TYP-01 Types of Title to Land

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1 Overview

Land in Western Australia is held by the Crown or in freehold. All land except freehold land is classified as Crown land, including reserved and leased Crown land, tidal waters, reclaimed land, river beds and lakes. Alienated land is land held in freehold. Also known as fee simple, it is the greatest estate that can be held by a person without being the absolute owner, which is the Crown.

1.1 Crown Grant

A Crown Grant is a title to land, where Crown land is transferred on behalf of the Queen (by her Western Australian representative, the Governor) to a person, company, statutory body or incorporated association. The grant may be made for a cash consideration or on the completion of certain developments that will benefit the State or for a mixture of both.

Every Crown Grant is subject to reservations to the Crown of the minerals in the land and the land grant is usually limited in depth, either to a depth of 12.19 metres or a depth of 60.96 metres (these limits are the metric equivalents of the imperial measurements of 40 feet and 200 feet).

Each Crown Grant also reserves to the Crown the right to resume - now called Taking under the Land Administration Act 1997 (LAA) - the land or to use part of it for the construction of public works.

Crown Grants created and registered in the name of the Commonwealth of Australia are unlimited in depth and do not contain mineral reservations or a right for the Crown (the State) to resume the land.

Community Service or religious organisations may have been granted land free of cost for specific purposes beneficial to the community. In this case, the land must be used only for that specific purpose and the Crown Grant was said to be a Crown Grant in Trust. When the land is no longer required for its stated purpose, it may be sold and the value of the land returned to the Government, leaving the value of the building on the land as the revenue to be returned to the
organisation.

1.2 Freehold Land

Most titles for freehold land in Western Australia were derived from a subdivision of land contained in an earlier Crown Grant and all titles derived from a grant are held subject to the same conditions as those listed in the grant.

With the introduction of the LAA, Crown Grants are no longer created and registered. Land alienated from the Crown is now brought under the Transfer of Land Act (TLA) by the lodgment and registration of a transfer after a settlement (similar to a Settlement of freehold land) has taken place. This will result in the cancellation of the Crown land title and the creation and registration of a certificate of (freehold) title.

Note: Even though Crown Grants are no longer created and registered, search copies of all those previously created and registered are available from Landgate.

2 Certificate of Title

An official document indicating ownership of land is issued in the form of a Certificate of Title. Issued in paper or digital format, the Certificate of Title provides a record of the ownership of a defined land parcel, and the lodged or registered interests or claims (encumbrances) against that ownership.

2.1 Paper Certificate of Title

Paper title means a certificate of title in a paper medium.

The paper original certificate of title (s.25, 48 and 66 of the TLA) constitutes a separate folium or page of the Register and the Registrar is required to record on it particulars of all instruments, dealings and other matters and, so as to preserve their priority, note the day and time of their registration (s.53 and 56 of the TLA).

The Registrar is also required to note on a certificate of title such information as will enable the title to be traced back to the original grant (s.72 of the TLA).

The essential matters included on a paper certificate of title are:

- the name and address of the proprietor of the estate in respect of which the certificate is created and registered
- the description of the estate or interest, e.g. an estate in fee simple or, where the estate or interest is less than fee simple, a description of that estate
- a sufficient description of the land comprised in the certificate
- encumbrances, easements, etc. to which the estate is subject
- a reference to enable the previous title or grant to be found
- the volume and folio number in the Register
- the date of its registration

and

- the seal of the Registrar of Titles.

Note: With the introduction of a digital register, a digital title is created in place of the former original certificate of title (a paper title) in most cases. Where possible, all original paper certificates of title in existence will be converted to a digital title.

Because some certificates of title are not suitable for conversion to a digital title, a paper certificate of title for some pieces of land will continue to exist.

2.2 Digital Certificate of Title

Digital title means a certificate of title in a medium in which the data comprising the certificate of title is stored and retrieved by digital means.

The digital databases become the certificate of title for a piece of land. The digital databases are the Register and persons will be searching the digital register and obtaining copies of the Register by receiving a Record of the Certificate of Title that is taken from the databases. The digital Register will comprise a digital record of the following five elements:

- Reference to the reservations, conditions and depth limits contained in the original grant, but not the specifics of the reservations, conditions and depth limits themselves.

- Land description.

- Registered proprietor and the estate or interest of the Registered Proprietor.

- Limitations, Interests, Encumbrances and Notifications.

- History of previous dealings in the register.

While the legal title will be the digital information that is stored in the various databases, a paper duplicate certificate of title (if required) will be automatically created and issued to the current registered proprietor or first mortgagee at the conclusion of the registration process.

3 Also see

- TYP-02 Crown Land
- TYP-03 General Law