SIG-05 Signing by an Incorporated Association

Version 2 - 21/11/2018

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1 Overview

Associations of persons who are incorporated under the Associations Incorporation Act 2015 have all the powers of a natural person to deal in real property. The one exception is where land has been granted/transfered by the State of Western Australia to an association for a specified purpose.

Such land may not be leased for more than 21 years or mortgaged without the written consent of the Governor or Minister as the case may be. The sealing clause, as laid down in the Articles of Association, should be used when an association executes an instrument creating or disposing of an interest in land.

2 Signing/Execution under Common Seal

An incorporated association may have a common seal which is the official stamp of the association. The common seal can only be used by those authorised to use it in accordance with the rules.

A common seal is the official stamp or ‘signature’ of an association. As a body corporate, an association is entitled to a Common Seal. The association must have a Common Seal if its rules require it to have one. The Act also requires the association’s rules to provide for the ‘custody and use of a common seal’.

An incorporated association may decide to use the common seal to execute contracts and other formal documents as the official signature of the association. It is good practice to limit the use of the common seal through the association’s rules by requiring that the stamp only be used if the committee formally resolves to ‘affix’ it to a document.
The rules should clearly indicate whether or not the association must use the common seal when executing contracts and documents. The fixing of the seal should be witnessed only by those who are authorised in the rules to witness the sealing of the document. Association rules usually require the sealing of a document to be witnessed by more than one officer bearer.

The Associations Incorporation Act 1987 (repealed) only provided for the affixing of a common seal when documents were to be signed. The Associations Incorporation Act 2015 now provides the option to sign with a common seal or without a common seal. Each incorporated association is bound by their constitution/rules when the organisation was created and should continue to sign documents as such.

Best practice is to affix and sign with the common seal and no questions will be asked if done so. Where the rules have been altered to provide for execution without a common seal, a copy of the constitution/rules should be presented with the transaction.

NOTE; The statutory declaration addressing who has authority to affix the common seal and duly sign legal documents is required regardless of the chosen execution, see below sample.

3 Examples of Signing/Execution Clauses

Where documents are executed with a common seal, the following form of execution is suggested as applicable to most corporations. The persons signing should show the position they hold in the company and print their full name under their signature

The Common Seal of XYZ Incorporated

was hereunto affixed in the presence of

Signature of President
(Print Full Name)

President

Signature of Secretary
(Print Full Name)

Secretary

Where documents are executed without a common seal, the persons signing should show the position they hold in the company and print their name under their signature

<table>
<thead>
<tr>
<th>Executed by XYZ Incorporated in accordance with the constitution in the presence of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature of President</td>
</tr>
<tr>
<td>(Print Full Name)</td>
</tr>
<tr>
<td>President</td>
</tr>
<tr>
<td>Signature of Secretary</td>
</tr>
<tr>
<td>(Print Full Name)</td>
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</tbody>
</table>
4 Evidence to support signing/execution of documents

In order to identify the persons executing the documents, the lodging party is required to produce with the instrument a statutory declaration by all the persons affixing the seal certifying or without the seal that, at the time the seal was affixed or signed, they were duly authorised to do so. An acceptable form of statutory declaration, which may be adapted to any particular case, is as follows: (modify as required if no seal is affixed).

MODEL DECLARATION - INCORPORATED ASSOCIATIONS

TRANSFER OF LAND ACT 1893

STATUTORY DECLARATION

I/We (name address and occupation of person or persons making declaration) do jointly and severally, sincerely declare as follows:

1. I am/we are (one of) the persons authorised by Rule ...... of the Rules of (name of incorporated body) the Association to affix or countersign the affixing of the Common Seal of the Association to documents.

2. The Association is the transferor and (here insert name or names of purchaser) is/are the transferee/s in a transfer dated of all that piece of land comprised in Certificate/s of Title Volumes/s Folio/s.

3. At the time I/we affixed or countersigned the affixing of the Seal of the Association to the said transfer, I/we was/were duly authorised to do so and I/we signed in the capacity of ....../, ...... and ........ respectively of the Association.

This declaration is true and I/ we know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made jointly and severally under the Oaths, Affidavits and Statutory Declarations Act 2005 at ................. (place) on ....... day of ........... 20...... by

Signature of person making the declaration

In the presence of

Signature of authorised witness (Print the full name, address and qualification below the signature of the authorised witness) Where two or more persons declare, then a separate attestation is required for each person.

5 Exemption from evidence requirement

A supporting statutory declaration is not required where the association is purchasing land or lodging a caveat.

All other documents should be supported by the declaration.

6 Masonic Lodges
Property in the name of a Masonic body, implies that the provisions of the Freemasons' Property Act 1956 have been adopted by that Lodge.

The Trustees of the Lodge are, by the passing of the resolution, and without the necessity of any other instrument or formality of incorporation, constituted a body corporate.

a) by such corporate name as is specified in the resolution

b) with perpetual succession

c) with a common seal

d) with power in the corporate name to acquire, hold, and dispose of real property

e) to authenticate documents with the affixing of the seal which is to be attested by at least two trustees.

Masonic Lodges that have not adopted the provisions of the Act are not shown on certificates of title as the proprietors. The land is only shown in the names of the private persons who hold the land as trustees for the Lodge. These bodies have to follow the usual rules - the attestation to be accompanied by evidence of their sealing clause as set out in their constitution, and a certificate of the trustees where appropriate.

The Trustees for the time being of individual Constituent Lodges are legal entities and as such are registered as the proprietors of the land in a particular area.

The constitution of The Grand Lodge of Western Australia of Ancient, Free and Accepted Masons contains Regulation 201 which states that should a Constituent Lodge be dissolved or become extinct then all the property of the Constituent Lodge shall be deemed the property of The Grand Lodge and shall vest in The Grand Lodge.

Execution of documents by a Masonic Lodge should follow the sample shown in the above paragraphs and be accompanied by the supporting statutory declaration.

7 Also see

- SIG-01 Signing of Documents