required refer to the paragraph above titled 'Documents created under other legislation' for attestation requirements.

3. PLANNING AND DEVELOPMENT ACT 2005 Section 146(1) (Notice to Surveyors T2 / 2008)

The following is a reprint of a Notice to Surveyors on the issue of the effect of section 146 of the *Planning and Development Act 2005*. It is reprinted here because of the close connection between the survey documents and the Conveyancing documents so that Conveyancers are aware of the approach being adopted by Landgate with surveyors on this issue.

This notice is to be considered as a special direction concerning plans and surveys pursuant to Regulation 5 of the *Licensed Surveyors (Transfer of Land Act 1893) Regulations 1961*.

Section 146 of the *Planning and Development Act 2005* (P&D Act) places time limits on the Registrar of Titles for the issue of new certificates of title, following approval of a Deposited Plan by the Western Australian Planning Commission (WAPC).

Owners of land the subject of plans that were endorsed with the approval of the WAPC before the commencement day (9 April 2006) will have 5 years after that day in which to lodge an application for new titles. Owners of land the subject of plans that are endorsed with the approval of WAPC on or after 9 April 2006 will have 2 years from the endorsed date in which to lodge an application for new titles.

This notice explains the application process for Deposited Plans with a status of "EXPIRED", and will be included in the Survey and Plan Practice Manual as section 19.5.4.

This notice does not apply to strata/survey-strata plans as these are currently excluded from the provisions of section 146.

LANDGATE'S SMARTPLAN SYSTEM STATUS CHANGE

For deposited plans that have been endorsed by the WAPC (i.e. status of "WAPC Approved") that have not been dealt on within the required time frames as stated above, SmartPlan will automatically update their status to "EXPIRED".



STATUS OF EXPIRED DEPOSITED PLAN (DP)

If a plan has the “expired” status and the registered proprietor still wishes to proceed with the subdivision, then the owner will need to seek a new subdivisional approval from the Western Australian Planning Commission.

For DPs endorsed on or after 9 April 2006 one of two procedures will apply:

Following consultation with officers from WAPC, a procedure has been agreed as to the potential to reuse the existing “expired” DP as part of that new WAPC application.

1. If no changes to DP are necessary for the subdivision to proceed

Application instigated by the owner(s) or surveyor:

- Form 1A Application is made together with a copy of the previously approved DP (WAPC will apply standard Form 1A fees);
 - WAPC preliminary approval is granted (new WAPC reference number);
 - No new conditions imposed by WAPC;
 - Owner(s)/surveyor requests Landgate to forward original DP to WAPC for its new approval inclusive of the new WAPC reference number (Landgate will apply plan lodgement and WAPC deposition fee only);
 - Landgate amends DP by adding section 146 notation, new WAPC reference number and version control, then forwards DP to WAPC;
 - WAPC will apply standard Form 1C fees
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- DP remains the same as a result of WAPC approval, but with the new WAPC date and signature;
 - On return of DP from WAPC, Landgate will re-date the “In Order for dealings” status and reset SmartPlan with the same status.

2. If changes to DP are necessary for the subdivision to proceed

Surveyor initiates action on behalf of owner:

- Form 1A Application to WAPC with appropriate fees and sketch (based on previously approved DP);
- WAPC grants preliminary approval (new WAPC reference number) with new conditions. One of two options may apply:
 - i. If the WAPC conditions, or the owner(s)/surveyor, make only **minor changes** to the previously approved DP then Landgate can request the Surveyor to submit a replacement plan using the same DP number but referring to a different version of that DP (Landgate will apply plan lodgement and WAPC deposition fee only).
In this case, minor changes are defined as:
 - interest changes on the Parent Title to be brought forward; or
 - any detail changes to non-subject land (abuttals).
 - ii. If the WAPC conditions, or the owner(s)/surveyor, make **major changes** to the previously approved DP then Landgate will require a new DP which will be subject to full Landgate fees. That DP will be allocated a new DP number and the previously approved DP will be cancelled on request (cancellation fee applies). Essentially, the same process applies to this plan as if it was a new plan.
In this case, **major changes** are defined as changes to:

- number of lots;
- size of lots;
- shape of lots; or
- spatial interest being depicted such as statutory easements, memorials, restrictive covenants or other private easements
- different survey company

For surveys endorsed before 9 April 2006.

The owner still has until 8 April 2011 to apply for the issuing of new titles. After that date the survey's status will be "expired" and if the owner still wishes to proceed with the subdivision, a new application approval must be sought from the Western Australian Planning Commission. The normal subdivisional process will apply and the previously approved DP will be cancelled (cancellation fee applies).

Enquiries.

Landgate has been proactive by, prior to the expiration date, sending letters to the registered proprietors of the land to inform them of the provisions of section 146 P&D Act.

Enquiries regarding this matter should be directed to the Survey Advice Officer Peter Joyce on 9273 7317.

Surveyors should ensure that on completion of their subdivisional contract, formal advice is given to their client on the implications of section 146 of the P&D Act.



**BRUCE ROBERTS
REGISTRAR OF TITLES
MANAGER, REGISTRATION SERVICES BRANCH
12 SEPTEMBER 2008**

FORM TYPE SHOWN ON LANDGATE WEBSITE	Witness details required	Witness details not required
	YES	NO
A1 - Application by Personal Representative		X
A2 - Application by Survivor		X
A2a - Application by Survivor (Incorporating Statutory Declaration) - Qualified Witness required		
A3 - Application by Personal Representative		X
A4 - Application By Survivor of a Mortgage Charge or Freehold Lease		X
A5 - Application	X	
A6 - Application for a New/Balance Title	X	
A7 - Application	X	
A8 - Application to Register Strata/Survey - Strata Plan	X	
A9 - Application	X	
A10 - Application to Register Property (Seizure and Sale) Order	X	
A11 - Application to Register an Order Extending the Sale Period	X	
A12 - Application to Register a Discharge of a Property (Seizure and Sale) Order	X	
B2921 - Application to Remove Memorial	X	
B1 - Additional Page To		
B2 - Blank Instrument Form		
B3 - Statutory Declaration - Qualified Witness required		
B4 - Coversheet		
C1 - Caveat	X	
C3 - Caveat Forbidding Land to be Brought Under the Transfer of Land Act 1893 (Section 30)	X	
CC1 - Carbon Covenant	X	
CR1 - Carbon Right	X	
Consent to Subsequent Lodgement		
D1 - Discharge of Mortgage	X	
D2 - Discharge of Charge	X	
D3 - Discharge of Mortgage (Part of Moneys and some of the Mortgagees)	X	
E1 - Extension of Mortgage	X	

E2 - Extension of Lease	X	
E4 - Extension of Carbon Right	X	
E5 - Extension of Carbon Covenant	X	
E6 - Extension of Plantation Interest	X	
L1 - Lease	X	
L2 - Sub Lease	X	
M1 - Mortgage	X	
M2 - Charge	X	
Memorial - Section 44F of the WSL Act		
Withdrawal of Memorial - Section 44F of the WSL Act		
Memorial - Contaminated Sites ACT 2003 Section 58(1)	X	
Memorial - Contaminated Sites Remediation Required	X	
Memorial - Contaminated Sites Notice Under Part 4	X	
Memorial - Contaminated Sites Charge	X	
Withdrawal of Memorial Contaminated Sites ACT 2003	X	
N1 - Notification Under Section 70A	X	
N2 - Removal or Modification of Notification Under Section 70A	X	
Notification Under Section 165 of the P&D Act		
Withdrawal of Notification Under Section 165 of the P&D Act		
Notification - Section 180 of the P&D Act		
Withdrawal of Notification - Section 180 of the P&D Act		
Notification - Section 181 of the P&D Act		
Withdrawal Notification - Section 181 of the P&D Act		
NA1 - Notification to Amend Address - Qualified Witness required		
Notification - Environmental Protection Act 1986		
Revocation of Memorial - Environmental Protection Act 1986		
Revocation of Notification - Environmental Protection Act 1986		
Amendment of Notification - Environmental Protection Act 1986		
P1 - Power of Attorney	X	
EPA - Enduring Power of Attorney Coversheet		
S1 - Surrender of Lease	X	
S4 - Surrender of Plantation Interest	X	

S5 - Surrender of Carbon Right	X	
S6 - Surrender of Carbon Covenant	X	
SC - Search Certificate	X	
SO - Stay Order	X	
T1 - Transfer of Land	X	
T2 - Transfer of Land with additional pages	X	
T3 - Transfer of Mortgage Charge or Freehold Lease	X	
T4 - Transfer of Land by Mortgage	X	
T5 - Transfer of Land (Sale for Rates)	X	
T6 - Transfer of Profit a Prendre	X	
T7 - Transfer of Land Under Under Property (Seizure and Sale) Order	X	
T8 - Transfer of Mortgage, Charge, Lease etc Under Property (Seizure and Sale) Order	X	
T9 - Transfer of Land (Revestment for Non Payment of Rates)		
T10 - Transfer of Plantation Interest	X	
T11 - Transfer of Carbon Right	X	
T12 - Transfer of Carbon Right and Carbon Covenant	X	
AW - Transfer of Land Act 1893 as Amended	X	
TP1 - Tree Plantation Agreement	X	
V1 - Variation of Tree Plantation Agreement	X	
V2 - Variation of Carbon Covenant	X	
W1 - Withdrawal of Caveat	X	
B2922 - Withdrawal of Memorial	X	