

REGISTRATION SERVICES

Customer Information Bulletin

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A Word of Caution – Why Property Professionals Should Undertake Valid Title Searches

An up-to-date Title Search of the *Land Titles Register* is the only valid way for property professionals to discover if there are any encumbrances in existence on properties offered for sale. A check of the Survey Plan may also be required should a digital title reveal that the plan holds easement information.

In the case of Strata Titles it is important to search both the Title for the lot and the Strata/Survey-Strata Plan, given that not all encumbrances appear on the Certificate of Title. The plan may contain an endorsement of an easement, a change of by-laws, an amended schedule of unit entitlement, or even changes to lot outlines and restrictions regarding the use of common property.

In the Spring 2009 edition of *REBA News*, the Real Estate and Business Agents Supervisory Board (REBA) expresses concern because:

“REBA has recently become aware that a number of agents have delayed obtaining title searches until receiving an offer on the property being sold.

“In several instances, encumbrances registered on titles were either not searched, or were searched and not disclosed to the buyer(s).”

REBA reminded the industry that:

“Article 8(3) of the Code of Conduct for agents and sales representatives (the Code of Conduct) states: When an agent receives instructions to offer a property for sale, he or she shall promptly obtain a copy of the Certificate of Title.

“Article 8(1) and 8(2) of the Code of Conduct requires an agent to make all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent agent would have ascertained and to promptly communicate that fact to any person who may be affected.”

We at Landgate are also concerned because there is evidence that some property professionals are using *Land Enquiry's* check search tools as a substitute for Title Searches. This is an unsafe practice because check searches have not been designed for dealing purposes.

A Certificate of Title is a guaranteed Title, as at date of Title Search for a defined parcel of freehold land, upon which all registered transactions affecting the lot(s) are recorded.



This bulletin is produced by the Western Australian Land Information Authority
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A registered transaction covers every kind of dealing such as a Discharge of Mortgage, Transfer of Land or Caveat. There are over 200 different types of restrictions, interests or limitations that can be imposed on property.

It is also unsafe to rely on an inspection of a Duplicate Certificate of Title as substitute for a search of the *Land Titles Register*. A Title search can help verify proof of ownership and may help safeguard against fraud due to fake duplicate documents. While a genuine duplicate allows the holder to deal on a subject property, it may not be current and will not confirm the existence of any encumbrances.

Some types of information not disclosed on a Duplicate Title relate to:

- Caveats
- Property Seizure and Sale Orders
- Taking Orders
- Memorials
- Notifications
- Orders by the Supreme Court
- Embargo Notices
- Freezing Orders
- Statutory Charges

As REBA states: *“A prudent agent would ensure the buyer is aware of and accepts any potential restrictions (such as easements or restrictive covenants) on the property they are seeking to purchase at the time of making an offer. If an encumbrance is not specified as part of a contract, the buyer may be entitled to terminate the contract prior to settlement.”*



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