REG-02 The Register

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1 Overview

The Register kept under the Transfer of Land Act (TLA) consists of one copy of each Crown Grant, Crown Lease, Crown land title and either a paper or digital Certificate of Title and every transfer and the original of any other instrument registered under the TLA (s.18, 48 and 52) and strata/survey-strata plans.

In relation to land that is the subject of a digital title the Register is also a (historical) record of the endorsements of the particulars of all relevant dealings that used to affect, but do not currently affect the land.

In relation to land that is the subject of a paper title the Register is also a record of the entries of recovery of possession and of surrender made in relation to a sublease of the land.

The Certificates of Title are created in the name of the registered proprietor for such estate as is named therein. The original certificate of title (and any pre-LAA Crown Leases) created is retained, as are the survey plans and diagrams, but at the end of 7 years most of the original documents (which have all been microfilmed or scanned into the optical disc image system) are destroyed. Transfers containing sketches are not destroyed.

With the introduction of the LAA, Crown Land Titles (CLT’s) are created and registered in the name of the State of Western Australia and leases of Crown Land are registered on the relevant CLT.

Every certificate of title, sealed with the seal of the Registrar of Titles in the manner provided in s.10 of the TLA, is admissible as evidence in all Courts without further proof. In practice the original is not produced in Court, a certified copy is produced and retained in the Court records.

2 The Present Physical Arrangement of the Register
All original certificates of title (paper titles) are filed as separate documents and an image of each title is held on optical disc. Microfilm copies of almost all documents lodged before October 1991 are held on roll film.

Copies of documents lodged after then are held on optical disc, as are all freehold surveys and strata plans. Crown surveys have been filmed (in colour) and produced as microfiche.

For security reasons, and to avoid damage or loss, the original documents are not usually available to the public for search purposes. Section 239(3) of the TLA authorises the Registrar to supply a print in lieu of producing the original. The search fee includes the cost of such a print.

Where it is essential that the original document be sighted, for instance where a reference is made to a section of the land indicated in a colour, arrangements to do so may be made at the Customer Centre in the Landgate building in Midland.

Members of the staff are required to use, where practicable, prints or photo copies of original documents.

All documents and instruments registered up to the end of 1962 are numbered consecutively by year according to their nature, e.g. there is a Transfer 1/1962, a Mortgage 1/1962, an Application 1/1962 and so on and they are filed in their respective categories.

From 1963 to June, 1967 the documents were numbered and filed consecutively as a progressive number followed by a year, e.g. 24687/67.

From July, 1967 continuous numbering and filing in the A series of documents began, e.g: A123456 and is continued through the B, C, D, E, F, G, H, I, J, K, L, M, and so forth, and all documents are now numbered in such alpha numerical series.

All documents, paper titles and surveys are recorded by filming or optical scanning following the initial registration process and are re-filmed or re-scanned following any later amendment.

3 Digital Titling System

Since 1992 Landgate has used image technology to provide its core searching services. These systems have been supported by a paper certificate of title and a paper based registration process for the recording of change in ownership and encumbrances. When a change is recorded on the original (paper) title, it is then scanned and stored on the image system, making it available for searching.

In June 1997, Landgate reviewed its future directions for moving into the electronic commerce environment. The key outcome was the need to establish a digital register that would provide the foundation for electronic commerce applications. This would allow conveyancers, in particular, to capitalise on the functionality already provided as part of the Electronic Advice of Sales system.

The options available to Landgate were either to develop its own digital register, or to acquire an existing system from another land Registry within Australia. A comprehensive investigation revealed that the New South Wales Integrated Titling System (ITS) appeared capable of meeting Landgate’s requirements.

ITS was redeveloped by Landgate into an automated title registration process suitable for Western Australia that supports a digital register in a text format with an associated survey plan. New Land Register (NLR) is an internal Landgate system to automate the recording of changes to interests
A major feature of the digital register is that now only current details are displayed and any superseded data is removed to an historical file that is still searchable. While there will no longer be (with some exceptions) paper original Certificates of Title created, paper duplicates will still be issued, if required.

4 Back capture of existing paper original certificates of title

To implement a digital register, it has been necessary to back capture the information on the pre-existing paper original certificates of title into the digital databases that now comprise the Register.

To ensure that all certificates of title the subject of current or future transactions have been converted to a digital title and ready for processing, the initial trigger for the conversion of titles has and will be the lodgement of a dealing.

The original paper title that is converted to digital is not cancelled. Once converted it will bear a superseded watermark. The title will not be removed from file or be marked subject to dealing.

The digital title uses the same Volume and Folio number as the paper title from which it was converted. The paper title becomes the previous version of the current digital title.

The format of paper titles not suitable for conversion to digital will, on cancellation, be changed to be similar to a Record of Certificate of Title produced by the digital system.

A certificate of title not suitable for conversion (at this time) includes:

- titles without a lot on survey land description

- part lots (this does not include balance lots which can be converted)

- titles that refer to Plans with sections

and

- titles that have a Lot number with fractions, under-numbers or suffixes.

5 National Electronic Conveyancing System

In 2008 the Council of Australian Governments (COAG) included in the National Partnership Agreement to Deliver a Seamless National Economy an initiative for the implementation in Australia of a National Electronic Conveyancing System (NECS).

NECS is a joint government and industry initiative to develop a legislative and business environment for the:

- Preparation and lodgement of registry instruments with Land Registrars electronically.

and

- Settlement of real property transactions electronically.
The objectives of this initiative are to:

- Provide a common electronic interface for conveyancing in all States and Territories.
- Deliver efficiencies throughout Australia in property conveyancing.

and

- Reduce the costs of property transactions.

NECS is being implemented through an Electronic Lodgement Network (ELN) provided and operated by an Electronic Lodgement Network Operator (ELNO). The ELN essentially provides a "hub" for the parties to a conveyancing transaction to electronically prepare and lodge the documents for registration at the Land Registry electronically.

The first ELN is being implemented by Property Exchange Australia Limited (previously known as National E-Conveyancing Development Ltd (or NECDL)) and is known as Property Exchange Australia (PEXA). Only approved Subscribers will be able to conduct conveyancing transactions through the ELN. It will not be accessible to the general public.

The ELN will also provide a mechanism for the electronic settlement of the financial aspects of a transaction.

Online Lodgement System (OLS) is Landgate’s technology solution to provide an interface between existing Landgate applications, e.g. NLR, the ELN and Landgate staff.

A council of the Registrars of all Jurisdictions has been established by the Intergovernmental Agreement to ensure a uniform approach to electronic conveyancing throughout Australia. Australian Registrars National Electronic Conveyancing Council (ARNECC) is responsible for implementing the legal framework for NECS and for promoting consistent business practices nationally between the Land Registries.

5.1 Legislation Key Components:

- Intergovernmental Agreement (IGA): Entered into by all States and the Northern Territory, committing to implement national uniform legislation, establishes ARNECC to oversee implementation of the legal framework and to work towards consistent business practices.

- Electronic Conveyancing National Law (ECNL): Passed in New South Wales, and adopted in Victoria, Queensland, the Northern Territory, South Australia and Tasmania. (The ECNL has been adopted in Western Australia (WA) as corresponding legislation, The Electronic Conveyancing Act 2014 with some minor amendments necessary to reflect WA’s statutory framework.)

- Model Operating Requirements (MOR): Developed by ARNECC and adopted as subsidiary legislation by Registrars of Title in each State and Territory. Sets out the requirements for an Electronic Lodgement Network Operator.

- Operating Agreement (OA): A contract made between an ELNO and the Registrar or, in the case of WA, Landgate. The OA incorporates the Operating Requirements as contractual terms.

- Model Participation Rules (MPR): Developed by ARNECC and adopted as subsidiary legislation by Registrars of Title in each State and Territory. These set out the rules on a Subscriber to an Electronic Lodgement Network.
6 How Changes in the Register are Caused

The object of conveyancing under the TLA is to secure the desired alteration to the Register (Title), using a statutory system of documentation. The most common types of document must be prepared on forms approved by the Registrar. (See Landgate’s approved Land titling forms.)

Some modifications of these forms, not being matters of substance, are permitted by s.238 of the TLA. All the above forms, together with the applications listed and other documents for registration for which no form is prescribed, must still be prepared to the standards laid down in the Transfer of Land Regulations 2004, published in the Government Gazette.

Changes in the Register may be brought about by:

- registration of a document expressed to create, transfer or extinguish rights in land

- registration as proprietors, pursuant to their application, of persons upon whom title has devolved by operation of law. An example is the application, commonly called a transmission application, by the executor or administrator of a deceased registered proprietor under s.187 of the TLA and

- applications requesting an order or direction by the Commissioner. Examples are vesting orders (sections 182 and 183 of the TLA), foreclosure orders (s.121 of the TLA) and a direction to remove easements (s.229A of the TLA) or covenants (s.129C of the TLA).

7 Importance and Order of Registration

The Register is all important. It is the act of registration of instruments which effects changes to the Register. People who neglect or fail to register their interest in land place themselves in a situation where they may lose their entitlement to the land or have their priority affected by an earlier registration.

Documents are normally registered in the following order:

- documents removing encumbrances

- documents effecting changes in the proprietorship of land

and

- documents encumbering the interest of the new registered proprietor.

Within that framework documents are registered in the order which gives effect to the intention of the parties. Where two documents are lodged and some doubt as to priority arises, e.g: a discharge and a transfer followed by two mortgages, the lodging party must determine the priority of the mortgages and mark the correct order on the coversheets for the mortgages.

The Registrar will register an instrument presented for registration in the order, and from the time, of its presentation. Instruments purporting to affect the same estate or interest have priority as between each other according to the time of registration. (s.53 of the TLA).

Note: Electronically lodged documents will be registered in the order listed on the Lodgement Instructions within the ELNO.
8 Priority of Registration

Priority of registration is achieved by the Registrar noting the day and hour when each document is presented for registration on the memorandum endorsed on the paper folium in the Register and on the face of the instrument itself. In the case a digital title, only the date of Registration appears on the Record of Certificate of Title. In practice each document is allocated a label printed with the document number, date, time lodged, fees and it is this action which establishes the time of registration.

Priority is lost when:

- the instrument is rejected under s.192 of the TLA

or

- the instrument is withdrawn from registration at the written request of the lodging party All documents are numbered consecutively and the number is used as an identifier for recording purposes. The number, in conjunction with the time and date lodged, establishes the priority of the instruments.

9 Priority of Registration - Computer Failure

The priority of a document is currently established by the electronic recording of the date and time. When the computer system which allocates the number, date and time fails, no documents will be accepted for registration.

The only exceptions to this rule are documents that were taken over the counter prior to the instruction from the Manager of Registrations Branch to stop processing documents (i.e. bulk lodgements by banks). As one component of the system issues numbers for lodgements in the Perth Office (Cloisters) and at the Landgate building in Midland, if lodgement ceases in one centre, it will also cease in the others.

When the computer systems become operational once again, documents will be registered in the usual way. Notices setting out these arrangements will be clearly displayed on the acceptance counters at the time of any computer failure.

10 Computer Record - Unregistered Dealings

A computer record of dealings in the process of registration is kept and is used to locate any such dealings required for search purposes.

The record also prevents Landgate from issuing to the public an outdated photocopy search of the relevant title. Access to the system and the information on it is available to members of the public who are enrolled as customers on the Remote Searching System. There is no charge for the information.

A manually produced photocopy of the documents in the process of being registered may be obtained by arrangement with the Customer Centre.

Note: In the case of a digital title, the Record of Certificate of Title (title search) has a section called Notes that contains information about any unregistered documents lodged against that
particular piece of land.

11 Followers

Follower is the term used to denote documents lodged for registration, which follow documents previously lodged but which have not yet been registered. The primary documents lodged are referred to as leaders.

The Follower documents may be lodged upon confirmation by Landgate to ensure that the leader dealing is still currently under the registration process.

If the follower document(s) requires the use of a duplicate title lodged with the leader dealing it must be accompanied by a letter (usually from the lodging party of the leader document) requesting the Registrar to register the follower dealing using the duplicate title produced in the leader dealing. The computer records the fact that there is a follower dealing in the system and issues a warning to the Titles staff of the existence of the follower when the leader dealing is completed.

The documents are accepted for registration in the normal manner and leader and follower dealings are amalgamated (where possible) during the examination process.

13 Also see

- REG-01 Background and History
- REG-04 Rectification in the Register and on Instruments (after Registration)
- REG-05 Service of Court Orders on the Registrar