TYP-03 General Law

Version 1 - 28/02/2018

The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action to protect your legal rights. Please read our Terms of Use on the Land Titles Registration policy and procedure guides web page. Landgate accepts no responsibility where parties print this guide and seek to rely on information that is out of date.

1 Land under General Law

Any land alienated from the Crown before 1 July 1875 and not subsequently brought under the operation of the Transfer of Land Act (TLA) of 1874 or 1893, is dealt with under the Registration of Deeds Act 1856 (19 Vic No. 14).

A system is provided for the registration of deeds, conveyances and other instruments, wills and judgements affecting land under the general law. The object is to prevent secret and fraudulent conveyances and to encourage registration by conferring on a registered instrument priority over an earlier unregistered one.

The land remaining registered under the Registration of Deeds Act 1856 is confined to the earlier settled areas of the State and probably constitutes less than one percent of the land alienated from the Crown. The land remaining is being reduced yearly by applications to bring such land under the operation of the TLA.

Some impetus is given to persons to bring land under that Act by the reluctance of purchasers to accept a title which is not government guaranteed, the expense of the necessary searches to ascertain the proper owner and the reluctance of lending institutions to make advances on such land.

2 Nature of the System

The system comprises:

- a copy of each of the original Crown Grants, known as an enrolment;

- a nominal index comprising:

- an index of surnames
and

- a three-volume register of complete names;
- an index to land comprising:
  - town lots
  - country locations
and
  - suburban lots
- a journal of encumbrances
- a journal of wills
- a register of powers of attorney and deeds
- a register of memorials for each volume
and
- bound volumes of all memorials registered. The volumes are identified by a roman numeral, each memorial being numbered in sequence within the volume, e.g. Book XXVII No. 1.

3 Method of Registration

Registration is effected by lodging with the Registrar of Deeds a memorial of the document to be registered. Each memorial presented for registration must comply with the regulations made under the Registration of Deeds Act 1856.

Regulation 3 states:

- Every memorial presented for registration shall:
  (i) be prepared on good quality paper approved by the Registrar and having the dimensions of 330mm x 203mm
  (ii) be clearly and legibly handwritten in ink (preferably black or blue), printed or typewritten
  (iii) have a binding margin on each page of 51mm free of written, printed or typewritten matter with the binding margin on the left hand side of the face sheet and on a corresponding side for all subsequent sheets
  and
  (iv) have all writing, printing, type or other matter on the memorial of a sufficient strength to bear photographic reproduction.

- The Registrar may reject from registration a memorial which does not comply with this regulation.

The memorial is required to be in the following form:

"A memorial is required to be registered of a (nature of document) of which the following is a copy."
Then follows a complete copy of the document:

"and this memorial is required to be registered by (full name) clerk to (name of solicitor) of (address of solicitor). Dated this .......... day of .......... 20...

Signed by the said )

(full name) ) (signature)

in the presence of )

Witness

(Full Name, Address and Occupation)"

Where the request to register is signed by a person other than a legal practitioner the signature must be attested by an adult witness who is required to state his or her address and occupation.

The original deed must be produced at the time of lodging the memorial and is later returned noted with the following registration certificate:

"Received a memorial of the within (nature of document) at ...... o’clock this ...... day of ...... 19 and registered in book .......... No ..........

(signature)

Registrar of Deeds"

4 Form of Conveyance

The Property Law Act 1969 (Fourth Schedule) provides for a short form of conveyance in the following form:

Conveyance

This Deed made this ................ day of ................ 20........ Between AB of (address and occupation) of the one part and CD of (address and occupation) of the other part Witnesseth that in consideration of the sum of (dollars) paid by the said CD to the said AB (the receipt whereof is hereby acknowledged) the said AB as beneficial owner (if it is not intended to include the usual covenants for title, omit the words beneficial owner) hereby conveys to the said CD in fee simple (or as the case may be) all that piece of land being (description of land)

Signed by the said

AB in the presence of

Section 37 of the above Act gives power for the owner of land to dispose of the land by deed without using words of inheritance. For deeds executed after 1 August 1969, the words and his heirs are no longer required to effectively pass the fee simple.

Subdivision can only be achieved by a sketch on a deed of conveyance. A plan or diagram cannot be approved for land under the system. Such a sketch must meet the requirements of Landgate and the provisions of the Planning and Development Act 2005 (P&D Act).
5 Effect of Registration

Registration under the Registration of Deeds Act 1856 neither cures any defect nor passes any estate. The only effect of registration is to secure priority. Section 3 provides that deeds have priority one over the other according to the priority of their respective dates of registration. Deeds or other instruments not registered may be rendered null and void by the prior registration of an instrument entered into for value and in good faith.

The registration of instruments enables secondary evidence to be available in the case of loss or destruction of the original registered document. A certified copy of a memorial issued by the Registrar of Deeds is receivable in any Court as conclusive evidence of the contents of the original instrument.

6 Satisfaction of Mortgages

The usual method of discharging general law mortgages is by reconveyance. Section 11 of the above Act provides an alternative method. A Certificate of Satisfaction may be produced showing that the whole of the moneys due have been paid. This certificate is signed by the mortgagor, his or her personal representative or attorney and attested by two witnesses. The certificate must contain the names and addresses of the original parties, the date of the instrument, the sum thereby secured and the time or times of payment. A receipt for the Certificate of Satisfaction is issued by the Registrar of Deeds as proof of registration. This method is not in general use.

7 Searches in the Register

The Register containing the memorials is open to public search on payment of the prescribed fees. The registration of any instrument is notice of all facts, circumstances and particulars referred to in the memorial. A person who omits to search the register is therefore deemed to have notice of all that would have been discovered if it had been searched (s.16).

A person making a search needs to know one of the following:

- the full name of the registered proprietors

- the description of the land, e.g. Avon Location U

- the registered number of any memorial in the chain of title.

For a person who only has one or both of the first two information items listed above, there are two sets of indexes to facilitate the location of the desired chain of ownership documents. The indexes are called the nominal index and the land indexes.

7.1 Nominal Index

The nominal index of surnames gives a page number or numbers in the nominal index of whole names on which all persons having the same surname are shown. The page or pages must be carefully checked for the required name and likely derivations of that name, e.g: Ann, Anne. Against each name is a reference to all the memorials in which that name appears.
The reference shows first the volume, as a roman numeral, secondly, a number beneath the roman numeral (indicating a page number in the register of memorials for that volume) and thirdly the number of the memorial itself within the volume, e.g. XXVII/10 101.

The searcher may then proceed either by searching the register of memorials for each volume, where limited detail is shown, or by searching each of the memorials.

7.2 Land Index

The index to land is divided into three sections: Country, Town and Suburban. Within the sections the index is nominal and against each location or lot is recorded the number (in the manner shown above) of all memorials registered against the land.

Persons making a search can expect no assistance beyond being shown where the relevant registers are and must draw their own conclusions as to the ownership of any particular piece of land. The lands contained in this Register do not enjoy the backing of a government guarantee.

8 Licences, Deeds Poll and Applications to Register Change of Name

Licences to change name issued under the Change of Names Regulation Act 1923 issued in the period from 1923 to 2 November 1989 were memorialised and lodged for registration with the Registrar of Deeds under the Registration of Deeds Act 1856. From 2 November 1989, the licences were registered in the office of the Registrar of Births Deaths and Marriages and, for administrative convenience, all the licences registered at Landgate from 31 January 1957 to 2 November 1989 were physically relocated to that Office.

An index of licences filed between 1923 and 31 January 1957 is held in the Deeds Office and a microfilm copy is held in the Document Filing Section in the Customer Service Centre in the Landgate building in Midland. The licences held in Landgate are available for public searching, and certified copies may be obtained.

Note: Because of the repeal of the Change of Names Regulation Act 1923 on 14 April 1999, the Registrar of Births, Deaths and Marriages will no longer accept licences for registration from that date. From the above-mentioned date, it is now possible to formally change a name by registration of that name at the office of the Registrar of Births, Deaths and Marriages and receive a certificate issued under s.57 of the Birth, Deaths and Marriages Act 1998.

8.1 Deeds Poll

An adult person desiring to renounce the use of his or her present name and assume another name could do so under the Change of Names Regulation Act 1923 by executing a deed poll and registering a memorial of that deed poll under the Registration of Deeds Act 1856. From 2 November 1989, the deeds poll were registered in the Office of the Registrar of Births, Deaths and Marriages and, for administrative convenience, all the deeds poll registered at Landgate from 31 January 1957 to 2 November 1989 were physically relocated that Office.

An index of deeds poll filed between 1923 and 31 January 1957 is held in the Deeds Office, and a microfilm copy of the index of memorials filed from 1957 to 1989 is held in the Document Filing
Section in the Customer Service Centre in the Landgate building in Midland. The deeds poll held in Landgate are available for public searching and certified copies may be obtained.

Note: Because of the repeal of the Change of Names Regulation Act 1923 on 14 April 1999, the Registrar of Births, Deaths and Marriages will no longer accept deeds poll for registration from that date. From the above-mentioned date, it is now possible to formally change a name by registration of that name at the office of the Registrar of Births, Deaths and Marriages and receive a certificate issued under s.57 of the Births, Deaths and Marriages Act 1998.

8.2 Application to Register Change of Name

On 14 April 1999, the Births, Deaths and Marriage Act 1998 (the Act) was proclaimed. This Act provides a process and a form by which a person’s name may be changed by the registration of that change under Part 5 and recorded in the Register referred to in s.49 (1) of the Act. The form is available from the Registry of Births, Deaths and Marriages and is titled Application to Register Change of Name.

A certificate certifying the change of name particulars contained in the Register maintained by the Registrar of Births, Deaths and Marriages will be issued by the Registrar under s.57 of the Act.

Under s.36 of the Act, a person is not prevented from establishing a change of name by repute or usage where the change is made after the commencement of the Act. However, applicants who are permanently residing in Western Australia may prefer to obtain the above-mentioned certificate from the Registrar of Births, Deaths and marriages certifying the change of name particulars because other authorities (e.g. the Passport Office) may require documentary proof of the person’s correct name.

9 Also see

- TYP-01 Types of Title to Land
- TYP-02 Crown Land