

Bulletin No. 105
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Customer Information

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1. Removal of Single Dwelling Restrictive Covenants

The mechanism has changed under which a single dwelling restrictive covenant that benefits more than ten (10) lots is extinguished, discharged or modified by way of an Order made by the Supreme Court of Western Australia under section 129C (1) (a) and (c) of the *Transfer of Land Act 1893*.

The new mechanism will apply as from 1 June 1999 following amendments contained in the *Transfer of Land Amendment Act 1999* ("the Act") and the *Transfer of Land Amendment Regulations 1999*.

A single dwelling restrictive covenant is defined under the Act as a "*restrictive covenant that prohibits the construction of more than one dwelling on the lot burdened by the covenant*". The burdened lot is the one upon which the restriction is placed. The benefited lot is the one for which benefit or advantage the restriction is placed.

Currently, every time a landowner applies to the Court under section 129C of the TLA for an Order to remove a single dwelling restrictive covenant, other residents who oppose a change and wish to maintain the existing single dwelling status may be required to incur costs and time in the Supreme Court defending the integrity and character of their neighbourhood.

The amendments aim to address some of these problems by giving more weight to the views of residents who own nearby land with the benefit of a single dwelling restrictive covenant.

The onus is now placed upon the landowner who wishes to change the single dwelling covenant to satisfy the Court that they have obtained written consent to do so from those most likely to be affected by the change.

Written consent must be given before the Supreme Court may consider an application to extinguish, discharge or modify a single dwelling restrictive covenant that benefits more than ten (10) lots.

The written consent must be obtained from 51% of lots with the legal benefit of a single dwelling restrictive covenant. These lots must be located within the "prescribed area". The registered proprietors of these lots and also their mortgagee or chargee, whichever is first in order of priority, must provide the written consent.

The Supreme Court cannot decide to make an Order to extinguish, discharge or modify a single dwelling restrictive covenant unless it is satisfied that the required consent has been obtained.

The landowner who wishes to remove a single dwelling restrictive covenant is responsible for requesting and obtaining those written consents. Please use the 2 special forms for consent as approved by the Registrar of Titles called respectively "Notice to Proprietor Under Section 129C(1a) of the TLA" or "Notice to Mortgagee/Chargee Under Section 129C (1a) of the TLA. Manager Examination Section, Registration of Interest may be contacted on 9273 7348 for information regarding forms.

The "prescribed area" mentioned above is determined by a circle formula in the Regulations. It is defined on the basis of the proprietorship of lots with the benefit of a single dwelling restrictive covenant located inside a circle of a certain distance from the lot from which the covenant is required to be removed.

The objective is to request consent from proprietors and from their first mortgagee or first chargee of about 200 or more benefited lots, located inside the prescribed area. However, the circle formula recognises that irrespective of the size of the circles, there may be cases where the number of benefited lots inside the circle is less than 200. A licensed surveyor who holds a current practising certificate must draw the circles to identify the affected lots.

In summary, under the Regulations:

- a circle with a radius of 250 metres from the centre of the lot that requests the removal of the single dwelling covenant is drawn; and
- the size of the circle is increased incrementally by 10 metres, until either at least 200 lots with the benefit of a covenant fall inside the circle or to a maximum radius of 270 metres, which equates to 3 circles.

The practical effect of these amendments is to make landowners who wish to remove a single dwelling restrictive covenant first obtain the support to do so from the majority of those who are most likely to be affected by such removal.

2. Name of Witness to Statutory Declarations

DOLA asks customers to ensure that the witness in a Statutory Declaration prints their name clearly under their signature. In some circumstances witnesses do not have to supply an address (Commissioner of Declarations) and a problem could arise if the witness needs to be contacted or verified.

3. Direct Access Phone Numbers on Bank Documents

Part of DOLA's commitment to quality customer service is to ensure that documents are processed as quickly as possible. If a minor error is detected in the examination process, the examiner may ring the responsible person to arrange for the error to be corrected. This practice enables the document to be registered without visiting the Stopped Documents Section. It is vital that a direct contact number is shown in the lodging particulars on the document. If easy access to a responsible officer is not available then the document will be requisitioned. Please help us to help you.

4. Blank Pages in Documents

In Bulletin No 74 the problem of blank pages in documents was highlighted but unfortunately the problem still exists. Some customers have complained about the amount of blank pages emerging from their fax machines when ordering searches of documents or titles. DOLA asks its customers who are preparing documents to ensure that blank pages are kept to an absolute minimum.

Your co-operation will assist in DOLA's scanning procedure and help other customers who order copies of your documents in the future.

5. Colour of Ink used for Signing Documents

From time to time customers are concerned if a document will be rejected because of the colour of the ink used to sign that document or the colour of a company seal or stamp. DOLA would prefer black ink to be used. The document will not be rejected as long as the signature is clear and it can be reproduced for searching purposes.

6. New Scale of Fees from 1 July 1999

Subject to the necessary approval of the Executive Council, a new scale of fees will apply from 1 July 1999. This fee change is continuing with the principle of cost recovery through fee for service. The same philosophy has been actively pursued for past fee reviews in accordance with the Government's cost recovery strategy.

This increase has resulted in the standard land transaction document lodgement fee rising by \$2.00 to \$66.00. Land information searching, microfiche and digital data fees will remain unchanged.

Western Australia's document lodgement fee still remains the third lowest of all Australian States.

The Amended Regulations are expected to be printed in the Government Gazette on the 18 June or 25 June 1999 and may be obtained from the State Law Publisher at 10 William Street Perth (93217688).

Attached is a ready reckoner for calculating Transfer Registration fees, for your assistance.



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