

CUSTOMER INFORMATION**BULLETIN**

OFFICE OF TITLES



DOLA

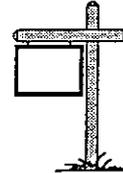
Department of LAND ADMINISTRATION

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TRANSFER BY A MORTGAGEE EXERCISING A POWER OF SALE (Continued from Bulletins 52 and 54)



The statutory declaration in support of the Transfer exercising the power of sale is best made by the registered mortgagee, but may be made by the mortgagee's solicitor or agent who must then declare his/her means of knowledge for the statements made in the declaration to the satisfaction of the Registrar.

If the mortgage is granted to a number of mortgagees, the statutory declaration must be made by each of the mortgagees. If the mortgage is made to a bank or a corporate body, the statutory declaration must be made by a responsible officer for and on behalf of that bank or corporate body, who must declare that he/she has the authority to make the statutory declaration on behalf of the bank or corporate body and means of knowledge.

The statutory declaration must state:

1. The identity, authority and means of knowledge of the declarant.
2. That a default (clearly specified in the notice or demand in writing) under the terms of mortgage has occurred - i.e.
 - (a) default in the payment of principal or interest (or both) and the date of default; and/or
 - (b) failure to perform or observe the mortgagor's covenants in the mortgage setting out the default complained of and the date of default;

That, in accordance with the terms of the mortgage, notice to remedy the default or demand to re-pay the monies secured was made on (date) and the default complained of has continued for one month or such other period specified in the mortgage in accordance with Section 106 of the Transfer of Land Act after the service of a notice of the default;

3. That the notice stated that unless the default was remedied within the time referred to above, that the mortgagee may exercise the mortgagee's power of sale;
4. That the default complained of continued up to and including the date of sale;
5. That the default notice or demand in writing had been properly served in accordance with s.106 of Transfer of Land Act by either giving such notice to the mortgagor, or by leaving such notice on a specified, conspicuous place on the mortgaged property at (address) or by posting or serving such notice to the then proprietor of the mortgaged property at the proprietors address appearing in the register book.

It should be clear from the statutory declaration that the notice to the mortgagor clearly sets out the nature of the obligation imposed by the mortgage and the consequences for not complying with these obligations.

If the statutory declaration does not clearly include the above, evidence supporting that statutory declaration will be requested. This evidence may include copies of the demand in writing or default notice and evidence of service complying with s. 106 of the Transfer of Land Act.

In checking the dealing, DOLA examiners ensure that the mortgagor has been strictly afforded the opportunity to remedy the default and retain ownership of the land. The checks that are made include:

1. Determining whether the mortgage is a demand or terms payment mortgage.
2. Ascertaining if the mortgage contains provisions setting a term for the continuance of default before a notice to remedy may be issued.
3. Whether the text of the notice, or contents of the notice, are set out in the mortgage. (If so, the declaration should state that the notice was in the form required by the mortgage, or the examiner may requisition a copy of the notice).
4. The default period set out in the document, after which the power to sell arises.
5. Whether the notice provisions in the mortgage, by setting a delivery time for notices, have the effect of extending the starting point for the default period.
6. That the sale (as evidenced by the details of the offer and acceptance) did not occur before the expiration of the default period.
7. That notice was either posted, served or affixed in accordance with s.106 of the Transfer of Land Act notwithstanding the existence of section 528 of the Companies code (now Section 220 of the Corporations Law).
8. While a number of Australian cases have discussed what constitutes effective service upon a company a mortgagee must strictly comply with the Transfer of Land Act if the mortgagee intends to exercise powers of sale in accordance with the Act.

AMENDMENT TO CUSTOMER INFORMATION BULLETIN No. 54

An error in the Power of Sale section of Customer Information Bulletin No. 54 has been noted. The last sentence in that section which reads:

"It must also be noted that, although many demand mortgages call for payment immediately or forthwith, in practice a period of at least one day must be given (and clearly specified in the notice)".

should be amended to read as follows:

"It must also be noted that, although many demand mortgages call for payment immediately or forthwith, in practice a period of **at least one day must be allowed before a mortgagee exercises its power of sale**".

This period of at least one day need not be specified in the notice. However, to enable the Registrar of Titles to be satisfied that the requirements of Sections 106 and 107 of the Transfer of Land Act have been complied with, as normally occurs, the Registrar requires that a minimum period of at least one day elapses before a mortgagee exercises its power of sale pursuant to the demand notice.



SPECIAL APPRECIATION TO OUR CLIENTS

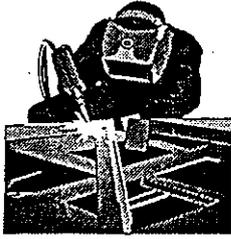
Staff of the Land Titles Division would like to thank all their Clients for their patience and support during the problems recently experienced with our computer system.

We know the situation has been extremely frustrating for everyone (ourselves included!), and we have been working hard to fix the problem and clear the backlogs which have developed.

The problem seems to be a flaw in DOLA's Customer Accounting System software which has caused the computer to block our users or to run very slowly. DOLA computer staff have applied temporary corrective measures, and are working overtime to achieve a permanent solution. In the meantime, Land Titles staff have worked frequent overtime to process the accumulated search requests and dealing registrations.

We are aware that many Clients are experiencing delays and being inconvenienced; please accept our sincere apologies.

Once again, thank you for your patience and understanding throughout this episode.



FREEHOLD MINI PLAN COPIES

As a result of persistent representation from the surveying profession at recent DOLA industry liaison forum meetings regarding the illegibility of Mini Plan copies produced by the Register 2000 Image System, software enhancements have been made in an attempt to overcome the problem.

All Copies of Mini Plans are now produced in two A3 size sheets with a 10% overlap. This has greatly improved the legibility of copies but is still not a perfect solution. It was critical that this was implemented quickly, particularly with Early Issue Plans where there is no lot detail in field books.

Further enhancements are being considered by the Department to give the option of providing either a single copy A4, the A3 sheet, or split double A3 of copies of Mini Plans. Clients will be invited to submit options of the various formats that they deem essential. The options supplied will be evaluated after the Department moves to Midland.

In addition whenever dealings for new titles are lodged or statutory amendments are required, duplicate Mini Plans are removed from file, updated and re-scanned on a constant and ongoing basis. Newer methods and better quality control is cleansing and improving the legibility of the scanned Mini Plan images.

IN ORDER FOR DEALINGS ENDORSEMENTS ON SURVEY PLANS AND DIAGRAMMS

All Freehold Survey Plans and Diagramms are endorsed in order for dealings as advised in Customer Information Bulletin No. 54, dated February 18, 1993.



A Plan being placed "in order for dealings" however does not mean that titles will issue automatically upon application. The "in order for dealings" status may be subject to various legal restrictions which may require complex legal and conveyancing solutions. Lawyers and Settlement Agents are advised to check conditions carefully and comply with them or encounter delays and the likelihood of documents being stopped.

Some conditions such as Section 295 (5) of the Local Government Act and Section 20 A, 27A, 28(2) and 28 (3) of the Town Planning and Development Act automatically take effect upon lodgement of dealings.

There are some conditions however that take considerable time and legal work to complete.

Some examples of these are:

1. Closure and inclusion of public roads.
2. Surrender of rights and closure and inclusion of private roads and rights of way.
3. Inclusion of Vacant Crown Land.

Clients are urged to attend to these matters early in the land development process in order to overcome processing delays when applying for Certificates of Title.

G. H. Sach
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Land Titles