

## Title Registration Services Customer Information Bulletin

Edition 91 October 2005

### Certification of company searches - an update

In *Customer Information Bulletin Edition 90* (May 2005) customers were advised of a new form of certification required on a company search.

Current Land Registry practice requires every page of the search to be certified.

In addition, Land Registry will now accept the certification on the front page only of a copy search, provided the certification refers to the total number of pages in the document and each page is numbered, so that the total number of pages corresponds with the certification.

The revised form of certification required is as follows:

*I certify that I have obtained this company search certificate comprising (number) pages from ASIC or its authorised broker and that the content has not been altered in any way.*

*{Signature}*  
*Current Practitioner for {Transferor, Mortgagor, etc.}*

*(Strike out the words "Current Practitioner" if not applicable).*

*Name:*

*Address:*

### Notices to caveators

Customers are reminded that when a caveat is recorded on a folio under Section 89 *Transfer of Land Act 1958*, notices to the caveator are not sent in respect of all subsequent dealings.

There are a range of dealings lodged against a folio on which a caveat is recorded that do not result in notice being sent by Land Registry to the caveator.

These include:

- A dealing which does not effect a disposition ie a change in ownership (dispositions include transfers, mortgages and leases). For example, an agreement under Section 173 *Planning and Environment Act 1987*, a land tax charge or another caveat;
- A Transfer or other disposition described in Section 90(1) *Transfer*

*of Land Act 1958*, such as a transmission (under Section 49, 50 or 51), a dealing authorised by the caveat or a dealing expressed to be subject to the rights of the caveator.

**Land Registry practice is to send notice to a caveator only in circumstances where a lodgement will trigger the lapsing provisions contained in Section 90(1) of the Transfer of Land Act. If the lodgement will not result in the caveat lapsing, either in whole or in part, Land Registry does not send notice to a caveator of the lodgement.**

If a customer has lodged a caveat and is concerned to be aware of all lodgements affecting a relevant folio, regular searches of the folio should be undertaken.

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## Statutory Declarations and statements of Witness Qualification

The *Evidence Act 1958* sets out a list of persons authorised to witness Statutory Declarations by referring to specific occupation/qualification classes. It is important for Land Registry to be able to establish that a witness to a Statutory Declaration is an authorised person.

A witness to a Statutory Declaration should ensure that his/her occupation/qualification class is set out

in the declaration clearly and sufficiently so that the qualification of the witness is apparent from the document. Abbreviated expressions may suffice, provided they are well understood.

If a witness' qualification is not clear, a refusal or requisition may be referred to the lodging party, to the effect of the following:

'It is not apparent that the witness to the Statutory Declaration is an authorised witness under the *Evidence Act 1958*. The qualification of the witness must be established. Alternatively, a fresh declaration, witnessed by an authorised person and containing the same proof, may be produced.'

## Confirmations

### Confirmation of the acts of an Attorney under Power

In both the Law Institute Journal and the Property Law Bulletin of August 1992, an article appeared concerning the confirmation of a dealing which contained some deficiency in execution.

For the benefit of customers, the following is a re-publication of that article, updated as necessary to accommodate contemporary practice.

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Land Registry may refuse or requisition a dealing for lack of authority where an act, such as the execution, is done on behalf of a person by another who is not the attorney of the first, or where the act is done by the attorney which exceeds the power given to him or her in the Power of Attorney. A confirmation of the dealing may facilitate registration.

Provided the act is one that is capable of being delegated to the person who acted as the attorney and the person intending to confirm would have the power to delegate in the first place, Land Registry will regard a confirmation as curing the defect in authority.

Confirmation is not available to a principal who is a trustee, a tenant for life or a statutory owner unless the principal can bring himself or herself within the provisions of Sections 28 or 30 of the *Trustee Act 1958*. It is also not available to a company where the act is beyond the company's Constitution.

A confirmation in the following or in similar form would be satisfactory if it appears at the foot or on the reverse of a Land Registry photocopy of the lodged instrument:

'I, (insert name) of (insert address) hereby confirm my prior purported execution of the (insert nature of instrument, document or dealing) lodged in dealing number (insert dealing number) of which the above (or reverse) is a true copy.'

The confirmation should be dated and then attested by the principal in the presence of a witness, who should also sign. If the principal is a company, the confirmation should be executed in accordance with Section 127 of the *Corporations Act 2001* (Commonwealth).

Other forms of confirmation that do not use a photocopy as their basis may

also be acceptable. However, any other form of confirmation must clearly demonstrate that the principal has full knowledge of the act to be confirmed and that he or she unequivocally adopts it in the light of that knowledge i.e. details of the dealing should be set out in the confirmation sufficient for Land Registry to identify it.

For example, in the case of a Transfer, an acceptable confirmation must at least contain a statement of the parties, a full description of the land affected, details of the consideration, the date and the dealing number (if applicable). In the case of a mortgage, details required would be the amount of the principal sum, the rate of interest, details of all conditions, the date and the dealing number (if applicable).

In all cases, it must be clear that the principal is aware of, and is thus confirming, all matters agreed to by the attorney in the specific instrument, document or dealing that was signed by the attorney.

## Annexure Pages in dealings lodged

Customers are reminded that when there is insufficient space for all the required information in any panel of an Approved Form, an approved A1 Annexure Page(s) must be used for the additional information.

Please refer to the instructions on use of the A1 Annexure Page in the Land Registry Lodging Book 3rd Edition, SECTION 2 - APPROVED FORMS PAGE 4.

Each approved A1 Annexure Page must be properly identified by completing the Identification Panel and be signed by all the parties to the instrument.

## Dealings by Insolvent Companies

### Dealings by companies in liquidation or where an administrator, controller or receiver and manager has been appointed

In dealings with land by a company no longer under the control of its Board of Directors, special attention should be given to Land Registry requirements. Specifically, the requirements apply to companies that are in liquidation, under administration or where a receiver and manager or controller has been appointed.

Frequently customers overlook these requirements and their dealings become the subject of refusal or requisitions. If customers are dealing with companies in these circumstances, they should ensure they can provide evidence to satisfy Land Registry requirements. Please note that, even with the required evidence, all such dealings will be subject to examination in the usual way.

The requirements are set out below:

1. In the case of a company to which an Administrator, Controller or Receiver and Manager has been appointed, proof by Statutory Declaration is required:
  - (a) as to the appointment and the date of the appointment;
  - (b) as to who was/were the person(s) so appointed and, if more than one, whether or not they were appointed jointly or severally;
  - (c) that the appointed person(s) was/were still acting in such capacity when this instrument was executed, stating the date of execution;

- (d) that the Court Order or instrument pursuant to which the appointment was made (stating which and the date thereof) does not limit the powers of the appointed person(s) to enter into the transaction to which the dealing gives effect; and
  - (e) that the transaction giving rise to the dealing was made in connection with the carrying on of the business of the company.
2. In the case of a company in liquidation, where the dealing is not a distribution in specie of the company's assets, proof by Statutory Declaration is required:
  - (a) as to the appointment and the date of the appointment;
  - (b) as to who was/were the person(s) so appointed and, if more than one, whether or not they were appointed jointly or severally;
  - (c) that the appointed person(s) was/were still acting in such capacity when this instrument was executed, stating the date of execution; and
  - (d) that the Court Order or instrument pursuant to which the appointment was made (stating which and the date thereof) does not limit the powers of the appointed person(s) to enter into the transaction to which the dealing gives effect.

3. In the case of a company in liquidation, where the dealing is a distribution in specie of the company's assets, proof by Statutory Declaration is required:
  - (a) as to the appointment and the date of the appointment;
  - (b) as to who was/were the person(s) so appointed and, if more than one, whether or not they were appointed jointly or severally; and
  - (c) that the appointed person(s) was/were still acting in such capacity when this instrument was executed, stating the date of execution;
  - (d) that the Court Order or instrument pursuant to which the appointment was made (stating which and the date thereof) does not limit the powers of the appointed person(s) to enter into the transaction to which the dealing gives effect;
  - (e) of the names of all shareholders in the company;
  - (f) that there are no debts owing by the company;
  - (g) that all the shareholders have received the assets agreed upon;
  - (h) that the distribution is being effected in accordance with the provisions of the Constitution or that the Rules make no provision regulating or restricting the distribution of the assets of the company on winding up.

## Legal Profession Act 2004

The *Legal Profession Act 2004* replaces the *Legal Practice Act 1996* in Victoria.

Under the new Act, which is to come into operation on 12 December 2005, there are a number of terms used to define local and interstate lawyers and legal practitioners.

Generally, most practitioners dealing with Land Registry will be sufficiently covered by the expression Australian Legal Practitioner, which is defined in the Act as "an Australian lawyer who holds a current local practising certificate or a current interstate

practising certificate." [Section 1.2.3 *Legal Profession Act 2004*].

This change is consistent with a purpose of the new legislation - to facilitate the regulation of legal practice on a national basis across state and territory borders.

Specifically, by providing a system for the issue of local practising certificates, the new Act will facilitate the national practice of law by ensuring that Australian legal practitioners can engage in legal practice in [the Victorian] jurisdiction.

From now, an acceptable description, to appear with a signature of a lawyer in applications and dealings under the *Transfer of Land Act 1958* and associated Acts, will be "An Australian Legal Practitioner within the meaning/under the *Legal Profession Act 2004*" or words to that effect.

## Tenancy in common in unequal shares

Land Registry's practice is to express any tenancy in common in unequal shares as a proportion of shares: eg, 'AB as to 1 of a total of 4 equal undivided shares and CD as to 3 of a total of 4 equal undivided shares'. Percentages are not used.

Customers preparing Transfers are referred to the examples set out in the Land Registry Lodging Book 3rd Edition SECTION 1 - GENERAL INFORMATION PAGE 13. Share proportions in a Transfer should not be expressed as percentages.

## Considerations in Transfers

Any Transfer presented to Land Registry with the consideration 'to rectify an error' should include or be supported by a written explanation of the error.

The explanation may be contained in the 'Consideration' panel of the Transfer or in a separate letter from the lodging party. Examples are set out in the Land Registry Lodging Book 3rd Edition in SECTION 1 - GENERAL INFORMATION PAGE 12.

When the Consideration in any Transfer is expressed as:

- 'to rectify an error'; or,
- 'Pursuant to an Agreement made between etc' (or similar words); or
- 'Entitled in Equity' (or similar words),

**and** duty has been paid on the document, the dealing will be refused.

The lodging party will be requested to confirm whether there was any monetary component in the consideration for the Transfer, to amend the Consideration accordingly and to pay the correct lodging fee.

## Registration Notification Report

From 20 September 2005, Land Registry is providing customers with a registration notification report.

The report is being provided to customers who lodge a dealing where:

- the processing date is later than the lodgement date; and

- the Certificate of Title is 'Made Available' and will not be issued to the lodging party, or

- the Certificate of Title is not required for the dealing (eg: a caveat).

The report is issued to customers on the day following processing of the dealing.

The report is intended to improve customer service and reduce the number of customer enquiries on the progress of dealings.

## Customer Information Bulletin on email

If you'd like to receive the *Customer Information Bulletin* electronically or to unsubscribe, send your request to Nancy Mazza via email

**nancy.mazza@dse.vic.gov.au**, or telephone (03) 8636 2812, or fax (03) 8636 2250.

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