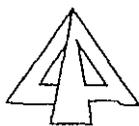


CUSTOMER INFORMATION BULLETIN



OFFICE OF TITLES

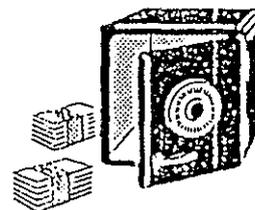
Department of LAND ADMINISTRATION

No. 52 — November 1, 1992

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A. INDEFEASIBLE TITLE



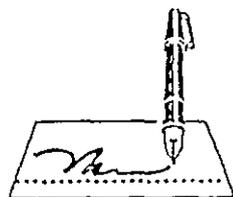
Under the Torrens System of Document Registration the subsequent Certificate of Title issued is guaranteed by the State Government to be correct. This fundamental principle provides a safe and secure environment for the citizens of this state to confidently conduct their land related business transactions.

A by-product of the Registration System is the collection and correlation of data pertaining to land ownership which is used to maintain the Tenure Base for the Western Australian Land Information System (WALIS).

Indices and reporting mechanisms are available from WALIS. Although the information is maintained at a high level it is not guaranteed by the State and is unable to be used for legal purposes. The WALIS information and its associated indices are used as a tool to ascertain the legal status of a parcel of land by identifying a title number.

If there is a discrepancy between various indices and reports generated by this Department compared to the information on the Certificate of Title then the information on the Certificate is always deemed to be correct.

If any discrepancies are identified, the Manager, Client Services Branch should be notified.



B. SIGNATURES

Printed name or variations of characters in lieu of a signature by parties to the document are acceptable by the Office of Titles when witnessed correctly. The Office of Titles will assume that the parties understand the document and have applied their normal signatures. If however any of the documents presented suggest a person did not understand the English language all documents should be consistent and bear an interpreter's clause within the attestation.

It is important to note the requirement that the witness certifies he or she saw the relevant party attest his or her name.

It is imperative that no doubt exists as to the authenticity of the witness. Witnesses to Transfer of Land Act documents must be persons who sign in the Western manner.



C. POWER OF SALE TRANSFERS

This area is complex, and it would be difficult to cover all the issues in one bulletin.

It is therefore proposed to cover this area by instalments over the next three bulletins.

Introduction

A mortgagee's power to sell arises as a consequence of an expressed or implied right to do so by virtue of:

1. s. 57 (1)(a) of the Property Law Act, where the mortgage, which must be a deed, has not been registered under the Transfer of Land Act (i.e. may have been registered in the Deeds Office); or
2. s. 108 of the Transfer of Land Act, where the mortgagor has defaulted in payment of the principal sum and/or interest or has defaulted in the performance or observance of any covenant, express or implied, in a mortgage that has been registered under the Transfer of Land Act.

A condition precedent to a valid exercise by a mortgagee of his power to sell is the service of a notice on the mortgagor. This notice must clearly specify the default complained of and provide the mortgagor with an opportunity to remedy the default within the specified time of one month as required by s. 108 of the Transfer of Land Act, or such other period as may be provided for in the mortgage.

The Transfer of Land Act also provides for a second form of notice to be served on the mortgagor in relation to "on demand" mortgages. There are two distinctly specific types of "on demand" mortgages:

1. Where the mortgage requires monies to be payable within a specific period. Failure to pay the monies within that period converts the mortgage into "a demand" mortgage where monies then become payable on demand.
2. Where the mortgage is "a demand" mortgage in the first instance and monies are payable on demand. In such a case, the mortgage usually requires that if the mortgagor pays within a specific period, the mortgage will refrain from issuing a demand notice calling up the principal sum and any interest outstanding.

In both cases s. 107 of the Transfer of Land Act provides that a demand in writing pursuant to the mortgage requiring all monies to be paid immediately, is equivalent to a notice in writing.

(To be continued)

D. QUALITY OF SURVEY PLAN PRINTS

The scanning of all historic documents into the Register 2000 system is nearing completion and the opportunity to review image quality can now be taken.

It has become apparent that due to their small size, and frequent large amount of detail, the images of some MINI PLANS of SURVEY can be improved. A maintenance programme to eliminate any poor images is underway.

While this is occurring, clients are requested to carefully check prints for clarity before leaving the Office. In the event of there being an unsatisfactory print, please contact the Supervisor of Freehold Graphic Band counter and a legible copy will be provided free of charge.

D Collins
A/Divisional Manager
Land Titles Division