

# Customer Information

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- A. Registrar's Practice Note No. 3  
Strata Companies
  - 1. Easements and Restrictive Covenants

### 1.1 General

Easement and Restrictive Covenant documents executed in respect of strata/survey-strata schemes are subject to the normal requirements. However, some issues that have caused problems are discussed in the following paragraphs.

### 1.2 Strata Companies Do Not Own the Parcels in Strata/Survey-Strata Schemes

Although a strata company may execute a document in accordance with section 20(1) of the Strata Titles Act creating easements or restrictive covenants, it does so as the representative of the registered proprietors of the lots (and common property). The strata company does not own any lots or common property. Ownership of the parcel is held by the registered proprietors of the lots (sections 17 and 4(4)).

If the ownership of all lots in a strata/survey-strata scheme is identical to that of another parcel of land then the two parcels are held in the same ownership.

In accordance with common law principles, easements and restrictive covenants can only be created when the dominant and servient tenements are in separate ownership. Easements or restrictive covenants created on subdivisions under Part IV A of the Transfer of Land Act or section 5D of the Strata Titles Act are statutory exceptions to that principle.

Registration of a transfer of at least one strata/survey-strata lot to another person is one way of breaking the unity of ownership.

It has been a common practice for a strata company of one parcel of land to execute an easement or restrictive covenant document with the owner of another parcel of land, where the owner of the second parcel is the owner of all lots in the strata/survey-strata scheme. That is, the parcels are held in the same ownership.

DOLA will only register those documents which are lodged for registration before the expiration of one month from the date of this Bulletin. Documents lodged after that date will result in a requisition requesting withdrawal.

### **1.3 Execution of Easement and Restrictive Covenant Documents by Strata Companies**

Any easements or restrictive covenants under section 20 of the Strata Titles Act can only be executed by the strata company pursuant to a unanimous resolution. See Item 2.

It has been a common practice to lodge easement and restrictive covenant documents purportedly executed by a strata company with the application for registration of the strata plan. For the reasons discussed at Item 2, that is an incorrect practice.

DOLA will only register those documents which are lodged for registration before the expiration of one month from the date of this Bulletin. Documents lodged after that date will result in a requisition requesting withdrawal.

### **1.4 Execution of Easements and Restrictive Covenants by Proprietors of Proposed Strata/Survey-Strata Lots – with Proprietors of Land Outside the Scheme**

The formalities of execution by strata companies of documents creating easements or restrictive covenants means that such documents cannot be lodged with applications for registration of strata/survey-strata plans.

Grants or acceptance of grants of easements and restrictive covenants between the owner of a proposed strata/survey-strata plan and the owner of another property can be made by reference to an annexed copy of the proposed strata/survey-strata plan and registered before the strata/survey-strata plan is registered.

### **1.5 Easements in respect of “Encroachments” (Including Easements Of Support)**

Section 22 of the Strata Titles Act 1985 provides that an appropriate easement for “encroachments” of part of a wall or building or material attached thereto, must be granted before the certificate by the licensed surveyor is completed. Accordingly, such grants of easements can never be executed by the strata company.

One of the appropriate easements is an easement of support, for which a simple model is set out in Example 10 in Appendix A of the Practice Manual. Persons considering using the model should examine it carefully to ensure that it is the type of easement required and that it satisfies all their needs. They should obtain legal advice before using the model.

It may be more appropriate to effect a subdivision which adds that part of the adjacent lot subject to the "encroachment" to the parcel.

Easements in respect of "encroachments" must be executed and dated prior to the date of the licensed surveyor's certificate (Section 22 (i) (c) (iii)) and must be lodged for registration before the application for registration of the strata plan.

In the case of an easement for support from part of a wall or building on the servient tenement, the easement document must be lodged with, but preceding the application for registration of the strata plan.

It is understood that it has been a common practice for easement documents in respect of "encroachments" to be prepared after the licensed surveyor has given a certificate under section 22.

All those strata/survey-strata plans lodged within one week after the date of this Bulletin that have certificates that are issued before the date of the "encroachment" easement will be stopped and a requisition served for the surveyor to re-execute the certificate.

## 2. Execution Of Documents And Changes Of By-Laws By Strata Companies - For Which Unanimous Or Special Resolutions Or Resolutions Without Dissent Are Preconditions

A unanimous or special resolution or resolution without dissent can only be achieved at a duly convened general meeting of the strata company of which the requisite notice specifying the proposed resolution has been given. See the definitions of "unanimous resolution", "special resolution", and "resolution without dissent" in section 3(1) of the Strata Titles Act.

A strata company can generally only pass the above three types of resolutions and any resolution necessary to authorise execution of relevant documents and execute such documents, at the earliest, on the 16<sup>th</sup> day after registration of the strata/survey-strata plan (registration date is counted as day one).

However, in the case of unanimous resolutions, if Schedule 1 by-law 11(5) has been modified by a management statement (section 5C and 42) to provide for a lesser period than 14 days notice then that shorter period will, in some cases, be applicable.

Accordingly, notifications of changes of by-laws and any other documents executed by a strata company and lodged or dated before the 16<sup>th</sup> day after registration of a strata/survey-strata plan will, if any of the above types of resolutions are applicable, be stopped and requisitions issued.

Where it appears unlikely that service of the relevant notice could have been effected within the time available (eg, interstate and overseas proprietors) and still provide 14 clear days notice, documents lodged or dated on or shortly after the 16<sup>th</sup> day after registration of a strata/survey plan may also be stopped and requisitions issued.

Notices on Australia Post mail boxes as to expected delivery times provide an indication of periods that would be relevant.

## B. Practice and Procedures Regarding Change of Name Births, Deaths and Marriages Act 1988 (the Act)

On 14 April 1999, the Act was proclaimed and the *Change of Names Regulation Act 1923* was repealed.

Because of the repeal of the *Change of Names Regulation Act 1923*, a person will no longer need to change his or her name by deed poll or licence and register that deed poll or licence in an approved form with the Registrar of Births, Deaths and Marriages.

The Act provides a process and a form by which a person's name may be changed by registration of that name change under Part 5 and recorded in the Register referred to in section 49 (1) of the Act. The form is available from the Registry of Births, Deaths and Marriages and is titled "Application to Register Change of Name".

Under Section 36 of the Act a person is not prevented from establishing a change of name by repute or usage where the change is made **after the commencement of the Act**.

Where a person seeks to change his or her name on the Register maintained by the Registrar of Titles under the *Transfer of Land Act 1893* and is domiciled (ie. **permanently residing**) **within Western Australia**, a supporting statutory declaration must be lodged with the following evidence:

1. If the applicant is adopting his or her spouse's surname or a combination of both spouses' surnames as part of his or her name after marriage - a certified copy of the marriage certificate;
2. If the applicant is reverting to his or her birth name - a certified copy of his or her birth certificate.
3. If the person claims that his or her name was changed before 14 April 1999 - a registered copy of the deed poll or licence as required under the *Change of Names Regulation Act 1923*; or
4. If the person claims that his or her name was changed after 14 April 1999 -
  - 4.1 a certificate certifying the change of name particulars contained in the Register maintained by the Registrar of Births, Deaths and Marriages and issued by the said Registrar under section 57 of the *Births, Deaths and Marriages Act 1998*; or
  - 4.2 sufficient documentary evidence to satisfy the Registrar of Titles that the name has been changed by repute or usage.

Such documentary evidence should include:

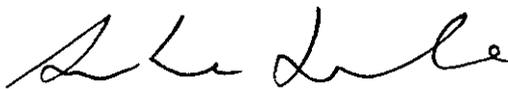
- (a) a statutory declaration stating the reason/s for the name change and setting out evidence of the use of the previous name and the circumstances that clearly establish that the new name has been acquired by repute or usage;
- (b) statutory declarations from at least two (2) persons who can normally witness a statutory declaration made in Western Australia as set out in the *Declarations and Attestations Act 1913* verifying that the applicant is known to

that person and that person has known the applicant both before and after his or her change of name. (For convenience, a list of those persons are set out on the back of the printed statutory declaration form - *Form B3*);

- (c) documentary evidence to establish the previous name of the applicant (eg. certified copy of birth certificate, certified copy of Australian citizenship, where available, current passport, or where the applicant acquired a name through marriage, a certified copy of marriage certificate); and
- (d) documentary evidence to satisfy the Registrar of Titles that the new name has been accepted and used over a reasonable period of time in at least two (2) of the following cases eg.
- Statements from rating authorities, financial bodies or public utilities;
  - Identification card/s issued by the Commonwealth, State or Territory as evidence of the person's changed name; or
  - Licences or permits issued under a written law.

Where the applicant is domiciled (ie. residing permanently) *outside* Western Australia, the law of the applicant's State (if within Australia) or country of *domicile* dealing with changes of names will need to be complied with.

Applicants who are permanently resident in Western Australia may prefer to obtain a certificate from the Registrar of Births, Deaths and Marriages certifying the change of name particulars in paragraph 4.1 for multiple purposes rather than providing the necessary statutory declarations and documentary evidence set out paragraph 4.2 to satisfy the Registrar of Titles of the change of name.



**GRAHAME SEARLE**  
**DIRECTOR, SERVICE DELIVERY**