COT-03 Application for Lost Title

Version 4 - 28/02/2020

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This document is subject to the Verification of Identity Practice issued jointly by the Western Australian Registrar of Titles and Commissioner of Titles. Please refer to the VOI webpage.

1 Overview

Where a duplicate certificate of title has been lost or destroyed, an application may be made for the creation and registration of a new duplicate certificate of title pursuant to section 75 of the Transfer of Land Act 1893 (TLA).

Note: All of the registered proprietors should make a joint application. However, applications that are not made by all of the registered proprietors or by someone other than the registered proprietors(s) (eg mortgagees) may be acceptable under certain circumstances.

In the case of a paper title that cannot be converted to digital, the loss or destruction of the duplicate title will result in the creation and registration of a new certificate of title.

In the case of a digital title, or a paper title that can be converted, the loss or destruction of the duplicate title will result in the creation of a new edition of that duplicate title. A new title will not be created and registered.

Where the registered proprietor is deceased an application of this nature must be preceded by a transmission application. The application for the new duplicate title will then be made in the name of the executor or administrator.

Where one or two or more proprietors registered as joint tenants is deceased, a survivorship application must precede the application for a new duplicate title. The latter application will then be made in the name of the survivor, or survivors.

In the case of a paper title that cannot be converted to digital, the application should be made on a blank application Application for a New/Balance Title and must describe the land affected and request the creation and registration of a new certificate of title and the issue of a new duplicate certificate of title in lieu of that lost or destroyed.

In the case of a digital title, or a paper title that can be converted, the application should be made
on a blank application form (see Landgate’s Land titling forms page for a General Application e-form) and must describe the land affected and request the issue of a new edition of the duplicate certificate to replace the one that is lost or destroyed. ¹

¹[Section updated on 24/07/2019 to add link to Land titling forms]

2 Declaration in Support

The applicant is required to make a Statutory Declaration on a Statutory Declaration, detailing the history of the duplicate certificate as far as it is known. All applicants (and any other person who may have any knowledge of the history of the duplicate title) must provide a statutory declaration.

It is important to note that the Commissioner of Titles can only consider the issuing of a replacement duplicate title, based on the evidence and the facts set out in the statutory declaration/s provided with the application document.

Where one page of a statutory declaration is not sufficient to include all the facts, it is acceptable to complete a second or third separate statutory declaration page (as many separate pages required to state the facts). However, the clauses should be numbered in sequence and all pages comprising the statutory declaration will need to be separately signed and witnessed.

The statutory declaration must provide a statement for each and every dot point shown below:

- Identify the person who is making the declaration (for example ... 'I am one of the registered proprietors/owners');

- If the declaration is being made by someone other than the registered proprietor/owner, state the authority of the person making the declaration (for example ... 'I am a director of XXX company who is registered as the proprietor of ...');

- Identification of the property by its legal land description and volume/folio reference;

- The name of the registered proprietor(s) (owner/s) of the property;

- If the duplicate title was held by the applicant, confirmation of such and how and when it came into the applicant's possession;

- If the duplicate title was not held by the applicant, the name of the person or body that did hold it, how and when it came into their possession and the reason that person or body cannot now produce the title (the person or an officer of the body formerly in possession of the duplicate title must, by statutory declaration, confirm the facts recited and include what searches were made for the duplicate and negate its deposit for security);

- The name of the person or body that the title last issued to. A letter from that person or body must be produced with the declaration. The letter should state who they gave the title to, and confirm that the duplicate certificate of title is not in their possession.

- The name of the person presently in possession of the property and the nature of the occupancy;

- Where the duplicate title was usually kept and who apart from the applicant/s had access to that place. Any other person/s having access will also need to complete a statutory declaration providing their knowledge of the duplicate title and negate its deposit by way of lien or security from any form of loan or business agreement;

- That there is no person known to have or is likely to have the said duplicate title in their
possession;

- Detail what searches for the duplicate title were made and the result of those searches. A statement that "all reasonable enquiries" have been made is not sufficient;

- What enquiries were made of banks, accountants or other institutions and with what result. The original of any replies received must be produced with the declaration;

- That the duplicate title had not been deposited with any bank, firm or person by way of security for any lien or loan or for any other purpose;

- Where an Attorney is signing the Application using an Enduring/Power of Attorney on behalf of the Applicant, they must state their means of knowledge of the whereabouts of the duplicate certificate of title. What communication was had with the Applicant as to the Applicants knowledge of the duplicate certificate of title and what might the applicant had done with the duplicate.2

2[Paragraph updated on 28/02/2020]

- Where the Applicant is a company, it is acceptable for one of the directors to make the declaration, but they must include an additional clause stating that they make the declaration on behalf of all directors, they have full knowledge of the particulars, and all directors are aware of the Lost Title Application.

- Where the land has been sold under contract of sale or where money has been borrowed on its security and there is a caveat protecting such contract or loan (on the original title held by Landgate) a declaration from the caveator/s is required as to their knowledge of the duplicate title;

- Depending on the facts and circumstances of each case, additional statutory declarations may be required from third parties to establish some of the facts;

- A reference to the current original land rate notice or letter from the local government, produced with the declaration which identifies the property and indicates in whose name/s the property land is currently rated. (If it is not rated in the exact names of the registered proprietor (as shown on the original title held by Landgate), then an explanation clause must be inserted explaining the anomaly);

- Where the duplicate title is known to have been destroyed by fire, a reference to the letter of confirmation from Department of Fire and Emergency Services (DFES) (or fire authority if outside Western Australia) as to the facts;

- Where the duplicate title is known to be stolen, the declaration should state the Incident Number of the theft as record by the Western Australia Police.

Note: The application will not be accepted unless each of the above dot points have been adequately addressed in the statutory declaration.

If the application is made by a registered mortgagee, it is essential that the mortgagee's supporting statutory declaration includes the following information, in addition to the above points:

- It is clear that the mortgagee held the duplicate certificate of title until it was lost;

- It is clear that the duplicate certificate of title was lost by the mortgagee;

- The duplicate title was never sent to the mortgagor or to anyone else on the mortgagor’s behalf, such as their solicitor or settlement agent;
- The mortgagee has informed the registered proprietor/s that the duplicate title has been lost and a true copy of the mortgagee’s letter (not email) to the registered proprietor/s should be annexed to the statutory declaration;

- The registered proprietor/s confirms, in writing that they have never held the duplicate title. The original letter from the registered proprietor/s (not email) should be annexed to the mortgagee’s statutory declaration;

- Although in these circumstances, a statutory declaration from each registered proprietor may be dispensed with, Verification of Identity must be conducted in respect of the mortgagee applicant and each registered proprietor.

3 Evidence Required

In addition to the statutory declarations referred to in the preceding paragraph the applicant must produce the original notices or letters referred to in the declarations. It is irrelevant whether the rates have been paid, as the notice serves to supply corroborative evidence of ownership and occupation. If the local government issues rates notices digitally, then a print out of the notice will be acceptable.

4 Advertising of Application (Paper Title only)

When the Commissioner is satisfied that the duplicate certificate of a paper title has been lost or destroyed, a notice of intention to create a new duplicate is advertised in a newspaper published in the City of Perth or in the neighbourhood of the land.

The period of advertising is the statutory minimum of fourteen days after which a new certificate of title will be created, and a new duplicate issued. Where the duplicate certificate of a digital title has been lost or destroyed no advertising period is necessary unless required by the Commissioner of Titles.

If the former duplicate title that was lost, is found after the creation and issuance of a replacement, it should be returned to Landgate for cancellation. No fee or penalty will be charged.

5 Replacement of Duplicate Certificate of Title lost, damaged or destroyed as a result of an eligible natural disaster

Landgate is able to offer disaster recovery assistance to communities severely affected by eligible natural disasters, as proclaimed under the Western Australia Natural Disaster Relief and Recovery Arrangements (WANDRRA) (prior 1 November 2018) or listed as an Activated Event under the Disaster Recovery Funding Arrangements (DRFAWA).

The list of Activated Events for WA natural disaster is available at the Department or Fire and Emergency Services (DFES) website.

An eligible natural disaster may/can consist of damage derived from thunderstorms, flooding, storms, bushfire and damage caused by cyclones.

5.1 Instructions to Potential Applicants

Upon lodgement of an application to replace the duplicate certificate of title by the registered proprietors, the application and supporting evidence
will be assessed using the existing policy described above.

The Application should be supported by a statutory declaration and address the points set out in paragraph 2 above, with attention to the point regarding where a duplicate title has been destroyed by fire. Reference to the DFES incident number and a copy of the correspondence from the Department of Fire and Emergency Services confirming the extent of damage to the property.

This service will be provided at no cost to the applicant.

For more information on Disaster Recovery please see the DFES website or WANDRA website for disasters prior to 1 November 2018.

3[New section added on 28/02/2020]