



ACT Land Titles Practice Manual

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SECTION 1

GENERAL MATTERS

CHAPTER 1 ABOUT AUSTRALIAN CAPITAL TERRITORY LAND INFORMATION SYSTEM (ACTLIS)

1.1 OVERVIEW

Australian Capital Territory Land Information System (ACTLIS) is the online Land Titles Register which has been developed to provide comprehensive searching and verification of ACT Land Titles. ACTLIS contains not only the records of property ownership for the ACT, but historical data on property transactions, sublease plans, unit plans, deposited plans, and crown leases.

Public use of the ACTLIS site provides access to the searching of the ACT Land Titles Register for both current and historical documents relating to properties. Submission of Seller & Buyer Verification Declarations is also completed through the ACTLIS site for completion of dutiable transactions in the ACT.

A search of the Land Titles register provides access to Crown Leases, Certificates of Title, Registry Instruments, Deposited Plans, Sublease Plans, Units Plans and Check Searches. Check search is a free search that shows land parcel details and any current registered Registry Instruments lodged on title in the last 3 months. All other searches are available for a determined fee. The fee schedule is available on the **Access Canberra Website**.

1.2 PAPERLESS TITLES

With the introduction of ACTLIS on April 2018, ACT Land Titles is working towards modernising the ACT Land Titles system with electronic conveyancing. In preparation for this with the first release of ACTLIS, Land Titles no longer provides a paper copy of the Certificate of Title once a document is registered. When a document is registered a registration confirmation email will be sent to the lodging party (see Process of Registry Instruments after registration Chapter 19). With changes to Legislation, all Land Titles Instruments are under certification and this removed the requirement for a paper Certificate of Title to be produced with the application. Verification of identity and evidence of authority to deal is now a requirement (see Chapter 7). Certificate of Titles that have been produced to Land Titles prior to June 2020 for safe custody will stay on title until the Registrar-General removes them with an internal form. Certificate of Titles that have been previously produced and are remaining on the title, require no action from the Registered Proprietor.

1.3 TITLE WATCH

Title Watch is an online title subscription service that sends out a notification to a subscriber when an action is detected on a title. It can help prevent fraud happening to you with daily and quarterly updates. Actions which cause a notification are lodgment of a Registry Instrument, new title reference being issued, title cancellation or a title search (if selected for notification on search of title).

Title Watch notices are sent out for several reasons:

- Subscription Confirmation – This includes a summary of the Title Watch details subscribed and the link to manage your subscription.

- Activity Notice – This notice will include any titles that have had an action occur on them and a summary of the action that occurred.
- Renewal reminder – The reminder notice will be issued prior to expiry of any title watch subscription (both 1 month and 1 week prior)
- Quarterly report – A notice summarising all actions that have occurred in the 3 months prior to the generation of the report over the watched titles.
- Cancellation – A final notice will be issued on cancellation of any title watch.
- Detail update – When the details of any title watch subscription are updated, a confirmation email containing the updated details will be issued.

HOW TO SUBSCRIBE TO TITLE WATCH

FOR PUBLIC USERS

What you will need:

- Property details -Either a volume & folio OR Suburb, Section, Block & Unit (where applicable).
- Email address - For service of notifications.
- Payment for subscription – Payment for Title Watch can only be done via credit or debit card. The cost for subscribing to a Title Watch is \$30 per title.

How to Subscribe:

- Select 'Create New' from the Title Watch drop-down in ACTLIS.
- In the 'Create New Subscription' section you will need to enter your first and last name and the email address that you would like to receive the receipt and notices at.
- There is an optional field for receiving notice on title searches. If this is selected, notification emails will be issued when a title search is done for the property being watched.
- On the following screen you will add the title that you want to watch. If you want to add multiple titles to your subscription 'Add Title' can be selected again.
- Once you have selected all titles you want to add to your title watch subscription, select 'Submit'. This will take you to an order confirmation screen. After confirming your order, it will redirect to a payment screen.
- After payment, you will be taken back to an order confirmation screen which has an option to download a copy of your Title Watch receipt (the receipt is also sent to the subscription email address).
- An email with subscription details will be sent to your nominated email address with the Title Watch details and a link to manage your subscription. Do not delete this email as it is only sent once.

FOR ACCOUNT USERS

Follow link to account user guide [here](#).

MANAGING YOUR TITLE WATCH SUBSCRIPTION

Your subscription confirmation email contains a link to manage your subscription. From this you can:

- Update your subscriber details (name, email address and whether to receive notification of title searches)
- Select titles to unsubscribe from Title Watch

- Select titles to renew the Title Watch over
- Create a new title watch subscription

Your Title Watch subscription will last for 12 months. 1 month before any Title Watch subscription is due to expire a renewal notice will be issued. A second notice will be issued 1 week prior to the expiry if not renewed earlier.

CHAPTER 2 SEARCHING THE LAND TITLES REGISTER

2.1 ACCESS TO ON-LINE SEARCHING

Online searches are available to anyone in possession of a Visa or MasterCard. Via an On-Line web browser **ACTLIS**.

Regular clients can apply to open an account by completing the relevant form in the publications area of the Land Titles home page at accesscanberra.act.gov.au.

Section 66(1) *Land Titles Act 1925* (LTA) provides for a person, upon payment of the prescribed fee, to have access to the Register. All documents lodged and registered are available for inspection.

2.2 SUBSCRIBER ACCOUNTS TO ACTLIS

OVERVIEW

ACTLIS subscriber organisations receive access to the ACT Land Titles Register, for searching of both current and historical documents, with ability to accrue searches and Land Titles lodgments against billing accounts rather than the pay-as-you-go method for searches completed by public users.

ACTLIS subscriber organisations have the ability to self-manage users and track their searches/account records. For more information on the conditions to becoming a subscriber click **here**

Each subscriber invoice will be generated automatically and emailed to the primary account holders nominated email address.

Product Accounts are required to be paid in full, in accordance with the contract on or before the 15th day of the new month. If payment is not received by the due date, this will result in the service being denied to all users until payment has been made.

Lodgment accounts are required to be paid in full, in accordance with the contract within 7 days of issue. If payment is not received by the due date, this will result in the service being denied to all users until payment has been made.

All current subscribers are required to supply and maintain up-to-date contact details for the person managing the account and all users. Each client is required to supply the following details –

- Name of person managing account (Administrator),
- Names of users who intend of having access
- Phone Number for the person responsible for the Primary Account Holder and users,
- Email Address of person responsible for the Primary Account Holder and users.

2.3 TYPES OF SEARCHES

Check Search

A Check search from ACTLIS is searched by Volume/folio, parcel and address (Land Titles highly recommend all search to be done by Volume/folio or parcel as this office does not guarantee searches by address). A Check search updates the title advising of any documents lodged, registered

and Registry Instruments remaining unregistered for a period of three months immediately preceding the date of the Check Search. This search is guaranteed to be correct by the Registrar-General. This search is a free service provided by Land Titles.

Crown Lease Search

A Crown Lease is searched by the original volume and folio, Crown lease historical transactions, lease covenants and conditions to the land.

The majority of titles held were converted to computer title around 1992. Any live encumbrances at that time were carried over on converted titles into ACTLIS.

Title Search

A Title Search from ACTLIS is searched by Volume/folio, parcel and address (Land Titles highly recommend all search to be done by Volume/folio or parcel as this office does not guarantee searches by address). Title Search will determine the current information such as owner, land details, restrictions, encumbrances and unregistered Instruments. A Title search is certified and correct at the time of carrying out the search. This search is guaranteed correct by the Registrar-General and fees are payable.

Historical Title Search

A Historical Title Search from ACTLIS is searched by Volume/folio, parcel and address (Land Titles highly recommend all search to be done by Volume/folio or parcel as we don't guarantee searches by address). Historical title search is a search that consolidates all dealings against that land that has been registered since converted to computer title in 1992. This search does not include registered proprietor.

Dealing Image Search (Registry Instrument Search)

Dealing Image Search is carried out by the Registry Instrument number. Registry Instruments included in this search for example are transfers, subleases, and mortgages etc. Customers may obtain a copy of any registered or unregistered Registry Instrument. Fees are payable for obtaining this search.

Alternatively, for an additional fee the original document may be inspected if held by Land Titles. Many of the documents held are scanned, indexed, and then destroyed.

Plan Search

Plan Search are carried out by the registered plan number. Plans available are deposited, sublease, Community Title and Unit Plans. Fees are payable for obtaining this search.

Community Title Schemes Search

Customers can obtain copies of Community Title Schemes by selecting the plan search option. Fees are payable for obtaining this search.

Note – If a copy of the Title is required for a block within a Community Title Scheme, the client is unable to search by the Lot number within the registered scheme. The search should be performed using the Parcel Identifier (Block/Section/Division) or Title Reference (Volume/Folio) for the relevant block.

Deposited Plan Search

Deposited Plans are searched by the registered plan number. Deposited plans establish a platform of legal parcels of land, which may then be the basis for grant and registration of Crown Leases. They record subdivision, parcel details, easements and area details

Sublease Plan Search

Sublease Plans are searched by a registered plan number. A sublease plan is where a part of the land included in a Crown Lease is intended to be leased, the Lessee (registered proprietor) may execute a sublease over the area. A sublease plan is required as a means of defining by measurement, the floor area of land referred to or to be referred to in a sublease/underlease.

Units Plan Search

Endorsements previously made inside the Units Plan, eg Special Resolution, Notice of Change of Address for Service of Notice etc, are no longer made inside the Units Plan. Upon conversion, all the endorsements in Units Plan were carried forward to ACTLIS. These may be searched by undertaking a Common Property Title Search or a dealing Image search. A normal title and dealing image search fee apply. From the On-Line searching facility, it is only possible to obtain a copy of the Units Plan in its entirety.

The following information is contained in a Units Plan Search -

- Parcel identifier/Units Plan Number
- Registration/Commencement/Expiry Date
- Surveyor's Declaration
- Site Plan
- Aggregate
- No of Units in Plan and Subsidiaries
- Address for Service of Notice
- Endorsements (up until conversion)
- Form 4 (covenants and conditions of each unit)
- Form 5 (covenants and conditions of the Common Property)

Standalone Document Search

Standalone documents search is searched by a registered dealing number, lodging party, dealing type and registration date. This search function is for registered Memorandum of provision (MOP) and Division/District Plan (ADDP) that were registered before ACTLIS (April 2020)

Historic Document Search

Historic Search is searched by a registered dealing number. This search is only available once a dealing has been requested through a dealing image search. Allow up to 6 weeks for this request to be processed. This is an ACTLIS report and enables a search to be made of the history of a computer folio since conversion (approximately 1992) and lists all transactions in chronological order of registration, together with the status and status date for each entry.

Prior to conversion, the history is contained in the Crown Lease and/or subsequent title that contains the stamped endorsements. A Historical Search does not include this information, and if needed by the client, must be requested separately.

Name Search

Name Searches can only be carried out by someone (company or law firm etc.), that has a subscription to ACTLIS.

Name Search was introduced in 1998 and its purpose is to enable a search to be made of the Index of Land Titles registered proprietors to determine whether the name searched is a current registered proprietor of land in the Register.

The standard Title Search fee applies to each name searched irrespective as to whether the report lists a matching name. Historical data is available from September 2004 onwards.

Name Suppression

A registered proprietor of land may apply for suppression of his/her name as a search key. A Registry Instrument of Application for Name Suppression in the Land Titles Register should be completed and lodged with a Land Titles Manager. No fee is payable.

On registration of the application, a Name Search under that name will produce a "nil result" report.

Certain Commonwealth Agencies will be permitted access to the Land Titles Register by name, irrespective as to whether a name has been suppressed.

It should be noted that registration of a Name Suppression does not limit searches by parcel identifier (Block/Section/Division). If a search is carried out by using the parcel identifier, the proprietors name is not suppressed.

2.4 CERTIFIED COPIES OF REGISTRY INSTRUMENTS

Pursuant to Section 65 of the *Land Titles Act 1925*, the Registrar-General will provide, upon payment of the prescribed fee, a certified copy of any part of the Register. Certified copies signed and sealed by the Registrar-General are acceptable for presentation in Court. Since April 2020 all Land Titles registered documents are now available online.

To apply for a certified copy of any registered document you can:

- Complete a smart form to obtain a Registry Instrument which is available **here**
- Email request to **actlandtitles@act.gov.au**

Section 67 of the *Land Titles Act 1925* permits the Registrar-General to provide, upon request, an uncertified copy of any part of the Register or of any information contained in the Register.

CHAPTER 3 THE REGISTER

3.1 THE NATURE OF THE REGISTER

The *Land Titles Act 1925* (LTA) requires the Registrar-General to keep a Register relating to land (Section 43(1)).

The Registrar-General may keep the Register –

- in such form or combination of Registry Instruments
- on such medium or a combination of media; and
- in such a manner as the Registrar-General sees fit; and
at any time, vary the form or medium in which the register or part of the register is kept.
- The term medium includes but is not limited to:
 - a computer; or
 - microfilm; or
 - paper.

3.2 FOLIOS

The register consists of folios of the register, Registry Instruments, plans and registered documents.

Upon registration, Crown Leases are allocated volume and folio numbers, which become the unique title identifier for Crown Leases. The Crown Lease is then converted to a computer folio with the same volume and folio number and allocated an edition number of one, which increases each time the title is updated.

The Registrar-General may issue a Title for:

- a leasehold estate;
- a freehold estate (in the ACT land system, freehold estate exists only in parts of Jervis Bay);
- a joint tenant;
- a tenant in common;
- a unit in a units plan;
- the common property in a units plan;
- a life estate; and
- an estate in remainder.

3.3 IDENTIFICATION OF LAND

The *Districts Act 2002* (DA) provides for the division and description of land in the Territory.

The DA makes provision for the establishment and variation of District boundaries by Deposited Plan (DP). The ACT is divided into 20 districts.

The DA generally provides that the Territory be divided by Deposited Plan into -

- larger geographic areas known as districts;
- smaller geographic areas known as divisions. These are generally synonymous with suburbs;
- sections of individual land parcels; and
- blocks.

The measurements and boundaries of land are delineated by Deposited Plan (DP). A Deposited Plan is evidence of the measurements and boundaries of the areas of land shown on it (Section 8).

Land in the Territory is referred to by Block/Section Division/District identifiers. Upon subdivision of a parcel under the *Land Titles (Unit Titles) Act 1970* (LTUTA), a Unit Number is added.

Notes concerning parcel identifiers:

- the legal name for a parcel under the DA is Block/Section/ Division/District;
- further subdivisions of parcels under the LTUTA are referred to by Unit Plan No, Unit No and Common Property;
- in practice, the District name is usually only referred to where the parcel is rural. For example: it has no Section number;
- where several parcels of land are contained in one lease (eg Woden Plaza), all parcel identifiers should be entered for lodgment purposes, in the land description fields, but only one parcel identifier needs be entered for searching purposes;
- for searching purposes, Division/District names must use the first four letters. For example: 'OCON' - O'Connor - and 'REDH' - Red Hill;
- some Divisions fall across the boundary between several Districts. In such cases the Block/Section identifiers are not duplicated within the two Districts;
- three Districts share the same name as Divisions i.e. BELCONNEN, GUNGAHLIN and HALL. This does not present a problem for Australian Capital Territory Land information System (ACTLIS) (the ACT land titles computer system) at present as a District parcel is differentiated from a Division parcel by the absence of a Section number; and
- as a general rule the order of reference should be as the user requires. For example: District/Division/Section/Block/Unit.

As has been established with the Commissioner for Surveys, the following will apply to Deposited Plans that create Districts and Divisions –

- the DPs will not be dimensioned and will not show the Division boundaries;
- District codes have been entered in ACTLIS for Deposited Plans to be lodged with new district names;
- For the three districts which have the same name as Divisions, the following codes have been allocated for use in accessing these DP's - HLLD (Hall District), GNGD (Gungahlin District) and BLCD (Belconnen District);
- The district of Weston Creek has been allocated the ACTLIS code of WCRK whilst the division of Weston has been allocated the code of WEST;
- The district of Molonglo Valley has been allocated the ACTLIS code of MOLV whilst the division of Molonglo has been allocated the code of MOLO.

The following procedure applies to accessing parcels –

- Where the parcel is not contained within a Division eg a rural parcel, the block number and District code should be used;
- Where the parcel is contained within a Division. eg: a suburban parcel, the block number, section number and Division code only need to be used.
- Where a Division or District DP is accessed, the only code required is the appropriate District or Division code;

3.4 APPLICATION TO CREATE OR AMEND A DEPOSITED PLAN (ADDP OR ADP)

The Districts Act 2002 (DA) provides that a parcel may only be created or amended by Deposited Plan (DP).

Where the parcel to be created or amended is a District the document type is an **ADDP**. Where the parcel to be created or amended is a Division the document type is an **ADP**.

Deposited Plans amending a block or section are prepared in accordance with an agreed convention. Where a block or section is amended in any way, the block or section must be renumbered so that a block and section number is always unique. The legend must include details of the immediate “previous” parcel and the number of the plan being amended. A new Deposited Plan number will be allocated to these DP’s on registration. An ADP/ADDP Registry Instrument and registration fees applies to these DP’s.

3.5 REGISTRY INSTRUMENT/DOCUMENT AND PLAN NUMBERS

Registry Instruments are allocated an incremental number, in accordance with the order in which the documents are originally lodged.

Deposited Plans are numbered in incremental numeric order prefixed by the letters ‘DP’.

Sublease Plans are numbered in incremental order prefixed by the letters ‘SL Plan’

Units Plans are numbered in incremental order. For example: ‘Units Plan No 1’.

3.6 PLANS

All Deposited Plans, Sublease Plans, Units Plans and any other plan attached to a Registry Instrument and referred to within a Registry Instrument to define an area that portrays to grant a right/access or authority should be prepared, drafted, signed and certified by –

- a surveyor;
- an architect;
- a survey draftsman.

All plans need to clearly define areas using dimensions in metric measurement and should also show the total square metres of the area referred to.

If the plan does not grant a right/access/licence or authority and is only to define an area referred to in the lease for the rent schedule (in the case of the whole of the land) or refurbishment plan, the plan should state clearly at the top what its purpose is.

A plan should not be annexed to a sublease.

Deposited Plans (DP)

Deposited Plans are prepared under the *Districts Act 2002* to show the subdivision and description of land in the Territory.

Parish Plans

Some of the earlier parcels of land in the Territory were described and delineated by plans of subdivision called Parish Plans. These were typically parcels under freehold title in NSW prior to the *Real Property Act 1925* (now *Land Titles Act 1925*). Parcels in Parish Plans were identified by

a lot/ portion/ parish/ county identifier, which equate to block/ section/ division/ district under the *Districts Act 2002*.

Sublease Plans

Section 64 of the *Land Titles Act 1925* provides that the Registrar-General may require a map or plan to be lodged when Registry Instrument with land under the Act. Sublease Plans are prepared and lodged in order to sub-divide buildings/land into areas for sublease/underlease purposes.

Subleases which have a plan attached to reference an area but do not portray or grant a right/access or authority to use should be clear and precise but do not need to be drafted by a technical officer.

Unit Plans

Unit Plans are prepared under the *Unit Titles Act 2001* and registered under the *Land Titles (Unit Titles) Act 1970*. Units Plans provide for the subdivision of land in a Crown Lease into not less than two units and common property. Registration of a Unit Plan establishes, in law, a corporation called the owners' corporation, which administers the common property and results in the issue of separate titles for each unit and the common property.

Community Title Plans

Community Title Plans are prepared under the *Community Title Act 2001*. The Community Title scheme is required to have a detailed Site Plan incorporated in the Management Statement lodged as part of the Community Title Scheme. For detailed information relating to Community Titles – Refer to Chapter 61 of this manual.

Retirement Village Plans

An application to note a retirement village over part of the land should have, annexed to it, an original plan describing the location of the retirement village in relation to other dwellings on the parcel. Each retirement village diagram needs to be site specific and should be prepared in accordance with the standards and specifications for the preparation of Sublease Plans and should be prepared by a -

- surveyor;
- architect;
- survey draftsman.

Retirement Village diagrams should be prepared on A4 size paper. Colour should not be used in the preparation of easement diagrams. Hatching, striking and pecked lines can be used to identify areas within the plan. A key should be accompanied on the supporting retirement village diagram to clearly define any hatched or pecked areas.

Easement Plans

The survey description of easements is commonly found in deposited plans or in a diagram attached to Registry Instruments, which create easements by deed.

CHAPTER 4 PROCEDURALS MATTERS

COMPLETION OF REGISTRY INSTRUMENTS (PDF AND WORD)

Land Titles provides all Registry Instruments required to be lodged in pdf and word format. Registry Instruments are available on the website at www.accesscanberra.act.gov.au.

Registry Instruments may be printed double or single sided. Registry Instruments not in the current form will not be accepted without prior approval.

Registry Instruments available from the website can be completed on screen prior to printing.

All Registry Instruments will be accepted as original. All court orders supplied with documents should be Original **Sealed** orders or in the case of Probates and Guardianship and Management Orders certified true copies of the original Sealed Order. Photocopies of Statutory Declarations will **not** be accepted. If a document relies on a Statutory Declaration for registration, the original of the Statutory Declaration should accompany the documents that it relates to at the time of lodgment.

Copies of other registered documents **cannot** be annexed to documents presented for registration.

Multi-page documents should be secured (i.e. stapled, bulldog clip, butterfly clips) but **not** bound, and each annexure page numbered. It is only necessary to sign the document at the execution page with the exception of Unit Plans. All multi-page documents should contain an Annexure Clause on the first page of the annexure after the Land Titles Registry Instrument.

Paper Registry Instruments should be completed, preferably in black ink, in neat and legible writing or printing. If after a document is registered, there is a discrepancy, the client will be required to lodge a Correction to the Register (CR) if the Registry Instrument contains handwritten information.

Any corrections should **not** be made by erasure or “whiteout”, this may make the Registry Instrument invalid. Corrections may be made by striking out the word/s and rewriting the corrected word/s above or below together with the initials of the amending parties to the document. Documents where “White out” has been used and the correction written on top of the “White out” will not be accepted as the correction tape can be scratched off. **Where corrections have been made and the alterations have obliterated the required information, the Registrar-General will request that a completion of a new Registry Instrument.**

Parties should be described by their full legal name as entered in the Register. In the party field on a document where more than one party is listed, the parties should be listed separately using their full names. For example – John and Sally Citizen is not acceptable, the parties in this case should be listed as John Citizen and Sally Citizen.

All information boxes on the Land Titles Registry Instruments are expandable. All parties should be listed on the Land Titles Registry Instrument and not on an annexure page. “See Annexure” in the party reference field of any Land Titles document is not acceptable.

Signatures may be written in **permanent black ink** capable of being clearly captured via an electronic imaging process and subsequently reproduced. Signatures must be made clearly. All signatures/executions must be clear of other signatures. If a person has signed over another party’s execution, it will be necessary that the Registry Instrument be re-executed to ensure clarity of each signature as executed. All executions witnesses must provide their full name when attesting land titles Registry Instruments

Section 173 of the *Land Titles Act 1925* (LTA) requires a Registry Instrument lodged for registration, to be attested by one witness, who is an adult and is not a party to the Registry Instrument. The execution of a Registry Instrument lodged for registration by a Legal Practitioner or Mortgagee Corporation is not required to be witnessed because certification for the Registry Instrument is given (see Section 48BD and E-Conveyancing Law, section 11).

All addresses should be street address or a Post Office box; references to DX box numbers are not acceptable.

One Registry Instrument can be used if both parties are the same for a maximum of ten (10) titles. The land identifier for each parcel will need to be listed separately using a line for each parcel.

When supporting documentation is submitted with a Land Titles Registry Instruments, they must comply with any legislative requirements that apply. For example – If providing a Statutory Declaration, the declaration must comply with the *Statutory Declarations Act 1959* (C'Wlth).

Where foreign identity documents are submitted in support of a lodgment, the foreign document should be accompanied by a legal interpretation of the document. All foreign documents should be deciphered by a consular officer or a recognised interpreter in Australia. The interpreter's full name and contact details should also be supplied with the lodgment (go to www.naati.com.au for more information)

There is a requirement to submit both a Buyer and Seller Verification Declaration for dutiable transactions. As these online forms hold personal information, to ensure privacy, the Buyer and Seller Declaration form have been created using an online system. Once completed and saved, the information will be secured separately from the Land Titles Register with only limited access. The forms are available for completion online at **actlis.act.gov.au**. When completed, an email with the verification identity number and a date will be sent to the nominated email address. The LTO Registry Instruments requiring these Buyer and Seller declarations are noted in the instructions of each Registry Instrument.

It should be noted that lodgment of the document does not signify registration and that registration of the Registry Instrument may be confirmed by:

- update of the Register; or
- Check search by visiting **actlis.act.gov.au** on any internet browser; or
- Registration Confirmation sent to the lodging agent

4.1 DOCUMENT CODES

Document Codes Alphabetical Order

<i>REGISTRY INSTRUMENT NO</i>	<i>ACTLIS REGISTRY INSTRUMENT TYPE</i>	<i>DOCUMENT NAME</i>
031	ACL	Application to Register a Crown Lease
012	ACT	Application for CT
061	ACTS	Application to Register a Community Title Scheme
064	ADDP	Application to Register a Division/District Plan

054	ADP	Application to Register a Deposited Plan
055	ALUP	Alteration of Units Plan
038	ALX	Application for Lapsing of Caveat
073	ANE	Annexure for execution
029	ANN	Annexure
027	ASP	Application to Register a Sublease Plan
004	ATR	Application for Title Repair
044	AVCL	Application to vary Crown Lease
	BVD	Buyer Verification Declaration (On-line completion)
042	C	Consent to register
039	CA	Change of Address
105	CAI	Change of Address for Service on a Registry Instrument
101	CCN	Company Change of Name
023	CCH	Court order or a Charge
009	CN	Change of Name
010	CNI	Change of Name on an Instrument
099	CTLP	Lot Entitlement Schedule for a Progressive Development within a Community Title Scheme
098	CTSA	Amend a Community Title Scheme
062	CTSE	Schedule of Lot Entitlements – Community Title Scheme
075	CUP	Cancellation of Units Plan
045	D	Discharge of Mortgage
001	DCC	Discharge/Removal of Statutory Charge
057	DCL	Determination of Crown Lease
058	DDA	Discharge 28DA/Premium in Crown Lease
047	DE	Discharge of Encumbrance
005	DESL	Determination/Expiry of a Sublease/Underlease
046	DMSL	Discharge of Mortgage of a Sublease/Underlease
065	DEX	Declaration by Executor
053	E	Encumbrance
102	ECL	Expiry of Crown Lease
079	EE	Extinguishment of Easement
030	FLUP	Further Lease for Unit Plan
	FP	Floor Plan
097	LN	Lease Notification

026	M	Mortgage
Online	NMF	National Mortgage Form
008	MA	Miscellaneous Application
007	MAE	Miscellaneous Application Encumbrance
048	MSL	Mortgage of Sublease/Underlease
049	MOP	Memorandum of Provisions – Common Provisions
015	ND	Notice of Death by Surviving Proprietor
016	NDI	Notice of Death on a Registry Instrument
112	NRV	Application to Note Retirement Village
050	NS	Name Suppression
077	NT	Notice of Appointment/Retirement of Trustees
059	OC	Overriding Statutory Charge
006	PDSL	Partial Determination/Surrender of Sublease/Underlease
109	REGD	Application to Register a Deed
013	RNS	Removal of Name Suppression
111	RPA	Revocation of a Power of Attorney
113	RRV	Application to Remove Notice for Retirement Village
082	RW	Removal of Writ from Register
017	RX	Registrar General's Caveat
072	SL	Sublease
	SP	Site Plan
094	SR	Application to Note Special Resolution
033	SRG	Surrender and Regrant of Crown Lease
078	SUE	Schedule of Unit Entitlements
	SVD	Seller Verification Declaration
052	T	Transfer
032	TA	Transmission Application
034	TAB	Transmission Application for Bankruptcy
035	TAI	Transmission Application on an Instrument
096	TCL	Termination of Crown Lease
100	TCTS	Application to Terminate Community Title Scheme
080	TGE	Transfer and Grant of Easement
068	TSL	Transfer of Sublease/Underlease.
021	TM	Transfer of Mortgage

018	TPS	Transfer Under Power of Sale
083	UL	Underlease
019	UP	Application to Register Units Plan
086	V	Vesting
028	VM	Variation of Mortgage
103	VP	Variation of Priority of Encumbrances
041	VPM	Variation of Priority of Mortgage
022	VSL	Variation of Sublease/Underlease
081	W	Writ
095	WA	Application to Note Withdrawal/Acquisition
037	WX	Withdrawal of Caveat
036	X	Caveat
060	XSL	Caveat on a sublease

The documents are listed in order of document number on the Land Titles page on the **Access Canberra Website**

4.2 REGISTRABLE FORM

The *Land Titles Act 1925* (the Act) provides for documents to be in 'registrable form' at Part 1 (4). Registrable form is defined as follows:

- (a) the Registry Instrument does not require a material correction, alteration or addition; and
- (b) the Registry Instrument is in the form (if any) approved under section 140 (Approved forms); and
- (c) any document that is required to be produced under section 14 (1) (a) or (c) for the Registry Instrument is produced when the Registry Instrument is lodged; and Preliminary Part 1
- (d) certification under section 48BA or section 48BB, or verification under section 48BC, is provided for the Registry Instrument; and
- (e) any document for the Registry Instrument that is required to be provided under section 48BH (2) is provided when the Registry Instrument is lodged; and
- (f) the Registry Instrument is otherwise in accordance with the Act or another law in force in the ACT.

The office is not required to accept a document for lodgment if it is, in the opinion of the Registrar-General, not in registrable form (Section 48A of the *Land Titles Act 1925*).

This above provision is to be read in conjunction with Section 48B of the *Land Titles Act 1925* which permits the Registrar-General to refuse to register and ultimately to reject such a document.

4.3 CORRECTION OF ERRORS PRIOR TO REGISTRATION

Prior to registration, the Registrar-General has authority at Section 48C *Land Titles Act 1925* to correct a document containing a patent (or obvious) error by a notation in the margin. This authority will only be exercised as follows:

- where the error is immaterial, eg: a typographical error, the correction will be made without consultation, initialled by officer; and
- where the error is material, eg: affects the meaning of the document, the correction will be made only after consultation with the lodging party.

4.4 CANCELLATION OF ENTRIES IN THE REGISTER

Under Section 43(5) of the *Land Titles Act 1925*, the Registrar-General, upon being satisfied that the Register contains an entry relating to a Registry Instrument or document affecting land, and that the land is no longer affected by the Registry Instrument or document, may cancel the entry in the Register.

In most cases it will be plainly evident that the land is no longer affected by the Registry Instrument or document and in such cases the Registrar-General may cancel the entry without notice.

4.5 DOCUMENT DATES

Land Titles also captures the Lodgment Date, Settlement Date and Agreement for Sale Date from Transfer Registry Instruments for use by other government agencies

4.6 NAMES WITHIN THE LAND REGISTER

Land Titles will not record any titles or prefixes to names. Please list only the party names on documents. Do not include Sir, Doctor, Dr, Reverend, Rev, and the like.

All personal names must be listed as it appears on Legal Documents such as the person's Birth Certificate, Passport or Citizenship Certificate

All names should be listed in full. Abbreviations are not acceptable.

4.7 IDENTIFICATION REQUIREMENTS

All registered proprietors in the case of individuals must appear on title with their full legal name, this name must match their legal documents such as birth certificate.

Registered proprietor who are registered companies must appear on title in their full registered company name including their ACN.

All identification that is required to verify the proprietor's identity must match the register and the application form being completed. Since the introduction of Verification of Identity (VOI) Land Titles now requires all identification to follow the guidelines in the Category chart see below or that's included in the Self-Represented Party pack available from the Access Canberra Website.

They should produce two category 1 documents, if they cannot satisfy category 1 requirements, they must produce documents from the next highest category possible. All identification supplied to Land Titles should have full legal name and all identification should match.

Australian Citizen or Resident					Non Australian citizen or resident	
Category 1	Category 2	Category 3	Category 4(a)	Category 4(b)	Category 6(a)	Category 6(b)
ONE of the following <ul style="list-style-type: none"> Australian passport Foreign passport Australian Evidence of Immigration Status Immicard Australian Migration Status Immicard 	ONE of the following <ul style="list-style-type: none"> Australian passport Foreign passport Australian Evidence of Immigration Status Immicard Australian Migration Status Immicard 	ONE of the following <ul style="list-style-type: none"> Australian driver licence Proof of age card (issued by an Australian state or territory) Photo card (issued an Australian state or territory) 	ONE of the following <ul style="list-style-type: none"> Australian passport Foreign passport Australian Evidence of Immigration Status Immicard Australian Migration Status Immicard 	ONE of the following <ul style="list-style-type: none"> Australian passport Foreign passport Australian Evidence of Immigration Status Immicard Australian Migration Status Immicard 	<ul style="list-style-type: none"> Foreign passport 	
AND ONE of the following <ul style="list-style-type: none"> Australian driver licence Proof of age card (issued by an Australian state or territory) Photo card (issued by an Australian state or territory) 	AND ONE of the following <ul style="list-style-type: none"> Full birth certificate Citizenship certificate Descent certificate 	AND ONE of the following <ul style="list-style-type: none"> Full birth certificate Citizenship certificate Descent certificate 	AND ONE of another form of Australian government issued photographic identity document	AND <ul style="list-style-type: none"> Full birth certificate 	AND ONE of another form of Australian government issued photographic identity document	AND <ul style="list-style-type: none"> Full birth certificate
	AND ONE of the following <ul style="list-style-type: none"> Medicare card Centrelink card DVA card 	AND ONE of the following <ul style="list-style-type: none"> Medicare card Centrelink card DVA card 		AND ONE of another form of Australian government issued identity document		AND ONE of another form of Australian government issued identity document
AND (if required) Change of Name* <ul style="list-style-type: none"> Marriage certificate Change of name certificate 	AND (if required) Change of Name* <ul style="list-style-type: none"> Marriage certificate Change of name certificate 	AND (if required) Change of Name* <ul style="list-style-type: none"> Marriage certificate Change of name certificate 	AND (if required) Change of Name* <ul style="list-style-type: none"> Marriage certificate Change of name certificate 	AND (if required) Change of Name* <ul style="list-style-type: none"> Marriage certificate Change of name certificate 	AND (if required) Change of Name* <ul style="list-style-type: none"> Marriage certificate Change of name certificate 	AND (if required) Change of Name* <ul style="list-style-type: none"> Marriage certificate Change of name certificate

4.8 SELLER AND BUYER VERIFICATION DECLARATION

Seller Verification Declaration

This declaration must be completed by any person or registered entity who, as a seller of ACT Land, is lodging any of the following dutiable documents.

- Determination/surrender of a Crown Lease
- Notice of appointment/retirement of trustee
- Transfer
- Transmission application for bankruptcy

The form can only be completed online through ACTLIS. Links to this form are available on the **Access Canberra Website**. Completion and requirements for this online form is available on the information page before opening the form

Buyer Verification Declaration

This declaration must be completed by any person or registered entity who, is to become the registered proprietor of ACT Land and accompanied with one of the following dutiable documents.

- Application to register a Crown Lease (ACL)
- Notice of appointment/retirement of trustee (NT)
- Transfer by power of sale (TPS)
- Transfer (T)
- Transmission application (TA)

The form can only be completed online through ACTLIS. Links to this form are available on the **Access Canberra Website**. Completion and requirements for this online form is available on the information page before opening the form.

Where the buyer is represented by a legal practitioner, the legal practitioners' responsibility is to verify the identity of the buyer under the Verification of Identity Registrar-General Rules. Where practical, the buyer when completing the buyer verification declaration may use the same identification documents that was used to have their identity verified.

Where the buyer cannot satisfy the identification requirements on the buyer verification declaration, an exemption request can be sent to the ACT Revenue Office on duties@act.gov.au.

4.9 SUPPORTING DOCUMENTS

Where a Statutory Declaration is lodged in support of a Registry Instrument, the Statutory Declaration must be the original – photocopies and certified copies are not acceptable.

All court orders need to be the sealed by the court. The Federal Law Courts now issue orders electronically and you can check the website to verify the orders are correct.

When a probate is supplied in support of a Transmission Application, the original or a certified true copy of the document is required.

All other supporting documents, other than those listed above, must be the original or a certified true copy of the original.

Note – If a document is certified as a true copy of the original, it must be certified by a qualified witness under the *Statutory Declarations Act 1959* (C'Wlth).

4.10 AUTHENTICATION OR APOSTILLE OF FOREIGN DOCUMENTS LODGED AS SUPPORTING DOCUMENTS

Where documents are supplied that were issued by an overseas government this office will require evidence that the documents are genuine before they will be accepted.

For all Birth Certificates, Marriage Certificates and Death Certificates issued in a foreign country these certificates should be accompanied by a certification stating its authenticity.

CHAPTER 5 LAND TITLES REGISTRY INSTRUMENT APPROVAL

5.1 GENERAL INFORMATION

Under Section 140 of the *Land Titles Act 1925* (LTA) the Registrar-General may approve Registry Instruments for any document (including an application and a memorandum) that may be registered or entered on the register, whether or not the registration or entry is expressly provided for in the LTA or any other Act.

The LTA states that if the Registrar-General approves a Registry Instrument for a particular purpose, the approved Registry Instrument must be used for that purpose.

All Registry Instruments for general use are published and available to infill on the Land Titles section of the Access Canberra website – [**www.accesscanberra.act.gov.au**](http://www.accesscanberra.act.gov.au).

For lodgment and registration purposes only a Registry Instrument approved by the Registrar-General will be accepted by Land Titles. The office does not accept Registry Instruments published by other jurisdictions.

CHAPTER 6 CONVEYANCE DUTY

6.1 OVERVIEW

LEGISLATION

Land Titles Act 1925 Section 51 (LTA)

Taxation Administration Act 1999

Duties Act 1999 section 10

BACKGROUND

The *Duties Act 1999* replaced the *Stamp Duties and Taxes Act 1987* and is the Legislation under which transactions with land in the ACT were dutiable.

DUTIABLE PROPERTY

Under the *Duties Act 1999*, there are certain transactions that are considered dutiable. Under section 10 of the Act, there is an imposition of duty on certain transactions concerning dutiable property.

Dutiable property:

- Crown Leases – all Crown leases in relation to National Land.
- Land in the ACT
- A declared land sublease

Dutiable transaction:

- Transfers - all transfers and transfers by mortgagee under power
- Agreement for sale
- Declaration of trust/change of trustee – declaration/notice, appointment, or retirement of trustee.
- Transmission Applications - all transmissions upon death and bankruptcy.
- Granting of a commercial lease with a premium.
- Granting of a Crown lease or declared land sublease
- Vesting Applications - applications under Section 68 of the *Land Titles Act 1925* to vest property either by defeasance of estate or by statute only if the vesting involves Crown Leases.

A Trust Declaration may be deposited with the Registrar-General under Section 124(2) of the *Land Titles Act 1925*. Section 124(2) however, prevents the Registrar-General from registering a Trust Deed in the Land Titles Register. **As the Registrar-General does not register a Declaration of Trust, the declaration is not required to be marked prior to deposit with the Registrar-General.**

6.2 WHEN DUTY MUST BE PAID

In 2017, the ACT Government introduced the **Barrier Free model** as part of its tax reform. The model makes buying a property simpler and more efficient. It applies to transactions exchanged on or after 18 September 2017.

Under the Barrier Free model, duty only becomes payable 14 days after the title to a property is registered at ACT Land Titles Access Canberra (at the end of the transaction), rather than when contracts are exchanged (at the beginning of the transaction). The model also allows parties to self-assess the duty that they have to pay.

For all queries relating to Stamp Duty please contact the ACT Revenue Office. If it is not apparent whether or not there is a liability for duty, the matter should be referred to the ACT Revenue Office for assessment.

Documents prior to 1 July 2017 will no longer be required to be physical stamped by the ACT Revenue Office. As of 24 September 2020, a new electronic approval process has been established between the ACT Revenue Office and the ACT Land Titles Office regarding Pre-Barrier Free 'stamping' of Registry Instruments for settlement purposes. This process enables contactless stamping of documents and remove the need for customers to have documents physically stamped. All Pre Barrier Free dutiable Registry Instruments should send a request by email to **duties@act.gov.au** with supporting documents attached in order for their confirmation with ACT Revenue data to be verified. Once assessed by ACT Revenue an authority email will be sent to the client, which will include a unique number assigned in relation to each particular dutiable transaction in accordance with Section 239 of the *Duties Act 1999*. This email must be lodged with the dutiable document for registration at ACT Land Titles. This authority email will constitute evidence of authorisation by the ACT Revenue Office for the dutiable transaction to be taken as stamped.

6.3 EXEMPT DOCUMENTS

The Registrar-General does not have the authority to make a decision as to whether a document is exempt from duty. Contact ACT Revenue for questions regarding exempt duty.

6.4 ALTERATIONS TO DUTIABLE DOCUMENTS

All alterations to dutiable documents must be stricken through neatly and initialled in the margin. Alterations made to dutiable documents that have Contract for Sale dates prior to 1 July 2017 will need to be assessed by ACT Revenue Office. For more information, please see the **ACT Revenue Website**. Any document discrepancies noted by the Land Titles Office will be clarified directly with the ACT Revenue Office.

6.5 LIABILITY OF THE COMMONWEALTH FOR PAYMENT OF DUTY

The High Court, in the Alder Case, established that the Commonwealth has exclusive power to legislate with respect to tax.

Further it was stated that there is no room for the operation of state stamp duty Legislation in respect of the sale of Federal Airports Corporation assets.

It was also stated that the Registrar-General has no authority to refuse any relevant document made by the Commonwealth if the document is otherwise in registrable form.

The practice of the Registrar-General will be to require any apparently dutiable document to be referred to the Commissioner for assessment under the DA. The matter of any exemption should be taken up with the Commissioner and not the Registrar-General.

CHAPTER 7 LODGMENT REQUIREMENTS AND CERTIFICATION

7.1 OVERVIEW

The *Land Titles (Electronic Conveyancing) Legislation Amendment Act 2020* introduced changes to help with fraud prevention and the introduced the need of certifications. This requires Legal Practitioners and Mortgagee Corporations to take reasonable steps to verify their client's authority to deal and verify the identity of their clients.

Self-Represented parties are individuals who choose to prepare and execute their own Land Titles Registry Instrument (Land Titles Form), rather than employing the services of a Legal Practitioner. A self-represented party is to complete Verification of Identity (VOI). See the Self-Represented Party lodgment packs which are available through Access Canberra Website.

Refer to the Verification of Identity Registrar-General Rules and Verification of Authority Registrar-General Rules both available from **Access Canberra Website**. These rules have been introduced as a stronger measure to protect all parties against land title fraud.

All ACT Land Titles Registry Instruments need to be completed in registerable form and signed (see Chapter 9) by all parties under certification.

7.2 VERIFICATION OF IDENTITY

Proof of identity is required to enter in a conveyancing transaction. In the ACT, this must be in accordance with the Verification of Identity Registrar-General Rules.

For Self-Represented Parties, Identification documents that are accepted are under the category's chart that is attached above under identification requirements (see Chapter 4.7) The highest possible category must be provided. If a change of name has happened on the identification the evidence to show that change of name is required. E.g. registered change of name certificate. **The authorised person must certify copies of all required documents.**

When Legal Practitioners and mortgagee corporations are completing a verification of identity, they must take reasonable steps to verify the identity of their client. See section 4 of the Verification of Identity Registrar-General Rules for the requirements.

7.3 VERIFICATION OF AUTHORITY

Since 1 June 2020, this office is no longer required to or produce paper Certificate of Titles (see chapter 1.2). All parties involved in an ACT Land Titles conveyancing transaction must ensure that evidence is provided to verify their right to enter into the conveyancing transaction. The documentation requirements will depend on the capacity of the party to the conveyancing transaction. Refer to the verification of authority Registrar-General rules.

Prior to registering or recording a Registry Instrument executed by a Self-Represented Party, the Registrar-General needs to be satisfied that the party is authorised to enter into the conveyancing transaction to which the Registry Instrument relates. For examples of documents required to verify their authority, see the list provided in the Self-Represented Party pack. The supporting documents to be inspected will vary depending on the circumstances.

Verification of authority Registrar-General Rules require that "reasonable steps" are taken to verify authority. Verifying a person's authority in accordance with these Rules requires inspection of

supporting documents that connect the person to the land which is being conveyed, or which otherwise show their authority to be a party to the Registry Instrument. The supporting documents to be inspected will vary depending on the circumstances.

Section 48BF of the *Land Titles Act 1925* requires Legal Practitioners to verify their clients' authority to be a party to the Registry Instrument authorised by or under a client authorisation prior to executing a Registry Instrument on behalf of their client. The Legal Practitioner must use the client authorisation for any conveyancing transaction it enters into. Mortgagees will also be required to verify the authority of mortgagors to enter into mortgages.

There is no requirement in these Rules for a client authorisation to be signed and kept in hard copy. It is acceptable for the client to sign, scan and send the client authorisation by email to the Legal Practitioner or to sign electronically by utilising digital signature technology. The Legal Practitioner must be comfortable that the person that has signed the client authorisation is their client prior to executing a Registry Instrument on behalf of their client. Further guidance on electronic signatures is provided in section 9 of the *Electronic Transactions Act 2001*.

To comply with these Rules, it will be necessary to take the steps to verify authority that a prudent Legal Practitioner or mortgagee (as the case may be) would reasonably be expected to take in the circumstances and in the ordinary course of his or her business.

An expression used in these Rules that is not defined above has, unless the contrary intention appears, the same meaning as in the *Land Titles Act 1925*.

CHAPTER 8 SELF-REPRESENTED PARTIES

8.1 OVERVIEW

Self-Represented parties are individuals who choose to prepare and execute their own Land Titles Registry Instrument (Land Titles Form), rather than employing the services of a Legal Practitioner. It is recommended that all conveyancing transactions within the ACT are prepared and lodged by a Legal Practitioner.

From 1 June 2020, when a Land Titles Registry Instrument is prepared and executed by a Self-Represented Party, the Self-Represented Party, is to have their identity verified in accordance with the Verification of Identity Registrar-General rules. These requirements necessitating that parties to an ACT Land Titles conveyancing transaction must have their identity verified.

If an individual decides to represent themselves there is a Self-Represented Party lodgment pack available on the **Access Canberra Website** to help with the lodgment requirements.

Self-Represented parties must have their identity verified by an authorised person, either Justice of the Peace, Legal Practitioner, or a Notary Public. Authorised persons, who are approved to verify the identity of Self-Represented Parties are in the VOI and that Authorised person is to complete the Self-Represented Party lodgment pack.

The Authorised person must certify copies of all identification requirements see category chart available in the Self-Represented Party lodgment pack or in chapter 4.7 of this manual.

It is recommended that the authorised person completing the VOI must witness the Self-Represented Party signing the approved Registry Instrument. See Chapter 9.11 for witnessing requirements.

When the land has a registered mortgage, and this mortgage is carrying over to the new title after the Registry Instrument is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website

When the Self-Represented Party is a registered company, an ASIC extract is required to show who is authorised to execute the Registry Instrument. All parties who are required to sign on behalf of the company will need to complete VOI and execute the Registry Instrument with a witness. More information may be required regarding company executions.

When the Self-Represented Party is an attorney executing through a power of attorney the ACT registered power of attorney is required as the evidence of Verification of Authority.

Once the Self-Represented Party pack is completed it must be lodged with the completed Land Titles Registry Instrument. The pack will be sighted and noted on the Registry Instrument and then returned to the lodging party. The self -Represented party pack is to be kept for the duration of 7 years.

The Registrar-General must not register the Registry Instrument unless the registrar has verified:

- the party has had their identity verified in accordance with the rules in force at time of verification
- the party has the authority to deal with the land under the verification of authority rules at time of verification

CHAPTER 9 EXECUTION OF REGISTRY INSTRUMENTS

9.1 OVERVIEW

All ACT Land Titles Registry Instruments are required to be executed by all parties involved in the transaction. Find below the requirements of different executions available on a Land Titles Registry Instrument. All executions must be part of the Registry Instrument but when unavailable or not the required room then the approve annexure form 073-ANN for addition signing panel must be used.

9.2 EXECUTION FOR SELF-REPRESENTED PARTY

Self-represented parties choosing to execute Registry Instruments on their own behalf are required to complete a verification of identity (VOI) (see chapter 7.2). Signatures should be in **permanent black ink** capable of being clearly captured via an electronic imaging process and subsequently reproduced. Refer to chapter 8 for more information on Self-Represented Parties

- Self-represented parties are required to complete a VOI using the Self-Represented Party lodgment pack.
- Certified copies of identification which match the category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack
- Sign the Registry Instrument in the certification box as the certifier with full name
- Have their execution on the Registry Instrument in the certification box witnessed by the authorised person certifying there VOI or someone over the age of 18 not a party to the document. Witness must include full name
- Delete or strike through the first two dot points of the certification requirements, as shown below

*The Certifier has taken reasonable steps to verify the identity of the Transferor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

9.3 EXECUTION BY LEGAL PRACTITIONER

Legal Practitioner executing documents on behalf of their clients must take reasonable steps to verify their client's identity. Legal Practitioners must apply reasonable steps to verify their client's identity through the Verification of Identity Standard, roughly a 100-points ID check and a face-to-face interview or another reasonable way. If your client is unable to meet the standard you must

make best endeavours in to seek further documentation that your client is who they say they are and be comfortable in this approach before certifying the documents.

- Client must do a VOI or 100-point ID check
- Client must verify the authority to deal
- Must get client to complete a client authorisation form
- Legal Practitioner to sign the Registry Instrument in the certification box as the certifier with full name, capacity of certifying party and company name
- No requirements for a witness
- Leave all certification dot points

9.4 EXECUTION OF A CORPORATION/COMPANY

A Registered Corporation can employ a Legal Practitioner to execute the Registry Instrument on the corporation's behalf or if choosing to execute a Registry Instrument as the authorised person from that corporation the authorised person or people are **all** required to complete an verification of identity (VOI). When the authorised person/persons are signing the Registry Instrument, they are required to complete a Self-Represented Party lodgment pack available on Access Canberra Website.

- Authorised person/persons to complete a VOI using the Self-Represented Party lodgment pack
- Provide a company extract from Australian Securities and Investments Commission to verify the person/persons executing the Registry Instrument has authorisation to do so.
- Authorised person/persons to sign the Registry Instrument in the certification box as the certifier with full name, capacity of certifying party, and company name.
- Have their execution on the Registry Instrument in the certification box witnessed by the authorised person certifying there VOI or someone over the age of 18 not a party to the document. Witness must include full name.
- Delete or strike through the first two dot points of the certification requirements, as shown below

*The Certifier has taken reasonable steps to verify the identity of the Transferor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

9.5 EXECUTION BY AN AUSTRALIAN FEDERAL AND STATE GOVERNMENT EMPLOYEE

Federal and State Government departments are required to execute all Registry Instruments under certification. This requires an employee that is executing a Registry Instrument on behalf of the department to have the authorisation to sign under their delegation or position and currently hold

that position at time of execution. No evidence of this delegation is required at lodgment but under section 48BH of the *Land Titles Act 1925*, Land Titles can request this evidence if required.

- Government employee to sign the Registry Instrument in the certification box as the certifier with full name, position of certifying party and Government department
- Witness is required (see chapter 9.11)
- Delete the first two certification dot points

*The Certifier has taken reasonable steps to verify the identity of the Transferor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

9.6 EXECUTION BY MORTGAGEE CORPORATION (EMPLOYEE)

Mortgagees (lender) will need to certify that they have undertaken a mortgagor (borrower) verification of identity for incoming mortgages and for a variation of a mortgage. Lenders will also need to certify that they have retained supporting evidence and documents are compliant with Legislation. If a Legal Practitioner is representing a Mortgagee, the Legal Practitioner will need to certify that they have verified a mortgagee's identity and are authorised by the mortgagee to lodge the Registry Instrument with the Land Titles office.

- Mortgagee to sign the Registry Instrument in the certification box as the certifier with full name, position of bank employee and banks name.
- No requirements for a witness
- Delete or strike through the first two dot points of the certification requirements, as shown below

*The Certifier has taken reasonable steps to verify the identity of the Transferor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

9.7 EXECUTION BY OWNERS CORPORATION

Owners Corporation can employ a Legal Practitioner to execute the Registry Instrument on the corporation's behalf or if choosing to execute a Registry Instrument as the authorised person from the owners corporation the authorised person or people are **all** required to complete an verification of identity (VOI). When the authorised person/persons are signing the Registry Instrument, they are required to complete a Self-Represented Party lodgment pack available on Access Canberra Website.

- Authorised person/persons to complete a VOI using the Self-Represented Party lodgment pack
- Body Corporation needs to confirm the existence and identity of the Body Corporate by providing a search of the records of the Australian Securities and Investments Commission or other regulatory body with whom the Body Corporate is required to be registered

- Provide evidence that the authorised person/persons executing the documents is authorised to do so with in the body corporate
- Authorised person/persons to sign the Registry Instrument in the certification box as the certifier with full name, position held at the body corporation, and name of a owner's corporation.
- Have execution on lodgment Registry Instrument in the certification box witnessed by the authorised person certifying there VOI or someone over the age of 18 not a party to the document. Witness must include full name
- Delete or strike through the first two dot points of the certification requirements, as shown below

*The Certifier has taken reasonable steps to verify the identity of the Transferor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

9.8 EXECUTION BY LIQUIDATOR

A liquidator executing a Land Titles Registry Instrument is to complete all Registry Instruments in the company name and not in the liquidator's name. If necessary, to add the words in liquidation after the company name. The appointed liquidator must execute the Registry Instrument under certification. The liquidator can employ a Legal Practitioner to execute the lodgment Registry Instrument on their behalf or if choosing to execute to document themselves they are required to complete a Self-Represented Party lodgment pack available on Access Canberra Website.

- Appointed liquidator is required to complete a VOI using the Self-Represented Party lodgment pack
- Provide evidence for the right to deal (Certification of appointee)
- Sign the Registry Instrument in the certification box as the certifier with full name, capacity of certifying party, company name
- Have execution on lodgment Registry Instrument in the certification box witnessed by the authorised person certifying there VOI or someone over the age of 18 not a party to the document. Witness must include full name
- Delete or strike through the first two dot points of the certification requirements, as shown below

*The Certifier has taken reasonable steps to verify the identity of the Transferor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

9.9 EXECUTION BY A POWER OF ATTORNEY

Power of Attorney executing a Land Titles Registry Instrument on behalf of the doner can employ a Legal Practitioner to execute the lodgment Registry Instrument on the attorney's behalf or if choosing to execute a Registry Instrument as the attorney for the doner **all** attorneys are required to complete a verification of identity (VOI). When the attorney/attorneys are signing the Registry Instrument, they are all required to complete a Self-Represented Party lodgment pack available on Access Canberra Website.

All Power of Attorneys dealing with Land in the ACT require to be registered at the Land Titles office, or the unregistered Power of Attorney will need to be lodged in series with the Registry Instrument being lodged at Land Titles. The power of attorney will still require to be registered and a separate fee will apply.

- Attorney/attorneys to complete a VOI using the Self-Represented Party lodgment pack
- Attorney/attorneys must provide registered Power of Attorney
- Attorney/attorneys to sign the Registry Instrument in the certification box as the certifier with full name, capacity of certifying party, company name if required
- Have execution on Registry Instrument in the certification box witnessed by the authorised person certifying there VOI or someone over the age of 18 not a party to the document. Witness must include full name
- Delete or strike through the first two dot points of the certification requirements, as shown below

*The Certifier has taken reasonable steps to verify the identity of the Transferor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

9.10 EXECUTION PURSUANT TO A GUARDIANSHIP AND MANAGEMENT ORDER

The appointed manager must execute the Registry Instrument under certification. The manager can employ a Legal Practitioner to execute the lodgment Registry Instrument on their behalf or if choosing to execute to document themselves they are required to complete a Self-Represented Party lodgment pack available on Access Canberra Website. For an appointed manager to execute a Land Titles Registry Instrument the Guardianship and Management order must be registered on the Land Titles register using a RX Registry Instrument (see Chapter 46)

- Appointed managers are required to complete a VOI using the Self-Represented Party lodgment pack
- Provide evidence for the right to deal (Guardianship and Management Order)
- Sign the Registry Instrument in the certification box as the certifier with full name, capacity of certifying party, company name if required
- Have their execution on the Registry Instrument in the certification box witnessed by the authorised person certifying there VOI or someone over the age of 18 not a party to the document. Witness must include full name

- Delete or strike through the first two dot points of the certification requirements, as shown below



*The Certifier has taken reasonable steps to verify the identity of the Transferor or his, her or its administrator or attorney.

*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

9.11 WITNESSING REQUIREMENTS

When a Land Titles Registry Instrument is required to be witnessed for a Self-Represented Party, it is recommended that the authorised person completing the VOI, witness the execution of the Registry Instrument. When an authorised person is witnessing the execution for the Land Titles Registry Instrument, the verification of identity is to occur immediately prior to the execution of the Land Title Registry Instrument.

In cases when the authorised person completing the VOI hasn't witnessed the self-represented party then the Land Titles still requires the Registry Instrument to be witnessed by 1 witness, being an adult over the age of 18 who is not a party to the Registry Instrument.

CERTIFICATION <i>*Delete the inapplicable</i>	
*The Certifier has taken reasonable steps to verify the identity of the [transferor/transferee/mortgagor/mortgagee/caveator/applicant/covenantor/covenantee/encumbrancer/encumbrancee/grantor/grantee/lienor/lessor/lessee/receiving party/relinquishing party/Donor] or his, her or its administrator or attorney. *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document. *The Certifier has retained the evidence to support this Registry Instrument or Document. *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.	
Signed By: <div style="text-align: center;">  </div> <Name of certifying party> <Capacity of certifying party>	<div style="text-align: center;">  </div> Witness to state full name and sign here
for: <Company name>	
<i>Cross out whichever is inapplicable</i>	
on behalf of the [transferor/transferee/mortgagor/mortgagee/caveator/applicant/covenantor/covenantee/encumbrancer/encumbrancee/grantor/grantee/lienor/lessor/lessee/receiving party/relinquishing party/donor]	

CHAPTER 10 MINORS

10.1 OVERVIEW

In Australia a person is a minor until the person reaches the age of 18 years. Section 44(2) of the *Land Titles Act 1925* (LTA) provides generally for a minor or person under other disability to own land and for the Registrar-General to state details of the minor or disability on the Title. There is nothing in the Act limiting or extending the capacity of minors (Section 44(2) LTA 1925). A minor does not derive any enhanced contractual capacity by reason of becoming registered proprietor of land under the Act.

10.2 REGISTRY INSTRUMENTS IN FAVOUR OF MINORS

Registry Instruments in favour of minors may be registered, even where the estate or interest taken is subject to a mortgage or restrictive covenant. The date of birth will be required (Section 44(2) *Land Titles Act 1925*). For example: AB, a minor born the 10/08/2015.

Where Registry Instruments in favour of minors are lodged, a Certified Copy of the minors Birth Certificate must be sighted by the Land Titles lodgment officer.

Execution in favour of a minor may be given:

- by the minor (if able to sign)
- by his/her parent or guardian (Full name and address must be printed under execution)
- by his/her Legal Practitioner (Must provide full name).

10.3 REGISTRY INSTRUMENTS BY MINORS

A Registry Instrument executed by a minor, that meets all other requirements, will not be registered unless-

- it is authorised by an order of court or by statute. If a minor on attaining full age wishes to confirm a dealing, he/she should re-execute it; or
- if it is supported by a certificate given by an independent Legal Practitioner or, in certain circumstances, by the Public Trustee.

The certificate must state that -

- the minor understands the true purport and effect of the disposition;
- the minor makes the disposition freely and voluntarily; and
- the consideration is not manifestly inadequate.

10.4 REMOVAL OF ENDORSEMENT NOTING MINORS DETAILS ON TITLES

An application to remove the notation of a minor's birth details on title (as per the above endorsement - "AB, a minor born the 10/08/2015") can only be lodged after the minor has reached the age of 18 years old.

The removal can be lodged using a Miscellaneous Application (MA) Registry Instrument. The standard Registry Instrument lodgment fee applies. The MA Registry Instrument should be lodged

with certified copies of suitable identification documents. The Registry Instrument must be signed by the minor named on title. Refer to section 9.2 for execution by self-represented parties.

CHAPTER 11 PERIODS OF TIME

Wherever reference is made in any of the Acts administered by Land Titles, to a period of time (i.e. 14 days from the date of publication of a notice) the *Legislation Act 2001* applies.

However, in respect to caveats the periods of time in the *Land Titles Act 1925* are stated differently –

- Section 106(1) “a caveat...shall...lapse 14 days after the date of notice...”
- Section 107(2) “the Registrar-General shall...not less than 14 days from the date of notice...”

It is important to carefully read the requirements of the specific section in each case.

Section 107(2) *Land Titles Act 1925* requires the Registrar-General to remove the caveat **not less than** 14 days from the date of service of the notice

In effect, this means that the Registrar-General is **not** compelled to remove the caveat immediately upon the expiry of the 14-day period, as long as at least 14 days are allowed to lapse from service.

The incidence of weekends and public holidays within a 14-day period of notice does not affect the period of time. The reference in the LTA to days means calendar days, not business days. This does not present any difficulty in relation to the lapsing of caveats. The lapsing takes place upon the expiry of the period of time allowed rather than when the Registrar-General notes the lapsing or registers the Registry Instrument whichever is the case.

In the case of S 106 LTA, a caveat notice lapses on the expiry of 14 days after the service of notice. This is clearly a different provision to that in S 107(2). A court order would have to be obtained within the 14-day period in this case to defeat the registration of a competing document.

CHAPTER 12 REGISTRATION AND PRIORITY OF REGISTRY INSTRUMENTS

A Registry Instrument lodged for registration shall be in registrable form, in accordance with Section 48(1) of the *Land Titles Act 1925* (LTA).

Registry Instruments shall be registered in the order of time in which they were lodged in registrable form (Section 48(4) *LTA 1925*). Where a person lodges two or more Registry Instruments affecting the same land immediately one after the other, the Registrar-General may register the Registry Instruments in the order that will give effect to the intentions of the parties as expressed in or apparent from those Registry Instruments (Section 48(5) *LTA 1925*).

A document that has been lodged and withdrawn from the system under Requisition Notice is deemed to be in unregistrable Registry Instrument and therefore, loses its priority status. The document status is then deemed from when the Requisition has been satisfied and the document has been re-lodged in registrable form.

Where two or more Registry Instruments are registered in respect of, or are affecting the same interest in land, the Registry Instruments shall have priority according to the date and time of registration (Section 48(6) *LTA 1925*). This is the same expectation if 2 documents were lodged on paper or electronically.

Upon registration of a Registry Instrument, the Registrar-General shall record that Registry Instrument in the Register (Section 48(7) *LTA 1925*).

Upon registration of a Registry Instrument, other than a Memorandum of Provisions or a Caveat, the Registry Instrument becomes part of the Register and has the effect of a deed duly executed by the parties (Section 48(8) *LTA 1925*).

The above also applies to Caveats, although a Caveat lodged after a document which is unregistered will not defeat that document's priority unless that document is not in registrable form (Section 107(2) *LTA 1925*).

CHAPTER 13 STATUTORY RESTRICTIONS ON DEALINGS

13.1 OVERVIEW

One of the purposes of the *Planning and Development Act 2007* (PDA) is to regulate the use of land in the Territory. It is consolidated, replaced and/or amends several other Acts for example, *Land Act 1918*, *City Area Leases Act 1936* and many previous pieces of Legislation relating to land regulation in the ACT.

This section outlines the restrictions found on current crown leases in the restriction field on the computer-generated title.

13.2 CONCESSIONAL LEASES/SPECIAL LEASES

Concessional Leases are issued under Sections 240 and 241 of the PDA. These leases were previously issued under Sections 161 and 163 of the *Land (Planning and Environment) Act 1991*.

Section 235 of the PDA defines a Concessional Lease and a Lease. Under the PDA a concessional lease means a lease granted for a consideration less than the full market value of the lease, or for no consideration. Concessional Leases are usually issued to Churches, Community Groups, Incorporated Sporting Clubs and the like.

Section 265 of the PDA states that the lessee, or anyone else with an interest in a concessional lease, must not, during the term of the lease, deal with the lease without the written consent of the planning and land authority.

A Registry Instrument in relation to a lease to which this section applies that is made or entered into without consent has no effect.

All Crown Leases issued under the PDA now specify if the lease issued over a parcel is a Concessional Lease or a Non-Concessional Lease.

13.3 POSSIBLY CONCESSIONAL LEASES

The PDA was amended in October 2010 and a new category of leases was created. The new category “possibly concessional” includes leases that might or might not be concessional. This category is intended to serve as a flag or warning that the lease might be concessional, and that further research may be needed.

13.4 MARKET VALUE LEASES

A market value lease is a lease that is deemed to be not concessional. From October 2010 all leases that are issued that are not deemed to be concessional leases will be birth marked stating that the lease is a market value lease.

Market value leases issued prior to October 2010 are birth marked with “This is not a concessional lease”.

13.5 RURAL LEASES

Sections 280 through to 287 of the PDA deals with the granting of further Rural Leases. Further Rural Leases were previously issued under Section 171A of the *Land (Planning and Environment) Act*

1991. Restrictions on Rural Leases were previously dealt with under Section 186D of the *Land (Planning and Environment) Act 1991*.

13.6 BUILDING COVENANTS/COMPLIANCE CERTIFICATES

Certificates of Compliance were previously issued under Section 179 of the *Land (Planning and Environment) Act 1991*. Previously, restrictions on the transfer of land where the land was subject to a building and development provision and where a Certificate of Compliance had not been issued required ministerial consent under Section 180 of the *Land (Planning and Environment) Act 1991*.

Currently, under the PDA Compliance Certificates are issued under Section 296. Transfer of land subject to a building and development provision requires the consent of Environment, Planning and Sustainable Development Directorate (EPSDD) under Section 298 of the PDA unless the lessee has died, or the transfer is pursuant to a Family Court matter, or the transfer is pursuant to an order under the Domestic Relationships Act 1994, or the lessee has been declared bankrupt or insolvent.

13.7 VARIATION OF CROWN LEASES BY COURT/ADMINISTRATIVE MEANS

Prior to 31 March 2008 all variations in the covenants and conditions of crown leases were approved by administrative means by the provisions contained in Sections 222 to 253 of the *Land (Planning and Environment) Act 1991*. Since the introduction of the *Land (Planning and Environment) Act 1991*, a lessee has been unable to apply to the Supreme Court for a variation of lease conditions.

Lease variations are now dealt with by EPSDD through Sections 7 to 9, Sections 112 to 198, Sections 270 to 279 and for variations to Concessional Leases under Sections 256 to 264 of the PDA. A lessee is required to lodge a development application to vary any clauses within a registered Crown Lease.

Practitioners should note that pursuant to 72A(3) of the *Land Titles Act 1925*, Variations of Purpose Clauses are effective upon registration of the memorial of variation by the Registrar-General.

13.8 STATUTORY RESTRICTIONS NOTED ON TITLE

The following statutory restrictions and his/her status may be noted in the restrictions, conditions, and easements panel on the ACTLIS computer folios or an ACTLIS Title search.

Details of ACT Land Restrictions:

Purpose Clause

Status - Refer Crown Lease; or
 Refer Units Plan

Concessional Lease

Status - Applies for Term of Lease

Market Value Lease

Status - Current

Land Rent

Status - Current

Restriction on Transfer/Assignment

Status – Current: or Applies for term of Lease
Timeframe will be set out in Crown lease

Possibly Concessional Lease

Status - Current

Section 180 Land Act 1991

Status - Current; or
Compliance Cert issued

Section 298 Planning and Development Act 2007

Status – Current; or
Compliance Cert issued

Section 251 Planning and Development Act 2007

Status- Current; or
Refer Crown Lease
Minster consent required

Occupancy Prohibition

Status – Refer to Administration Interest

National Land

Status - Current; or
Revoked by Application No.....

Discharge of Liability in clause 2(c) of Crown Lease

(i.e. discharge of premium included in leases for payment of additional works/services)

Status- Current; or
Discharged by Application No.

Section 28A City Area Leases Act 1936

Status - 5 years from grant date

Section 28B City Area Leases Act 1936

Status - Repealed Land Act 1991

Section 28DA City Area Leases Act 1936

Status - Current; or

Discharged by DDA 000000

Section 163(8) Land Act 1991

Status - Applies for term of lease

Section 164(7) Land Act 1991

Status - 5 years from grant date

Section 167(5) Land Act 1991

Status – Applies for term of lease

Section 186C & D Land Act 1991

Status - Applies for term of lease.

Reg 19 Leases Regs 1918

Status - Applies for term of lease

Reg 19 Leases Regs 1918 (Leases Ord)

Status - Applies for term of lease

CHAPTER 14 HISTORICAL STATUTORY RESTRICTIONS ON REGISTRY INSTRUMENTS/CROWN LEASES

The *Land (Planning and Environment) Act 1991* (Land Act) has been repealed and replaced by the *Planning and Development Act 2007* (PDA). The PDA is the current Legislation used by EPSDD and the Suburban Land Agency (SLA) to regulate the use of land in the Territory.

The following items detail the various pieces of Legislation that have been repealed, replaced or amended prior to the commencement of the PDA. The restrictions that related to the PDA have been previously outlined in detail at the beginning of this chapter and where applicable the new restriction in the PDA is outlined in respect to the previous restriction in the *Land Act 1991*.

These restrictions may be found in the "Restrictions, Conditions and Easements" panel of computer folios or ACTLISTitle Searches.

14.1 LEASES ACT 1918 (REPLACED BY THE LAND (PLANNING AND ENVIRONMENT) ACT 1991 SINCE REPEALED)

All leases granted under the *Leases Act 1918* were also subject to Section 167 of the *Land (Planning and Environment) Act 1991*.

Section 167(5) prohibited the Transfer, Assignment, Sublease or parting with possession of such a lease without consent of EPSDD/Executive for the term of the lease. Effectively, Regulation 19 of the Leases Regulations was replaced by Section 167(5) Land (Planning and Environment) Act 1991.

Where a lease carries restrictions under both S.167(5) and S.186D of the *Land (Planning and Environment) Act 1991*, EPSDD have advised that the lodgment of a transfer endorsed with consent under S.167(5) was taken as evidence of compliance with both sections.

Leases Act 1918 leases are subject to Section 179 of the *Land (Planning and Environment) Act 1991*, however, EPSDD advises that it does not require the Registrar-General to administer the provisions of Sections 179, 180 and 181 in relation to those leases.

14.2 CITY AREA LEASES ACT 1936 / LAND (PLANNING AND ENVIRONMENT) ACT 1991

The *City Area Leases Act 1936* was repealed and replaced by the *Land (Planning and Environment) Act 1991*. The following aim to identify specific sections that need to be considered in the context of land titling in the ACT.

14.3 VARIATION OF CROWN LEASES BY A COURT OR ADMINISTRATIVE MEANS

Section 11A – City Area Leases Act 1936

Section 11A provided for the Supreme Court to vary the purposes for which a lease may be used. It was repealed and replaced with a new set of provisions, which make it possible for the purposes to be varied by administrative means. These new provisions were contained in Sections 222 to 253 of the *Land (Planning and Environment) Act 1991*.

Refer Chapter 37.10.

14.4 CONCESSIONAL LEASES

Section 11D – City Area Leases Act 1918

Section 11D restricted the transfer of a “Concessional Lease” (i.e., for club, association etc. purposes) without Ministerial Approval. Section 11D was repealed and replaced by Section 167 of the *Land (Planning and Environment) Act 1991*.

Section 163 and Section 164 – Land (Planning and Environment) Act 1991

Section 163 provides where a lessee to which this section applies (to community organisations) shall not transfer the lease during its term and a purported transfer of such a lease shall be of no effect. Transmission Applications to Executor/Devisee/Beneficiary/Administrator are prohibited.

Section 164 provides where a lessee to which this section applies (special leases for a charge less than market value) shall not assign, transfer, sublet, or part with possession of the lease within five years from the grant date without consent, of EPSDD otherwise such a Registry Instrument is of no effect. Transmission Applications to Executor/Devisee/Beneficiary/Administrator will require the consent of EPSDD.

14.5 BUILDING COVENANTS

Section 28(2A) - City Area Leases Act 1936

Section 28(2A) provided for the issue of a building and development covenant compliance certificate and was replaced by Section 179(1) of the *Land (Planning and Environment) Act 1991*.

Section 159 – Land (Planning and Environment) Act 1991

Section 159 of the *Land (Planning and Environment) Act 1991* defines "building and development provision" as a provision in a lease that requires the lessee to carry out specified works on the land or on any unleased Territory land. This may include such works as landscaping, car parking, screening etc, construction of buildings as well as works on unleased Territory land. The Registrar-General will only police the traditional "commence and complete" building covenant relating to the construction of buildings and associated works as has been past practice.

Section 28(2B) - City Area Leases Act 1936

Section 28(2B) of the *City Area Leases Act 1936* was repealed when *Land (Planning and Environment) Act 1991* was enacted.

Section 28(2B) restricted the transfer of a lease prior to the issue of a Compliance and was replaced by Section 180 of the *Land (Planning and Environment) Act 1991*.

Section 180(1) - Land (Planning and Environment) Act 1991

Those leases subject to Section 180(1) of the *Land (Planning and Environment) Act 1991* provides that transfers or assignments are restricted until the issue of a compliance certificate or until the consent of EPSDD is obtained. Some exceptions apply (refer Section 180(1) of the *Land (Planning and Environment) Act 1991*) as follows -

- upon death of a lessee;
- where transfer is made pursuant to an order of the Family Court, an order under another jurisdiction under the Family Law Act 1975 (Cwlth) or an order under the Domestic

Relationships Act 1994 part 3.2 adjusting property interests of parties in a domestic relationship;

- where transfer or assignment is made pursuant to bankruptcy or insolvency;
- the lessee has obtained, a compliance under Section 179 or the consent of EPSDD under subsection (2) or (3).

Section 28(2C) - City Area Leases Act 1936

Section 28(2C) restricted mortgaging of a lease prior to the issue of a Compliance Certificate. Section 181 of the *Land (Planning and Environment) Act 1991* replaced Section 28(2C) of the City Area Leases Act 1936.

Section 181 – Land (Planning and Environment) Act 1991

Under the City Area Leases Act 1936, the Registrar-General was required to administer a section that required mortgagees to execute a statutory declaration which stated that the mortgage meet the requirements of the Legislation (where it was land only). This administration requirement did not exist in the Land (Planning and Environment) Act 1991.

Essentially, the statutory declaration, or clause in the Mortgage/MOP to that effect, is no longer a necessary prerequisite to registration of a mortgage.

Section 28(3) - City Area Leases Act 1936

Section 28(3) provided for the Minister to consent to a transfer of a lease prior to the issue of a Compliance Certificate. Section 28(3) has been repealed and was replaced by Section 180(2) of the *Land (Planning and Environment) Act 1991*, which required the consent of EPSDD.

14.6 GOVERNMENT HOUSES

Section 28A - City Area Leases Act 1936

Section 28A restricted the transfer of leases for a fixed period of five years following grant of a lease for a government house. There was no equivalent provision in the *Land (Planning and Environment) Act 1991*, however as a result of the transitional provisions in the *Land (Planning and Environment) Act 1991*, Section 28A continued to have effect for continuing leases. covenant to pay balance of reserve price at auction

Section 28DA - City Area Leases Act 1936

Section 28DA provided for the liability of a lessee to repay the balance of the reserve price of a lease obtained at auction and was continued pursuant to the transitional provisions of the Land (Planning and Environment) Act 1991. Discharge of the liability is provided for by Section 28DA(3) of the *City Area Leases Act 1936*.

A discharge can be undertaken by attaching the Discharge issued by EPSDD to a Discharge Registry Instrument and completing the required details.

14.7 RESTRICTED AUCTION

Section 28B - City Area Leases Act 1936

Section 28B restricted the transfer of a lease obtained at restricted auction for five years. On commencement of the *Land (Planning and Environment) Act 1991* this restriction ceased to have effect as it was not covered by the transitional provisions.

14.8 PARTY WALLS

Section 32 - City Area Leases Act 1936

Section 32 provided for the definition and regulation of party walls and is replaced with Part 3 of *the Common Boundaries Act 1981* (refer Division 5 Pt 2 LA Consequential Provisions).

14.9 CERTIFICATES OF COMPLETION

Certificates of Completion were issued as evidence that the building was completed in accordance with the provisions of the Canberra Building Regulations, and under the Building and Services Ordinance 1924-1942.

The Registrar-General had previously accepted the Completion as evidence of satisfaction of a building and development covenant in a lease, and in lieu of Certificates of Compliance.

Retrospective amendments to the *City Area Leases Ordinance 1936*, commencing on 19 December 1973 require a lessee to obtain a Compliance or EPSDD's consent prior to the transfer or assignment of **any** lease containing a building and development covenant.

EPSDD advise that Certificates of Completion do not satisfy a building and development covenant in a lease.

The Registrar-General will no longer accept a Completion as evidence of satisfaction of a building and development covenant, and any title search containing the provision "Section 180 Land (Planning and Environment) Act 1991 Current" will require the Compliance or the written consent of EPSDD prior to transfer or assignment.

14.10 CERTIFICATES OF FITNESS FOR OCCUPANCY AND USE

A Fitness for Occupancy and Use is issued under Part 5 of the *Building Act* and is issued as evidence that the building complies with the ACT Building Code.

A Fitness for Occupancy and Use does not satisfy a building covenant in a Crown Lease and is not required to be lodged with the Registrar-General for any purpose

14.11 BUILDING CONVENANTS AND COMPLIANCE CERTIFICATES

Section 72C(1) of the *Land Titles Act 1925* (the Act) permits the Registrar-General to note the issue of a compliance certificate (by production of the certificate or evidenced by a conveyancing inquiry), issued under Section 179 of the Land (Planning and Environment) Act, in the register.

Section 72C(2) of the Act provides that when the Registrar-General makes such a notation in the register in respect to the issue of a compliance certificate it is conclusive evidence that EPSDD is satisfied as to compliance with the building and development provision.

Section 296(1) of the PDA permits EPSDD to issue a compliance certificate where it is satisfied that a building and development provision has been **fully** complied with.

Section 296(2) of the PDA permits EPSDD to issue a compliance certificate where it is satisfied that a building and development provision has been **partially** complied with. In such cases, EPSDD may require a bond to be paid until the provision has been fully complied with. A certificate issued under this section may contain a condition relating to that bond.

14.12 PRACTICE

Land Titles practice in relation to building and development provisions and compliance certificates is as follows –

Where it is evident to the Registrar-General that a Crown Lease contains a traditional building and development provision, the existence of that provision will be noted in the Restrictions field of the Title in respect to the Crown Lease, as follows -

“Section 298 Planning and Development Act 2007 Current”

Upon evidence being provided to the Registrar-General that a full or partial compliance certificate (or by way of a conveyancing inquiry) has been issued in respect to the Crown Lease, the notation will be altered to the following –

“Section 298 Planning and Development Act 2007 Compliance/Completion Certificate Issued”

Upon that notation being made, a person is entitled to assume that the building and development provision contained in the Crown Lease has been complied with.

Evidence of the issue of a compliance certificate may be in the Registry Instrument of the original certificate or a certified copy of the original or by way of a conveyancing inquiry. EPSDD issue one copy of the Certificate, if the original is lost and a client applies for a new Compliance Certificate; it is EPSDD’s practice to issue a Certified Copy of the original certificate from their file.

Once the compliance notation has been made on the register, it will not be necessary for the Registrar-General to sight the Compliance Certificate or conveyancing inquiry in respect to future Registry Instruments.

14.13 BUILDING COVENANTS IN AUSTRALIAN NATIONAL UNIVERSITY LEASES

This deals with EPSDD’s practice in relation to building and development covenants in residential leases granted to the Australian National University (ANU) in the early 1960s.

Certificates of Fitness and Occupancy and Use

These certificates are issued by the building section within EPSDD. The issue of this certificate is normally a pre-requisite to the issue of a Compliance by EPSDD. These leases contain building and development covenants, however the building works carried out by the then National Capital Development Commission (NCDC) on behalf of the Commonwealth were exempt from the Canberra Building Regulations at the time. Buildings constructed on those leases by ANU and NCDC were classified as "exempt buildings" and continue to enjoy that status. Building works carried out by successive owners do not enjoy that status and are subject to the provisions of the current building regulations.

In short, Certificates of Fitness for Occupancy and Use will not be issued in relation to the original building on the lease.

Certificates of Compliance

In order to satisfy Section 296 of the *Planning and Development Act 2007*, for the purposes of registration of a transfer, evidence of Compliance or the consent of EPSDD should be provided.

In order that the Registrar-General may note the register, under Section 72C of the Land Titles Act 1925, that Section 296 of the Planning and Development Act 2007 have been complied with,

evidence may be provided in the Registry Instrument of a Compliance or a Conveyancing Inquiry issued by EPSDD to that effect. The Registrar-General will note the register accordingly and no further evidence will be required in future.

14.14 RESTRICTIONS ON TRANSFER CONTAINED IN CLAUSE 3 OF A CROWN LEASE

A restriction on the transfer of a Crown Lease may sometimes be found in clause 3 of some older Crown Leases. These restrictions are not made under any specific part of the enabling Legislation and are in the form of an inter-party covenant.

The Registrar-General will not prevent registration of a transfer where such a restriction exists.

14.15 STATUTORY RESTRICTIONS NOTED ON TITLE

The following statutory restrictions and his/her status may be noted in the Restrictions, Conditions and Easements Panel on computer folios or computer Title Searches.

Purpose Clause

Status - Refer Crown Lease; or
 Refer Units Plan;

Concessional Lease

Status - Restriction on Transfer

Section 180 Land Act 1991

Status - Current; or
 Compliance Cert issued

Section 298 Planning and Development Act 2007

Status – Current; or
 Compliance Cert issued

National Land

Status - Current; or
 Revoked by Application No.....

Discharge of Liability in clause 2(c) of Crown Lease

(i.e. discharge of premium included in leases for payment of additional works/services)

Status- Current; or
 Discharged by Application No.

Section 28A City Area Leases Act 1936

Status - 5 years from grant date

Section 28B City Area Leases Act 1936

Status - Repealed Land Act 1991

Section 28DA City Area Leases Act 1936

Status - Current; or
Discharged by DDA 000000

Section 163(8) Land Act 1991

Status - Applies for term of lease

Section 164(7) Land Act 1991

Status - 5 years from grant date

Section 167(5) Land Act 1991

Status – Applies for Term of Lease

Section 186C & D Land Act 1991

Status - Applies for term of lease.

Reg 19 Leases Regs 1918

Status - Applies for term of lease

Reg 19 Leases Regs 1918 (Leases Ord)

Status - Applies for term of lease

CHAPTER 15 RESTRICTIVE COVENANTS

15.1 RECORDING IN THE REGISTER

There is no express provision in the LTA, which authorises the registration of Restrictive Covenants. However, the Registrar-General will accept for lodgment a transfer, which has attached to it a schedule containing restrictive covenants.

The Restrictive Covenant schedule must clearly indicate:

- the land which benefits from the restriction;
- the land which is burdened by the restriction;
- the persons having the right to release, vary or modify the restriction other than those having the legal right to release, vary or modify; and
- the persons whose consent to a release, variation or modification is stipulated for.
- The restrictive covenant must also satisfy these conditions:
 - it must touch and concern the land which benefits by the restriction (dominant tenement)
 - it must be negative in nature. Covenants imposing a positive obligation will not be accepted.

A recording will be made by entering a reference to the covenant in the Register under the heading 'RESTRICTIONS, CONDITIONS AND EASEMENTS' eg

Restrictive Covenant created by Transfer No

The execution on a restrictive covenant should be completed by the burdened party and not by their Legal Practitioner. If there is provision on the restrictive covenant for an execution and the execution is left blank, the transfer deemed to not be in registrable Registry Instrument.

No additional fee is charged upon lodgment of a transfer containing a restrictive covenant.

Restrictive Covenants will not be carried forward upon registration of a Units Plan. Restrictive Covenants will also fall upon registration of the surrender and re-grant of a Crown Lease upon which such a covenant is registered.

15.2 RELEASE OF RESTRICTIVE COVENANT

An appropriate recording will be made in the Register with regards to any Restrictive Covenant, which has been released.

The application to have the Restrictive Covenant released should be made on a Miscellaneous Application Registry Instrument available from this office. The Application should be signed in accordance with terms of the restrictive covenant.

Upon release, the recording of a restrictive covenant will remain in the 'RESTRICTIONS, CONDITIONS AND EASEMENTS' panel and noted 'Released by ' in the righthand margin.

The standard lodgment fee applies.

CHAPTER 16 TRUSTEES OF LAND UNDER THE LAND TITLES ACT 1925

16.1 DEFINITION

"Trustee" for the purposes of Section 138A *Land Titles Act 1925* includes an assignee or trustee of a bankrupt or insolvent registered proprietor, and an executor or administrator of the estate of a deceased proprietor.

Section 124 of the *Land Titles Act 1925* requires that the Registrar-General shall not make any entry in the Register of any Notice of Trust, whether express, implied or constructive.

Section 48(4) of the *Land Titles Act 1925* states that, upon registration, any Registry Instrument shall be deemed to be embodied in the Register.

Registered proprietors under the LTA are deemed to be the absolute proprietor.

16.2 GENERAL

Changes were made to Section 124 of the *Land Titles Act 1925* which took effect on 4 April 2013.

Section 124 of the *Land Titles Act 1925* used to prohibit the Registrar-General making any entry in the register of any notice of trust, whether express, implied or constructive. This provision is intended to prevent a declaration of any trust being registered on the actual land titles register.

On a strict interpretation of the section any Registry Instrument, including commercial leasing agreements which commonly refer to trusts in their contract terms, could not be registered. This creates uncertainty for lessees under commercial and retail leases in particular who wish for their lease agreements to be registered on the title.

The changes in April 2013 clarified that the prohibition in section 124 was designed to prevent notice of trusts on the register itself but was not designed to prevent the registration of Registry Instruments that make references to trusts.

The change to section 124 will not permit registration of a deed which creates a trust which has an actual or potential effect on title. Documents creating or referring to other trusts (not relating to the title) can now be registered.

16.3 REGISTRY INSTRUMENTS / REGISTRY INSTRUMENTS CONTAINING REFERENCES TO TRUSTS

As of April 2013, the Registrar-General will not reject Registry Instruments/dealings which contain references to trusts within the body of the Registry Instrument.

The approved Registry Instrument should show the parties to the Registry Instrument but should not make any references to trusts/trustees. The Registrar-General will reject any Registry Instrument where references to trusts/trustees are listed in addition to the registered proprietor of a parcel and/or other parties to a Registry Instrument. The Registrar-General will not allow references to trust within a Registry Instrument if that Registry Instrument creates/establishes a trust by way of registration of the Registry Instrument.

All documents should be executed by the parties to a Registry Instrument and references to trusts/trustees should not appear on the execution fields of an approved Registry Instrument.

16.4 DECLARATION OF TRUSTS IN REGISTRY INSTRUMENTS

Except in the case of a transfer or transfer by mortgagee, the Registrar-General will raise no objection to the description of a party Registry Instrument as a trustee.

A party Registry Instrument should be described by his/her name only or company name. If it is the intention that persons Registry Instrument with that proprietor be put on notice of equitable rights in other parties:

- the Deed of Trust (Section 124(2) *Land Titles Act 1925*); or
- the Deed of Appointment of Trustee (Section 132(2) *Land Titles Act 1925*); or
- the Grant of Administration (Section 135 (2)(a) *Land Titles Act 1925*);
- may be deposited with the Registrar-General for safe custody and reference, but not registered. Refer to chapter 47.5.

16.5 ENTRY AND REMOVAL OF REGISTRAR-GENERAL'S CAVEATS

When such a deed is deposited, the Registrar-General will enter a Registrar-General's Caveat, forbidding the registration of Registry Instruments not in accordance with the trust provisions (Section 124(3) *Land Titles Act 1925*). In this case, the Registrar-General's Caveat is entered/withdrawn at the expense of the applicant.

The purpose of entry of the Registrar-General's Caveat is to afford protection to persons with beneficial or equitable interests in the land by warning persons Registry Instrument, and where appropriate preventing registration of Registry Instruments, contrary to the interests of those persons.

It should be noted that a Registrar-General's Caveat entered to protect the terms of a trust deed in relation to property will not be removed automatically.

On the removal of such Caveats, the Registrar-General will no longer require evidence that the Caveat is being removed with the consent of the Beneficiaries. However, the Registrar-General will be concerned that no apparent conflict of interest arises from a request for removal.

Such Caveats may be removed by lodging a blank Withdrawal of Caveat Registry Instrument for the Registrar-General to complete together with the common lodgment fee and any supporting evidence.

16.6 REGISTRY INSTRUMENT WITH LAND SUBJECT TO A REGISTRAR-GENERAL'S CAVEAT

A party intending to deal with land subject to a Registrar-General's Caveat may search the Registrar-General's Caveat and the relevant deed deposited. Generally, that party should decide whether the registered proprietor has the capacity to deal. Supporting evidence in the Registry Instrument of a declaration may be required.

Upon lodgment of a Registry Instrument, where the land is subject to a Registrar-General's Caveat, the Registrar-General may inquire as to whether the Registry Instrument is contrary to the interests of the beneficiaries and may refuse to register if this is found to be the case eg conflict of interests situations. Supporting evidence in the Registry Instrument of a declaration may be required.

16.7 REGISTRY INSTRUMENTS BY TRUSTEES

Registry Instruments by a trustee or director of a trustee company in which it appears that his/her interest and duty conflict will be requisitioned. For example: a trustee transferring trust property to him/herself or a person mortgaging his/her own property to him/herself as trustee of trust property.

Where the Registrar-General requisitions a Registry Instrument where there may be a conflict, the requisition may be satisfied by lodgment of a request by all beneficiaries as follows;

"We X, Y, & Z, the beneficiaries under the will of A, deceased, and being sui juris request you to register.....(name of document) free from any notification in protection of our interests, and notwithstanding the fiduciary relationship existing between the said.....(trustee) and ourselves.
Signed in the presence of....."

16.8 APPOINTMENT/RETIREMENT OR VACATION OF OFFICE OF TRUSTEE

Section 138A provides for the appointment or retirement, or vacation of the office of, a trustee. For the purposes of that section, Section 138A(3) provides that "trustee" includes an executor.

Persons making application for the appointment of new trustees should also note the provisions of S.6 of the *Trustee Act 1925*.

An application pursuant to Section 138A(1) may describe the applicant/s as trustees.

Other words such as ".....entitled in equity" or "pursuant to a deed dated....." may be used.

An application pursuant to Section 138A LTA need only be signed by the incoming proprietors, and not those retiring, as long as the Deed of Trust is filed.

In the case of a trustee who has died, the application should be made by the surviving trustee/s accompanied by evidence of the registration of the death. A Notice of Death under Section 55 only applies to joint tenants/life estates and may not be used for this purpose.

Applications under Section 138A should be accompanied by the appropriate title. The Registry Instrument of appointment, or an office copy, or evidence of the death, should be deposited (but not registered or filed with the application).

The Registrar-General will raise no objection to the use of the word "Custodian" in connection with applications pursuant to the *Managed Investments Act*.

16.9 CONTROLLING TRUSTEES - BANKRUPTCY ACT 1966

A debtor who wishes that his/her affairs be dealt with under Pt X of the *Bankruptcy Act 1966* without sequestration of his/her estate, or without entering into a deed of assignment or arrangement may, by Section 188 of the *Bankruptcy Act*, sign an authority which, upon becoming effective, places the property of the debtor under the control of the trustees named therein. The debtor is thereafter prohibited from disposing of or Registry Instrument with any of his/her property except with the consent of the controlling trustee: *Bankruptcy Act 1966*, Section 189(2). Failure to comply his/her responsibilities under this section has a penalty of imprisonment for 12 months.

Section 190 of the *Bankruptcy Act 1966* confers a wide range of powers on the controlling trustee, including the power "to deal with the debtor's property in any way that will, in the opinion of the trustee, be in the interests of the creditors".

In exercise of the powers under Section 190 of the *Bankruptcy Act 1966*, the trustee is empowered to act "in the name of the debtor as if he or she had been duly appointed by the debtor to be his/her lawful attorney to exercise those powers": *Bankruptcy Act 1966*, Section 190(4).

An effective authority under Section 188 of the *Bankruptcy Act* is not revocable by the debtor: *Bankruptcy Act 1966*, Section 188(3).

Registry Instruments by trustees should be drawn in the name of the debtor and executed by the trustee on behalf of the debtor. Evidence should also be furnished that the property has not been released from the trustee's control: see Section 189, 204 and 208 of the *Bankruptcy Act 1966*. For example: a court order, a notice of a special resolution by creditors etc.

16.10 REPEAL OF "NO SURVIVORSHIP" PROVISIONS

Upon commencement of the *Land Titles Act 1925* the former Section 126 and Section 127 of the *Real Property Act 1925* were repealed.

These provisions were repealed because they were anomalous in principle. They supported obligations in relation to registered land which were purely equitable, not legal, and are thus outside the ambit of the Torrens system.

In the event that an entry exists in the register including the words (no survivorship) the proprietors remain joint tenants.

CHAPTER 17 UNREGISTERED REGISTRY INSTRUMENTS

The existence of unregistered Registry Instruments is notified by either a Title or Check search in ACTLIS. This system is accessed by inserting the parcel identifier or Title reference (i.e., Vol/Fol).

A 'Check Search' lists all transactions with a title during a period of 3 months preceding the date of the search and all unregistered Registry Instruments affecting that title and shows the date and time at which the report was certified by the Registrar-General to be correct.

Generally speaking, a document is not lodged until it is entered into ACTLIS. Unregistered Registry Instruments can be altered by the authorised party, however, registered Registry Instruments may only be altered or corrected by lodgment of an Application to Correct the Register Registry Instrument (CR) appropriately completed with supporting evidence from all parties affected by the correction.

Unregistered documents have no legal effect on the Title until registration has been completed. The lodgment of a Caveat does not prohibit the registration of a document lodged in registrable Registry Instrument prior to the Caveat being lodged.

If a party requires a copy of an unregistered Registry Instrument the normal search fees apply. However, unregistered documents are not guaranteed by the Registrar-General.

CHAPTER 18 REGISTRY INSTRUMENT REQUISITIONS

Where a Registry Instrument lodged for registration with the Registrar-General is not in registrable form (Section 4 *Land Titles Act 1925*) the Registrar-General, under Section 48B (2)(a) of the *Land Titles Act 1925* may:

- (i) refuse to register it and require 1 or more of the parties to the Registry Instrument to
 - a) alter or correct the Registry Instrument; or
 - b) provide a stated document under section 14 (1) (a); or
- (ii) for a Registry Instrument lodged under section 48BA or section 48BB the Legal Practitioner or mortgagee corporation to—
 - a) alter or correct the Registry Instrument; or
 - b) provide certification under section 48BA or section 48BB in appropriate Registry Instrument; or
 - c) provide a stated document under section 14(1) (c) or section 48BH (2); or
 - d) reject it.

18.1 THE REGISTRAR-GENERAL MAY CORRECT ERRORS IN REGISTRY INSTRUMENTS PRIOR TO REGISTRATION

Notwithstanding the above, the Registrar-General may register a Registry Instrument notwithstanding any error in or omission from the Registry Instrument and where a Registry Instrument is so registered the error or omission does not invalidate its registration.

This gives the Registrar-General a discretionary power, which must be limited in its application. In practice the exercise of the discretion will usually be limited to relatively unimportant cases of error or omission.

Section 48C of the *Land Titles Act 1925* enables the Registrar-General to correct a patent or obvious error in a document, by marginal notation.

18.2 POWER TO REQUIRE AMENDMENTS

If, in his/her opinion, a Registry Instrument is incorrect, incomplete, or defective in any particular, the Registrar-General may, under Section 48(B)(2)(a) LTA require it to be altered or corrected by way of a requisition.

If the client is a regular user of the office and has previously supplied an email address for notification of requisitions, they may be sent an email.

The original documents are returned to the lodging party with a detailed requisition notice explaining what needs to be done to the documents to ensure they are in registrable form.

Lodging parties will be given one calendar month from the date of the requisition to rectify the document.

The original document with the bar code attached at time of lodgment must be returned. The bar code is proof of the time of original lodgment and contains the Registry Instrument number allocated to the Registry Instrument. The client cannot replace a document and discard the original

bar code document issued by Land Titles. If a document is replaced without the original barcode being returned the lodgment fees are payable again.

Where requisitions are not attended to during this period, a 'final notice' may be issued. This will allow the lodging party a further and final calendar month to comply with the requisition.

If, at the expiry of the final notice period, the requisition has not been complied with, the document concerned, and any documents that rely on it for registration, will be rejected automatically (Section 48B(2)(b) LTA). Fees will not be refunded where documents are rejected. New lodgment fees apply if the documents are presented for lodgment after being rejected.

No extensions of time will be granted.

18.3 ALTERING REGISTRY INSTRUMENTS TO SATISFY REQUISITIONS

The allowable modes of alteration are as follows -

- a) Alterations must not be made by erasure, by 'whiteout' or by pasting over or attaching to the Registry Instruments slips of paper containing the matter intended to be inserted in the Registry Instrument. Alterations made in any of these modes will render the Registry Instrument liable to rejection. The original words or figures to be omitted must not be rendered illegible but should be ruled through and those substituted written above them. If there is insufficient room on the Registry Instrument to affect the desired alteration by interlineations, then:
 - i) the alteration should be made by annexure; or
 - ii) if the alterations desired are extensive or entail such radical alterations as to make it in effect a new Registry Instrument, a new Registry Instrument containing the desired alterations should be prepared and executed.
- b) Alterations made by interlineations must be noted in the margin by the signatures or initials of the parties who signed the Registry Instrument.
- c) Annexure added to Registry Instruments after execution, are required to be signed by the parties to the Registry Instrument.

18.4 REFUSAL TO REGISTER

If a Registry Instrument is presented for registration it may be immediately refused unless all documents which the Registrar-General requires in order to register the Registry Instrument are available. The Registrar-General may refuse to register a Registry Instrument, which is not in 'registrable form'. (Refer Section 4 for definition of 'registrable form').

18.5 WITHDRAWAL

A document may be withdrawn prior to registration upon request from the lodging party. As the fee paid is a lodgment fee and not a registration fee, the lodgment fee is non-refundable.

CHAPTER 19 PROCESS OF REGISTRY INSTRUMENT AFTER REGISTRATION

All Registry Instruments lodged (eg Transfer, Discharge of Mortgage, etc), are retained by Land Titles when registered and become part of the register. Any supporting documents lodged to enable registration (eg probate, company change of name etc) are retained by Land Titles and form part of the register once attached to the Registry Instrument.

All registrations from 1st of June 2020 will no longer receive Certificate of Titles back in paper form. Once the registration of the Registry Instruments is completed the lodging party of the Registry Instruments will automatically receive a confirmation email advising them that the Registry Instruments lodged with ACT Land Titles has been registered.

When there are documents required to be picked up from ACT Land Titles a schedule sheet will be sent out by email to the authorised lodging party (eg crown lease, power of attorney, unit plans, etc). The party authorised to receive the documents are required to print off a copy of their schedule sheet and bring the schedule sheet into one of the customer services officers on the Land Titles counter. The customer service officer will provide the documents to the authorised person, who will then be required to check off all of the documents and sign the schedule sheet before leaving the office. One copy of the schedule sheet should be retained by the authorised party, and the signed copy will be retained by the Land Titles as proof of collection.

CHAPTER 20 TENANCY

20.1 JOINT TENANTS

Definition

A useful definition of 'joint tenants' may be found in the Explanatory Memorandum of the *Land Titles (Amendment) Bill 1995* as follows -

"the ownership of land in common held by several people where there is a right of survivorship, i.e. where, on the death of one joint owners, the land as a whole vests in the survivors, and can only be disposed of by will by the last surviving owner. Every joint tenant is possessed of the joint property by every part and by the whole."

The essential features of joint tenancy are referred to as the 'four unities'. These are as follows -

- unity of title
- unity of time
- unity of interest
- unity of possession

Unity of title means the co-ownership must be created by the same deed, Registry Instrument.

Unity of time means the interests of the tenants must vest in them all at once and at the same time, i.e. for a Joint Tenancy to occur, all parties need to take title together on the same Transfer Registry Instrument.

Unity of interest means:

the tenants must have the same kind of estate, one cannot have an estate in possession whilst the other has an estate in remainder.

they cannot hold in different proportions, since they are not holders in different shares, but each is entitled to the whole, that is he/she holds the whole jointly and nothing separately.

they must all concur in any legal act affecting the subject matter eg. one joint tenant cannot lease the land without the concurrence of his/her co-owners.

Unity of possession means no one holder or owner has possession, or a right to possession, each one's interest extends to the whole. This feature is described by saying they have unity in possession.

Where two or more persons are listed in the Register as joint proprietors, not being tenants in common, they shall be registered as joint tenants (Section 54(2) *Land Titles Act 1925*).

Registry Instruments by Joint Tenants

A person registered as a joint tenant, upon request to the Registrar-General, is entitled to receive a separate duplicate Title (this does not include a Crown Lease) Section 54(3) of the *Land Titles Act 1925*. A fee is payable upon lodgment of this request and all parties should complete an Application for New Title – Multiple – (ACT).

Transfers by Joint Tenants

Refer 'Transfers – Chapter 58'.

The registration of a mortgage by one joint tenant does not sever the joint tenancy. However, if the mortgagee should exercise power of sale this would sever the joint tenancy and a purchaser would take the title as a tenant in common with the remaining proprietor.

If a Writ is registered on title against the interest of one of several joint tenants, upon registration of a transfer in pursuance of the writ, the practice is the same as if the transfer had been executed by the joint tenant.

20.2 DEVOLUTION ON DEATH OF A JOINT TENANT

Registration of the survivor of a joint tenancy is made pursuant to Section 55 of the *Land Titles Act 1925*, known as a Notice of Death by Surviving Proprietor - see 'Survivorship of Joint Tenants – Chapter 57.

Devolution of Property upon Death of joint tenants at the same time see Chapter 57...

Corporations as joint tenants

The *Law of Property (Miscellaneous Provisions) Act 1958* applies and modifies the *Conveyancing Act, 1919-1954* (New South Wales) in the ACT.

Section 25(1) of the Conveyancing Act provides that a Corporation is capable of acquiring and holding property in joint tenancy in the same manner as if it were an individual. Where a body corporate and an individual, or two or more bodies corporate become entitled to any property in a Registry Instrument which would, if the body corporate had been an individual, have created a joint tenancy they shall be entitled to the property as joint tenants: provided that the acquisition and holding of property by a body corporate in a joint tenancy shall be subject to the like conditions and restrictions as attach to the acquisition and holding of a property by a body corporate in common.

NB: Where a body corporate is a joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant.

20.3 TENANCY IN COMMON DEFINITION

A useful definition of 'tenants in common' may be found in the Explanatory Memorandum of the *Land Titles (Amendment) Bill 1995* as follows -

"where two or more persons are entitled to land in such a manner that they have an undivided possession but several freeholds, that is, no one of them is entitled to the exclusive possession of any part of the land, each is entitled to occupy the whole in common with the others. It is distinguished from joint tenancy by the fact that on the death of any one of them, her/his share passes, not to the survivors, but to her/his devisee, who then becomes a tenant in common with the survivors."

A person registered as a tenant in common is entitled, upon request, to receive a separate Title. Each Title shall specify the person's share (Section 54(4) and (5) *Land Titles Act 1925*).

Where registered proprietors wish to convert from one title to separate titles, the proprietors are required to lodge an Application for New Title – Multiple – One to Many (MT). A fee is payable and after registration of the MT, new Volume and Folios (title references) are issued.

20.4 REGISTRY INSTRUMENTS BY TENANTS IN COMMON

A Registry Instrument by one of several tenants in common should be precise as to the share intended to be dealt with.

For transfers by tenants in common - see 'Transfers – Chapter 58'.

One of several tenants in common may mortgage his/her interest in the land. This will be entered against the title as follows:

mortgage from AB to(Mortgagee)

Where tenants in common, having separate titles, transfer the whole of his/her shares in the land to another person, the transferee may be required to take out a new Title for consolidation.

Devolution on Death of a Tenant in Common

On the death of a tenant in common his/her interest devolves in the same manner as if they were a sole proprietor; see 'Transmission Applications – Chapter 61'.

20.5 SOLE PROPRIETORS

The estate of a sole proprietor devolves, upon death, in similar manner to that of a tenant in common.

20.6 SEVERANCE OF JOINT TENANCY

The usual method of severance of a joint tenancy is for A & B as joint tenants to transfer to A & B as tenants in common.

A joint tenancy may be unilaterally severed by a joint tenant. This is effected by registering a transfer from A, of all his/her estate and interest to A. This is based on the common law rule, which recognises this as an effective means of severing a joint tenancy. For further reading see *Wright v Gibson* (1949) 78 CLR 313.

A mortgage by one joint tenant will not sever the joint tenancy.

However, if the mortgagee in a mortgage by one joint tenant transfers that joint tenants' interest under power of sale, the tenancy will be severed.

For all transfers lodged where the intent is to sever an existing Joint Tenancy between the proprietors, the Transfer must be accompanied by a Statutory Declaration from the applicant proprietor stating –

- that they understand by severing the tenancy that their share of the estate will no longer pass to the surviving tenant and will be determined by their will,
- that they are aware that the severance of tenancy will not take effect until registration and should they pass away prior to registration of the document, the transfer will have no effect.
- That they have served notice on the other joint tenant (providing date and address where notice was served (including a copy of the letter which should be sighted by the Land Titles Client Service Officer).

Proof of Ownership or in the case of a registered mortgage on the Title a mortgagee's consent is required for the registration of the transfer document.

20.7 UNILATERAL SEVERANCE ON IMMINENT DEATH OF A JOINT TENANT

In several NSW cases involving estranged spouses, unilateral severance of a joint tenancy was attempted as a means of preventing property passing by survivorship to the joint tenant. In each case, the transferee died before registration of the transfer under the *Real Property Act 1900*, and in

each case, the relevant Court held that the joint tenancy had not been severed. As a result, the share in the property of the deceased joint tenant passed to the surviving joint tenant.

These cases highlight the need for severances of this kind to be prepared and registered with extreme urgency. It should be noted that such Registry Instruments with land, Land Titles require proof of ownership or in the case of a registered mortgage then the mortgagee consent is required.

20.8 PRESUMPTION AS TO JOINT TENANTS

Section 54(2) of the *Land Titles Act 1925* provides that where 2 or more persons are registered as "joint proprietors", but not as tenants in common they shall be taken to be registered as joint tenants.

In the absence of any Registry Instrument of tenancy in a document Section 26 (1) of the *Conveyancing Act 1919 to 1954* (NSW) establishes a presumption as to tenants in common.

Section 26 of the *Conveyancing Act* is applied in the ACT by the "*Law of Property*" (*Miscellaneous Provisions*) *Act 1958*. Section 26(1) of the *Conveyancing Act* provides that in the construction of any Registry Instrument after the commencement of the *Law of Property Act* a disposition of the beneficial interest in any property whether with or without the legal estate to or for 2 or more persons beneficially shall be deemed to be made to them as tenants in common, and not joint tenants.

This provision does not apply to certain Registry Instruments of ownership eg executors, administrators, trustees or mortgagees unless specifically stated to take as joint tenants.

CHAPTER 21 LIQUIDATION

21.1 POWERS OF LIQUIDATORS

Under the *Corporations Act 2001* all liquidators, whether official or voluntary, have power to “*sell or otherwise dispose of, in any manner, all or any part of the property of the company*”: Subsections 477 (2)(c), 506 (1)(b). An official liquidator, with the approval of the Court, or the committee of inspection or a resolution of the creditors has the power to “*carry on the business of the company so far as is necessary for the beneficial disposal or winding up of that business*”: Section 477(1)(a).

A voluntary liquidator with the approval by a special resolution of the company or, in the case of a creditor’s voluntary winding up, with the approval of the Court or the committee of inspection or, if there is no such committee, a meeting of creditors, may exercise similar powers: Section 506(1)(a).

21.2 REGISTRY INSTRUMENTS BY A LIQUIDATOR

A Registry Instrument by a company in liquidation should be drawn in the name of the company and not in the name of the liquidator. It is necessary to add the words “(in liquidation)” after the name of the company where it appears in the Registry Instrument; Corporations Act 2001 Section 541.

The execution of the Registry Instrument by the liquidator must be done under certification.

Execution under certification by a Legal Practitioner (see chapter 9) or certifications done by the liquidator is classed as a Self-Represented Party (see chapter 9)

CHAPTER 22 CORPORATIONS

22.1 REGISTRATION UNDER LAND TITLES ACT 1925

The only persons who will be registered as proprietors of land under *Land Titles Act 1925* are natural persons and corporations. A corporation may include a corporation under -

- *Corporations Act 2001* (or equivalent overseas law)
- Associations Incorporation Act 1991 (or equivalent State law)
- Unit/Strata title Legislation
- Statute, creating body corporate

Note - Where there is uncertainty regarding the capacity of an entity to legally hold title in the Australian Capital Territory, the client will be required to supply this office with supporting evidence to demonstrate the legal status of the organisation.

22.2 ACQUISITION AND DISPOSAL OF LAND

The Registrar-General does not, as a rule, inquire whether a corporation acquiring an interest in land under the *Land Titles Act 1925* is acting within its corporate powers.

22.3 EXECUTION OF REGISTRY INSTRUMENTS

Refer Chapter 9.4.

The *Corporations Act 2001* does not govern the execution of documents by a foreign corporation. The Registrar-General will accept such documents upon sufficient evidence that the organisation is a body corporate Registry Instrumented in accordance with the laws of that relevant country.

22.4 INCLUSION OF AUSTRALIAN COMPANY NUMBERS OR AUSTRALIAN BUSINESS NUMBERS (ACN'S/ABN'S)

All documents by or in favour of a company lodged at the ACT Land Titles after 1 July 2017 must comply with the following;

- The registered ACN/ABN should be included after the description of a corporate party on all Land Titles documents.

22.5 TRANSFERS, LEASES AND MORTGAGES BY COMPANIES

When a transfer, mortgage, encumbrance or lease by a company is lodged for registration, it is assumed in the absence of some patent irregularity that the Registry Instrument is within the corporate powers of the company.

22.6 CHANGE OF NAME

A company may, by special resolution, and with the approval of the Australian Securities and Investment Commission (ASIC), change its name (*Corporations Act 2001*). Provision is also made whereby a public company may convert to a proprietary company or vice versa.

Where a corporation has changed its name, application should be made in a similar manner to changing a person's name as outlined in Chapter 30. A certified copy of the Incorporation or Change of Name should be produced. An ASIC Search certificate issued by ASIC should be produced as evidence of the change of name. The right to deal shall be provided or in the case of a registered

mortgage then the mortgagees consent is required, and the company should execute the Registry Instrument.

22.7 APPOINTMENT OF LIQUIDATORS

Under the *Corporations Act 2001*, appointment of how liquidators are regulated varies according to whether the winding up is by the court or takes place voluntarily.

Every liquidator, whether appointed by the court or voluntarily, is required under penalty to lodge with the Australian Securities and Investment Commission, notice of his or her appointment and of the situation of his or her registered office.

No entry of the appointment of a liquidator or of the filling of a vacancy in the office of liquidator is made on the Register under the *Land Titles Act 1925*; the position in that respect corresponds to that of the donor of a power of attorney, or of a receiver.

22.8 POWERS OF LIQUIDATORS

Under the *Corporations Act 2001* all liquidators, whether official or voluntary, have power inter alia to *“sell or otherwise dispose of, in any manner, all or any part of the property of the company”*:

An official liquidator with the approval of the Court, or the committee of inspection or a resolution of the creditors has the power to *“carry on the business of the company so far as is necessary for the beneficial disposal or winding up of that business”*. A voluntary liquidator with the approval of a special resolution of the company or, in the case of a creditor’s voluntary winding up, with the approval of the Court or the committee of inspection or, if there is no such committee, a meeting of creditors may exercise similar powers.

22.9 REGISTRY INSTRUMENTS BY A LIQUIDATOR

Refer to Chapter 21.2

22.10 DISCLAIMER OF ONEROUS PROPERTY

The *Corporations Act* makes provision for the disclaimer of property by a liquidator. Where a lease under the LTA has been disclaimed the lessor may apply to have the determination of the lease noted on the title. There is no special Registry Instrument for this application and the Miscellaneous Application should be used, and completed as follows -

The applicant, being the registered proprietor of the land above described, hereby requests the Registrar-General to record on the said folio of the Register the Determination of Lease No pursuant to Pt 5.6, Div 7 of the *Corporations Act 2001*.

There should be lodged with the application;

- the certificate or other Registry Instrument of title to the reversion expectant upon the disclaimed lease;
- evidence of the appointment of the liquidator;
- a statutory declaration by the liquidator stating that he/she gave the notice of disclaimer required by the *Corporations Act* and the disclaimer has now taken effect pursuant to that Law;
- a disclaimer in writing.

22.11 DEFUNCT COMPANIES

Any such Registry Instrument with land under the LTA of which a defunct company is registered as proprietor should be drawn in the name of the defunct proprietor and, if it is expressed to be executed by the Australian Securities and Investment Commission "*pursuant to the Corporations Act 2001*", will be registered by the Registrar-General without inquiry.

CHAPTER 23 CHANGE OF OWNERSHIP ADVICE TO ICON WATER AND ACT REVENUE

The following Registry Instruments have been modified in order to collect the data as agent of the ACT Revenue Office and replace the Notice of Lease Transfer Registry Instrument:

- Transfer
- Transmission Application
- Transfer by Power of Sale
- Change of Name
- Notice of Appointment/Retirement of Trustee

The Registrar-General provides ACT Revenue, Environment Planning and Sustainable Development Directorate (EPSDD) and ICON Water with access to all changes in the ownership of land. These organisations are provided with a report on a daily basis, listing the above documents registered by Land Titles on the previous day.

The Registrar-General takes no responsibility for the subsequent update of rates OR water accounts.

PART 2

**REGISTRY
INSTRUMENTS
AND
APPLICATIONS**

CHAPTER 24 LODGING OF PAPER REGISTRY INSTRUMENTS

When paper Registry Instruments are lodged in person, they are required to be lodged at the **Dickson** Access Canberra Service Centre, 480 Northbourne Avenue Dickson ACT 2602. Lodgment hours are between 9:00 am and 5:00 pm weekdays (excluding Public Holidays). See Access Canberra Website for any changes to operation hours **Access Canberra website**.

Registry Instruments posted to the office will not be accepted. Payments for all Registry Instruments and lodgments must be made by Visa or MasterCard or via a lodgment agent on a lodgment account.

Registry Instruments should be presented to a lodgment clerk at the Land Titles counter for an examination prior to lodgment. Registry Instruments must be presented in the correct lodgment order and accompanied by applicable fees. Registry Instruments will be registered in the order that they have been presented for lodgment.

CHAPTER 25 INTENTIONALLY LEFT BLANK

CHAPTER 26 FEES

Fees are determined by the Minister in relation to those matters as identified throughout the *Land Titles Act 1925* by way of a fee note at the end of the relevant section and/or subsection. The determination power is established under Section 139(1) of the *Land Titles Act 1925*.

26.1 FEES PAYABLE ON LODGMENT

For an Organisation with a lodgment account, accounts must be paid within 7 days of the invoice generation. Payable methods are by Visa, MasterCard or by EFT to a BSB and ACC No.

26.2 RE-LODGMET OF REJECTED REGISTRY INSTRUMENTS (BY REQUISITION)

Upon re-lodgment of a Registry Instrument which has previously been **rejected out of time**, lodgment fees are payable.

26.3 RE-LODGMET OF WITHDRAWN REGISTRY INSTRUMENTS

Lodgment fees **are** payable upon **re-lodgment** of previously **withdrawn** Registry Instruments.

26.4 REFUNDS

The *Land Titles Act 1925* does not provide the Registrar-General with the capacity to refund fees.

26.5 NEW TITLE FEES

A fee is payable for issue of new Title only when it is necessary to issue a new volume and folio –

- upon registration of a Units Plan, for each new Title for each unit in the plan plus the common property,
- upon request for separate Titles for each registered proprietor,
- upon request for consolidation of separate Titles into one title,
- upon request for creation of Titles for an Estate for Life and for an Estate in Remainder,
- upon termination of an Estate for Life and the consolidation of both estates into one title.

26.6 REVIEW OF FEES

Fees are generally reviewed on an annual basis and new fee schedules take effect on 1 July each year. Full details of the fees can be found at the **Legislation Website** where the Ministerial Determination is published or in a simplified form at the **Access Canberra Website**.

CHAPTER 27 ANNEXURES

27.1 OVERVIEW

Some distinction needs to be drawn between what is defined as a supporting document and an annexure. Supporting documents consist of papers prepared **in support** of a document as evidence of a particular matter and include the following: certificates, court orders, statutory declarations, deeds, letters, agreements etc. Annexure are attached papers, which **forms part** of a document eg. where there is insufficient space in the body of a document, the text is included in an Annexure.

27.2 FORM OF ANNEXURE

Annexure which Registry Instrument part of the document must meet the following standards-

- Printed Annexure Sheets 029-ANN are available at the Land Titles section of the Access Canberra Website **www.accesscanberra.act.gov.au**
- Each page must be numbered. For example 1, 2, 3 (Roman Numerals are not accepted)
- Must be properly annexed i.e. must be referred to in the body of the document and must bear all information relating to the document. If the annexure was separated from the original, it should be able to be easily identified and include –
 - Parties to the document,
 - Document Type, i.e. Transfer, Sublease,
 - The date of the document,
 - Total amount of pages in the annexure,
 - Either the title or parcel identifier.

An example of the annexure clause required is set out below -

"This is the Annexure marked ".A." referred to in the Sublease between Party A and Party B. over Volume 1234 Folio 56 - consisting of 76 pages"

the Annexure should be properly attached to the parent document and need not be signed and dated by all parties to the document. The pages should be numbered, and the proper annexing clause used (see above).

The printing must be permanent and fade free and completely legible.

Supporting documents are not required to be on A4 Legal white paper.

Page one (1) of the annexure should begin from the first page of the annexure and not include the pages of the Land Titles Registry Instrument.

CHAPTER 28 CAVEATS

28.1 OVERVIEW

There are two classes of caveats provided for under the *Land Titles Act 1925* -

- Private Caveat; and
- Registrar-General's Caveat.

28.2 PRIVATE CAVEATS

This section of the practice manual is in regard to private caveats. A caveat is neither a Registry Instrument nor a Registry Instrument with the land. Its entry does not give any person a registered interest in another's land. It merely claims an interest and operates as a bar on registration of Registry Instruments. The registration of the caveat gives the caveator the opportunity to seek to prevent the registration of the Registry Instrument by obtaining an order of the Supreme Court.

A private caveat may be entered by -

- a person/corporation claiming an interest in the land (or Legal Practitioner for).
- The Registry Instrument of caveat is, in itself, a statutory declaration. By that declaration, the caveator declares that the interest claimed is, to the best of their knowledge, a valid interest in the land.

NB: A business name cannot enter a caveat onto a title. Land Titles staff will reject an application if the applicant is not a person or a corporation (if a corporation, please provide the appropriate ACN).

28.3 FORM OF CAVEAT

A Caveat should be prepared using the Caveat Registry Instrument number 036-X available from Access Canberra website. To qualify for lodgment and entry, the caveat Registry Instrument should be completed in full and in registrable form. Guidance notes on completion of this Registry Instrument is attached to the Caveat Registry Instrument.

The Registrar-General requires a caveator to provide details of the interest claimed in order to substantiate that the interest runs with the land.

Section 104A(2) of the *Land Titles Act 1925* provides that the Registrar-General is not required to determine the validity of the caveator's claim.

Whilst there is no comprehensive definition of what is a caveatable interest, it must always amount to **an interest in the land**. The role of the Registrar-General in the entry and removal of caveats has been described as "ministerial" only and is not concerned as to the validity of the claim on which the caveat is based.

A person who secures the entry of a caveat without reasonable cause is liable to compensate anyone who suffers loss or damage as a result (Section 108 *Land Titles Act 1925*).

28.4 EFFECT OF ENTRY

Caveats are entered in the Register and are effective upon lodgment. The lodgment of a caveat will always be evident by searching ACTLIS using either a Check Search or a Title Search. Lodgment of the caveat does not require mortgagee's consent.

A caveat will have effect depending upon the level of prohibition sought.

The following categories should be carefully noted.

- 1) A caveat cannot prevent the registration of a document lodged prior to the caveat if that document is in registrable form (Section 107A(2) *Land Titles Act 1925*)
- 2) A caveat is ineffective to prevent registration of any of the following –
 - a writ (however, the Registrar-General will advise the caveator if a writ has been registered on title);
 - lapsing, withdrawal, cancellation or removal of a writ;
 - a caveat;
 - lapsing, withdrawal or removal of a caveat;
 - a Registry Instrument executed by the mortgagee whose interest was registered prior to the caveat eg transfer or lease by a mortgagee in possession where the mortgage is in priority to the caveat;
 - a correction to the Register by the Registrar-General.
- 3) A caveator may elect to prohibit Registry Instruments generally with specific exceptions. The Registrar-General will refuse to accept a caveat where this specific prohibition at Item 5(c) of the Caveat Registry Instrument is vague. The following would be refused;
“Any Registry Instruments where the caveator is a party”
as the caveator is placing an onus upon the Registrar-General to decide whether the Registry Instrument should be registered.
- 4) A caveator may elect to prohibit all Registry Instruments with the exception of those Registry Instruments referred to at Section 104(5)(a)-(n) *Land Titles Act 1925* as follows-
 - a) Notice of Death
 - b) Vesting Application
 - c) Resumption/Withdrawal of Land
 - d) Discharge of Mortgage
 - e) Easement
 - f) Extinguishment of Easement
 - g) Variation of Easement
 - h) Registration of an incorporeal right
 - j) Extinguishment of an incorporeal right
 - k) Transmission Application (Bankruptcy)
 - m) Transmission Application (Death)
 - n) Application by trustees (Section 138A *Land Titles Act 1925*)
 - p) Declaration by an executor (Section 138B *Land Titles Act 1925*)
 - q) Registration of a Registry Instrument by a lessor under a prior unregistered lease i.e. Termination of a lease by re-entry.

NB Under the Bankruptcy Act 1966, a caveat may not prevent the registration of a Charge lodged under Section 139ZN(1) or Section 139ZR(1) of that Act.

28.5 NOTICE TO THE REGISTERED PROPRIETOR

Upon entry the caveat will have effect in accordance with its level of prohibition.

The Registrar-General, is required under Section 105(1) LTA to notify the registered proprietor affected by the caveat.

28.6 CONSENT BY THE CAVEATOR TO DEALINGS

Section 107A(1)(b) of the *Land Titles Act 1925* permits a caveator to consent to the registration of Registry Instruments with the land affected by the caveat. This may be done by -

- endorsement of the Registry Instrument prior to lodgment “The caveator consents hereto. (Signature)”;
- endorsement of the Registry Instrument “The caveator consents hereto (Signature)” following service of a notice on the caveator pursuant to Section 106(1) Land Titles Act 1925;
- letter from the caveator containing that consent.
- and, where subject to a period of notice, such consent will allow the Registry Instruments to be registered forthwith.

NB: Where the caveat lapses in order to allow registration of a Registry Instrument, either following consent of the caveator, or lapse of fourteen days (refer ‘Periods of Time’ see chapter 11) following the notice, the caveat will be re-instated in its effect following registration of the Registry Instrument (Section 106(2) *Land Titles Act 1925*).

28.7 NOTICE TO THE CAVEATOR

Where a caveat has been entered against a title and Registry Instruments are subsequently lodged, and the Registrar-General is required to serve notice upon the caveator advising of the lodgment of the Registry Instruments. The caveator has fourteen days (Refer ‘Periods of Time’ see above Chapter 11) from the service of the notice within which to prevent the registration of the Registry Instruments by obtaining a Supreme Court Order. If the caveator takes no such action, the caveat will lapse and the Registry Instruments will be registered. Alternatively, the caveator may consent as previously described.

Caveat notices (Section 106(1) *Land Titles Act 1925*) are served either by personal service, by registered mail or by email. Service of Notice will only be used in email format to regular users of the office (i.e., Legal Practitioners and Financial Institutions) who have previously supplied an email address to the Manager of Land Titles.

At Section 105(1) *Land Titles Act 1925*, the Registrar-General is required to serve notice upon the caveator at the address specified in the caveat, unless the caveator has amended the address by lodging a change of address for service of documents on a caveat Registry Instrument (Registry Instrument 105-CAI). If the caveator is no longer at the address specified, and has not advised the Registrar-General of a change of address, the Registrar-General may, when all reasonable efforts have been made to serve the notice –

- direct any further notice to be given;
- direct substituted notice; or
- proceed without notice.

28.8 WITHDRAWAL OF CAVEATS

Section 104B of the *Land Titles Act 1925* provides that a caveat may be withdrawn by -

- the caveator;
- the Legal Practitioner for the caveator
- the agent of the caveator where the caveator authorises in writing (this evidence must be produced with the WX Registry Instrument at time of lodgment)
- a surviving joint caveator (no 'Notice of Death' required)
- by the executor/administrator of a deceased sole caveator or
- by the Official Trustee in Bankruptcy where the caveator has been declared bankrupt.
- The *Land Titles Act 1925 (dictionary)* defines "caveator" as the person by whom, or on whose behalf, a caveat has been lodged.

Where a court order is registered on title and states that the caveat is to remain in force until further order of the court, the caveat cannot be removed using a WX Registry Instrument. The court order relating to the caveat must be removed using a Removal of Court Order (RCO) Registry Instrument. The sealed order relating to the removal of the caveat must be attached to the RCO. Once the RCO has been lodged and registered, Land Titles will remove the caveat using a Registrar's Dealing for Removal (RGD) at no cost to the client.

The standard lodgment fee applies for the RCO document.

28.9 LAPSE OF CAVEATS

Ordinarily, a caveat remains in force until -

- it is withdrawn;
- it temporarily lapses (Section 106(2) *Land Titles Act 1925*) following notice served upon the caveator on lodgment of a Registry Instrument (Section 106(1)) or following consent by the caveator;
- registration of a transfer by the Sheriff under a writ;
- cancellation by the Registrar-General under Section 43(5) (refer Chapter 31.11);
- or removal by the Registrar-General pursuant to Sections 107(3)(b), 107B and 107C(2)(b) of the *Land Titles Act 1925*.

A caveat lapses in its effect after the expiration of fourteen days (Refer 'Periods of Time' above see Chapter 11 from the service of notice upon the caveator (Section 106(1) *Land Titles Act 1925*), unless the caveator obtains a Supreme Court order restraining the Registrar-General from registering the document. The lapsing of a caveat in this manner is temporary only and the effect of the caveat is reinstated after registration of the Registry Instruments (Section 106(2) *Land Titles Act 1925*).

28.10 CANCELLATION OF A CAVEAT BY THE REGISTRAR-GENERAL

Under Section 43(5) LTA, the Registrar-General, upon being satisfied that the Register contains an entry relating to a Registry Instrument or document affecting land, and that the land is no longer affected by the Registry Instrument or document, may cancel the entry in the Register.

Upon removal of a caveat under this provision the Registrar-General will serve a notice upon the caveator at the address in the caveat for service of Notices on the Caveator, advising of the removal of the caveat and allowing fourteen days (Refer 'Periods of Time' above see chapter 11) within which to object.

Also refer to Chapter 4.4 – Cancellations of Entries in the register.

28.11 REMOVAL BY REGISTRAR-GENERAL UPON A REGISTRY INSTRUMENT WHICH FORMALISES THE INTEREST CLAIMED IN THE CAVEAT

The Registrar-General may remove a caveat pursuant to Section 107B *Land Titles Act 1925* if satisfied that the caveator has acquired, by registration of a transfer or other Registry Instrument, the interest claimed in the caveat unless the Court orders otherwise. This will be done by a Registrar-General's Dealing (RGD).

Before removing a caveat pursuant to this section, the Registrar-General will by notice served upon the caveator, allow a period of fourteen days within which the caveator may obtain a Court Order restraining the Registrar-General from removing the caveat.

28.12 REMOVAL BY REGISTRAR-GENERAL UPON APPLICATION BY REGISTERED PROPRIETOR

The registered proprietor of land affected by a caveat may apply to the Registrar-General to have the caveat removed (Section 107(1) *Land Titles Act 1925*).

Application should be made using an Application for Lapsing of a Caveat Registry Instrument 038-ALX. Lodgment fees apply.

The Registrar-General will serve a lapsing notice on the Caveator allowing fourteen days (Refer 'Periods of Time' at start of this Chapter 11) within which to obtain an order of the Court preventing the Registrar-General from removing the caveat (S.107(2)(a) and (b) *Land Titles Act 1925*). For the purposes of Section 107, a court order means an original office copy.

If no order is obtained, within the prescribed time, the Registrar-General shall register the ALX.

Upon registration of the ALX, the Registrar-General will serve notice on the registered proprietor advising them of the removal of the caveat. A copy of the notice will be attached to the ALX Registry Instrument.

If an order is obtained, the following should be noted -

- a notice will be sent to the registered proprietor advising that the caveat cannot be removed;
- the unregistered ALX will be withdrawn from ACTLIS,
- the court order, a copy of the notice sent to the proprietor, and the unregistered ALX Registry Instrument will be attached to an Application to Register a Court Order (CO) Registry Instrument and registered against the title,
- when the caveat is ultimately withdrawn the CO will also be removed.

28.13 REMOVAL BY THE REGISTRAR-GENERAL UPON TRANSFER OF THE LAND TO ANOTHER PERSON

Following registration of a transfer of the whole of the land affected by a caveat, to a person other than the caveator, the Registrar-General may remove the caveat.

The Registrar-General must have reasonable grounds for believing that the transfer has extinguished the caveator's interest and must serve notice upon the caveator of their intention to remove the caveat (Section 107(3) *Land Titles Act 1925*).

The caveator may, within fourteen days (Refer 'Periods of Time' above Chapter 11) of the service of the notice, satisfy the Registrar-General that the interest has not been extinguished, or obtain a Court Order restraining the Registrar-General from removing the caveat (Section 107(3)(b) *Land Titles Act 1925*).

If the caveator takes no action within the fourteen-day period, the Registrar-General may remove the caveat (Section 107(3)(b) *Land Titles Act 1925*). This will be done by a Registrar-General's Dealing (RGD).

28.14 REMOVAL BY THE REGISTRAR-GENERAL OF SUCCESSIVE CAVEATS

Where the Registrar-General has removed a caveat upon application by the registered proprietor pursuant to Section 107(2) *Land Titles Act 1925*, the Registrar-General may remove any successive caveats entered by the same caveator or for the same purpose (interest) affecting the same land (Section 107C(2)(b) *Land Titles Act 1925*).

Before doing so, the Registrar-General is required to serve notice upon the caveator of their intention to remove the caveat. The caveator may, within fourteen days (Refer 'Periods of Time' above Chapter 11) of the service of the notice, obtain a Court Order restraining the Registrar-General from removing the caveat, otherwise the caveat may be removed by the Registrar-General.

28.15 REMOVAL BY REGISTRAR-GENERAL UPON TRANSFER BY MORTGAGEE PRIOR TO THE CAVEAT

Section 95(3) *Land Titles Act 1925* provides that:

- where there is a caveat entered in the Register affecting land which is the subject of a transfer by a Mortgagee; and
- the caveat was entered in the Register after the registration of the mortgage
- the Registrar-General may register the transfer notwithstanding the caveat. Registration of the transfer renders the caveat ineffective, and the caveat lapses.

The Registrar-General may remove such a caveat under Section 95(4) without notifying the caveator.

28.16 CONTINUATION OF CAVEAT ON SURRENDER AND REGRANT OF CROWN LEASE

Section 105A *Land Titles Act 1925* provides that:

Subject to any order of the court, if:

- a caveat has been registered in relation to land;
- the caveat has not lapsed or been removed; and
- the lease of the land is surrendered and regranted to the same lessee, the operation or effect of the caveat is not affected by the surrender of the lease and the grant of the new lease, the caveat will be carried forward by the Registrar-General

28.17 CANCELLATION OF CAVEAT UPON REGISTRATION OF A UNITS PLAN

Section 10 of the *Land Titles (Unit Titles) Act 1970* does not provide for caveats to carry forward to Unit Titles.

On receipt of an application to register a Units Plan, the registrar-general shall—

- give notice of the application to the caveator; and
- not less than 14 days from the date of service of the notice, remove the caveat from the register, unless the court otherwise orders.

28.18 CHANGE OF NAME ON A CAVEAT

Where a person changes a name(s) appearing on a Caveat for any reason, eg: by marriage, under the relevant state or territory Births, Deaths and Marriages Legislation the caveator is required to inform Land Titles by using a Change of Name on a Registry Instrument application form (010-CNI) to update the caveators name on the registered caveat.

If self-represented, evidence must be produced at the time of lodgment in support of the application i.e., Marriage Certificate, Change of Name document registered at Births, Deaths and Marriages.

It is important to note that a change of name on a Caveat Registry Instrument can only be used to complete one change of name for a caveator on that caveat. If there are multiple caveators, who require a change of name to be registered, it will be necessary to complete individual CNI Registry Instruments for each caveator.

When the caveator has chosen to not use a Legal Practitioner for preparing and executing the 010-CN Registry Instrument. The Self-Represented Party rules apply see Chapter 8 for the requirements.

28.19 CHANGE OF ADDRESS FOR SERVICE OF NOTICE ON A CAVEAT

At Section 105(1) of the *Land Titles Act 1925*, the Registrar-General is required to serve notice upon the caveator at the address specified in the caveat. If the caveator wishes to change that address an application may be made using a Notice of Change of Address for Service of Notice on a Registry Instrument (CAI).

The new address must be an address within the Australian Capital Territory.

Caveat notices (Section 106(1) of the *Land Titles Act 1925*) are served by personal service, by registered mail or by email. Service of Notice will only be used in email form to regular users of the office (i.e., Legal Practitioners and Financial Institutions) who have previously supplied an email address to the Manager of Land Titles.

28.20 DEATH OF A CAVEATOR

The death of a Caveator should be recorded using a Transmission Application on a Registry Instrument (TAI). The application should be accompanied by the grant of administration as defined at Section 135(6) of the *Land Titles Act 1925*.

The TAI is not a dutiable document.

CHAPTER 29 CHANGE OF A PERSON'S NAME

29.1 OVERVIEW

Where a person changes a name(s) appearing in the Register for any reason, eg: by marriage, under the relevant state or territory Births, Deaths and Marriages Legislation they are required to complete a Change of Name Registry Instrument (form number 009-CN) available from the Access Canberra Website. Guidance notes on completion of this Registry Instrument is attached to the Instrument

If an error has occurred on the register at the time of purchasing the land, then the registered proprietor is required to complete a Correction to the Register form number 004-CR. A correction is not a legal change of name (see Correction to the register Chapter 32)

It is important to note that a change of name form can only be used to complete one change of name on title. If there are multiple proprietors, who require a change of name to be registered, it will be necessary to complete individual change of name forms for each proprietor.

No lodgment fee is payable for a Change of Name on the Land Titles Register.

29.2 FORM OF CHANGE OF NAME

A change of name form should be lodged for registration in person at ACT Land Titles office. Lodgment of the Registry Instrument will not be accepted unless all sections of the Registry Instrument are completed and adhere to Legislation requirements including the following:

Change of Name Completed by Legal Practitioner requires -

- Change of name form completed in full under certification.
- If executed by a Legal Practitioner, then no evidence is required. However, if a registered mortgage is on title, then mortgagees consent form 042-C available on the Access Canberra Website.

Change of Name Completed by Registered Proprietor (Self-Represented Party)-

If completed and executed by the registered proprietor, then the registered proprietor must complete their verification of identity by using the Self-Represented Party pack available (see Chapter 8). The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace, or a Notary Public.

- Certified copies of identification which match the category chart in Self-Represented Party pack. One of these forms of Identification must be in the registered proprietor's new name.
- Must attach the evidence of the change of name. e.g. registered change of name certificate, registered marriage certificate (not ceremonial)
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the Peace, Legal Practitioner or Notary Public, completing the VOI. This is provided in Self-Represented Party pack

- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the Change of Name is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- The registered proprietor must sign the Change of Name form under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the form (see self-represented execution Chapter 9.2).
- Once the change of name form is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles Office.

CHAPTER 30 CHANGE OF COMPANY NAMES

30.1 OVERVIEW

Where a corporation has changed its name, it is required that the change be made on the title. Application may be made in a similar manner to changing a person's name as provided above. When changing a corporation name, they must complete Application to Note Change of Company Name on Title form number 101-CCN. Guidance notes on completion of this Registry Instrument is attached to the form.

No lodgment fee is payable.

30.2 FORM OF CHANGE OF NAME

Change of Company Name Completed by Legal Practitioner requires -

- Change of Company name Registry Instrument completed in full under certification.
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the Change of Name is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website

Change of Company Name Completed by the Corporation (Self-Represented Party)-

If completed and executed by the Company, then the authorised person (director/s) must complete their verification of identity by using the Self-Represented Party pack available (see Chapter 8 The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace, or a Notary Public.

- Change of Company name form completed in full under certification.
- Certified copies of identification which match the category chart in Self-Represented Party pack.
- Must attach the evidence of the change of name. e.g. ASIC Extract
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Provide a company extract from Australian Securities and Investments Commission to verify the person/persons executing the Registry Instrument has authorisation to do so.
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the Change of Name is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- The authorised person/s must sign the Change of Company Name Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see corporations execution Chapter 9.4)

- Once change of company of name Registry Instrument is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles Office.

CHAPTER 31 BULK CHANGE OF NAMES

31.1 OVERVIEW

Where all parties are the same over several titles a Change of Name Registry Instrument (CN) can be used to update up to 10 Titles.

When the land has a registered mortgage, and the mortgage is carrying over to the new title after the change of name is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website.

A standard lodgment fee applies.

CHAPTER 32 ERRORS IN NAMES OR ENTRIES IN THE REGISTER

32.1 OVERVIEW

Where it is subsequently discovered that a person's name was recorded incorrectly on the Register a correction to the register form 004-CR available from Access Canberra Website is required to be completed. The following practice applies.

In cases of typographical errors made by the lodging party or poorly handwritten, an Application to Correct the Register (CR) (pursuant to Section 14(1)(d)) should be lodged at the Land Titles Office.

32.2 FORM OF CORRECTION TO THE REGISTER

Correction to the Register Completed by Legal Practitioner requires -

- Application to Correct the Register form to be completed in full, under certification.
- Statutory Declarations from all relevant parties
- Supporting document may be requested i.e., Identification, contract for sale etc.
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the correction is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- If certification is executed by a Legal Practitioner, no evidence is required unless requested by the Registrar-General or a Deputy.

Correction to the register by Registered Proprietor (Self-Represented Party)-

If completed and executed by the registered proprietor, then the registered proprietor must complete their verification of identity by using the Self-Represented Party pack available (see Chapter 8). The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace or a Notary Public.

- Application to Correct the Register form completed in full, under certification.
- Must provide a Statutory Declaration (attached to CR form). Statutory Declaration must be completed under the *Statutory Declaration Act 1959*. Information that must be included in the body of the Statutory Declaration, land details (district/division, block and section) of the land that the correction is being corrected over, what the error is, how the error happened and how the error needs to be corrected.
- Statutory Declarations from all relevant parties, and any supporting information if required must be attached the Correction of the Register form. i.e., Identification
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the correction is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website

- Certified copies of identification which match the category chart in Self-Represented Party pack.
- Identification must match name on application if that is the error being corrected.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public, completing the VOI. This is provided in Self-Represented Party pack
- The registered proprietor must sign the Correction to the Register Registry form under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution Chapter 9.2).
- Once Correction to the Register form is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.

In cases of transcription errors made by Land Titles Officers, this office will amend the Register pursuant to Section 14(1)(d) of the *Land Titles Act 1925*

Section 160(2) of the *Land Titles Act 1925* provides a mechanism for the Registrar-General to correct errors resulting from accidental slips or omissions unilaterally or, where considered necessary, to the registered proprietor under Section 160(2)(b)(i) and (ii) of the *Land Titles Act 1925*.

CHAPTER 33 COMMUNITY TITLE SCHEME

Community Title provides for land to be parcelled allowing separate ownership of a primary lease, whilst having a shared interest and responsibility over common land on an adjacent Crown Lease.

Community Title Schemes can be altered, can be developed in stages and are flexible. Land in a Community Title Scheme can be further subdivided. The Common Property in a scheme is vested in the lessees of the land in the scheme and the Common Property is managed by a body corporate.

The scheme is governed by the *Community Title Act 2001* (CTA). The Act sets out the requirements for approval of a scheme by the ACT Environment, Planning and Sustainable Development Directorate (EPSDD) and then registration by Land Titles.

For approval and registration there are a number of documents that must be prepared. These requirements are explained further in this chapter.

33.1 COMMUNITY TITLE SCHEMES

A Community Title Scheme consists of –

- (a) a master plan for developing the scheme land; and
- (b) a management statement that complies with the provisions outlined in the CTA; and
- (c) the constituent documents for the body corporate to be formed on the registration of the scheme; and
- (d) the by-laws of the body corporate.

A Community Title Scheme must include 1 or more lots that are Common Property and 2 or more lots that are not Common Property.

The land included in a Community Title Scheme must form a single area that is not divided by anything other than a road or a body of water.

33.2 FORM AND CONTENT OF MASTER PLAN

The master plan forming part of a Community Title Scheme must –

- (a) contain a site plan that –
 - (i) delineates the site; and
 - (ii) shows each lot included in the scheme; and
 - (iii) identifies the lots that are common property; and
 - (iv) shows the position of all buildings on the site; and
- (b) contain a sketch that complies with the regulations showing the expected appearance of the finished development; and
- (c) include a description of the general theme (if any) of the development (for example, the architectural style or the nature of the landscaping); and
- (d) include any other information prescribed under the regulations.

33.3 FORM AND CONTENT OF MANAGEMENT STATEMENTS

A management statement that forms part of a Community Title Scheme must include –

- (a) the name and address of the developer; and
- (b) a description of the stages, and the sequence of stages, in which any development of scheme land is to be carried out; and
- (c) a plan showing construction zones and access zones and the nature of the use that may be made of them; and
- (d) a schedule of times for starting and finishing each stage of any proposed development of scheme land; and
- (e) if a body corporate is to be established (other than on registration of the scheme) for any elements of the scheme – a copy of the documents that are to establish the body corporate; and
- (f) a schedule of the hours when work may be carried out on the proposed development; and
- (g) a description of the amenities to be provided as part of the proposed development and a statement of –
 - (i) the purposes for which the amenities are to be provided; and
 - (ii) the extent to which the amenities are to be available for use by owners and occupiers of lots and their invitees; and
 - (iii) the arrangements for providing and maintaining the amenities and defraying the cost of their provision and maintenance; and
- (h) a schedule (the lot entitlement schedule) setting out –
 - (i) for each lot that is not to be common property – a whole number that is the lot entitlement for the lot; and
 - (ii) a whole number that is the total of the entitlements of all lots that are not to be common property; and
- (i) a statement of the voting rights of the members of the body corporate at a general meeting if a poll is required; and
- (j) any other information or materials prescribed under the regulations.

33.4 ESTABLISHMENT OF COMMUNITY TITLE SCHEMES

The developer of a Community Title Scheme must apply in writing to EPSDD for approval of the scheme.

For further information – please refer to Section 8 of the *Community Title Act 2001*.

33.5 LODGMENT OF COMMUNITY TITLE SCHEME WITH LAND TITLES

If EPSDD have approved a Community Title Scheme application must be made to the Registrar-General for registration of the scheme within 3 months of the approval. If the scheme is not lodged within 3 months, the developer must re-submit the scheme to EPSDD for endorsement/consent.

Application must be made to Land Titles using an Application to register a Community Title Scheme form 061- (ACTS). All titles listed on the ACTS must provide mortgagee consent prior to lodgment.

All Crown Leases (Unit Titles) listed in the ACTS must have been registered prior to application. After registration of the scheme the parcels will then be known as lot numbers for identification purposes within the scheme only. The parcel identifier on title will continue to be the reference used by Land Titles (and not the Lot number given to the parcel within the scheme).

Where there is more than one block listed on a Crown Lease under one Volume and Folio it is considered as one lot within the scheme. The lot number issued on registration of the scheme is a unique number and cannot be re-issued to another block under the Community Title Scheme under an amendment.

The following scheme documents are required to be attached to the ACTS Registry Instrument upon application –

1. Master Plan containing –
 - (a) A site plan that:
 - Delineates the site;
 - Shows each lot included in the scheme;
 - Identifies the lots that are common property; and,
 - Shows the position of all buildings on the site.
 - (b) a sketch that complies with the regulations showing the expected appearance of the finished development.
 - (c) a description of the general theme (if any) of the development (for example, the architectural style or the nature of the landscaping).
 - (d) any other information prescribed by regulation.
 - Management Statement
 - Constituent Documents (if applicable)
 - By Laws

The Registry Instrument is required to be executed by the developer or Legal Practitioner. Execution requirements are explained in detail on the ACTS Registry Instrument or *Chapter 9 – Executions* in this manual.

The mortgagee and sub-lessee of any encumbered Crown Lease listed on the application are required to consent to the ACTS.

In most cases there will be a number of schedules that make up the overarching Management Statement. If it is the intention to use as part of the Management Statement, each schedule should be clearly marked and identified within the Management Statement itself. Land Titles staff will ensure that any schedules are appropriately attached at the time of lodgment. If a schedule is missing or not clearly identified, the document set will be rejected.

33.6 LAND TITLES REQUIREMENTS FOR PLANS LODGED AS PART OF THE COMMUNITY TITLE APPLICATION

All plans lodged as part of the Community Title application should be lodged in A3. The plans can be lodged on clean white A3 paper.

Plans should be prepared by a registered surveyor or architect and comply with drafting instructions issued by the ACT Survey Office.

Minimum line thickness is 0.25mm to allow for reduction (for reproduction purposes).

Dimensioning should be no less than 2.5mm high using a 0.25mm pen.

All linework and lettering should be in dense black ink for the plotting of lots within the Community Title Scheme. The lots within the scheme should be defined/marked in ink thicker than boundaries and other areas shown on a plan for location purposes.

All areas where lots are plotted should be drawn using the same line markings.

Where different lettable areas are drawn using a varying line thickness – the plan will not be accepted at lodgment.

The plan should identify -

- a. the Block, Section and Division on the plan itself and in the identification block at the bottom of the page.
- b. a north point,
- c. scales (ratio and bar)
- d. a legend on each page if symbols are used
- e. page numbers in those cases where the plan is more than one page. For example – Page 1 of 4.
- f. clearly defined dimensions, distances, and boundaries.

Information not relevant to the plan should not be supplied on the actual plan; this information should be included in the constituent documents.

33.7 LAND TITLES LODGMENT FEES

Lodgment fees apply for the ACTS Registry Instrument (standard Registry Instrument fee), the Community Title Master Plan (CTMS) (standard Registry Instrument fee) and also for the Master Plan (standard plan fee).

Unlike a Units Plan fees are **not payable** for the issue of the Common Property and/or lot Certificates of Title.

The Community Title Scheme Lot Entitlement Schedule forms part of the ACTS Registry Instrument and no fee is payable.

Consent from the mortgagee is required.

33.8 COMMON PROPERTY

The Common Property of a Community Title Scheme is all the parts of land included in the scheme that are identified as common property in the master plan for the scheme.

The Common Property of a Community Title Scheme vests in the body corporate of the scheme.

Upon registration of the scheme Land Titles will issue the Certificates of Title for the lots identified as Common Property to “The Body Corporate – Community Title Scheme No ...” and endorse the title with the address for service provided on the ACTS Registry Instrument.

No fee is payable for the issue of the Common Property/Body Corporate Title.

33.9 AMENDMENT OF COMMUNITY TITLE SCHEMES

The developer under a registered Community Title Scheme, or the body corporate of the scheme, may apply to EPSDD for an authorisation to amend the scheme and to make any consequential amendments needed to the lot entitlement schedule.

For registration of the amendment the application should be made using an Application to Amend Community Title Scheme Registry Instrument (CTSA) and Community title scheme lot entitlement schedule (CTSE). The standard Registry Instrument fee applies.

The CTSA Registry Instrument must be accompanied by –

- a) the CTLP Lot entitlement schedule for a progressive development within a community title scheme
- b) the proposed scheme as amended, indicating the amendments
- c) the authorisation of the amendment under Section 23 of the CTA (Authorisation and Amendment); and

The amendment is required to be lodged within 3 months of the consent given by EPSDD.

33.10 AMENDMENT BY THE SUPREME COURT

The Supreme Court may, on application by an interested person; order that a Community Title Scheme be amended if satisfied that it is impossible or impractical to finish the scheme as proposed in the master plan or management statement.

The CTA defines an interested person as –

- (a) the developer of the Community Title Scheme;
- (b) the body corporate;
- (c) an owner or prospective owner of a lot of scheme land;
- (d) the Registrar-General;
- (e) anyone else who has, in the Supreme court’s opinion, a proper interest in the scheme.

A copy of a Supreme Court Order amending the scheme (including an order amending or revoking an earlier order) must be lodged with the Registrar-General by the person who obtained the order.

For registration of the amendment the application should be made using an Application to Amend Community Title Scheme Registry Instrument (CTSA). The standard Registry Instrument fee applies.

All titles for any parcels affected by the amendment and/or any title to any land not formally within the scheme that is affected by the amendment must provide mortgagees or mortgagor consent.

The CTSA should also be accompanied by the original order made by the Supreme Court.

The amendment does not require the written consent of EPSDD.

The amendment does not take effect until registration is completed by the Registrar-General.

33.11 ESTABLISHMENT OF BODIES CORPORATE

On the registration of the Community Title Scheme, a body corporate is established under the name “Community Title Scheme No.....”. The number to be included in the name of the body corporate established is the number allotted to the Community Title Scheme by the Registrar-General on its registration.

Establishment and functions of bodies corporate are explained in detail at Section 30 to 53 of the CTA.

All area defined as Common Property will be issued with a Title listing all parcels to “The Body Corporate – Community Title Scheme No.....”.

33.12 ADDRESS FOR SERVICE

Provision is made on the ACTS Registry Instrument to provide the Address for Service of the Body Corporate.

If the address for service of the body corporate of the scheme changes after registration of the Community Title Scheme by the Registrar-General, the body corporate should complete a Change of Address for Service of Notice form (CA) and lodge it with the Registrar-General.

Standard lodgment fee applies.

33.13 AMALGAMATION OF COMMUNITY TITLE SCHEMES

Part 11 of the CTA allows for the amalgamation of two or more Community Title Schemes. When the schemes are amalgamated –

- (a) the Schemes end their existence as separate Community Title Schemes; and
- (b) the lots of each scheme become the lots of a single, newly established, Community Title Scheme.

Community Title Schemes must not be amalgamated if the newly established Community Title Scheme would not comply with the requirements of the CTA for a Community Title Scheme.

Section 80 of the CTA describes the requirements and the process that must be followed for the amalgamation of the Community Title Schemes.

The same Registry Instruments, fees and lodgment processes apply with Land Titles as a basic Community Title Scheme.

33.14 TERMINATION OF COMMUNITY TITLE SCHEMES

Only a basic scheme may be terminated. The CTA describes a basic scheme as a community title scheme that consists entirely of lots that are registered under the *Land Titles Act 1925* and that are not –

- (a) land of another Community Title scheme; or
- (b) land that has been subdivided under the *Unit Titles Act 2001*.

The scheme may be terminated if –

- (a) the body corporate by unanimous resolution decides to terminate the scheme; and
- (b) so far as necessary for the effective termination of the scheme, an agreement about the termination issues is entered into between –
 - (i) all registered proprietors of scheme land; and
 - (ii) each lessee under a registrable sublease to which the scheme land is subject.

Alternatively, the scheme may be terminated if the Supreme Court decides it is just and equitable to terminate the scheme and orders that the scheme be terminated.

The request to terminate the scheme must be lodged with the Registrar-General. The request must be lodged by the body corporate or a person on whose application the Supreme Court made an order to terminate the scheme. If making an order under Section 89 of the CTA the court may appoint an administrator and give the administrator authority to put the order into effect in the way directed by the court.

Application should be made to the Registrar-General using an Application to Register a Termination of Community Title Scheme Registry Instrument (TCT). The request must be lodged by the Body Corporate or a person on whose application the Supreme Court made an order terminating the scheme.

A standard Registry Instrument lodgment fee applies.

The TCT Registry Instrument must be accompanied by –

- (a) if the scheme is terminated under a resolution of the body corporate – the resolution to terminate the scheme, and any agreement made about termination issues; or
- (b) if the scheme is terminated under an order of the Supreme Court – the order to terminate the scheme.

33.15 RECORDING TERMINATION OF COMMUNITY TITLE SCHEMES

If the request to record the termination of the scheme complies with the CTA and with any order of the Supreme Court, the Registrar-General must record the termination of the scheme and must also –

- (a) Place a statement of the termination of the scheme in the folium for the title for each lot that was included in the scheme; and
- (b) Cancel the particulars (other than particulars of easements, covenants and other Registry Instruments that can be maintained against the scheme land after the termination of the scheme) recorded in the register kept under the *Land Titles Act 1925*.

Consent from EPSDD is not required on Registry Instruments submitted by termination of an order by the Supreme Court.

The termination takes effect when the Registrar-General completes the registration of the TCT Registry Instrument.

33.16 TRANSFER OF TITLE TO LAND UNDER REGISTERED COMMUNITY TITLE SCHEMES

A person who acquires title to land subject to a registered Community Title Scheme becomes bound to develop the land in accordance with the relevant Community Title Scheme.

If the owner of land (subject to a Community Title Scheme) proposes to sell or dispose of the land –

- (a) the owner must give written notice of the proposed transaction to EPSDD,
- (b) the person who is to acquire title to the land by the transaction must –
 - (i) give to EPSDD a written undertaking to develop the land in accordance with the relevant Community Title Scheme; and
 - (ii) give EPSDD any security required by the Authority, within 28 days after notice of the transaction was given to the Authority, for the develop of the land in accordance with the scheme.

33.17 TRANSFER REGISTRATION REQUIREMENTS

When a Registry Instrument for the sale or disposal of land for a registered Community Title Scheme is submitted for registration with Land Titles, if the building and development covenant is “Current” on title, it must be accompanied by –

- (a) a copy of the undertaking to finish the development in accordance with the relevant Community Title Scheme; and
- (b) a statutory declaration stating that EPSDD has not required security to be given under the CTA for completion of the development in accordance with the scheme or that such a requirement as been complied with.

Where a Building and Development Covenant on a crown lease is current and a Compliance Certificate has not been issued, the land is deemed to be undeveloped, and Section 65 of the CTA applies.

On the titles of land relating to a Community Title Scheme where the restriction field on title states “Section 180 Land Act 1991: Compliance/Completion Cert issued” or “Section 298 Planning and Development Act 2007: Compliance/Completion Cert issued” Land Titles have sighted the Compliance Certificate and the above section does not apply. The Title for the relevant block should be submitted with the Transfer and the standard Transfer Registry Instrument fee applies.

On registration of a Registry Instrument for the sale or disposal of land under a Community Title Scheme, the rights and obligations of the developer under the relevant community title scheme, so far as they relate to the land transferred, pass to the person who acquires title to the land.

An example Statutory Declaration as described above is outlined below –

STATUTORY DECLARATION
Commonwealth of Australia
Statutory Declarations Act 1959

I, John Citizen of 255 Canberra Avenue, Fyshwick – Public Servant

make the following declaration under the *Statutory Declarations Act 1959*:

That I am the proposed buyer for Block 214 Division of Coree, also known as Lot 220 in Community Title Scheme #100.

I undertake to develop the above land in accordance with Community Title Scheme #100 and have attached a copy of the undertaking that was furnished to EPSDD.

The ACT Planning and Land Authority have not required security to be given under the *Community Title Act 2001*.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under Section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

Declared at 4 _____ on _____ of _____ 2010.

Before me -

Signature of Declarant Signature of Witness

Address of Witness

Qualification of Witness

CHAPTER 34 CONCESSIONAL LEASES

34.1 OVERVIEW

ACT Planning and Land Authority (EPSDD) may grant leases under the *Planning and Development Act 2007* (the PDA) to various organisations on a concessional basis and/or a Lessee may apply to EPSDD for a decision about whether the Crown Lease is a concessional lease.

The PDA was amended in October 2010 to assist in clearly identifying concessional leases and non-

- concessional leases, the amendments deem certain leases to fall within the following categories:
- concessional leases – leases deemed to be concessional
- market value leases – leases deemed to be not concessional
- possibly concessional leases – leases deemed to be possibly concessional

Concessional Leases are normally granted to community organisations, for business and economic development and are normally granted for less than the full market value or market rent of the lease. Concessional Leases do not include a rural or residential lease.

Section 238 of the PDA requires that any lease granted under this section must include a statement about whether the Crown Lease is a Concessional Lease.

All new Concessional Leases registered will include the following notations in the restrictions field of the subsequent Title issued by Land Titles –

- “Concessional Crown Lease – Current” and
- “Restriction on Transfer/Assignment – Applies for Term of Lease”

34.2 DECISIONS ABOUT WHETHER LEASE IS CONCESSIONAL

On application by the lessee under Section 256 of the PDA, EPSDD must decide whether the lease is concessional or not. The application is a Registry Instrumental process under the PDA. More information can be obtained from www.planning.act.gov.au.

34.3 LODGMENT OF A NOTICE THAT THE LEASE IS A CONCESSIONAL LEASE

Whether application is made by the lessee or EPSDD has decided the Crown Lease is a concessional lease on its own initiative, to update the title for the affected parcel a Lease Notification Registry Instrument (LN) is required to be lodged with Land Titles.

The LN Registry Instrument must be executed by a delegate of EPSDD. The lessee is not required to execute the Registry Instrument.

When the land has a registered mortgage, and the mortgage is carrying over to the new title after the LN is registered, consent is required from the mortgagee, consent Registry Instrument 042-C is available from Access Canberra Website.

The standard Registry Instrument lodgment fee applies.

After registration of a LN, Land Titles will update the Restrictions Field on the Title to include “Concessional Lease – Created by LN 123123”.

Note – Crown Leases issued prior to the PDA were not required to be noted as to whether they were Concessional Leases or not as it was not a legislative requirement. However, in some instances a Crown lease is birth marked with the section, of the repealed Act, under which it was granted, giving some indication on whether or not the Crown lease is concessional. If required, EPSDD will use the LN to update the status of current Crown Leases that were issued under Legislation now repealed.

Where a decision is made by EPSDD that the lease is not a concessional lease, a Lease Notification Registry Instrument (LN) should be lodged with Land Titles. The LN Registry Instrument must be executed by a delegate of EPSDD. The lessee is not required to execute the Registry Instrument. When the land has a registered mortgage, and the mortgage is carrying over to the new title after the lease notification is registered, consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website. The Registered Proprietor is required to complete a consent Registry Instrument 042-C consenting to the LN.

Standard Registry Instrument lodgment fee applies.

After registration of a LN, Land Titles will update the Restrictions Field on the Title to include “Market Value Lease – Created by LN 123123”.

34.4 VARYING CONCESSIONAL CROWN LEASE TO REMOVE CONCESSIONAL STATUS

Section 264 of the PDA relates to the uses of leases varied by surrender and regrant to remove the concessional status.

The application is a Registry Instrumental process under the PDA and more information can be obtained by contacting EPSDD in relation to Section 264 as well as Sections 260, 261, 262 and 263 of the PDA.

34.5 RESTRICTIONS ON DEALINGS WITH CONCESSIONAL LEASES

Section 265 of the PDA states that –

1. The lessee, or anyone else with an interest in a Concessional Lease, must not, during the term of the lease, deal with the lease without the written consent of EPSDD.
2. A Registry Instrument in relation to a lease to which this section applies that is made or entered into without consent has no effect.

Land Titles will require the consent of EPSDD on/or included with the documents lodged for registration.

THIS CHAPTER ONLY RELATES TO CONCESSIONAL LEASES GRANTED UNDER THE PDA.

Please refer to “Chapter 69 – Historical information Relating to Concessional Crown Leases”. The matters contained in Chapter 69 were preserved as an information tool for easy reference to restrictions on current crown leases in the ACT Land Title register that were issued by EPSDD under repealed Legislation.

CHAPTER 35 CORRECTION OR AMENDMENTS

35.1 OVERVIEW

When a correction or amendment is required on the register under Sections 160, 161, 162 and 162A and Section 14(1)(e) of the *Land Titles Act 1925* empower the Registrar-General to amend the register. Guidance notes on completion of this Registry Instrument is attached to the Registry Instrument. In practice errors fall into two categories -

- a) errors in the construction of documents (a reference to documents includes any document, plan, Registry Instrument, Crown Lease or Title Registry Instrumenting part of the Register),
- b) errors made by the Registrar-General or his delegate.

Completion of a Correction to the Register for 004-ATR Registry Instrument is required to be completed when an error has happened at the time of construction of the documents.

Applications with limited information to support the correction will not be registered. The standard lodgment fee applies.

35.2 FORM OF CORRECTION TO THE REGISTER

Correction to the Register Completed by Legal Practitioner requires -

- Application to Correct the Register Registry Instrument completed in full under certification.
- Statutory Declarations from all relevant parties
- Supporting information may be requested i.e., Identification or Contract for Sale.
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the correction is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- If certification is executed by a Legal Practitioner, then no evidence is required unless requested by the Registrar-General or a Deputy.

Correction to the register by Registered Proprietor (Self-Represented Parties)-

If completed and executed by the registered proprietor, then the registered proprietor must complete their verification of identity by using the Self-Represented Party pack available (see Chapter 8) The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace, or a Notary Public.

- Application to Correct the Register Registry Instrument 004-ATR completed in full under certification.
- Must provide a Statutory Declaration (attached to ATR Registry Instrument). Statutory Declaration must be completed under the *Statutory Declaration Act 1959*. Information that must be included in the body of the Statutory Declaration, land details (district/division,

block and section) of the land that the correction is being corrected over, what the error is, how the error happened and how the error needs to be corrected.

- Statutory Declarations from all relevant parties, and any supporting information if required must be attached the Correction of the Register Registry Instrument. i.e., Contract for Sale.
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the correction is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- Certified copies of identification which match the category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack
- The registered proprietor must sign the Correction to the Register Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution Chapter 9.2).
- Once Correction to the Register Registry Instrument is completed and verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.

CHAPTER 36 ERRORS MADE BY THE REGISTRAR-GENERAL OR HIS DELEGATE

Errors made by the staff of Land Titles will be corrected by the Registrar-General by the registration of a Registrar-General's Registry Instrument to Correct the Register at no cost to the customer.

It is stressed that only genuine errors may be corrected in (a) above and ultimately evidence submitted should be to the Registrar-General's satisfaction.

Clients should not automatically assume that applications to correct errors in (a) above will be registered as each application will be dealt with according to its own merits.

CHAPTER 37 CORRECTIONS BY COURT ORDER

Pursuant to Section 161 of the *Land Titles Act 1925* in any proceedings where the correctness or otherwise of the Register is an issue, the Court may require the Registrar-General to correct the Register or may direct them not to do so.

The Court may require or direct the Registrar-General to correct, record, substitute or cancel any entry in the Register which may cause the issue of a new Title. The Court may alternatively direct the Registrar-General to substitute such recording as the circumstances of the case may require, notwithstanding that the mortgagee's consent to be required.

CHAPTER 38 CORRECTION OR ADDITIONS TO DEPOSITED PLANS

Corrections or additions required to be made to information on a Deposited Plan as a result of requisitions (before the plan is registered) by the Commissioner for Surveys or the Registrar-General, must be made by striking through the incorrect matter, and inserting the correct information, which shall be initialled and dated by the surveyor. With the consent of the surveyor, corrections or additions of a minor nature may be made to the plan by the Commissioner for Surveys. (Refer 'Deposited Plans – Chapter 42')

CHAPTER 39 REINSTATEMENT OF INTEREST

The most important consideration when applying for any Correction of the Register is to be aware that any correction made will not offset the interest of a person who, (*bona fide*), and in reliance on the state of the Register, acquired the interest before the correction was made. (Section 160(6) *Land Titles Act 1925*).

Registration of a document by the Registrar-General in its proper Registry Instrument where the registration results from, eg a mistaken Discharge of Mortgage by a mortgagee, is not an error in the Register within the meaning of Section 160 LTA, which can be corrected by the Registrar-General.

The registration creates an indefeasible interest in the Register. In the case of a mistaken Discharge by a mortgagee may enter a Caveat as unregistered mortgagee and later follow the caveat with a fresh mortgage document. (*Refer State Bank of New South Wales v Berowra Waters Holdings P/L* (1986) 4 NSWLR 398).

CHAPTER 40 CHANGE OF ADDRESS

40.1 OVERVIEW

If the registered proprietor requires to change their address or to add an address for services of notice to the register. They are required to complete a Notice of Change of Address for Service of Notice Registry Instrument (CA) available for the Access Canberra Website. Guidance notes on completion of this Registry Instrument is attached to the Registry Instrument.

Since 1st July 2017, Land Titles now receives the address for service of notices information from the completed Buyer Verification Declaration, which is completed by a person or registered entity when purchasing Land in the ACT.

Mortgagees consent is not required.

No fee payable for Notice of Change of Address for Services of Notice when completed for a registered proprietor.

This Registry Instrument is also to be used to update the register to changes to body corporates (see Chapter 62) on requirements for this. Where an owner's corporation in a Units Plan changes its address for service of notice, a fee is payable.

40.2 CHANGE OF ADDRESS FOR SERVICES OF DOCUMENTS

Notice of Change of Address for Services of Document Completed by Legal Practitioner requires -

- Change of address for service of documents Registry Instrument completed in full under certification.
- If executed by a Legal Practitioner, no evidence is required.

Notice of Change of Address for Services of Document Completed by Registered Proprietor (Self-Represented Parties)-

If completed and executed by the registered proprietor, then the registered proprietor must complete their verification of identity by using the Self-Represented Party pack available (see Chapter 8) The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace, or a Notary Public.

- Notice of change of address for services of documents Registry Instrument CA completed in full under certification.
- Certified copies of identification required see category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack

- All registered proprietors must sign the Notice of Change of Address for Services of Document Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution Chapter 9.2)
- Once Notice of Change of Address for Services of Document Registry Instrument is completed and Verification of identity is completed then **all** documents must be lodged in person at the Land Titles office.

CHAPTER 41 CROWN LEASES

41.1 DEFINITION

Section 237 *Planning and Development Act 2007* provides that EPSDD (Land and Planning Authority) may, on behalf of the Commonwealth of Australia, grant a lease of Territory land.

‘Crown Lease’ includes any lease of land granted by or in the name of the Commonwealth

41.2 GENERAL

All land in the Australian Capital Territory (ACT) is owned by the Commonwealth and is subject to a leasehold system of land tenure. The functions of planning and development of land and the preparation and grant of leases are the responsibility of EPSDD, as a distinctly separate function to registration of title by the Registrar-General.

The ACT Government is responsible for managing Territory land i.e. land in the ACT which has not been retained by the Commonwealth (and declared National Land).

41.3 WHAT IS A LEASE?

A lease is a document that is a binding agreement between the ACT Government, which acts as a manager for the Commonwealth, and the lessee. It sets out the period of the lease, the rights and obligations of lessees and states the purpose for which the land can be used. The main dates established in a lease are:

- Grant Date – the date of grant is the day the delegate of the authority signs the lease.
- Commencement Date – the lease commencement date is the date the original crown lease was purchased. It is normal practice that the lease commencement date is the date on which a deposit is paid.
- The Government warrants that the lessee can have and use the land that is described in the lease for their benefit and can remain as the owner of that land for the term of the lease.
- One of the key obligations of lessees is that they must develop the land within the time prescribed by the lease.
- For residential uses the standard clause is that construction must start within 12 months of buying the lease and be completed within 24 months.
- Unless there are extenuating circumstances the penalty for non-compliance is forfeiture of the lease.

41.4 REGISTRATION OF SUBDIVISIONS OF LAND

Land in the ACT is subdivided into geographical areas called Districts. These Districts are further subdivided into Divisions, Sections and Blocks under the *Districts Act 2002*. This is done by means of a surveyed plan of subdivision, prepared by developers and certified by the Commissioner for Surveys, which is then lodged at Land Titles. Upon registration this is known as a Deposited Plan. The Deposited Plan legally establishes the subdivision.

The unique identifier established by the Deposited Plan is information used by all land-related organisations. An example might be -

CANBERRA CITY (District), GARRAN (Division) 50(Section) 10(Block)

These Deposited Plans establish a platform of legal parcels of land, which may then be the basis for grant and registration of Crown Leases.

The Registrar-General makes no technical examination of the Deposited Plan upon receipt. In order to qualify for registration, however, certain standards must be met. Of particular concern to the Registrar-General is that a Deposited Plan does not attempt to subdivide land subject to a registered lease or that only one current Deposited Plan subdivides or describes a particular parcel of land.

Upon registration, Deposited Plans are given a 'DP' number.

41.5 TERM OF THE LEASE

A Crown Lease may be registered for a term of less than twelve months granted by or in the name of the Commonwealth (Section 70(1) *Land Titles Act 1925*).

All residential leases in the ACT are now granted for a fixed term of 99 years.

The term of a Rural or Commercial lease may vary from twelve months to 99 years.

41.6 GRANT OF FURTHER LEASE

Residential Leases

Where:

- a lessee of a residential lease applies to EPSDD for the grant of a further lease of that land;
- neither the Territory/Commonwealth require the land for a public purpose;
- the lessee pays the administrative fee; and
- the lessee surrenders the existing lease.

EPSDD shall grant a further lease for a term not exceeding 99 years.

The term commences immediately following the date of surrender.

Rural Leases

The same provisions apply as in Residential Leases above, however, the Minister may make a determination in relation to the term and may impose conditions pursuant to the determination.

Leases other than Residential or Rural

The same provisions as for Residential Leases apply however, all rent due under the existing lease must be paid out prior to the surrender.

Unit Title Leases

Refer Chapter 62.16 – Extension of Leases for Units and Common Property

Sections 91A, 91B and 91C provide for preservation of subleases, mortgages and other interests noted on the surrendered lease. Once a Crown Lease is cancelled to allow for registration of a Units Plan any existing encumbrances (except for Subleases and Caveats) will carry forward to the Units Plan under the above provisions.

41.7 NATURE OF THE REGISTER

The Registrar-General sets out on the title, the nature of the estate or interest in respect of which it is issued, and enters on it particulars of any mortgages, encumbrances, leases and other estate and interests.

The Registrar-General is no longer required to keep the Register in manual 'Book' form. Steps were taken to amend the *Real Property Act 1925* to allow the Registrar-General the discretion to keep the titles in electronic form as a database. This amendment took effect on 1 January 1994.

The Land Titles Register is the foundation of the Torrens System. It consists of individual Crown Leases and paperless Certificates of Title. These do not constitute the title but are evidence of title. All other documents, Registry Instruments, plans and titles together with the database constitute the Register.

Following the registration of the Crown Lease or settlement of a conveyance or other event, documents/Registry Instruments may be registered against a Crown Lease.

41.8 REGISTRATION OF CROWN LEASES

After registration of a Deposited Plan a parcel may be leased by means of a Crown Lease.

Crown Leases were previously granted under many different statutes depending upon the type of lease issued, i.e. standard residential, rural, church etc. The *Planning and Development Act 2007* enables EPSDD to grant all leases of Territory Land in the ACT.

Section 17(2) of the *Land Titles Act 1925* requires the Crown leases to be lodged with the Registrar-General.

Leases of National Land were previously made by the Commonwealth under the *City Area Leases Ordinance 1936*. National Land leases are now made by the Commonwealth under *National Land Ordinance 1989*. In special circumstances National Land leases have been issued under gazettal notices (Refer to District of Kowen - Block 110).

Section 70 of the *Land Titles Act 1925* states that the Registrar-General shall register every Crown Lease for a term of not less than 12 months granted by or in the name of the Commonwealth by entering the lease in a folio of the Register.

Crown Leases are a form of contract between the Commonwealth and the lessee. They are lodged and registered in duplicate. The original becomes part of the Land Titles Register and the duplicate becomes the lessee's copy of the title.

Leases may be granted for terms up to 99 years or varying periods as prescribed by Regulation.

Refer 51.3 in relation to the use of Memorandum of Provisions and panel format Crown Leases.

A Crown Lease, once registered, is given a 'Volume' and 'Folio' identifier and is legal evidence of title to the lease.

Once registered, a Crown Lease may be dealt with by way of lodgment and registration of Registry Instruments eg. Transfer, Mortgage, Sublease, and the like.

The Register is available for search by any member of the public, upon payment of the prescribed fee.

It should be noted that if a lease covenant is breached, EPSDD/Executive has the power to determine the lease in prescribed circumstances).

If a person entitled to a Crown Lease dies before the grant has been made, the grant may be made in the name of that person and the land will devolve as if the grant had been made prior to the death.

41.9 LODGMENT REQUIREMENTS FOR A CROWN LEASE (ACL)

To qualify for lodgment and registration, a Crown Lease should be completed as follows-

- Application to Register a Crown Lease Registry Instrument 031-ACL must be completed in full
- Crown Lease must be in duplicate.
- Standard lodgment fees apply
- The Buyer verification declarations have been submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. The Reference Code and submission date for each buyer is required to be completed on the paper Registry Instrument for the Crown Lease to be accepted.

41.10 CROWN LEASES GRANTED NATIONAL LAND ORDINANCE 1989 & CITY AREA LEASES ORDINANCE 1936

Current leases of National Land are made by the Commonwealth under the National Land Ordinance (NLO), previously they were made under City Area Leases Ordinance (CALO). Land Titles requirements for leases of National Land are as follows:

- Land to be surveyed and a Deposited Plan (DP) lodged;
- Crown Lease prepared and lodged for registration in duplicate;
- The Crown Leases need to be accompanied by an Application to Lodge a Crown Lease (ACL) Registry Instrument.

The same fee applies as per a Crown Lease issued by the Territory.

Computer folio Title created bearing notation "Declaration of National Land-current" in the 'Restrictions, Conditions and Easements' panel on the Title.

Where it is intended that the land becomes Territory land, a revocation of the declaration of National Land should be lodged, following Gazettal by the Commonwealth. This revocation should be lodged using a Miscellaneous Application (MA) form headed "Application to Note Revocation of Declaration of National Land". **The standard Registry Instrument fee applies for the Miscellaneous Application.**

On registration of the application the status of the notation will be changed from 'Current' to 'Revoked by Application'. The status of the application will be changed to "registered".

41.11 VARIATION OF CROWN LEASES

OVERVIEW

Section 72A of the *Real Property Act 1925* provided for the Registrar-General to record on title, particulars of a variation of purposes clause and was repealed and replaced with Sections 72A and 72AB of the *Land Titles Act 1925*. A variation made under the repealed Section 72A *Real Property*

Act 1925 and not registered is now not capable of being registered, refer Chapter 37.21 – Registration of Variations made under Section 72A of the Real Property Act 1925.

Section 72A *Land Titles Act 1925* provides for the Registrar-General to record on title particulars of an order varying a Crown Lease. A variation under Section 11A *City Area Leases Act 1936*, may still be registered, refer Chapter 37.20 – Registration of Variations made under Section 11A of the *City Area Leases Act 1918*.

Section 72AB *Land Titles Act 1925* provides for the Registrar-General to record on title particulars of orders under Sections 359 and 364 of the *Planning and Development Act 2007* only where the order purports to affect a Crown Lease. This type of order is an order restraining a person from carrying out a controlled activity as distinct from a variation.

41.12 LODGMENT REQUIREMENTS FOR VARIATION OF CROWN LEASE (AVCL)

Wherever it is provided in the *Planning and Development Act 2007* for a variation of Crown Lease or an order to be lodged with the Registrar-General, such a variation or order should be lodged according to Land Titles procedure. To register a variation of Crown Lease the Application to Vary a Crown lease Registry Instrument (AVCL) is required. See below for lodgment requirements.

Application to Vary a Crown Lease (AVCL) by Legal Practitioner requires -

- AVCL Registry Instrument completed in full under certification.
- Details of variation either completed on Registry Instrument or attached with an approved annexure
- Execution completed by Environment, Planning and Sustainable Development Directorate
- Executed by the Legal Practitioner as the certifier
- If a registered mortgage is on title, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website

Application to Vary a Crown Lease by Registered Proprietor (Self-Represented Party)-

If completed and executed by the registered proprietor, then the registered proprietor must complete their verification of identity (VOI) by using the Self-Represented Party pack available (see Chapter 8) The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace or a Notary Public.

- AVCL Registry Instrument completed in full under certification
- Certified copies of identification which match the category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack

- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the variation is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- The registered proprietor must sign the AVCL Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution Chapter 9.2)
- Execution completed by Environment, Planning and Sustainable Development Directorate
- Details of variation either completed on Registry Instrument or attached with an approved annexure Registry Instrument
- Once change of name Registry Instrument is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.

41.13 LODGMENT REQUIREMENT FOR AN ALTERATION OF UNIT PLAN (ALUP)

In the case of the variation of purposes for which Units in a Units Plan may be used the applicant is required to complete an Application to Alter a Units Pla Registry Instrument 055-ALUP (ALUP), the

Variation, upon lodgment, is entered in the Register as follows –

- if all units are affected by the variation – the variation will be registered over all titles including the Common Property Title.
- if only some of the units are affected by the variation – the variation will be registered against the title for the relevant units as well as on the Common Property Title.
- The units affected by the variation with a registered mortgage and this mortgage is carrying over to the new title after the variation is registered. Consent may be required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website

Application to Alter a Units Plan (ALUP) by Legal Practitioner requires -

- ALUP Registry Instrument completed in full under certification.
- Details of variation either completed on Registry Instrument or attached with an approved annexure Registry Instrument
- Execution completed by Environment, Planning and Sustainable Development Directorate
- Executed by the Legal Practitioner as the certifier
- Supporting documents must be attached
- If a registered mortgage is on title that the alteration is affecting, then we may require mortgagees consent Registry Instrument 042-C available from the Access Canberra Website.

Application to Alter a Units Plan (ALUP) by Registered Proprietor or Registered Body Corporate (Self-Represented Party)-

If completed and executed by the registered proprietor/s or the body corporate, then the registered proprietor/s or body corporate must complete their verification of identity by using the Self-Represented Party pack. The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace, or a Notary Public.

- ALUP Registry Instrument completed in full under certification
- When applicant is a Body corporate see execution by an owner's corporation (Chapter 9.7) as these requirements apply to verify their identity.
- Body corporate must be registered on common property title. If not a change of address is required with lodgment fee
- Certified copies of identification required see category chart in Self-Represented Party pack. Identification must match title and application Registry Instrument.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack
- Supporting documents must be attached
- When the units being affected by the ALUP have a registered mortgage and this mortgage is carrying over to the new title after the ALUP is registered. Consent may be required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website
- All registered proprietor/s or the registered body corporate must sign the ALUP Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution Chapter 9.2)
- Execution completed by Environment, Planning and Sustainable Development Directorate
- Details of variation either completed on Registry Instrument or attached with an approved annexure Registry Instrument
- Once ALUP Registry Instrument is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.
- Standard lodgment fees apply

Practitioners should note that pursuant to 72A(3) of the *Land Titles Act 1925*, Variations of Purpose Clauses are effective upon registration of the memorial of variation by the Registrar-General.

41.14 REGISTRY INSTRUMENTS WITH LAND PRIOR TO REGISTRATION OF CROWN LEASE

Section 72B of the *Land Titles Act 1925* provides that a person may deal with land prior to the registration of a Crown Lease.

Section 72B of the *Land Titles Act 1925* provides that where a Crown Lease has been granted and a Registry Instrument is presented for registration prior to registration of the new Crown Lease, the Registry Instrument is entitled to be registered upon registration of the Crown Lease. A Registry Instrument/Registry Instrument will not be accepted for lodgment with Land Titles unless the Crown Lease has been registered prior to lodgment.

41.15 DETERMINATION OF CROWN LEASES

A Crown Lease may be determined by;

- surrender of the Crown Lease by the lessee during the term of the lease; or
- expiry of the term of the Crown Lease; or
- re-entry by the lessor under a covenant in the lease or an implied covenant in the Act; or
- operation of law (recovery of possession by the lessor by any proceeding in law);
- disclaimer by the trustee of a bankrupt estate or the liquidator of a company which is being wound up;
- acquisition of the whole of the land;
- vesting of the land in the lessor; or
- termination of crown lease by the lessor.

In each of the above cases, the Crown Lease must be produced or lodged with the Registry Instrument affecting the determination.

Surrender of Crown Lease

There are two types of surrenders:

- a) where the Crown Lease is to be surrendered back to the Crown and no further Crown Lease is to issue to the lessee; and
- b) where the Crown Lease is to be surrendered with a view to the acceptance of a new Crown Lease(s) to the same lessee (Sections 91A, 91B and 91C *Land Titles Act 1925*).

Effect of Surrender of Crown Lease on interests in the Crown Lease

On surrender of the Crown Lease with no re-grant -

- Mortgages should be discharged; or
- Mortgagee may consent to the surrender by signing the surrender to that effect (in which case the mortgage falls) (Section 86(6) *Land Titles Act 1925*); or
- Subleases will automatically fall and **no consent is necessary** (Section 90 *Land Titles Act 1925*).

On surrender of the Crown Lease with a view to the grant of a replacement Crown Lease/s -

Mortgages will carry forward to the new Crown Lease/s providing (Section 91B *Land Titles Act 1925*)-

- the mortgage has not been discharged;
- the priority of the mortgage relative to each other mortgage (if any) continuing in force under Section 91B, can be clearly defined;
- the land in the new Crown Lease includes all or part of the land in the surrendered lease;

- the new Crown Lease is from the same lessor to the same lessee and is lodged at the same time as the Crown Lease being surrendered.
- Subleases will carry forward to the new Crown Lease providing (Section 91A *Land Titles Act 1925*) -
- the sublease has not been determined;
- the sublet area is wholly within the land in the new Crown Lease;
- the new Crown Lease is from the same lessor to the same lessee and is lodged at the same time.

If the Crown Lease being re-granted is over more parcels than the original lease the Subleases (and the sublet area is wholly within the areas on the New Crown Leases) the Subleases will carry over to all of the new Crown Leases issued. If the Sublease does not apply to all new Crown Leases, the proprietor must provide a plan of the new areas and outline which of the new leases are affected by the subleases. For parcels that the Sublease does not affect, the consent of the lessees is required (in this case the subleases fall (and will not be carried over to the new lease/s) in relation to the consented parcels).

Other interests e.g. easements, writs, caveats, rates determinations, charges etc noted on the title will carry forward automatically (Section 91C, *Land Titles Act 1925*) providing:

- the interest has not been determined; and
- the re-granted lease is to the same lessee.
- Any variation of any interest carried forward continues in force.

NB: Where any mortgage, sublease or other interest is continued in force pursuant to Sections 91A, 91B, or 91C LTA the endorsement of the mortgage/sublease/other interest will include the note "continued by Sections 91A, 91B or 91C *Land Titles Act 1925*."

41.16 LODGMENT OF SURRENDER AND RE-GRANT OF CROWN LEASE

In the case where the Crown Lease is to be surrendered with a view to the acceptance of a new Crown Lease(s) to the same lessee (Sections 91A, 91B and 91C *Land Titles Act 1925*). The application Registry Instrument Surrender and Re-Grant of a Crown Lease Registry Instrument 033-SRG (SRG) is required to be completed.

When the parcels of land are changing by a Deposited Plan then the required Registry Instruments to be completed are Determination/Surrender of a crown lease Registry Instrument 057-DCL (DCL), Application to Register a Deposited Plan Registry Instrument 054-ADP (ADP) and an Application to Register a Crown Lease Registry Instrument 031-ACL (ACL).

To qualify for lodgment and registration, a SRG should be completed as follows –

- SRG Registry Instrument completed in full under certification
- Discharge of Mortgage or Surrender of Sublease if not being carried forward to the new Crown Lease,
- When the land has a registered mortgage, and this mortgage is carrying over to the new title after the SRG is registered. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website

Application of a DCL, ADP AND ACL by a Legal Practitioner requires-

- Determination/Surrender of a Crown Lease Registry Instrument 057 – DCL (DCL) to be completed under certification
- Execution completed by Environment, Planning and Sustainable Development Directorate
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after all instruments are registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- The Seller verification declarations have been submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. The Reference Code and submission date for each seller is required for the surrender Registry Instrument (DCL) to be accepted
- Application to Register a Deposited Plan Registry Instrument 054-ADP (ADP) accompanied by the new plan
- Application(s) to Register a Crown Lease Registry Instrument 031-ACL (ACL accompanied by the Crown Lease(s) in duplicate
- The Buyer verification declarations have been submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. The Reference Code and submission date for each seller is required to be completed on the ACL Registry Instrument for the (ACL) to be accepted

Application of a DCL, ADP AND ACL by Registered Proprietor requires-

If completed and executed by the registered proprietor/s or the body corporate, then the registered proprietor/s or body corporate must complete their verification of identity by using the Self-Represented Party pack available (Chapter 8) The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace, or a Notary Public.

- Determination/Surrender of a Crown Lease Registry Instrument 057 – DCL (DCL) to be completed under certification
- Execution completed by Environment, Planning and Sustainable Development Directorate
- Certify copies of identification required see category chart in Self-Represented Party pack. Identification must match title and application Registry Instrument.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after all instruments are registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website

- The registered proprietor must sign the DCL Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution Chapter 9.2)
- The Seller verification declarations have been submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. The Reference Code and submission date for each seller is required for the surrender Registry Instrument (DCL) to be accepted
- Application to Register a Deposited Plan Registry Instrument 054-ADP (ADP) accompanied by the new plan
- Application(s) to Register a Crown Lease Registry Instrument 031-ACL (ACL accompanied by the Crown Lease(s) in duplicate
- The Buyer verification declarations have been submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. The Reference Code and submission date for each seller is required to be completed on the ACL Registry Instrument for the (ACL) to be accepted

Where many Crown Leases are being simultaneously surrendered and re-granted and the subject blocks of land are being amended by one new Deposited Plan, Land Titles Practice is to register the surrender/re-grant of Crown Leases and the new Deposited Plan simultaneously.

41.17 EXPIRY OF CROWN LEASE

When the term of a Crown Lease has expired, an application to note the expiry will be lodged by EPSDD. An entry will then be made on the title recording the expiry. The title is then cancelled.

41.18 DETERMINATION BY RE-ENTRY

A determination by re-entry may be effected by EPSDD lodging an application supported by a declaration that:

- the lessor had, on a specified date, peaceably and lawfully re-entered and recovered possession of the land;
- a specified covenant in the lease had been broken by the lessee;
- the requisite time had elapsed between the date of breach and the date of re-entry.

The application should be lodged using a Determination/Surrender of Crown Lease Registry Instrument 057-DCL (DCL).

Standard lodgment fee applies.

If there is a registered mortgage on the Crown Lease the application should be accompanied by a Discharge of Mortgage from the registered mortgagee.

Following an entry to that effect the title is cancelled.

41.19 DETERMINATION BY OPERATION OF LAW

A determination by operation of law would be effected by EPSDD lodging an application supported by evidence showing:

- an intention on the part of the lessee to yield up the premises and on the part of the lessor to accept the same on the basis of surrender;
- resumption of possession by the lessor;
- that the lessee was not, by reason of any charge or encumbrance on the lease, incompetent to surrender on the relevant date; and
- that it is impractical, owing to inability to locate the lessee or otherwise, to obtain a surrender in writing.

The application should be lodged using a Determination/Surrender of Crown Lease Registry Instrument (DCL). If there is a registered mortgage on the Crown Lease the application should be accompanied by a Discharge of Mortgage from the registered mortgagee.

Following an entry to that effect the title is cancelled.

41.20 DETERMINATION BY DISCLAIMER

Where the trustee of a bankrupt lessee, or the liquidator of a company which is being wound up, is in charge of a lease burdened by onerous covenants he may disclaim the lease. In other words, the Crown Lease is a liability rather than an asset to the estate. Depending upon whether the Crown Lease was mortgaged and, if not, whether the mortgagee wishes to acquire the lease in his own right, the Registrar-General may record the determination of the lease or vesting in the mortgagee. If there is no mortgage, or if the mortgagee chooses not to acquire the lease, the Registrar-General will determine the lease and it will be cancelled. (See reference to disclaimer in 'Subleases – Chapter 49).

The application should be lodged using a Determination/Surrender of Crown Lease Registry Instrument (DCL). Standard Registry Instrument fee applies.

41.21 RESUMPTION AND WITHDRAWAL OF LAND

Many Crown Leases contain a clause which empowers EPSDD to resume or withdraw the land in the Crown Lease. EPSDD may exercise this power upon breach of any of the lease covenants in a Crown Lease containing this provision.

Where the power is exercised, an Application to Note Withdrawal is lodged together with a copy of the appropriate Gazette Notice (ACT Gazette) and registered and the lease determines (Section 87B LTA).

Application should be made using a Miscellaneous Application (MA) Registry Instrument. Standard Registry Instrument fee applies.

41.22 TERMINATION OF CROWN LEASE

Under section 382 of the *Planning and Development Act 2007* if a lessee contravenes covenants within the lease the Planning and Land Authority may by written notice (given to the lessee) terminate the lease.

A termination takes effect 10 working days after the day the notice was given to the lessee.

At the same time as, or as soon as practicable after, the termination notice is given to the lessee, the planning and land authority must give a copy of the termination notice to—

- (a) the Registrar-General; and
- (b) any person having an interest in the land comprised in the lease that is registered under the *Land Titles Act 1925*.

A termination of crown lease (TCL) should be lodged using **Registry Instrument 096 – TCL – Termination of Crown Lease**. The standard Registry Instrument lodgment fee applies. A copy of the notice to the lessee and any notice issued to other interested parties in the land comprised in the lease should also be supplied with the lodgment of the TCL Registry Instrument.

41.23 ACQUISITION OF LAND (ACT)

The Lands Acquisition Act 1994 established a statutory process for the acquisition of interests and rights including legal and equitable estates or interests in land.

Under the Act, certain documents are required to be lodged with the Registrar-General.

Section 30(1) of the Act requires EPSDD, to lodge a memorandum setting out particulars of an authorising document (or variation or revocation). The memorandum must be lodged within 7 working days after the date of the document. Upon receipt of the document the Registrar-General is required to make such entries in the Register as he/she thinks appropriate. An authorising document is a “pre-acquisition declaration” under Section 19(1) of the Act or a certificate under Section 21(1) of the Act.

Section 41(1) of the Act requires EPSDD, to lodge a memorandum setting out particulars of a declaration under Section 33(1) (or variation). The memorandum must be lodged within 28 days after publication of the declaration in the *Gazette*. The Registrar-General may deal with the memorandum to the effect that it vests the property acquired in the acquiring authority and make such entries in the Register as are necessary.

Section 103(1) of the Act requires EPSDD to lodge a notice extinguishing an easement. The notice must be lodged within 28 days of the notification in the ACT Legislation Register, of the extinguishment of the easement.

NB. It should be noted that the process of acquisition of land, or interests, is legally effective upon making of the declaration or notices described above and not upon entry in the Register.

Registration of Acquisition of the Whole of the Land in a Crown Lease

Upon lodgment of the memorandum under Section 41(1) of the Act the Registrar-General will determine the Crown Lease and all interests therein.

A mortgagee, however, may elect to prepare and lodge a discharge of mortgage.

An application to note the Acquisition of the whole of the land in a Crown Lease should be prepared using an Application to Note Withdrawal/Acquisition (WA) Registry Instrument.

The standard Registry Instrument fee applies for this lodgment.

Registration of Acquisition of part of the land in a Crown Lease

Upon acquisition of part of the land in a registered Crown Lease, the Registrar-General will require the following documents to be lodged:

An "Acquisition of Part of the Land" should be prepared using an Application to Note Withdrawal/Acquisition (WA) Registry Instrument.

The application should be supported by a memorandum setting out particulars of the declaration, in accordance with Section 41(1) of the *Lands Acquisition Act 1994*, together with a Land Acquisition Plan indicating the land being acquired.

A Balance Crown Lease should be prepared and issued in respect to the residual land in the Crown Lease following the partial acquisition.

The Balance Crown Lease is prepared by EPSDD and has the effect of continuing the Crown Lease subject to the same covenants, terms and conditions together with all current encumbrances in the original Crown Lease. A Balance Crown Lease should be lodged together with an Application to Register a Balance Crown Lease (BCL) and it will be treated for all intents and purposes as a new Crown Lease. The Balance Crown Lease must be lodged in duplicate.

The Balance Crown Lease however, includes new parcels of land created by the amending Deposited Plan. The Plan accompanies the 'Acquisition of Part of the Land' and should also accompany the Balance Crown Lease.

A Deposited Plan should be lodged describing the land acquired and also describing the residual land.

The standard lodgment fee applies.

NOTE: An application for the 'Acquisition of Part of the Land' does not need to be presented to the Stamp Duty office as it is, in effect, a continuation of a Crown Lease (refer to back of Registry Instrument).

41.24 REGISTRATION OF VARIATIONS MADE UNDER SECTION 11A OF THE CITY AREA LEASES ACT 1918

Section 11A of the *City Area Leases Act 1918* empowered the Supreme Court to make orders varying the purposes for which land, the subject of a Crown Lease, could be used. Variations made under Section 11A were registered by lodgment of a Court Order.

The *Land (Planning and Environment) Act 1991* (since replaced by the *Planning and Development Act 2007*) has replaced this mechanism by permitting such variations to be made by administrative means. By Section 24 of the *Land (Planning and Environment) (Consequential Provisions) Act 1991* (LACP), CALA was repealed. Section 26 LACP continued CALA in force in respect of applications made under CALA and not determined until after the *Land (Planning and Environment) Act 1991* commenced.

An amendment to LACP (No 41 of 1994) inserted two new provisions i.e. 26(1A) and 26(1B). 26(1A) establishes a sunset clause, to the effect that variations made under Section 11A CALA cease to have effect at the expiration of 30 June 1995. Section 26(1B) provides that, on 1 July 1995 any application made under Section 11A CALA and not determined before 1 July 1995 shall be deemed to be refused.

It is important to note the provisions of Section 46 of the *Legislation Act 2001*, which deals specifically with certain circumstances where Acts are repealed. Section 46 preserves the operation of a repealed Act for certain specified purposes.

In summary, applications to note variations of Crown Lease made under Section 11A *City Area Leases Act 1918* but not registered before the repeal of *City Area Leases Act 1918* may still be registered.

All such applications will be dealt with on a case by case basis and may be referred to ACT Government Legal Practitioner for opinion as to registrability.

CHAPTER 42 DEPOSITED PLANS

42.1 DEFINITION

‘Deposited Plan’ (DP) means a plan prepared by a Registered Surveyor setting out the boundaries of, and the distinguishing number or name to each District, Division, Section or Block in accordance with the *Districts Act 2002*.

42.2 GENERAL

DP’s provide for the description and sub-division of land in the Australian Capital Territory (ACT).

Section 64(1) *Land Titles Act 1925* provides that the Registrar-General may require a map or plan to be lodged where the proprietor applies to bring land under the *Land Titles Act 1925* or desires to transfer or otherwise deal with the land.

In the ACT, prior to registration of Registry Instruments in land or amendment of the area of land in a Crown Lease, it is necessary to define in survey terms the area of land to be leased or the amendment to be made.

The unit of land for leasing purposes is known as a ‘Parcel’ but more correctly referred to as a Block.

The ACT is geographically subdivided under Section 5(1) of the *Districts Act 2002* into districts. These districts are larger zones akin to the Parish system in other states.

The minimum number of parcels which may be created by a DP is one.

42.3 PREPARATION AND EFFECT OF REGISTRATION

The responsibility for the preparation of DP’s is vested in the Commissioner for Surveys.

A DP is a diagrammatic presentation of the results of a field survey. Areas are defined by a DP with reference to Survey Reference marks, bearings and distances.

The Plan must be:

- digitally certified by a Registered Surveyor pursuant to the *Surveyors Act 2007*; and
- digitally certified by the ACT Surveyor-General pursuant to the *Districts Act 2002*.

The DP will be emailed to Land Titles from the Surveyor General.

In order to have the plan registered the following is required:

- a completed Application to Register a Deposited Plan Registry Instrument (ADP), or in the case of District Plans an Application to Register a Division/District Plan Registry Instrument (ADDP)
- any other Registry Instruments affecting the plan (e.g. surrender and re-grant of a Crown Lease, broad acre etc.)
- the lodgment fee is required to be paid

Registration of a DP is a necessary pre-requisite to the registration of a new Crown Lease.

Upon lodgment the plan is subject to a registration examination to determine whether or not it transgresses the boundaries established by another Deposited Plan, etc.

Where a DP amends another DP a notation to that effect is endorsed on amended Plan prior to registration of the new plan. The extent of the amendment is charted by this office on the

original DP. The DP is an important aid in the prevention of 'double grants' of land. It achieves this function through the checking of the ACTLIS 'Land Index' of existing Crown Leases and/or grants of freehold on the plan. It is general policy to reject a DP if it appears to subdivide or amend an existing parcel, which is subject to a current registered lease. The DP when used as a charting medium is also a valuable and necessary backup to the Land Index (an index of block/section/division information correlated with volume/folio).

Section 248 of the *Planning and Development Act 2007* provides that each parcel of land shall be capable of separate access and should not be land locked.

42.4 USE OF DEPOSITED PLANS

The DP is the sole identifier of land in the ACT and should be used by all searchers to properly identify the land in respect of which any Registry Instrument is contemplated.

Section 8 of the *Districts Act 2002* establishes the DP as evidence of the measurements and boundaries of the areas of land shown in it, unless the contrary is proved.

A DP may also be used by Registered Surveyors to undertake an identification survey and to locate the boundaries of all blocks shown on it.

Searches of DPs are normally conducted by conveyancers on the initial search of the Crown Lease. The reason is firstly to confirm identification and measurements for the block and secondly to ascertain the existence or otherwise of 'Easements' eg drainage, sewerage, electrical.

42.5 CREATION OF EASEMENTS

Deposited Plans themselves do not create easements they merely describe the location of proposed easements.

In the ACT, easements may not be created by a DP. DP's may include reference to the location of "Easements" by dashed lines or pecking, but these are not Registry Instrumental easements unless created by a deed or within the text of the Crown Lease.

Easements exist in the register in a number of ways including those:

- proposed by the Deposited Plan,
- created in the text of the Crown Lease, and defined (with colours) on the annexure to the Crown Lease, and
- Alternatively, easements may also be created by Registry Instruments and registered on the relevant Crown Leases. These easements are an agreement in the Registry Instrument of a deed between the parties.

42.6 CORRECTION OR ADDITIONS TO DEPOSITED PLANS

Corrections or additions required to be made to information on a Registered Deposited Plan as a result of requisitions by the Surveyor-General or the Registrar-General shall be made by striking through the erroneous matter and inserting the correct information, which shall be initialled and dated by the Registered Surveyor. With the consent of the Registered Surveyor, corrections or additions of a minor nature may be made to the plan by the Surveyor-General.

42.7 COMPILED PLANS

A compiled plan is a plan suitable for registration as a Deposited Plan where some or all of the boundaries on the plan have been defined from previous survey information.

For more details and guidelines in respect of compiled plans surveyors and practitioners should consult Surveyor-General Guideline No. 1 ; Partial Surveys and Computed Plans.

In general, a compiled plan should not be used as a basis for the grant of a residential Crown Lease. They are generally used as interim plans in the development process.

A compiled plan should not be used to subdivide a parcel of land for residential purposes.

CHAPTER 43 DETERMINATION UNDER THE RATES AND LAND RENT (RELIEF) ACT 1970

43.1 EFFECT OF REGISTRATION

The *Rates and Land Rent (Relief) Act 1970* originally provided for the registration of determinations made under Section 3 of the Act. Registration under Section 108B of the *Land Titles Act 1925* (LTA) had the effect of creating a registered charge on the land securing the payment to the Territory of an amount for which the person is indebted.

Section 3 of the Act was repealed in 2004 removing the requirement for the Minister responsible to register a determination under the LTA.

Previously registrations of determinations were registered under the Registry Instrument code “DR” – Deferment of Rates.

43.2 DISCHARGE OF DETERMINATIONS

Notwithstanding the repeal of Section 5, a number of determinations remain registered in the Land Titles Register. Provision exists for the revocation of determinations or discharge of the debt.

Where a determination is revoked on discharge, provision exists at Section 108C of the *Land Titles Act 1925* for registration of the discharge.

Previously discharges of these determinations were registered under the Registry Instrument code of “DDR”. All discharges should now be registered by using a Miscellaneous Application (MA) Registry Instrument.

The application should be executed by the Commissioner for Revenue and/or his delegate.

It is no longer a requirement to produce the Title upon lodgment of the Discharge.

CHAPTER 44 EASEMENTS

Section 103B to 103H *Land Titles Act 1925* (the Act) deal with the creation and registration of easements affecting land under the Act.

Section 27 *Unit Titles Act 2001* provides for a number of statutory easements in relation to units in Units Plan.

44.1 DEFINITION

In general terms, an easement is a right enjoyed by the owner of land over the land of another: such as rights of way, rights of light or rights to a flow of air or water. An easement must exist for the accommodation and better enjoyment of the land to which it is attached. The parties to an easement are known as the 'dominant tenement' and the 'servient tenement'.

Dominant tenement refers to the person benefiting from an easement (the transferee or grantee).

Servient tenement refers to the person burdened by the easement (the transferor or grantor).

44.2 EASEMENTS IN DEPOSITED PLANS

In the ACT, easements may not be created by a Deposited Plan. Deposited Plans may include reference to the location of 'easements' by dashed lines, but these are not easements unless Registry Instrumentally created by deed or incorporated in the grant of a new Crown Lease.

44.3 EASEMENTS IN CROWN LEASES

An easement may be created by grant and/or reservation in Crown Leases. Common examples of this may include -

- reservation of an easement in the Crown Lease for - drainage, sewerage, access way etc.
- grant of rights for the Crown Lessee to pass sewerage through pipes under a neighbouring lease.

Easements created in Crown Leases should be described and defined in an Easement Plan attached to the Crown Lease or by diagram locating the easement in the Deposited Plan (DP). An Easement plan shall be prepared in accordance with Section 42 of this manual. A copy of the DP should be attached to the Crown Lease or the registered DP number should be stated within the easement clause within the Crown Lease.

Words creating easements in Crown Leases will normally be found in the body of the covenants of the Crown Lease.

The Registrar-General will flag the existence of such easements in the Restrictions field on the computer Title searches i.e.

"Subject to Easement in Crown Lease"

NB: Easements in Crown Leases may be extinguished under Section 103E(1)(a) *Land Titles Act 1925* in a similar manner to an easement created by deed. Refer Chapter 40.9.

44.4 CREATION OF EASEMENTS BY DEED

An easement may be created subsequent to the grant of a Crown Lease by preparation and lodgment of a Transfer and Grant of Easement in the Land Titles Office. The following points should be noted -

- an easement may be registered where the land benefited and burdened have the same registered proprietor (Section 103D), although only if the parcels affected are on separate Certificates of Title. Land Titles will not register an easement on a Multi Parcel Crown Lease where the proprietor attempts to create an easement from block to block in the same Multi Parcel Crown Lease.
- When a mortgagee is involved for the Servient tenement then Consent is required.
- an easement may be positive or a right to do something (eg right of way) or negative or a right to receive (eg right to receive light or support),
- an easement may create benefits in relation to a dominant tenement even though the dominant tenement is not the registered proprietor of land (refer 'Easements in Gross' below),
- a Transfer and Grant of Easement is not liable for duty
- an easement may be limited wholly or partly in height or depth or both,
- a Transfer and Grant must be signed by the Servient and Dominant tenements, and any mortgagees of the Servient tenement.

Application should be made using a Transfer and Grant of Easement Registry Instrument (TGE). The standard lodgment fee applies.

After registration, the TGE will appear as an encumbrance on the Title for the affected parties.

An easement should not confer exclusive possession or use on the dominant owner.

Unlike transfers, assignments etc which are protected upon registration by the indefeasibility provisions, registered easements may be challenged as to his/her validity (Evans case).

An unregistered easement is nevertheless not protected by the indefeasibility provisions.

The indefeasibility provisions at Section 58(b) cover omitted or misdescribed easements to the extent that may be binding upon a person becoming proprietor of the land.

44.5 EASEMENTS IN GROSS

An easement in gross is an easement that does not benefit land (i.e. there is no dominant tenement) under the *Land Titles Act 1925* and may only be made in favour of -

- the Territory or owners corporation under Territory law;
- the Commonwealth or owners corporation under Commonwealth law;
- a State/Territory or owners corporation under State/Territory law;
- a person providing a public utility service in the Territory (eg reticulated services; gas, water, sewerage, electricity).
- the Registrar-General may request for a drawing outlining the easement to be attached to the Registry Instrument for registration.

44.6 EASEMENT DIAGRAMS

A Transfer and Grant of Easement should have, annexed to it, an original Easement Plan describing the location of the easement. Each Easement Plan needs to be site specific and should be prepared in

accordance with Surveyor-General Guideline No. 20 - Standards and Specifications for the preparation of Easement Plans and should be prepared and signed by a Registered Surveyor.

Easement Plans should be prepared on A4 size paper. Colour should not be used in the preparation of easement Plans. Hatching, striking and pecked lines can be used to identify areas within the plan. A legend should be on the supporting Easement Plan to clearly define any hatched or pecked areas.

If an Easement has been described as a “proposed easement” on a Deposited Plan, the client may enlarge this drawing on A4 paper to attach to an Easement application if the diagram shows enough relevant detail. The body of the TGE document should refer to the diagram submitted in support of the application.

44.7 PARTY WALLS

The Common Boundaries Act 1981 makes provision for statutory easements in relation to party walls.

A party wall is defined at Section 27 of that Act as –

- means a wall or structure designed for the common use of 2 or more buildings and erected, or to be erected, on a common boundary, or part of such a boundary, between 2 parcels of land, and extending laterally into each of those parcels of land; and
- Includes any wall that is completely or partly used to support 2 or more buildings, if the wall was erected in connection with a building for which there is an occupancy under the Building Act 2004.

A party wall may be described by plan in the titles to adjoining leases or in their respective Deposited Plan. However, it is not necessary for a plan describing a party wall to be lodged. Such easements exist by force of the *Common Boundaries Act 1987* without the need for a deed, providing the prerequisites under the Act are met.

44.8 VARIATION OF EASEMENT

Section 103F of the *Land Titles Act 1925* provides for the variation of a registered easement.

A registered easement includes -

- an easement created by subsequent deed.

The following variations are not permitted -

- changing the location of the easement;
- changing the area of land affected by the easement; and
- changing the burdened or benefited land

Application may be made using an 008-MA Miscellaneous Application.

A Variation of an Easement in a Crown Lease will require the consent of the ACT Planning Authority.

44.9 EXTINGUISHMENT OF EASEMENT

A registered easement, whether created in the terms of a Crown Lease or by deed, may be extinguished, by

- memorandum of extinguishment; or
- surrender of the lease benefited by the easement.

NB: Section 91A of the *Land Titles Act 1925* provides that an easement is not extinguished if the surrender of the lease is followed by a replacement lease.

The Memorandum of Extinguishment should be prepared using an Extinguishment of Easement form 079-EE (EE).

The standard lodgment fee applies.

The extinguishment should be signed by the registered proprietor for the dominant tenement and each mortgagee and lessee (other than a lessee who does not receive a benefit from the easement) of the dominant tenement.

Where an easement in a Crown Lease is being extinguished the consent of EPSDD is required prior to lodgment. The Registry Instrument submitted for lodgment at Land Titles should have the written consent of EPSDD attached.

44.10 INCORPOREAL RIGHTS

An 'Incorporeal Right' does not include an annuity or rent charge.

Typically, an incorporeal right might allow a person to take things i.e. timber, water, herbage etc from another's land.

An incorporeal right may be registered and extinguished in a similar manner to an easement.

44.11 STATUTORY EASEMENTS

Section 34 of the *Unit Titles Act 2001* establishes statutory rights in relation to units in Units Plans.

Section 27 of the *Common Boundaries Act 1981* establishes rights in relation to party walls.

44.12 CARRYOVER OF EASEMENTS

Section 91C LTA provides that where a Crown Lease has been surrendered and a new lease is granted to the same lessee of all or part of the land, any easement registered in respect to the surrendered lease will carry forward providing -

- a) the easement has not been determined; and
- b) the land, which is the subject of the easement, is included in the land in the replacement Crown Lease.

CHAPTER 45 ESTATES FOR LIFE AND ESTATES IN REMAINDER

A registered proprietor may elect to create, out of their estate, a life estate, and upon death of the life tenant, an estate in remainder.

Creation

Separate Certificates of Title for an 'Estate for Life' and an 'Estate in Remainder' are created by:

- the lodgment of a transmission application by the Life Tenant and the remainder person under provisions made by the registered proprietor in their will; or
- a transfer by the registered proprietor, creating a life estate.

In this context, an estate for life includes an estate *pur autre vie* (for the life of another) and an **estate limited for uncertain period during a life** (eg until a woman remarries).

The creation of separate Certificates of Title in favour of a life tenant and a remainder person are not essential (i.e. the Transfer or the Transmission Applications may be noted on the current title).

As the estate for life terminates upon death of the proprietors, there is no need to show a form of tenancy for co-proprietors. Upon death of a proprietor of an estate for life there is no estate to transmit. Tenancy for co-proprietors of estates in remainder must be shown.

Where a life estate in which a Title has been issued has determined, and the estate in remainder or reversion vests in possession, or the person to whom the Title has been issued (or a purchaser) becomes entitled to the land, the Registrar-General may, upon application by the person entitled, in the Registry Instrument of a transfer, and upon proof to his/her satisfaction, register that person as proprietor of the estate or interest (Section 55 (d) *Land Titles Act 1925*).

Where a Title has been issued in respect of a life estate in any land, any person entitled in reversion or remainder to the land may apply to be registered as proprietor. The Registrar-General, upon consideration of the case, may, unless otherwise directed by the Court, either reject or register the application. Section 56 *Land Titles Act 1925*.

In the majority of cases in which the land has been transmitted by will, the title is held by trustees or executors, particularly so when the limitations are contingent or otherwise complicated. If Certificates of Title for particular estates are desired, they may be obtained by transfer from the trustees. It is not the practice to create a Title for a contingent interest.

Reversion

The reversion or remainder is the interest in land which is created when the owner of an estate grants an interest in it to another without disposing of the whole of his/her interest eg

A, makes a grant of the land to B (as the owner of the estate in fee simple) for the term of B's life, the estate then to revert back to A, A's interest is described as a 'reversion'.

Remainder

An interest in land which is expectant upon the determination of an estate in fee simple eg

If C (as the owner of the estate in fee simple of a parcel of land) grants his land to D, for the term of D's life, and thereafter to E, the interest of E is described as a 'remainder'.

For the purposes of Section 56 *Land Titles Act 1925* 'reversion' and 'remainder' are treated in a similar fashion.

45.1 DEATH OF LIFE TENANT

The death of the Life Tenant may be registered on Title using the printed Registry Instrument of Notice of Death, modified to suit.

The application should refer to the Certificates of Title comprising both estates.

A Statutory Declaration evidencing the death of the life tenant or the occurrence of the event that determined the life estate, and a declaration of identity must be furnished.

There should also be lodged -

- Where the tenant for life had a power of appointment, evidence as to the non-existence of the power.

Upon registration of the Notice of Death, the Certificates of Title for the 'Estates for Life' and 'in Remainder' are cancelled the register is prepared in the name of the remainder person.

45.2 DEATH OF THE REMAINDER PERSON

The death of the Remainder Person may be registered on Title using a Transmission Application (TA) Registry Instrument and is dictated by the TA process. For more information on Transmission Applications refer to "Chapter 61 – Transmission Applications".

If separate titles have been previously issued for the life estate and the estate in remainder, the application should refer to the Certificates of Title comprising both estates.

The standard lodgment fee applies.

CHAPTER 46 GUARDIANSHIP AND MANAGEMENT ORDERS

46.1 ACT GUARDIANSHIP AND MANAGEMENT OF PROPERTY TRIBUNAL ORDERS

The *Guardianship and Management of Property Act 1991* (the Act) empowers the ACT Civil and Administrative Tribunal to appoint a guardian or manager for a person who, because of illness or injury, is unable to make decisions (a represented person).

Section 25 of the Act requires a manager appointed by the Tribunal, to lodge evidence of appointment with the Registrar-General within 14 days (see 'Periods of Time' in Procedural Matters) after being appointed where the land concerned is under the *Land Titles Act 1925*.

The order of appointment should be lodged with the Registrar-General together with a request to enter a Registrar-General's Caveat (RX) Registry Instrument. **No fee is payable for entry of the Caveat.** The client should complete Items 1 through to 4 of the RX Registry Instrument, Item 4 (certification) will be completed by the Registrar-General or a Deputy Registrar-General once the document has been lodged at Land Titles.

46.2 EXECUTING A LAND TITLES REGISTRY INSTRUMENT

Before executing a Registry Instrument on behalf of a represented person where an order has been made, the order must be lodged at Land Titles.

A Registry Instrument executed by a manager (see Chapter 9.10), acting as manager of a represented person's land, has the same effect as if it had been executed by the represented person.

For the purposes of execution of LTA documents the following Registry Instrument of execution will be accepted -

- Appointed managers are required to complete a VOI using the Self-Represented Party lodgment pack
- Provide evidence for the right to deal (Guardianship and Management Order)
- Sign the Registry Instrument in the certification box as the certifier with full name, capacity of certifying party, company name if required
- Have execution on lodgment Registry Instrument in the certification box witnessed by the authorised person certifying their VOI or someone over the age of 18 not a party to the document. Witness must include full name
- Delete first two certification requirements
- a management order may require any Registry Instrument with property (land) of the represented person to have the prior endorsement of the Public Trustee of the Australian Capital Territory. The Public Trustee may execute the document and/or provide a letter of consent to support the registration of the Registry Instrument.

A Registrar-General's Caveat entered in the above manner will be removed by the Registrar-General upon being satisfied that the order is no longer current (i.e. reviewed, varied or revoked) or no longer affects the property concerned (i.e. The death of a registered proprietor). **No fee is payable for removal of the Caveat.** The caveat will be removed by the Registrar-General using a Registrar's Registry Instrument for removal (RDR) Registry Instrument.

Practitioners should note the following -

- the Guardianship and Management of Property Tribunal, Supreme Court or Magistrates Court may, by order, declare a transaction void.
- a management order may be directed to be reviewed within twelve months of the date of the order
- a management order may require any Registry Instrument with property (land) of the represented person to have the prior endorsement of the Public Trustee of the Australian Capital Territory. The Public Trustee may execute the document and/or provide a letter of consent to support the registration of the Registry Instrument.

46.3 ORDERS MADE IN OTHER AUSTRALIAN JURISDICTIONS

Where a Guardianship and Management Order (or equivalent), which affects property under the *ACT Land Titles Act 1925*, is made in an Australian jurisdiction outside of the ACT, parties should contact the ACT Civil and Administrative Tribunal (ACAT). Section 12 of the Guardianship and Management Act 1994 allows the ACAT to register orders made in other jurisdictions in limited circumstances.

CHAPTER 47 HERITAGE AGREEMENTS

47.1 GENERAL INREGISTRY INSTRUMENTATION

The objectives of the *Heritage Act 2004* are to establish a system for recognition, registration and conservation of natural and cultural heritage places and objects. The objectives of the Act also include provision to establish a heritage council and to provide for heritage agreements to encourage the conservation of heritage places and objects; and to provide a system integrated with land planning and development to consider development applications having regard to the heritage significance of places and heritage guidelines.

47.2 LEGAL REQUIREMENT FOR REGISTRATION OF HERITAGE AGREEMENTS

S.103 of the *Heritage Act 2004* states -

- (1) A heritage agreement attaches to the land where the place or object is located and is binding on the owner of the land for the time being.
- (2) The Minister must lodge a copy of each heritage agreement, and of any agreement to vary or end a heritage agreement, with the registrar-general for registration under the *Land Titles Act 1925*.
- (3) The Minister must ensure as far as is practicable that the copy of the agreement is lodged with the registrar-general in registrable Registry Instrument.

The *Land Titles Act 1925*(LTA) provides for the registrar-general to register an agreement under s.48 of the LTA.

47.3 LODGMENT REQUIREMENTS

A copy of the Heritage Agreement should be attached to the Miscellaneous Application to be recorded as an Encumbrance (MAE) Registry Instrument.

The “Title of Application” and “Nature of Application” should fully explain the nature of the agreement. The standard Registry Instrument fee applies for the MAE. When the land has a registered mortgage and this mortgage is carrying over to the new title. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website.

CHAPTER 48 LAND RENT LEASES

48.1 GENERAL INREGISTRY INSTRUMENTATION

An applicant for the grant of a crown lease may apply to the ACT Environment, Planning and Sustainable Development Directorate (EPSDD) to pay land rent for the lease.

Section 7 of the *Land Rent Act 2008* applies if -

- EPSDD invites applications for the ballot or direct sale of a single dwelling house lease that may be subject to the condition that the lessee pays land rent for the lease, and
- If the lease is granted, and an application is made under subsection 7(2) in accordance with the regulations, the lease —
 - (a) must be granted to the applicant subject to the condition that land rent is payable for the lease; and
 - (b) must indicate that the lease is a land rent lease

Each Land Rent Lease is birth marked by EPSDD with the following notation in the left-hand top corner of the Crown Lease – “This is a land rent lease – s238(2) Planning and Development Act 2007”.

The same lodging provisions apply as a standard lease –

- An ACL Registry Instrument must be completed,
- The lease must be lodged in duplicate,
- The Buyer verification declarations have been submitted. The link to the online Registry Instruments can be found at **Access Canberra Website**. The Reference Code and submission date for each buyer and seller is required for the Crown Lease to be accepted,
- The standard lodgment fee applies.

Section 17(2) of the *Land Titles Act 1925* requires the leases to be lodged and registered with Land Titles.

Currently, there is no restriction on Transfer for a land rent lease. Land Titles notes the restriction field on title to be consistent with other birth marks on title. The following notation currently appears – “Land Rent Lease – Applies for Term of Lease”.

CHAPTER 49 SUBLEASE

49.1 DEFINITION

A Sublease is a lease by the registered proprietor of a Crown Lease for a life or for a term that expires on a date specified in the lease. The term of a sublease must not extend beyond the term of the Crown Lease. The term 'underlease' is given where a sublessee gives a further lease on the leased area to another party.

49.2 EFFECT OF REGISTRATION

The *Land Titles Act 1925* (LTA) provides the mechanism for registration of subleases. Registration of subleases under the LTA is not compulsory.

The indefeasibility provisions at Section 58 of the *Land Titles Act 1925* protect unregistered subleases as prior tenancies for a term not exceeding three years.

For this reason, many subleases up to three years are not registered.

A sublease should be registered where it is for a term of three years or more or an initial term and an option period that would together exceed three years.

Unregistered subleases for a term more than three years may be protected by entry of a caveat.

49.3 REGISTRY INSTRUMENT OF SUBLEASE

The Registry Instrument of sublease prepared by the Registrar-General should be used in drafting leases. Alternatively, a sublease may be prepared in a Registry Instrument approved by the Registrar-General pursuant to Section 168A (1) of the *Land Titles Act 1925*.

A lessor may prepare a Memorandum of Provisions pursuant to Section 103A of the *Land Titles Act 1925* containing provisions that are to be incorporated by reference in subleases. This memorandum should be prepared and lodged with a covering application at Land Titles (refer 'Memorandum of Provisions' – Chapter 51).

The Memorandum of Provision should be submitted using a Memorandum of Provision Registry Instrument (MOP). The standard Registry Instrument lodgment fee applies for lodgment of a MOP.

The person on whose behalf the memorandum is lodged, or his Legal Practitioner, should make the following statement in the application at Item 3 of the MOP Registry Instrument -

"I (Given name and surname in full, residence and occupation) certify that this memorandum comprising pages is lodged on behalf of and contains provisions that are to be incorporated by reference in such leases as refer to this memorandum.

49.4 LODGMENT REQUIREMENTS

To qualify for lodgment and registration, a sublease Registry Instrument 072-SL available from the Access Canberra Website must be completed in full on A4 paper size and white. Standard lodgment fees apply. Guidance notes on completion of this Registry Instrument is attached to the Registry Instrument.

Multiple copies of the sublease will not be accepted for registration. Only one copy of the sublease will be registered and not returned to the lodging party. If a copy of a registered sublease is required, a copy can be obtained from ACTLIS for a fee.

A sublease of land subject to a mortgage or encumbrance is not valid or binding against the mortgagee or encumbrancee unless they have consented to the sublease before it is registered.

A sublease may be registered during the term of a registered sublease of the same land, provided that it is expressed to commence the day after the determination of the prior lease.

The sublease termination date is applicable to all lettable areas on the sublease. Subleases with multiple areas cannot state that different areas within the one document expire at differing times.

All mortgagees in a Crown Lease must consent to any sublease to be effective against the mortgagee. Where a mortgagee refuses consent this should be in writing and will not prevent registration of the sublease.

If the Crown Lease is subject to Reg 19 of the Registry former Leases Regs or Section 167(5) of the *Land (Planning and Environment) Act 1991*, the consent of EPSDD/Executive will be necessary prior to registration of the lease.

Any current registered sublease over the same area must be determined unless it is a concurrent lease.

The Annexure should be properly attached to the Registry Instrument and need not be signed and dated by all parties to the document. The pages should be numbered, and the proper Annexure Clause used – refer to Chapter 27 “Annexures”. All panels in annexure to be completed or ruled up if left blank.

It should be noted that where a sublease exists for a unit title the area being subleased includes the whole of the land including all unit subsidiaries defined on the Units Plan. If the whole of the unit title is not to Registry Instrument part of the lease and/or it is the proprietor’s intention to lease the subsidiaries separately the areas should be defined on a registered Sublease Plan. The registered Units Plan is not accepted in lieu of a registered Sublease Plan to define areas within a Units Plan.

Copies of other registered documents cannot be annexed to documents/subleases presented for registration.

49.5 COMPLETION OF SUBLEASE REGISTRY INSTRUMENT

Lodging Party details - Detail of the individual or company lodging the Registry Instruments with ACT Land Titles office

Title and Land details – completed in full with all block numbers and unit number if required

Lessor/owner and postal address – Lessor name must match title and address to be a postal address

Lessee/tenant and postal address – Lessee/s name in full if a registered company must provide ACN. Full postal address must be included

NB: In the case of a sublease to ACT Government or Commonwealth of Australia the address and Government Department is required

Tenancy of Lessee – To be completed when there is more than one Lessee.

Area being Leased – One option must be ticked. If not leasing the whole of the land, then tenancy description of area to be leased and SL Plan Number (if the whole of land is not being leased the area/s needs to be defined by a registered SL Plan);

Sublease commencement date and termination date – must be completed and correspond with the annexure leased

Conditions – At least one box must be completed

Execution - Lessor/Lessee under certification (see Chapter 9)

Sublease Registry Instrument completed and executed by a Legal Practitioner requires -

- Sublease Registry Instrument completed in full under certification.
- Leased attached with approved Annexure Registry Instrument
- Executed by the Legal Practitioner as the certifier
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the sublease is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website

Sublease Registry Instrument completed and executed by Lessor/Lessee requires -

If completed and executed by the registered proprietor, then the registered proprietor must complete their verification of identity by using the Self-Represented Party pack available (see chapter 8) The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace or a Notary Public.

- Sublease Registry Instrument completed in full under certification.
- Certified copies of identification which match the category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the sublease is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website

- The Lessor/Lessee must sign the Sublease Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution Chapter 9.2)
- Once the Sublease Registry Instrument is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.

49.6 DEATH OF LESSEE

Where a lessee has died, the normal provisions relating to disposition of the estates of joint tenants, tenants in common and sole proprietors will apply. (Refer 'Transmission Applications – Chapter 61) and 'Survivorship of Joint Tenants – Chapter 51').

A Notice of Death by Surviving Proprietor on a Registry Instrument (NDI) Registry Instrument and a Transmission Application on a Registry Instrument (TAI) Registry Instrument should be used instead of the standard ND and TA Registry Instruments.

Standard Registry Instrument lodgment fee applies.

49.7 EXTENSION OR VARIATION OF SUBLEASES

Section 87C(1) of the *Land Titles Act 1925* provides that a registered sublease may be varied as follows -

- variation of the term of the sublease; or
- variation, revocation or supplement to a covenant, condition or restriction contained or implied in the sublease.

It is not possible to vary the extent of the sublet area. If it is necessary to reduce the sublet area, this may be achieved by a partial surrender of the lease.

The variation should be signed by the lessor and lessee and **MUST** be registered before the term of the sublease expires.

The variation shall have the same effect as if it were a reference to the sublease.

A variation of sublease is not valid or binding against the proprietor of any prior mortgage recorded in a folio of the Register in respect of the land to which the lease relates unless that mortgagee has consented in writing to the variation before it is registered. A mortgagee's refusal to consent to a Variation should be in writing and will not prevent registration of the Variation.

A Variation should be made in the Registry Instrument available from Land Titles – Variation of Sublease/Headlease or Underlease Registry Instrument 022-VSL (VSL).

Consent from mortgagee is not required. The standard Registry Instrument lodgment fee applies.

49.8 EXPIRY OF SUBLEASE

Section 87A of the *Land Titles Act 1925* provides that “the Registrar-General may, upon being satisfied that the term of a sublease has expired, note the expiration of the sublease by entry in the Register”.

The existence on the Register of a prior sublease, whose term has expired, will not be an impediment to the entry of a fresh sublease of the same area.

It is Land Titles practice to note expiry of a lease in the Register, without the necessity of an application. Any registered mortgage over the sublease, underlease etc will fall upon the expiry of a registered sublease. This is achieved by a Registrar-General’s Registry Instrument for Removal (RDR) Registry Instrument. No fee is payable for the RDR.

The Registrar-General will not be concerned if a sublease is expressed to commence on a date earlier than the expiry date in an earlier sublease of the same area, as long as that earlier sublease has expired and been removed from the register. In this sense there will only be one current sublease of the interest in the register at one time.

A sublease will not be registered after the date specified in the lease for expiry of the term. This applies whether or not:

- the sublease was lodged before the date of the expiry; or
- the transfer of the sublease has been lodged for registration; or
- the sublease contains an option for either purchase or renewal.

49.9 OPTIONS TO RENEW

The *Land Titles Act 1925* does not contain any specific provision relating to an option to renew a sublease.

It is the view of the courts that, notwithstanding the absence of any such provision in the respective Australian State Real Property/Land Titles Acts, an enforceable option for renewal creates an equitable interest in the land and is enforceable by and against the successors in title of the lessor/lessee. Such equitable interests are protected by the indefeasibility provisions.

Such an equitable interest must be put into effect by registering a fresh lease in order to convert the equitable interest to a legal estate or alternatively by applying under Section 87C of the LTA to register an extension of the term of the sublease.

49.10 RE-ENTRY

Section 87(1) of the *Land Titles Act 1925* provides that the Registrar-General, upon proof of lawful re-entry and recovery of possession by a lessor, shall record the re-entry and recovery in the Register. The estate of the lessee thereupon determines, but without releasing the lessee from liability in respect of the breach of any covenant expressed or implied in the sublease.

An application under these circumstances should be made by completion of a Determination/Expiry of a Sublease or Underlease (DESL) Registry Instrument supplied by Land Titles and supported by a Statutory Declaration (included on the back of the LT Approved Registry Instrument). It should be noted that the provisions of the *Statutory Declarations Act 1959 C’With* apply to this Registry

Instrument with regard to qualified witnesses and so on. Guidance notes on completion of this Registry Instrument is attached to the Registry Instrument.

If there is a registered mortgage on the sublease, consent from the mortgagee and/or a discharge of mortgage is required. The mortgagee can consent by using Registry Instrument 042 Consent.

The standard Registry Instrument lodgment fee applies.

49.11 SURRENDER OF SUBLEASE

A surrender of sublease should be submitted using a Determination/Expiry of a Sublease, Headlease or Underlease (DESL) Registry Instrument, supplied by Land Titles, executed by the lessee as well as by the lessor.

Surrender of Sublease with no replacement Lease

Where a sublease subject to a registered mortgage is surrendered, the Registrar-General will not register the surrender unless is satisfied that -

- the mortgage has been discharged; or that
- the mortgagee has consented to the surrender.

Where a sublease subject to a registered underlease is determined from any cause, the determination will determine any registered underlease/s. Upon registration of the determination of the lease the underlease/s will fall, this will be achieved by a Registrar-General's Registry Instrument for Removal (RDR).

Surrender of Lease with a view to the acceptance of a new Lease

Where a sublease, subject to a registered mortgage, is surrendered with a view to the acceptance of a new lease, the Registrar-General will not register the surrender unless -

- the mortgage is discharged; or
- if the mortgage is to be carried forward -
- where more than one mortgage is to be carried forward on consolidation of two surrendered leases, if the relative priority of the mortgages can be clearly defined;
- the land in the new lease includes all or part of the land comprised in the lease to be surrendered.

Where a sublease, subject to a registered underlease, is surrendered with a view to the acceptance of a new sublease, the surrender may be made without surrender of the underlease. In this case, the underlease will carry forward where the land comprised in the underlease is wholly within the land in the new lease.

A surrender of lease, with a view to the acceptance of a new sublease, must be accompanied by the new sublease and the relevant mortgagee's consent.

Where a surrender of sublease is lodged, and the term of that lease has expired the Registrar-General will not accept that surrender for lodgment.

49.12 PARTIAL SURRENDER OF SUBLEASE

A surrender of part of the land in a sublease can be registered where one or more of the areas described in a sublease have been surrendered. Application should be made using a Partial Determination/Surrender of a Sublease, Headlease or Underlease 006 - PDSL Registry Instrument.

The standard Registry Instrument lodgment fee applies.

49.13 DETERMINATION BY DISCLAIMER

Provision is made at Section 133 of the *Bankruptcy Act 1966 (C'Wlth)* for a trustee to disclaim land of any tenure burdened by onerous covenants. Where the trustee of a bankrupt lessee, or the liquidator of a company which is being wound up, is in charge of a lease burdened by onerous covenants, he/she may disclaim the lease. In other words, the lease is a liability rather than an asset to the estate. Depending upon whether the sublease was mortgaged and, if not, whether the mortgagee wished to acquire the lease in his/her own right, the Registrar-General may record the determination of the sublease or vesting in the mortgagee. If there is no mortgage, or if the mortgagee chooses not to acquire the lease, the Registrar-General will determine the lease and it will be cancelled.

The Registrar-General will, upon application, determine the sublease in similar manner to the surrender under an operation of a law (Refer Registry Instrument No 769986).

Provision is also made at Division 7A Section of the *Corporations Act 2001* for the disclaimer of property by a liquidator (Disclaimer of Onerous Property).

Where a sublease registered under the *Land Titles Act 1925* has been disclaimed, the lessor may apply to the Registrar-General to record the determination in the same manner as for a disclaimer under the *Bankruptcy Act 1966 (C'Wlth)* above.

49.14 DETERMINATION BY NOTICE

Where a sublease has been determined by notice pursuant to an express provision contained in the lease eg following destruction of the premises by fire, it will be treated in the same manner as an expiry. An application should be lodged together with proof of service of the notice, and evidence to show that the right to determine the sublease has arisen.

Application should be made using a Determination/Expiry of a Sublease, Headlease or Underlease (DESL) Registry Instrument. The standard Registry Instrument lodgment fee applies.

49.15 SURRENDER BY OPERATION OF A LAW

Surrenders by operation of law are contemplated by Section 86(1) LTA and will be registered upon lodgment of a request accompanied by evidence of the facts amounting to a surrender. There is no specific printed Registry Instrument of request.

The miscellaneous Application Registry Instrument may be used with the following statement

-

- The applicant (Full name of Applicant), being the registered proprietor of the land in Item 1, hereby requests the Registrar-General to record the determination of Lease No , the same having been surrendered by operation of law.
- The request should be accompanied by evidence showing -

- an intention on the part of the lessee to yield up the premises and on the part of the lessor to accept the same on the basis of the surrender;
- resumption of possession by the lessor;
- that the lessee was not, by reason of any charge or encumbrance on the lease, incompetent to surrender on the relevant date; and
- that it is impracticable, owing to inability to locate the lessee or otherwise, to obtain a surrender in writing.

The Registrar-General will note the surrender by using a Registrar-General's Registry Instrument for Removal (RDR) Registry Instrument. No fee is payable for the RDR.

49.16 TRANSFER OF SUBLEASE

A Transfer of Sublease should be made using the Transfer of Sublease 068 - TSL Registry Instrument available from the Access Canberra Website. Guidance notes on completion of this Registry Instrument is attached to the Registry Instrument.

See Execution of Registry Instruments (chapter 9) on how to complete certification execution

The standard transfer Registry Instrument fee applies.

If a Transfer of Sublease is made to more than one transferee, his/her tenancy must be stated.

No objection will be made to the registration of a transfer of sublease upon the grounds that it has been made in breach of a covenant not to assign or sublet without consent.

A TSL cannot be lodged if the Sublease to which it relates has expired.

49.17 EASEMENTS IN SUBLEASES

An easement may be included in a sublease, appurtenant to the land leased, over other land belonging to the lessor. The land leased may also be made subject to an easement for the lessor as appurtenant to his/her other land that is not included in the lease.

It is common, for example, for two adjacent leased premises to share a common space i.e. foyer, hallway, yard, driveway etc.

Section 91C of the *Land Titles Act 1925* provides that, upon surrender and re-grant of a Crown Lease subject to a sublease, if any easement is reserved in the new Crown Lease, which was not in the surrendered Crown Lease, the sublease cannot be continued in force if it is affected by the easement.

49.18 SUBLEASES BY MORTGAGEES

A mortgagee who has entered into possession under Section 96(a) of the *Land Titles Act 1925* has, by implication, power to grant a lease. As mortgages usually confer wide powers of leasing on the mortgagee, it is not often that the implied or statutory power has to be relied on.

The Registry Instrument of Sublease may be adapted for use by a mortgagee in possession by describing the Lessor as follows:

Lessor AB, of(address) the mortgagee in possession under Mortgage No

Execution by the mortgagee need not repeat the description as mortgagee in possession.

For the sublease to be binding on a prior mortgagee, the consent of the prior mortgagee to a sublease by a mortgagee in possession is required prior to lodgment of the lease.

Consent by a first mortgagee would be regarded as implied consent.

49.19 PROVISIONS APPLICABLE TO LEASES APPLY ALSO TO SUBLEASES

In general, the provisions of the *Land Titles Act 1925* affecting Crown Leases apply also to subleases, with such modifications and exceptions as the difference between a Crown Lease and sublease require (Section 89 *Land Titles Act 1925*).

In addition to the covenants specified by the Act to be implied in leases, Section 91 provides that in a lease there shall be implied a covenant that the sub-lessor shall pay the rent reserved and perform and observe the covenants and agreements contained in the Lessor's lease, and on his/her part to be paid, performed, and observed. This implies covenants can be modified by the parties, as allowed by Sections 119, 120 and 121 of the *Land Titles Act 1925*.

49.20 DUAL SUBLEASES

This term is given to a situation where two subleases are registered apparently in respect of the same land simultaneously.

They are distinct from concurrent subleases as they both confer the right of exclusive possession.

An example of dual subleases is where A has a sublease of premises 123 to use the premises as a cafe from 9.00 am to 9.00 pm and B has a sublease over the same premises to use the premises as a nightclub from 9.00 pm to 9.00 am.

Another example is where two subleases are simultaneously registered over the same area, the former commencing and terminating prior to the term of the latter.

Land Titles will state the full extent of the sublease terms and area in the Sublease endorsement on the related Title. For example – "Sublease to A of the whole of the land between 9am and 9pm".

49.21 CONCURRENT SUBLEASES

This term is given to a sublease by which a lessor assigns rights under a registered sublease as distinct from those of the sublessee. i.e.. **A** grants a lease to **B** and then **A** simultaneously grants a concurrent sublease over the same premises or part thereof to **C**.

The effect of the registration of the concurrent sublease to C is that, in respect of the premises leased to C, C stands in the place of A as the landlord, for the duration of the term of the concurrent sublease.

On registration of the concurrent sublease it will be described in the Register as follows -

"123456 Lease to ABC of(Concurrent with Lease 123454)"

When the sublease to B expires or is surrendered, C is entitled to the reversion. Any surrender must then be made to C. C may then lease those premises to another person by way of an underlease.

49.22 MERGER

Where a sublessee purchases the Crown Lease whilst registered as sublessee in respect of that Crown Lease, application may be made to the Registrar-General to merge the interests following registration of the transfer. This will have the effect of consolidating the interests and the sublease will be written off.

It should be noted that a merger is not automatic upon such purchase and will only be made following application. The effect of a merger is set out in 'Merger of Estates – Chapter 52'.

Any Underleases registered on the lease fall upon registration of the Merger.

The Merger of Estates should be lodged using an Miscellaneous Application (MA) Registry Instrument. The standard Registry Instrument lodgment fee applies.

49.23 SUBLEASE PLANS

(Refer 'Sublease Plans – Chapter 56)

Where part of the land included in a Crown Lease is intended to be leased, the Crown Lessee may execute a lease. This is specifically authorised by Part 9.12 of the *Planning and Development Act 2007*.

A sublease plan is not required where the whole of land or the whole of a building on the land is being leased.

A sublease plan is required as a means of defining by measurement, the floor area of land referred to or to be referred to in a sublease/underlease.

Sublease plan may not be registered merely by inclusion in the lease document and must be separately prepared and registered as described in 'Sublease Plans – Chapter 56'.

The Registrar-General will not register a Sublease Plan that amends an existing plan subject to a current sublease unless -

- the sublease is determined; or
- the plan is to be used for underlease purposes.

49.24 OTHER PLANS IN SUBLEASES

Any plan attached to a sublease and referred to within the Registry Instrument to define an area that portrays to grant a right/access/licence or authority should be prepared, drafted, signed and certified by –

- a surveyor;
- an architect;
- a qualified technical officer; or
- a survey draftsman.

All plans need to clearly define areas using dimensions in metric measurement and should also show the total square metres of the area referred to.

If the plan does not grant a right/access/licence or authority and is only to define an area referred to in the lease for the rent schedule (in the case of the whole of the land) or refurbishment plan, the plan should state clearly at the top what its purpose is.

A plan should not be annexed to a sublease unless it is referred to in the body of the document.

There is currently no extra plan annexed examination fee.

49.25 CONSENT BY MORTGAGEE TO SUBLEASE

Section 84 of the Land Titles Act 1925 provides that a sublease of land subject to a mortgage is not valid or binding against the mortgagee unless the mortgagee has consented to the sublease before it is registered.

In practice, where a sublease of land is lodged and a prior mortgagee's consent is not provided, the lodging party will be required to obtain the mortgagee's endorsement as either:

"the mortgagee in mortgage no..... consents hereto"; or

"the mortgagee in mortgage no.....withholds consent to this lease".

Alternatively, consent Registry Instrument 042 -C by the mortgagee for the purpose of registration of a Sublease will be regarded as implied consent.

CHAPTER 50 MARKET VALUE LEASES

GENERAL INREGISTRY INSTRUMENTATION

A lease is not a market value lease if the lease states, in the lease or a memorial to the lease, that the lease is a concessional lease or the lease is possibly concessional (see s 235B and s 235C of the *Planning and Development Act 2007*).

For a detailed explanation of when a lease is deemed to be a Market Value Lease, please refer to “Schedule 5 Market value leases and leases that are possibly concessional” of the *Planning and Development Act 2007* (PDA).

A market value lease is a lease that is deemed to be not concessional. From October 2010 all leases that are issued that are not deemed to be concessional leases will be birth marked stating that the lease is a market value lease.

Market value leases issued prior to October 2010 are birth marked with “This is not a concessional lease”.

Section 17(2) of the *Land Titles Act 1925* requires that the lease be lodged with the Registrar-General in duplicate.

The same land titles lodging provisions apply for all types of crown leases –

- An ACL Registry Instrument must be completed,
- The lease must be lodged in duplicate,
- The Buyer verification declarations have been submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. The Reference Code and submission date for each buyer and seller is required for the Crown Lease to be accepted,
- The standard lodgment fee applies.

The land titles office upon registration of the crown leases will cancel the crown lease and issue with proprietor with a title. After issue of the Title parties will be referred to the Crown Lease for all covenants and conditions.

If after an application to the ACT Planning and Land Authority for a lease status decision and a lease is to be birth marked as a Market Value Lease an application should be made to the Registrar-General using a “Lease Notification” Registry Instrument (LN). Consent is required to be lodged and standard Registry Instrument lodgment fee applies

CHAPTER 51 MEMORANDUM OF PROVISIONS

51.1 DEFINITION

'Memorandum of Provisions' means a memorandum registered pursuant to Section 103A of the *Land Titles Act 1925*.

51.2 GENERAL

A person may lodge a memorandum containing provisions that are to be incorporated by reference in Crown Leases, subleases, underleases, mortgages or encumbrances that are prepared or executed by them.

The memorandum should be signed by the person for whom it is lodged or by their Legal Practitioner.

The memorandum is prepared (one copy only) and lodged with a Memorandum of Provisions (MOP) Registry Instrument 049 - MOP at ACT Land Titles. The following statement is required to be completed at Item 3 Provisions of the MOP Registry Instrument by the applicant or his/her Legal Practitioner:

**"I.....(Given name and surname in full, residence and occupation)
certify that this memorandum comprising pages is lodged on behalf of
..... and contains provisions that are to be incorporated by reference
in such.....(insert mortgages, encumbrances or subleases) as refer to this memorandum.**

The MOP Registry Instrument **must** be executed **under certification** by the applicant **or Legal Practitioner**. The MOP does not take effect until registration.

Upon lodgment, the memorandum will be given a Registry Instrument number. Any subleases, underleases, mortgages or encumbrances lodged for registration containing provisions incorporated in a registered memorandum should state the registered Registry Instrument number of that Memorandum of Provisions.

It is important to note that upon registration a MOP may not be corrected in any way after registration. This is because the MOP has been referred to in documents and should not be changed in its effect at a later date. Where it is intended to refer to a memorandum of provisions in a document and to change the terms of that memorandum it should be done by an annexure in the document in which it is referred.

Where it is intended that a MOP be changed, a new MOP should be registered.

51.3 USE OF MEMORANDA OF PROVISIONS IN CROWN LEASES

Section 103A LTA provides that a person may register a Memorandum of Provisions to be incorporated by reference in a crown lease.

By agreement with EPSDD, Crown Leases for developments (eg. “broad acre” developments) having generic lease covenants will be prepared using a MOP. This will permit Crown Leases to be prepared in short Registry Instrument i.e.. single sheet duplex, instead of reproducing identical covenants in every Crown Lease. This single sheet is called panel format Crown Lease.

Several MOPs relating to Crown Leases have been registered and have been allocated Registry Instrument numbers in a series of 2,000,000-2,000,050. To avoid the need for customers to pay a search fee for a further document in the process, these MOPs have been reproduced on the Access Canberra website under the Land Titles section.

Upon registration, the relevant MOP number will appear in the “Restrictions, Conditions and Easements” panel of the Title Search and the Title relating to the lease.

MOPs for Crown Leases do not at this stage include a purposes clause. The purpose clause may be found in Item 5 of the panel format Crown Lease.

The “LEASE No” appearing at the top left-hand corner of the panel format Crown Lease is EPSDD’s reference not a Land Titles reference.

CHAPTER 52 MERGER OF ESTATES

52.1 DEFINITION

A merger occurs when two estates or interest in the same land, registered under the Act without intervening interests become merged by way of transfer. For example - the sublessee under a registered sublease purchases the Crown Lease in respect of which the sublease is registered.

52.2 GENERAL

The merger of estates is not automatic. The Registrar-General, upon the request by a registered proprietor, accompanied by such other evidence as may be required, will record in the Register that an interest in land has been extinguished by merger (Section 14(1)(e) *Land Titles Act 1925*).

Where a mortgagee buys the Crown Lease in respect of which he/she is a mortgagee, he/she may apply to the Registrar-General to merge the interests. This will have the effect of consolidating the interests and the mortgage will be written off.

52.3 FORM OF APPLICATION

The Registrar-General will receive applications using the Miscellaneous Applicant 008 – MA (MA) Registry Instrument available from the **Access Canberra Website**.

When the land has a registered mortgage and this mortgage is carrying over to the new title after the MA is registered. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website.

The standard Registry Instrument lodgment fee applies.

A merger application is not required to be marked by the ACT Revenue Office.

52.4 INTERVENING INTERESTS

It is essential that the applicant holds both estates in the same right. For example - if the registered proprietor of a lease acquired the Crown Lease as an executor (trustee) or vice versa there would be no merger.

There must be no intervening interests. For example - if the registered proprietor of an underlease acquired the Crown Lease the intervening sublease would prevent a merger.

An underlease does not intervene between a sublease and a Crown Lease to prevent a merger. However, if a Merger of Estates occurred between the Sublease and the Crown Lease, any Underleases registered on the Sublease would fall upon registration of the Merger.

52.5 EFFECT OF AN APPLICATION TO MERGE

Section 90 of the *Land Titles Act 1925* provides that if a registered lease (or sublease, see Section 89) is determined from any cause whatsoever, the determination shall determine any sublease there under. As a merger extinguishes the lesser estate it is considered to be determined. Should a sublease merge with a Crown Lease any underleases would fall and the sublessee may be subject to an action by the Underlessees.

CHAPTER 53 MORTGAGES

DEFINITION

The dictionary of the *Land Titles Act 1925* defines 'mortgage' for the purposes of the Act as:

"any charge on land created merely for securing a debt".

This is distinct from the definition of an 'encumbrance' which is discussed further on.

The provisions relating to mortgages apply to encumbrances except where otherwise specified (Section 92A(1) *Land Titles Act 1925*).

53.1 EFFECT OF REGISTRATION

The mechanism for registration of mortgages is set out in Division 10.3 – Mortgages and Encumbrances of the *Land Titles Act 1925*.

Registration of mortgages under the *Land Titles Act 1925* is not compulsory, however an unregistered mortgage does not attain the advantages and powers which accrue when registered. For example - power of sale, priority on title and so on.

53.2 REGISTRY INSTRUMENT OF MORTGAGE

To register a mortgage on the ACT Land Titles register you are required to complete a national mortgage form available from the Access Canberra Website or the ARNECC website. The ACT will also accept the ACT Land Titles Registry Instrument 026 – M or the National Mortgage (NMF) Registry Instrument (link to the NMF Registry Instrument is available on the Access Canberra Website). Mortgages are not liable for stamp duty in the ACT. Standard lodgment fees apply.

A mortgagee may prepare a Memorandum of Provisions (MOP) pursuant to Section 103A of the *Land Titles Act 1925* containing provisions that are to be incorporated by reference in a mortgage. This memorandum should be prepared and lodged with a covering application at the Registrar-General's Office (refer 'Memorandum of Provisions – Chapter 51). The person on whose behalf the memorandum is lodged, or his Legal Practitioner, should make the following statement on the application at Item 3 of the Registry Instrument:

"I..... (Given name and surname in full, residence and occupation) certify that this memorandum comprising pages is lodged on behalf of and contains provisions that are to be incorporated by reference in such (insert mortgages/encumbrances) as refer to this memorandum

To qualify for lodgment and registration, a mortgage should be completed as follows:

full name and address of mortgagor;

- full name and address of mortgagee and Registry Instrument of tenancy
- estate or interest affected i.e. whole, share estate/interest
- full description of land together with the number of the sub/underlease, if the mortgage is over a sub/underlease
- principal sum and details of repayment are optional

- the registered number of any memorandum of provisions to be incorporated in the mortgage
- date of execution
- consent from first mortgagee if registering a second mortgage
- execution by mortgagor
- execution by mortgagee (if the mortgagee elects to execute). The Mortgagee is not required to execute the Mortgage Registry Instrument, however if they elect to do so, the Mortgage will not be accepted for lodgment unless the execution complies with office requirements (refer “Chapter 9 – Executions”).

53.3 THE CAVEAT MAY BE REMOVED ON THE APPLICATION OF THE SAME PERSON AND IN THE SAME MANNER AS IS PROVIDED IN SECTION 105 OF THE LTA. DISCHARGE OF MORTGAGES

A Registry Instrument of Discharge (D) 045 – D is available from the Access Canberra Website. If the Discharge is of a second or subsequent mortgage consent from first mortgagee is not required. The discharge must be executed by the Mortgagee or the mortgagee Legal Practitioner under certification. The Mortgagor is not required to execute a Discharge of Mortgage Registry Instrument.

A Discharge of Mortgage (D) or Discharge of Encumbrance (DE) may discharge the debt or annuity secured to the extent specified in the discharge.

Generally, a discharge may discharge the debt or annuity in relation to -

- one or more Crown Leases (up to and including 10 parcels/titles per document),
- one or more mortgagors. In this case the endorsement of the mortgage in the Register after registration of the discharge will be –
 - No Mortgage from A to Finance Bank Ltd, instead of
 - No Mortgage to Finance Bank Ltd
- one or more mortgagees. In this case the endorsement of the mortgage after registration of the discharge will be -
 - No Mortgage to A, instead of
 - No Mortgage to A and B

Each mortgage with its own Registry Instrument number will require a separate discharge which is also given its own Registry Instrument number.

NB: The duplicate copy of the mortgage being discharged is no longer required to be lodged with the discharge.

53.4 ABSENT OR INCAPABLE MORTGAGEES

Where a mortgagee is out of the jurisdiction, cannot be found, or is unknown, or it is uncertain as to who is entitled to receive payment under a mortgage, Section 103 LTA requires an application to be made to the Court and for the Court to determine the matter. Upon determination by the Court, and lodgment of a Certificate by the Registrar of the Court, the Registrar-General shall register the Certificate as a discharge.

Under certain circumstances, and at the discretion of the Registrar-General, Section 43(5) of the Act permits cancellation by the Registrar-General of an entry in the Register. In the case of a mortgage,

specific supporting documentation at the discretion of the Registrar-General will be required to cancel/discharge the mortgage. Also refer to Chapter 4.4– Cancellations of Entries in the Register.

Where a mortgagee has died, the normal provisions relating to disposition of the estates of joint tenants, tenants in common and sole proprietors will apply. Application to note the death of a mortgagee should be lodged using either a Notice of Death by Surviving Proprietor on a Registry Instrument (NDI) Registry Instrument or a Transmission Application on a Registry Instrument (TAI) Registry Instrument.

Where a corporation has become defunct, the *Corporations Act 2001* provides a mechanism for the Commissioner to execute a discharge.

53.5 VARIATION OF MORTGAGES

Section 101A LTA provides for a mortgage to be varied.

The terms of the LTA permit any part of a mortgage to be varied. For example - rate of interest, principal sum, term or any other provision or by inclusion of new provisions or exclusion of existing provisions.

The Registrar-General will not register –

- a variation by transfer of any of the mortgagors; or
- a variation by transfer of any of the mortgagees; or
- a variation of Mortgage by varying the reference to the title or land which is security for the mortgage.

Application may be made by completing and lodging a Variation of Mortgage (VM) Registry Instrument 028 – VM is available from the Registrar-General.

Consent is not required and the standard Registry Instrument lodgment fee applies.

53.6 VARIATION OF PRIORITIES OF MORTGAGES

Mortgages are registered in the order in which they are lodged in registrable form. Where many mortgages are registered in respect of a particular Crown Lease, the mortgages are ranked in priority in the order in which they were registered. Thus we have first, second and so on mortgages.

The respective priorities of two or more mortgages may be varied, under Section 92A LTA, by lodgment of a Registry Instrument of Variation of Priorities of Mortgages Registry Instrument 041 - VPM. The term "postponement of priority" is used in the Act to have a synonymous meaning with "variation of priority".

Where the mortgages are registered in respect of two or more Crown Leases the priorities may only be varied where the respective position of the mortgages is identical on those titles. A variation will not be registered where there are intervening mortgages on one title only, or where the priorities of the mortgages concerned differ on the titles in respect of which they are registered.

Particular attention should be made to the position of a second mortgagee where the first and third mortgagee are changing places. In this situation, the second mortgage is known as an intervening mortgage. Where there are intervening mortgages, they must be included in the Registry Instrument of Variation of Priorities, as by doing so it affords the mortgagee the right to consent, by signing the Registry Instrument. However, where the first and second mortgagees

elect to change places, a third or successive mortgagee need not consent and is not required to sign the Registry Instrument.

The effect of registration is to vary the order in the manner expressed as if the mortgages had been originally registered in that order.

Registration may be effected by completion of a Registry Instrument of Variation of Priorities of Mortgages, available from the Registrar-General. Particular attention should be paid to the signature requirements for mortgagees as stated above. In the case of mortgagors, consent is only necessary where the assent of the mortgagor is necessary to render the variation effective against him or her. The Registrar-General will not require the mortgagor to sign and will assume that the variation is not required to be binding on the mortgagor, where the mortgagor has not executed the variation.

Standard Registry Instrument lodgment fee applies.

53.7 TRANSFER BY MORTGAGEE EXERCISING POWER OF SALE

A mortgagee under a registered mortgage has a statutory power of sale, if the mortgagor defaults in payment or in observing covenants in the mortgage.

While Section 94 of the *Land Titles Act 1925* requires the mortgagee to serve notice upon the mortgagor and provides for a period of one month after service of notice to lapse before selling, the Registrar-General will presume that the power was properly exercised.

Only mortgagees in registered mortgages or mortgages already lodged for registration may sell under the *Land Titles Act 1925*. This power extends to executors, administrators, or trustees of the mortgagee.

Where the same mortgagee is registered under first and second mortgages the sale should be made under the first mortgage unless the purchaser is taking title subject to that mortgage.

Registration of a Transfer by Mortgagee may be made by completing and lodging a Transfer by Power of Sale (TPS) Registry Instrument 018 – TPS available from the Access Canberra Website. The Buyer verification declarations must be submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. The Reference Code and submission date for each buyer is required for the transfer Registry Instrument to be accepted. The standard Transfer Registry Instrument fee applies.

As provided for at Section 95(2) of the *Land Titles Act 1925* registration of a transfer by a first mortgagee will automatically discharge that mortgage and any subsequent mortgages, however transfer by a second or subsequent mortgagee must be accompanied by a discharge of each prior mortgage.

Where there is a caveat entered on the title after the date of registration of the vending mortgage, the Registrar-General may disregard the caveat and the caveat lapses on registration of the transfer. The Registrar-General may remove the caveat without the need for any notice upon the caveator. Refer Section 95(3) and (4). The Registrar-General will remove such caveats from the Register by using a Registrar-General's Registry Instrument for Removal (RDR) at no cost to the client.

Where the person purchasing from the mortgagee appears to be the same person as the mortgagee or a director of the mortgagee company or the wife/husband of the mortgagee, the Registrar-General may query the transaction on the basis of a potential conflict of interests.

53.8 CONSIDERATION

On a transfer by mortgagee must reflect the total value of the property, being the higher of the consideration or market value, including GST is applicable. For more information regarding self-assessment tools and act revenue concession codes, please visit the **ACT Revenue Website** foreclosure

Only registered mortgagees are empowered to foreclose. The mortgagor must have defaulted in the payment of the interest or principal sum for six months before the mortgagee or his Legal Practitioner or attorney applies to the Registrar-General for an order for foreclosure.

The application should be made in accordance with Section 97(2),(3) & (4) LTA. The Registrar-General may require notice to be placed in the Gazette of his intention to make the order and shall nominate a period of time following the notice after which the order may be made. After the order has been made, the estate of the mortgagor is vested in the mortgagee free from any right of the mortgagor to redeem the property, but nevertheless liable and subject to the lessor to the same extent as was the lessee prior to the making of the order.

53.9 MERGER

Where a mortgagee purchases the Crown Lease whilst registered as mortgagee in respect of that Crown Lease, application may be made to the Registrar-General to merge the interests. This will have the effect of consolidating the interests and the mortgage will be written off.

It should be noted that a merger is not automatic upon such purchase and will only be made following application. The effect of a merger is set out in "Merger of Estates – Chapter 52.

Consent is required and the standard Registry Instrument lodgment fee applies.

53.10 EFFECT OF SURRENDER OF CROWN LEASE

Where a lessee under a Crown Lease which is subject to a registered mortgage wishes to surrender the Crown Lease, the consent of the mortgagee is required.

Where the Crown Lease is surrendered with a view to the grant of a replacement Crown Lease, the mortgage will be carried forward to the replacement Crown Lease if the land in the replacement lease includes all or part of the land in the surrendered lease under S91B of the *Land Titles Act 1925*.

53.11 TRANSFER OF A MORTGAGE

Application to register a Transfer of Mortgage should be prepared using a Transfer of Mortgage (TM) Registry Instrument 021 - TM which is available from the Access Canberra Website.

A Transfer of Mortgage is registered by making a recording on the relevant folio of the Register. Consent is not required.

A Transfer of Mortgage is not required to be marked by the ACT Revenue Office.

53.12 VESTING APPLICATIONS

See Chapter 63 on 'Vesting Applications' generally.

53.13 DEATH OF MORTGAGEE

Where a mortgagee has died, the normal provisions relating to disposition of the estates of joint tenants, tenants in common and sole proprietors will apply. (Refer 'Transmission Applications – Chapter 61' and 'Survivorship of Joint Tenants – Chapter 57').

A Transmission Application on a Registry Instrument (TAI) Registry Instrument is not a dutiable document. A TAI is not required to be noted by ACT Revenue prior to lodgment with this office.

Application to note the death of a mortgagee should be lodged using either a Notice of Death by Surviving Proprietor on a Registry Instrument (NDI) Registry Instrument or a Transmission Application on a Registry Instrument (TAI) Registry Instrument (whichever is applicable).

CHAPTER 54 POWERS OF ATTORNEY

54.1 COMMON LAW

A Power of Attorney is a Registry Instrumental form by which one person empowers another to represent him/her, or act in his/her place for certain purposes. A Power of Attorney is usually a special Registry Instrument in the Registry Instrument of a deed but it may be a Registry Instrument part of a deed containing another matter.

The donor of the power is called the principal or constituent, the donee is called the attorney.

A Registry Instrument conferring authority by deed is termed a Power of Attorney. A Power of Attorney to execute a deed can only be given by a Registry Instrument under seal a principal is not bound by the act of the donee in excess of his authority. Thus the power of attorney is to be construed in favour of the principal and not against him.

54.2 ACT LEGISLATION

Powers of Attorney Act 2006 regulates the preparation of and exercise of powers under Powers of Attorney in the ACT.

Registration of Deeds Act 1957 provides a statutory mechanism for the registration of deeds (including Powers of Attorney) in the ACT.

Land Titles Act 1925 requires documents executed by attorneys under that Act to be made under registered Power of Attorney.

54.3 POWERS OF ATTORNEY UNDER THE LAND TITLES ACT 1925

Section 130 provides that a *Land Titles Act 1925* Registry Instrument executed under a power of attorney shall not be registered unless the power of attorney is registered under the *Registration of Deeds Act 1957*. In simple terms, for a party to execute a Registry Instrument under power of attorney, the Power of Attorney needs to be registered first in the Australian Capital Territory.

As of 1 January 2011 the Land Titles unit assumed responsibility for the administration of Deeds including the registration of Powers of Attorney.

54.4 LODGMENT OF REGISTRATION OF A POWER OF ATTORNEYS

The donor, or anyone on their behalf may lodge a Power of Attorney for registration.

A Power of Attorney is registered under the *Registration of Deeds Act 1957*.

Section 4 (1)(b) of the *Registration of Deeds Act 1957* provides that a person may register a Deed in the register by producing the deed and a copy of the deed verified as a true copy by the statutory declaration to the Registrar-General.

A Registry Instrument – Registry Instrument 109- REGD – Application to register a Deed may be used to lodge a Power of Attorney. The Registry Instrument has a statutory declaration incorporated in the Registry Instrument to be completed by the lodging party for the purpose of declaring the copy provided is a true copy of the original document.

Part 3.2 section 19 (1) of the *Powers of Attorney Act 2006* provides that a power of attorney must be signed by the principal and section 19 (2) of the *Act* provides a power of attorney must be signed and dated by 2 adult witnesses in the presence of the principal and each other.

For an enduring power of attorney one witness must be a person authorised to witness the signing of a statutory declaration.

Upon registration of the Deed, the original document will be returned to the lodging party. The Registrar-General will keep the copy to Registry Instrument part of the public register.

The standard lodgment fee applies for the REGD Registry Instrument.

54.5 REVOCATION OF A POWER OF ATTORNEY

To revoke a Power of Attorney the original registered deed must be lodged with a statement by the Principal revoking that registered deed if they are unable to execute the application Registry Instrument, along with an exact copy of the deed and statement if required.

Registry Instrument 111 – RPA – Application to register a revocation of a power of attorney is used to register the revocation and the standard lodgment fee applies.

Upon registration of the revocation the original deed will be returned to the lodging party. A new registration number will be issued under the original registration number.

54.6 REGISTRY INSTRUMENT EXECUTED UNDER POWER OF ATTORNEY

On lodgment for registration of a Registry Instrument executed under a self-represented Power of Attorney the Registrar-General requires the registration of the power of attorney in the General Register of Deeds, and the statement that no notice of revocation has been received is optional.

Power of Attorney executing a Land Titles Registry Instrument on behalf of the doner can employ a Legal Practitioner to execute the lodgment Registry Instrument on the attorneys behalf or if choosing to execute a Registry Instrument as the attorney for the doner **all** attorneys are required to complete a verification of identity (VOI). When the attorney/attorneys are signing the Registry Instrument, they are all required to complete a Self-Represented Party lodgment pack available on Access Canberra Website.

Execution requirements

- Attorney/attorneys to complete a VOI using the Self-Represented Party lodgment pack
- Must provide verification of authority document, evidence that they can deal with the land.
- Attorney/attorneys must provide registered Power of Attorney or the ACT registered power of attorney number.
- Attorney/attorneys to sign the Registry Instrument in the certification box as the certifier with full name, capacity of certifying party, company name if required
- Have execution on lodgment Registry Instrument in the certification box witnessed by the authorised person certifying there VOI or someone over the age of 18 not a party to the document. Witness must include full name
- Delete first two certification requirements

54.7 GENERAL MATTERS WHEN EXECUTING A REGISTRY INSTRUMENT (FORM) UNDER POWER OF ATTORNEY

If a person is executing a Land Titles Registry Instrument under power of attorney and that power of attorney relates to more than one person, they must execute/sign separately for each person.

In the ACT there is no provision to amend a power of attorney after registration. If a power of attorney needs to be changed, a new power of attorney should be registered. If the name of a donee has changed after registration of a power of attorney, evidence supporting the change should be lodged with Land Titles in support of the execution by the donee. If the principal's name on the registered Power of Attorney doesn't match the Land Titles Register and there is not enough evidence to show that they are one in the same then Land Titles may request a statutory declaration from the Legal Practitioner who originally prepared the Power of Attorney. Stating what the error is and how the error happened.

If the principal of a power of attorney has appointed a donee by position, that person is required to list both their name and position in the execution clause of the Registry Instrument.

CHAPTER 55 RETIREMENT VILLAGES

55.1 GENERAL INREGISTRY INSTRUMENTATION

Retirement villages are complexes, or parts of complexes, comprising residential premises (other than residential aged care facilities covered by the *Commonwealth Aged Care Act 1997*) predominantly or exclusively occupied by retired persons who have entered into some Registry Instrument of contractual arrangement with the owner or operator of the village.

The *Retirement Villages Act 2012* (the Act) commenced on 4 March 2013 and sets out the rights and obligations of residents and operators of retirement villages in the Australian Capital Territory.

55.2 REQUIREMENT TO LODGE A NOTICE

Under the provisions of section 42 of the Act the operator of a retirement village must lodge a notice with the Registrar-General for registration under the *Land Titles Act 1925* that the land consisting of the retirement village (or land that is part of the retirement village) is used as a retirement village.

A notice must be lodged with the Registrar-General before entering into a residence contract in relation to residential premises on the land.

The operator must lodge with the Registrar-General a new notice under section 42 if any of the information in a notice registered under the *Land Titles Act 1925* in relation to the retirement village is no longer accurate.

Where a retirement village notification relates to a parcel of land that has been unit titled, the notification should go on each unit title that is subject/used as part of a retirement village.

If the notification relating to a retirement village is not over the whole of the land a plan clearly depicting the area encompassed by the Retirement Village should be clearly shown on the plan. See below point for plan specifications.

An operator should lodge the notice with the Registrar-General using Application to Note Retirement Village (NRV) which is available from the Land Titles Registry Instruments and Fees page of the Access Canberra website at the following link - www.accesscanberra.act.gov.au

The standard Registry Instrument lodgment fee applies for lodgment of an Application to Note Retirement Village.

55.3 PLAN DIAGRAMS FOR RETIREMENT VILLAGES WHERE DESCRIPTION RELATES TO "PART" OF THE LAND

An application to note a retirement village over part of the land should have, annexed to it, an original plan describing the location of the retirement village in relation to other dwellings on the parcel. Each retirement village diagram needs to be site specific and should be prepared in accordance with the standards and specifications for the preparation of Sublease Plans and should be prepared by a -

- surveyor;
- architect;
- technical officer; or

- survey draftsman.

Retirement Village diagrams should be prepared on A4 size paper. Colour should not be used in the preparation of easement diagrams. Hatching, striking and pecked lines can be used to identify areas within the plan. A key should be accompanied on the supporting retirement village diagram to clearly define any hatched or pecked areas.

55.4 REQUIREMENT FOR OPERATOR TO GIVE COPY OF RETIREMENT VILLAGE NOTICE

Under the provisions of section 43 of the Act an operator of a retirement village must give a copy of the notice under section 42 to –

- (a) each person that has a registered interest in the land to which the notice relates; and
- (b) the residents committee (if any) of the retirement village.

55.5 APPLICATION TO REMOVE RETIREMENT VILLAGE NOTICE FROM THE REGISTER

A person may apply in writing to the Registrar-General for a notice under section 42 to be removed from the register under the *Land Titles Act 1925*.

The Registrar-General must remove the notice from the register if satisfied that –

- (a) there are no residential premises on the land to which the notice relates that are subject to a village contract; and
- (b) there are no amounts outstanding that are payable under a village contract relating to residential premises on the land to which the notice relates.

An application to remove the retirement village notice from the register should be lodged using Registry Instrument **113 – RRV – Application to Remove Notice for Retirement Village** which is available from the **Access Canberra Website**

The standard Registry Instrument lodgment fee applies for lodgment of an Application to Remove Notice for Retirement Village (RRV).

The Registrar-General has incorporated a declaration within the RRV Registry Instrument where the operator should declare that the residential premises on the land to which the original notice relates is no longer subject to a village contract. The operator should also declare that there are no amounts outstanding that are payable under a village contract relating to the residential premises on the land to which the original notice relates.

Under the provisions of section 14 of the *Land Titles Act 1925* the Registrar-General may require further evidence to be produced to be satisfied of compliance under section 44 of the Act.

55.6 REGISTRATION OF A CHARGE FOR A RETIREMENT VILLAGE

A charge is created over the land in a retirement village for the amount of the refund under the village contract for a resident's residential premises in the village on the day the contract is entered into.

A charge cannot be created over land –

- (a) that is not registered as a retirement village under section 42; or
- (b) if the person is one of the following:

- a. the registered proprietor of land in the retirement village;
- b. the owner of a unit in a units plan in the retirement village;
- c. the owner of a lot in a community title scheme in the retirement village;
- d. if the person has a residence right in relation to residential premises in the retirement village;
- e. owns shares in a company title scheme that give rise to a residence right in relation to residential premises in the retirement village; or
- f. is a registered long-term sublessee.

A charge that is created over land under section 242 of the *Retirement Villages Act 2012* is binding on and enforceable against, the owner of the land from time to time while the charge is in force.

A person must not dispose of land in relation to which a charge is in force under this part except in accordance with an order under section 246 (Order for enforcement of charge).

A charge relating to land subject to a notice for a retirement village should be lodged with Land Titles using **Application to Register a Court order or Charge Registry Instrument 023 – CCH** which is available from the Land Titles Forms and Fees page of the Access Canberra website at the **Access Canberra Website**

The standard Registry Instrument lodgment fee applies for lodgment of an Application to Register a Court order or Charge Registry Instrument 023 – CCH

55.7 REGISTRATION OF A REMOVAL OF A CHARGE RELATING TO A RETIREMENT VILLAGE

A charge over land created under this part remains in force until—

- (a) the village contract that caused the charge to be created is ended and all of the operator's liabilities under the contract have been met; or
- (b) the land is sold in accordance with an order under this part.

To remove a registered charge against land in a retirement village – **Registry Instrument 115 – DCC – Application to Discharge/Remove a Charge over land in a Retirement Village** should be completed in full and lodged with Land Titles. A DCC Registry Instrument is available from the Land Titles Registry Instruments and Fees page of the Access Canberra website at the following link - **www.accesscanberra.act.gov.au**

The standard Registry Instrument lodgment fee applies for lodgment of an Application to Discharge/Remove a Charge over land in a Retirement Village (DCC).

CHAPTER 56 SUBLEASE PLANS

56.1 WHAT IS THE PURPOSE OF A SUBLEASE PLAN?

A Sublease (SL) Plan is required where any part of land subject to a Crown/Sub Lease is intended to be sublet and serves to accurately identify the location and boundaries of such 'subdivisions' of land. A SL Plan is not required when the whole of a Crown Lease/Sublease is being sublet.

The Registrar-General may require a map or plan to be deposited (refer to Section 64 *Land Titles Act 1925*).

While this section may include a Deposited Plan under the *Districts Act 2002* it is not limited to such plans as is EPSSD for the Registrar-General to require plans for such other purposes. For example - Sublease Plans and plans for easements created by Registry Instruments or included in Crown Leases.

A SUBLEASE PLAN CANNOT BE LODGED OR REGISTERED PRIOR TO THE REGISTRATION OF THE RELEVANT CROWN LEASE.

56.2 WHAT STATIONERY SHOULD BE USED?

- SL Plans must be prepared using the proforma approved by the Registrar-General. Each SL Plan should be single sheet only.
- The plan to be emailed to **LTPlan@act.gov.au**
- The plan will not be accepted as lodged until the Application Registry Instrument and prescribed fee has been paid.
- Please see example of accepted proforma at the end of this Chapter – "56.6 – Sublease Plan Proforma".

56.3 STANDARDS AND SPECIFICATIONS FOR THE PREPARATION OF SUBLEASE PLANS

- The registrar-general prefers a separate plan for each floor of a building. A mezzanine level is treated as a separate floor. Where it is intended to sublease a one storey building as well as a yard/court yard the plan description should state "the building and yard on block x section x on division of xx. A separate plan for the building and yard is not required in this case.
- The title block or legend of the plan should contain the following data:
- land subdivided to be described by either-
 - Block/District; or
 - Block/Section/Division; or
 - Unit/Units Plan No/Block/Section/Division.
- if the plan covers part of a floor, the title block and certification should state this. For example – "Part Ground Floor".
- if there are a number of separate lettable areas on a plan, this should be made clear by identifying them as separate areas and defining the boundaries. Each lettable area on a plan must be named. For example – Office, Store, Unit 1. This also applies when there is only one lettable area on the plan, it still must be clearly dimensioned and named.
- certification to be made by either -
 - licensed surveyor (in accordance with the Surveyors Act);

- registered architect;
- drafts person (architectural or survey);
- engineering surveyor;
- NB: Where bearings and distances are the only definition of the area being sublet (See SL Plan 2986) certification must be by a licensed surveyor.)
- if the plan amends a current registered plan/s -
 - the words "Amends SL Plan No" should be entered at the base of the plan number panel. Height of the lettering should be no more than 3.5mm and sufficient space should be left in the panel for the sublease plan number to be added later (in 10mm lettering).
 - where the amendment is partial, only the amended area should be described on the amending plan. If other units are shown for location purposes they should be hatched out. The whole of a partially amended area will become historical. Other areas which are not amended will remain current on that plan.
 - if the current plan is subject to a current sublease, the amending plan will not be registered unless it is for underleasing purposes or alternatively the sublease is terminated. The Application to Register a Sublease Plan (ASP) Registry Instrument should note when a plan is to be used for underleasing purposes.
 - Each lettable area should be sufficiently dimensioned to ensure each leaseable area is fully and unambiguously defined. It is insufficient to merely describe the area in square metres. It is preferable that each lettable area is sufficiently dimensioned as well as stating the total lettable area in square metres.
 - Where boundaries are adjacent to a lettable area, it should be clearly indicated if they are part of that area. Pecking to show boundary areas will be accepted on a plan for plotting purposes if the pecked lines do not affect the lettable area.
 - Areas of a plan not intended to be sublet (i.e. core areas, lifts, toilets, foyers, stairwells etc) must be hatched out.
 - If an area is named on a plan – the area needs to be clearly defined and show all measurements and dimensions. Areas that are not hatched out are deemed to be lettable areas.
 - A floor may be described by any name i.e. floor, level, basement, plaza, carpark etc, upper or lower **as long as it is the unique name of a floor in that building**. However, upper and lower are not preferred as they may give rise to ambiguity.
- Floor numbering should increase with distance from ground level (i.e. above and below) eg
- above ground - First Floor, Second Floor, etc in ascending order
- below ground - Basement one, Basement two, etc in descending order
- Minimum line thickness is 0.25mm to allow for reduction (for reproduction purposes).
- Dimensioning should be no less than 2.5mm high using a 0.25mm pen.
- All linework and lettering should be in dense black ink. The lettable area should be defined/marked in ink thicker than boundaries and other areas shown on a plan for location purposes. All lettable areas should be drawn using the same line markings. Where different lettable areas are drawn using a varying line thickness – the plan will not be accepted.
- The plan should show -

- a north point,
- scales (ratio and bar)
- adjacent street names or location diagram. Where a location diagram or site plan is included it must be drawn in dense black ink. Stick-ons or photocopies are not acceptable. If a location diagram does not clearly show where the lettable area is, the plan will not be accepted for registration.
- building offsets (measurements) to block boundaries where the building is to be let separately from other lettable areas. Diagram to show at least 2 connections to intersections of parcel boundaries.
- Measurements should be taken -
 - from internal surfaces of external walls; and for windows, the internal surface of the window;
 - at a height of 1.5m above floor level;
 - to the centre line of partitions between tenancies.
- Internal columns may be disregarded. If several different types of columns are shown on a plan, a key should be included so that all areas shown on the plan are apparent. If internal columns are plotted they should be included in the measurement of the total lettable area.
- Grid markings are not accepted on a Sublease Plan unless a prior Sublease Master Plan has been submitted. Grid markings are accepted on a plan, where they refer to a grid on the location diagram.
- It is preferable that pecked lines are not used. Pecking is only accepted in circumstances where it is used to help plot a location. For example – when a lettable area goes through two blocks of land and a pecked line is drawn to show the boundary.
- If an area is plotted on a plan it should be clearly defined by measurements. If an area is plotted on a plan and not to be used as a leased area it should be hatched out.
- As each lettable area needs to be named uniquely – pecking to show other areas within a lettable area will not be accepted.

56.4 LODGMENT REQUIREMENTS

A SL plan should be presented for lodgment -

- a) one copy only of the plan is required to be submitted online via the [smart form](#)
- b) any other Registry Instrument(s) affecting the plan (eg surrender of sublease or any other new leases affecting the new plan)

Consent from mortgagee is not required, unless (b) above applies.

Standard Plan lodgment fee applies for each plan submitted.

NOTE - A search of the SL Plan data base should be performed prior to lodgment of a new plan to ensure that any plans amended by the new plan are noted. The office began registering SL Plans on the affected title in 2004. The SL Plan does not remain as an encumbrance on the title and falls once the title edition is increased.

56.5 SUBLEASE MASTER PLANS

Where a large multi tenanted commercial Crown Lease, eg shopping mall, is subject to a number of registered sublease plans, Sublease Master Plans (SMP) may be lodged.

The purpose of SMPs is to provide an overview of the complete area from which the location of lettable areas and their respective sublease plans may be ascertained. This is assisted by the use of approved grids established on the SMP and replicated on each new sublease plan.

A separate SMP should be lodged for each floor level and must identify all shops on that floor level.

To be in registrable form a SMP must -

- have identification grids in a style approved by the Registrar-General;
- provide the edition number, block and section details and north point;
- contain the whole of each floor level; and,
- identify each shop with the same description as on the registered sublease plan.
- There will be a standard lodgment fee applies for a SMP.

Upon lodgment, each SMP will be checked against all registered and unregistered sublease plans for that floor level in the sublease plan register. If correct, the SMP's are registered and given a registration number. On registration, Land Titles will produce an index from the Sublease Plan Index indicating each lettable area number and its respective sublease plan number. The index will be attached to the SMP. Each registered SMP and index will then be scanned into the Land Titles database and will be available for search. Customers will receive confirmation of the registration number and edition number for each SMP in the normal manner.

Where an area subject to a registered SMP changes, a sublease plan identifying the new area, an A4 photocopy of the sublease plan and an updated SMP must be lodged. The new SMP must include the same information as the initial plan including the updated edition number.

The new SMP will be checked against the previous edition to ensure that the only variation is as described on the new sublease plan. An updated index including the master plan number, edition number, lettable area numbers and sublease plan numbers for that floor level will be generated by Land Titles. Once the plans have been registered they will be scanned into the Land Titles database.

A copy of the index will be forwarded to the customer along with the A4 photocopy of the sublease plan noting the registration number.

56.6 SUBLEASE PLAN PROFORMA

	 LAND TITLES ACCESS CANBERRA <small>Chief Minister, Treasury and Economic Development Directorate</small>
	Sheet No. _____ of _____
	SUB LEASE PLAN OF
	Area/s: 1. _____
	Being part of: 1. _____
	Unit
	Block
	Section
	Division
	District
Australian Capital Territory	
I, _____ certify that this is an accurate and adequate representation of Area/s: _____ _____	
Signed: _____ Date: _____ Title: _____	
SUB LEASE PLAN No.	

Graphic bar scale - SCALE 1:

CHAPTER 57 SURVIVORSHIP OF JOINT TENANTS

57.1 GENERAL MATTERS

Registration of survivorship of a joint tenant(s) is made pursuant to Section 55 of the *Land Titles Act 1925*, known as a Notice of Death, accompanied by proof to the Registrar-General's satisfaction of the death of a joint proprietor.

57.2 LODGMENT OF NOTICE OF DEATH

Application to note the death of a joint tenant should be made using a Notice of Death by Surviving Proprietor (ND) Registry Instrument 015 - ND. Lodgment of the Registry Instrument will not be accepted unless all sections of the Registry Instrument are fully completed and adhere to Legislation requirements including the following requirements.

Notice of Death Completed and Executed by Legal Practitioner requires -

- Notice of Death Registry Instrument completed in full under certification.
- If executed by a Legal Practitioner, then no evidence is required. However, if a registered mortgage is on title, then mortgagees consent is required for lodgment. Registry Instrument 042-C is available on the Access Canberra Website.

Notice of Death Completed and executed by Surviving Proprietor-

If completed and executed by the registered proprietor, then the registered proprietor must complete their verification of identity by using the Self-Represented Party pack available (see chapter 8). The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace or a Notary Public.

- Notice of Death (ND) Registry Instrument completed in full under certification.
- Certify copies of identification required see category chart in Self-Represented Party pack.
- Must attach the registered death certificate either a certified copy or the original which will be sighted and returned to the lodging party.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack
- When the land has a registered mortgage, and the mortgage is carrying over to the new title after the correction is registered, consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- The registered proprietor must sign the ND Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution chapter 9.2)

- Once Notice of Death Registry Instrument is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.
- The standard Registry Instrument lodgment fee applies

NB: It is considered that certificates containing personal information (eg. certificates of death) should not form part of the public Register, in keeping with the information Privacy Principles contained in the *Information Privacy Act 2014*).

Only certificates of death issued by the Births, Deaths and Marriages Registry are acceptable.

57.3 DEATH OF ALL JOINT TENANTS – NO SURVIVOR

Where all joint tenants have died, and their death is not yet noted on title, the person claiming through the last survivor may apply to be registered as proprietor pursuant to Section 136(1) *Land Titles Act 1925*. The application should be accompanied by lodging a Transmission Application (TA) Registry Instrument 032 - TA and supporting evidence of death of the other joint tenant(s). Refer to chapter 61 on completion of TA Registry Instruments.

This section applies equally to persons registered as joint tenants as mortgagees and lessees. The registered number of the mortgage or lease must be clearly stated in the land description panel of the relevant Notice of Death Registry Instrument. A Notice of Death Application to note the death of a mortgagee or to note the death of a sublessee should be lodged using a Notice of Death by Surviving Proprietor on a Registry Instrument (NDI).

57.4 DEVOLUTION OF PROPERTY OF JOINT TENANTS WHO DIE AT THE SAME TIME OR IN AN UNCERTAIN ORDER

Section 49Q(2) of the *Administration and Probate Act 1929* provides as follows -

- (1) This section applies to property—
 - (a) that was owned jointly and exclusively by 2 or more people who died at the same time or in an order that is uncertain; and
 - (b) that was not held by them as trustees.
- (2) The property devolves as if the joint owners had, at the time of their deaths, held the property as tenants in common in equal shares.

CHAPTER 58 TRANSFER

58.1 OVERVIEW

‘Transfer’ means the passing of any estate or interest in land under the *Land Titles Act 1925* whether for valuable consideration or otherwise. The registration of transfers is set out in Division 10 of the *Land Titles Act 1925*. On the registration of a transfer, the interest in land described in the transfer, passes to the transferee (Section 77(1) *Land Titles Act 1925*).

To Transfer land in the ACT all parties are required to complete a Transfer Registry Instrument. Registry Instrument number 052-T is available from the Registrar-General at the Land Titles Office or accesscanberra.act.gov.au. Guidance notes on completion of this Registry Instrument is attached to the Registry Instrument.

In the case of transferring land due to a sole registered proprietors death (chapter 61 transmission application Registry Instrument is required, if the case of a death of a joint tenant (see chapter 57) notice of death by surveying proprietor Registry Instrument is required.

58.2 TRANSFER REGISTRY INSTRUMENT

A transfer should be lodged for registration in person at ACT Land Titles. Lodgment of the Registry Instrument will not be accepted unless all sections of the Registry Instrument are fully completed and adhere to Legislation requirements including the following requirements.

When transferring land all parties involved need to complete the online Seller Verification Declaration or a Buyer Verification Declaration. The link to the online forms can be found at the Access Canberra Website. The Reference Code and submission date for each buyer and seller is required to be completed on the transfer form for the Registry Instrument to be accepted.

Under Section 178A of the *Land Titles Act 1925* the Registrar-General is authorised to collect information and give that information to the Commissioner for Taxation under the *Taxation Administration Act 1953*.

A Transfer Registry Instrument is a dutiable document. If applying for a concession, exemption or duty deferral you are required to contact the ACT Revenue Office. If an exemption is available a code will be provided by ACT Revenue and this code must be included in the online Buyer Verification Declaration.

The transfer must be executed under certification by the transferor/s (seller) Legal Practitioner or by the transferor/s (chapter 8 Self-Represented Party) of the land, estate or interest and accepted by the transferee/s (buyer) Legal Practitioner or by the transferee/s (see chapter 8 Self-Represented Party). Refer to (chapter 9 Execution of Registry Instrument) to see acceptable forms of execution.

If related party Transfer and when the land has a registered mortgage and this mortgage is carrying over to the new title after the transfer is registered. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website. Otherwise, a signed discharge of mortgage is required.

Transfer Completed and Executed by Legal Practitioner requires -

- Transfer Registry Instrument completed in full under certification.
- Sellers and Buyers verification declaration completed.

- If executed by a Legal Practitioner then no evidence is required however if a registered mortgage is on title, and this mortgage is carrying over to the new title once the transfer is registered then we required mortgagees consent Registry Instrument 042-C available from the Access Canberra Website.

Transfer Completed and executed by Transferor(s) or Transferee(s) (Self-Represented Party)-

If completed and executed by the transferor(s) or transferee(s), then they must complete their verification of identity by using the Self-Represented Party pack available (see chapter 8) The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace or a Notary Public.

- Certified copies of identification which match the category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack
- When the land has a registered mortgage and this mortgage is carrying over to the new title after the transfer is registered. Consent is required from the mortgagee. Consent form 042-C is available from Access Canberra Website
- The Self-Represented person must sign the Transfer form under the certification section. They are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution Chapter 8)
- Once Transfer is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.
- Lodgment fee applies

58.3 TENANCY

Where a transfer is to two or more persons, the form of tenancy must be state. For more information on tenancy (see Chapter 20) eg:

- as joint tenants; or
- as tenants in common, in which case the quantum of shares must be specified. Reference to shares should be made in either fractions or percentages, but not a mixture of both. It is preferable that shares are stated in fractions.

Unless requested, joint tenants or tenants in common will receive one (Volume: folio) Title covering all interests or shares.

TRANSFERS BY JOINT TENANTS OR TENANTS IN COMMON

By Joint Tenants

Where one joint tenant transfers their interest to the other, the transfer may be made in either of the following methods -

- by transfer from one joint tenant of all their estate and interest in the land, to the other joint tenant; or, preferably,
- by transfer from both joint tenants of the whole of the land to one of the joint tenants.

By Tenants in Common

Where one tenant in common transfers the share to the other, the transfer may be in either of the following methods-

- By transfer from one tenant in common of the share in the land; or
- By transfer from multiple tenants in common of the whole of the land to one of the tenants in common (who then takes title as Sole Proprietor).

NB: A joint tenancy relies upon the four unities of title, in particular, the 'unity of time' as a necessary pre-requisite to its construction. It follows then that all proprietors in a joint tenancy must take title at the same time.

58.4 CONSIDERATION

All transfer Registry Instruments must include a statement of consideration. It is always necessary to insert a monetary consideration and any other forms of consideration are not acceptable. The consideration on a Transfer must reflect the total value of the property, being the higher of the consideration or market value, including GST is applicable. **A transfer will not be accepted for lodgment/registration where the consideration is listed as "NIL"/\$1.**

For more information regarding self-assessment tools and ACT Revenue concession codes, please visit revenue.act.gov.au.

58.5 DATE OF AGREEMENT FOR SALE/SETTLEMENT

Date of Agreement/Contract for Sale

The date of Agreement for Sale has been included on the Transfer Registry Instrument to satisfy the needs of other ACT and Commonwealth Government agencies, which collect data from the Registry Instrument.

Date of Settlement

The date of Settlement is required to be completed, as it is the date from which responsibility for the rates account will be transferred into new registered properties name. This date is required as the Transfer is now the principal way in which municipal authorities are advised of the details of a change of property ownership.

58.6 TRANSFER BY DIRECTION

A transfer by a registered proprietor, by direction of another party having an unregistered interest in the land will be registered. It is important that the complete chain of sales be disclosed in the transfer. Intermediate parties need not sign the transfer.

A transfer by direction is normally drawn showing the registered proprietor as the transferor and the following words are included in the consideration "In consideration of \$..... paid to(name of transferor) by.....(name of directing party) the directing party".

58.7 TRANSFER TO MINORS

A transfer in favour of a minor (a person under the age of 18 years) should state the age of the person. The date of birth will also be required (Section 44(2) *Land Titles Act 1925*) eg: AB, a minor born the tenth day of August 1980 (see Chapter 10 for more information)

Execution in favour of a minor may be given:

- a) by the minor (if able to sign)
- b) by his/her parent or guardian
- c) by his/her Legal Practitioner.

NOTE - The minors Birth Certificate will be required to be submitted with the Transfer.

58.8 TRANSFERS IN PURSUANCE OF A WRIT

Where land has been sold in pursuance of a writ, in order to pass to the purchaser, a transfer must be executed by the Sheriff or by the Registrar of the Court out of which the writ issued. The only interest which can be sold is the beneficial interest that was in the name of the judgement debtor at the sale or at the time of the entry of the writ. (Refer 'Writs – Chapter 65)

The transferor in such a transfer should be described as "The Sheriff/Registrar of the Supreme Court of the Australian Capital Territory pursuant to Writ of Fieri Facias No..... of..... (reg no.....)."

In order to affect the sale it is customary to use the ordinary transfer Registry Instrument, modified to fit the circumstances. If a mortgagee is involved a consent Registry Instrument should be lodged with the transfer.

The standard Transfer Registry Instrument lodgment fee applies.

58.9 TRUSTEES

This office will object to the description in a transfer of the transferor or transferee as trustee.

Section 124 LTA prohibits the Registrar-General from making any entry of any Notice of Trust in the Register, whether express, implied or constructive.

A party should be described by their natural name or registered company name, except where the word "trustee" is part of a company name or official title eg. "Public Trustee" or "Official Trustee in Bankruptcy".

If it is the intention that persons Registry Instrument with that proprietor be put on notice of equitable rights in other parties:

- the Deed of Trust (Section 124 (2) *Land Titles Act 1925*); or
- the Deed of Appointment of Trustee (Section 132 (2) *Land Titles Act 1925*); or
- the Grant of Administration (Section 135 (2)(a) *Land Titles Act 1925*).

may be lodged with the Registrar-General accompanied by a Registrar-General's Caveat (RX) Registry Instrument. A lodgment fee applies for the RX and is payable by the lodging party. (Refer to Trustees – Chapter 16)

Stating the terms “as Trustee” or “pursuant to Trust Deed” will not be accepted in the Consideration on a Transfer Registry Instrument.

The Registrar-General will not accept any Registry Instrument for lodgment/registration where it states or implies that a Trustee has a proprietary right to title.

58.10 TRANSFER OF SEVERAL TITLES IN ONE TRANSFER

A transfer may deal with more than one title providing the registered proprietor in all titles is identical and the transferee is identical in respect of all titles (a maximum of ten (10) titles per Registry Instrument).

If insufficient space is provided on the Registry Instrument, all Registry Instruments can be opened as a word documents and boxes can be increased when needed or an annexure signed by all parties should be attached.

58.11 TRANSFER OF COMMUNITY TITLE

(Refer to Community Title – Chapter 33)

58.12 TRANSFER CREATING LIFE ESTATE AND ESTATE IN REMAINDER

(Refer 'Estates for Life' and 'Estate in Remainder' – Chapter 45)

58.13 TRANSFER OF MORTGAGE

(Refer 'Mortgages' – Chapter 53)

58.14 TRANSFER OF SUBLEASE

(Refer 'Subleases' – Chapter 49)

58.15 TRANSFER CREATING RESTRICTIVE COVENANT

(Refer 'Restrictive Covenants' – Chapter 15)

CHAPTER 59 SEPARATE TITLES

Separate titles will be issued upon request and upon payment of a fee, if each joint tenant/tenant in common wishes a separate title for his/her interest or share. Application for separate titles should be made using an Application to Combine or Separate Titles (ACT) Registry Instrument.

It should also be noted, where joint tenants/tenants in common have separate titles for their share in a property and each transfer the whole of their share to one proprietor, the title should be combined back to one title using a New Title – Combine or Separate Titles (ACT). The standard Registry Instrument lodgment fee will apply. The ACT document should be lodged with the transfer.

Where multiple parties transfer a multi-title lease the titles will remain separated and each party will be registered on separate titles as already issued. If requested by the client, the Registrar-General will combine titles upon lodgment of a New Title – Combine or Separate Titles (ACT). The standard Registry Instrument lodgment fee will apply.

CHAPTER 60 DEATH OF PARTY TO DOCUMENT AFTER EXECUTION OF DOCUMENT

There has been some question as to whether a Registry Instrument is registrable if the applicant dies after execution and before registration of the Registry Instrument. Chapter 15 (3) of the Torrens System in Australia by Douglas J Whalan (DJW) refers to the “Death of a Transferor or Transferee after Execution of Memorandum of Transfer.”

It states in effect that, if a party to a Registry Instrument dies after the execution of the Registry Instrument, this does not prevent its registration. The reason given for the principle is stated by Isaacs J. in the *National Trustees, Executors and Agency Co. of Australasia Ltd v. Boyd* “registration is not the act of the party: it is the act of the State. Application to register may be made by any party interested, and the death of either or both of the parties to a transfer is no necessary obstacle to registration”. It was also stated that “...rights are created in equity, and the act of registration merely completes the legal title in which the equitable rights, which inter parties, merge.”

Death of the applicant should not affect the registration of a Registry Instrument provided that the Registry Instrument is in registrable form. Registration merely completes the legal process.

(refer *The National Trustees, Executors and Agency Co of Australasia Ltd v. Boyd* (1929) 39 CLR 72, 84).)

NOTE – See Section 20.6 Severance of Joint Tenancy. There are several cases where transfers executed for the purpose of severing Joint Tenancy have had no effect if registered after the death of a proprietor. As the Transfer to sever tenancy was executed prior to death but not registered with Land Titles, the transfer has no effect.

CHAPTER 61 TRANSMISSION APPLICATIONS

61.1 DEFINITIONS

Administrator(m)/	a person given the responsibility of administering an estate
Administratrix (f)	where the person has died without making a will
Administrator/trix pendente lite	an interim administrator with limited powers to do such things as are necessary to preserve the assets of the deceased until a hearing can be convened on the validity of the will.
Beneficiary	a person who receives the benefit of another's will.
Chain of representation	refer pp212&213 Whalan "The Torrens System in Australia"
Devisee	same as beneficiary.
Executor(m)/Executrix(f)	a person appointed in a will to administer its terms
Grant of administration/representation	<ul style="list-style-type: none">(a) a grant of probate, or of letters of administration, under the Administration and Probate Act 1929; or(b) a grant of an order to collect and administer under Section 88 of that Act; or(c) an election to administer under Section 87C of that Act; or(d) a corresponding grant or election under a law in force in a State or another Territory.
Intestate	To die without making a will or to leave an invalid will or one which only partially disposes of an estate.
Probate	the act of proving a will as the last valid will.
Testator	a person who makes a will
Transmission	the acquisition of title to land or an interest in land consequent upon the death, will, intestacy, bankruptcy or insolvency of the registered proprietor

61.2 UPON BANKRUPTCY

Pursuant to Section 132 of the *Land Titles Act 1925*, upon a registered proprietor becoming bankrupt, the assignee or trustee of the bankrupt or insolvent shall be entitled to be registered as proprietor of the interest of which the bankrupt is registered.

Application must be made using the approved Transmission Application for Bankruptcy (TAB) Registry Instrument 034 – TAB available from the Access Canberra Website.

To be in registrable form, a transmission upon bankruptcy should include or be accompanied by the following -

- When the land has a registered mortgage and this mortgage is carrying over to the new title after the Transmission Application for Bankruptcy is registered. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website.
- If the Title is subject to a Concessional Lease is granted under the *Planning and Development Act 2007* or there is a restriction on Transfer in the Lease Provisions of the Crown Lease consent will be required from an authorised delegate from EPSDD or their Minister;
- The Buyer Verification Declaration and Seller verification declarations have been submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. Reference Code and submission date for each buyer and seller verification is required to be completed on the Registry Instrument for the Registry Instrument to be accepted.
- standard Registry Instrument lodgment fee applies.

Transmission Application Registry Instrument Completed and Executed by Legal Practitioner requires -

- Transmission Registry Instrument completed in full under certification.
- Sellers and Buyers verification declaration completed.
- If executed by a Legal Practitioner, then register general may request evidence of bankruptcy.
- If a registered mortgage is on title, and this mortgage is carrying over to the new title once the transmission application is registered then we required mortgagees consent Registry Instrument 042-C available from the Access Canberra Website.

Transmission Application Completed and executed by the trustee or assignee -

If completed and executed by the trustee or assignee, then they must complete their verification of identity (VOI) by using the Self-Represented Party pack available (see chapter 8) The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace or a Notary Public.

- Transmission Registry Instrument completed in full under certification.
- Certify copies of identification required see category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples) eg. Certification of appointee
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack.
- When the land has a registered mortgage and this mortgage is carrying over to the new title after the transmission application is registered. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website
- The trustee or assignee must sign the Transmission Application Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution chapter 9.2)

- Once Transmission Application Registry Instrument is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.
- The standard Registry Instrument lodgment fee applies

NOTE: It is no longer a requirement for the Registrar-General to routinely place a Registrar-General's Caveat on the title at the time a Transmission Application is lodged. The Registrar-General, will however, continue to note the appointment of the assignee or trustee on the title.

Registry Instruments By The Official Trustee In Bankruptcy

The powers of the Official Trustee in Bankruptcy to deal with the estate or interest in land formerly held by a bankrupt are to be found in subsections 134 and 136 of the *Bankruptcy Act 1966* (Commonwealth). The Act makes compliance with certain conditions a prerequisite to the proper exercise of those powers.

In the absence of any patent impropriety, a transfer giving effect to a sale by the Official Trustee in Bankruptcy will be registered without inquiry as to whether the conditions precedent to the proper exercise of the power have been fulfilled.

Registry Instruments By Trustees

Registry Instruments by trustees should be consistent with their general powers as enumerated in Section 134 of the *Bankruptcy Act 1966*. These include power to sell, lease or mortgage.

Section 190 and 190A of the *Bankruptcy Act 1966* confers a wide range of powers on the controlling trustee, including the power "to deal with the debtor's property in any way that will, in the opinion of the trustee, be in the interests of the creditors.

Registry Instruments by trustees should be drawn in the name of the debtor and executed by the trustee on behalf of the debtor. Evidence should also be furnished that the property has not been released from the trustee's control. (Refer also 'Trustees' – Chapter 16)

- 1) Controlling Trustees *Bankruptcy Act 1966* Section 188 Authority
- 2) (see Chapter 16.9– Controlling Trustees)

61.3 UPON DEATH

Section 135 of the *Land Titles Act 1925* deals with applicants seeking to be registered as proprietors of land or interests in land (eg mortgagees, sublessees) in the Australian Capital Territory following the death of a sole proprietor, or a tenant in common.

A Transmission Application 032 - TA must be in the approved Registry Instrument available from the Registrar-General or by visiting the **Access Canberra Website**.

To be in registrable Registry Instrument, a Transmission Application (upon Death) should –

be accompanied by the grant of administration as defined at Section 135(6) *Land Titles Act 1925*;

state clearly the capacity of the applicant eg. executor, administrator, devisee or beneficiary. A person applying in dual roles, as “executor and beneficiary” will be required to elect the appropriate capacity and to strike out the inappropriate reference

include the Minister’s consent, if the Title is subject to Section 163(8), Section 164(7) or Section 167(5) of the *Land (Planning and Environment) Act 1991*

When the land has a registered mortgage and this mortgage is carrying over to the new title after the Transmission Application is registered. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website

The Buyer Verification Declaration have been submitted. The link to the online Registry Instruments can be found at the **Access Canberra Website**. Reference Code and submission date for each buyer and seller verification is required to be completed on the Registry Instrument for the Registry Instrument to be accepted.

be accompanied by the standard Registry Instrument lodgment fee

Transmission Application Registry Instrument Completed and Executed by Legal Practitioner requires -

- Transmission Application Registry Instrument completed in full under certification.
- Sellers and Buyers verification declaration completed.
- If executed by a Legal Practitioner then register general may request evidence eg. Grant of Administration (probate and will).
- If a registered mortgage is on title, and this mortgage is carrying over to the new title once the transmission application is registered then we required mortgagees consent Registry Instrument 042-C available from the Access Canberra Website.

Transmission Application Completed and executed by the Administrator, Executor or Beneficiary (Self-Represented party) -

If completed and executed by the above, then they must complete their verification of identity (VOI) by using the Self-Represented Party pack available (see chapter 8) The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace or a Notary Public.

- Certified identification required see category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples) eg. Grant of Administration (probate and will)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack.

- When the land has a registered mortgage and this mortgage is carrying over to the new title after the transmission application is registered. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website
- The Administrator, Executor or Beneficiary must sign the Transmission Application Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution chapter 9.2)
- Once Transmission Application Registry Instrument is completed and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.
- The standard Registry Instrument lodgment fee applies

Grant of Representation/Administration

This term is defined at Section 135(6) of the *Land Titles Act 1925*. There are two basic types of grants of representation/administration -

Probate - made when a deceased person leaves a valid will, which is proved by the person named in the Will as executor.

Letters of Administration - the grant made to administer the estate of a person who died intestate (without leaving a will). Section 12 of the *Administration and Probate Act 1929* provides a list of eligible administrators. Application may also be made by an administrator under Letters of Administration with a will annexed (see below).

Probate

Where a person applies as beneficiary/devisee and the executor differs from the beneficiary/devisee, the executor must consent to the application. Where the executor is taking title as one of the beneficiaries, they are required to execute the TA Registry Instrument in both capacities – as the beneficiary as well as the executor.

Transmission Applications by executors or beneficiaries/devisees, or by beneficiaries with the executor's consent, must be supported by the appropriate Grant of Administration (probate and will), in all cases. An application relying upon a will must produce probate of the will in every case. It is a function of the Courts and not the Registrar-General to determine that a person died testate or intestate or whether the will is the last will.

Where more than one person apply as beneficiaries/devisees, the Registry Instrument of tenancy should be stated. If held as tenants in common, the quantum of shares must be stated.

In the case of the death of a sole executor or last surviving executor, the Chain of Representation applies.

61.4 APPLICATION BY ADMINISTRATOR TO BE REGISTERED AS BENEFICIAL OWNER

An administrator appointed under Letters of Administration may apply to be registered as beneficial owner. In such cases, a statutory declaration will be required in support of the application as follows:

"I am the administrator named in Letters of Administration No..... I am the sole beneficiary in respect to the estate of..... No other person is beneficially entitled to the land the subject of this application due to the following information"

61.4.1. APPLICATION BY ADMINISTRATOR FOR REGISTRATION OF ANOTHER PERSON

Where an administrator wishes to dispose of the land to a person who is not a beneficiary, the administrator must first become registered as proprietor by lodging a Transmission Application. The application should be supported by the Grant of Administration. The administrator may then transfer to the buyer.

61.4.2. LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED

A person named in a will as an executor, is under no obligation to administer an estate and may renounce the right to the executorship. The Public Trustee is often approached by executor/s who are named in the will and do not want to be the executor. In such circumstances as a named executor who wishes to renounce his/her position, has no authority to direct that any person, other than the Public Trustee, administer the estate.

The named executor will sign a "Renunciation of Probate" and request the Public Trustee to administer the estate. The renunciation is then lodged at the Supreme Court with the application for grant of letters of administration with will annexed.

If the executor has not requested the Public Trustee to administer, Section 12 of the *Administration and Probate Act 1929* (relating to "eligible administrators") applies.

Application may be made by an administrator under Letters of Administration with a will annexed, when a deceased person left a valid will, but there is no executor capable of or willing to prove it – eg where the deceased person failed to appoint an executor in the will, or the appointed executor has died before proving the will, or the executor appointed either renounces, refuses to act or is incapable of acting.

Land Titles requirements will be for a Transmission Application to be completed naming the beneficiary as applicant and bearing the consent of the administrator. The normal registration requirements as for all Transmission Applications apply.

61.4.3. CAVEATS BY REGISTRAR-GENERAL

It is no longer a requirement for the Registrar-General to routinely place a Registrar-General's Caveat (RX) on the title at the time a Transmission Application is lodged. However, the Registrar-General will continue to note on title that the proprietor is an executor or administrator.

The Registrar-General may note on title of probates that include life estates with a Registrar-General's Caveat. No fee is payable by the client for lodgment or removal of the RX in this case. The purpose of registering the caveat on title is to protect the interest of any persons that were bequeathed a life estate. The caveat will not be removed until the Registrar-General is satisfied that the life estate is no longer current. Evidence such as a death of the person entitled to the life estate and/or a statutory declaration of the entitled person may be required as proof.

61.4.4. APPLICATION BY LAST SURVIVING JOINT TENANT

Where both joint tenants have died, and the death of the first deceased is not yet noted on title, the person claiming through the survivor may apply to be registered as proprietor pursuant to Section 135 of the *Land Titles Act 1925*. The Transmission Application should be accompanied by the normal

documentation supporting a Transmission Application together with evidence of death of the other joint tenant(s).

Section 135 applies to persons registered as mortgagee, encumbrancee or lessee. The registered number of the Registry Instrument must be clearly stated in the 'land description' panel of the application. For registration of a Notice of Death on a mortgage or lease the standard ND Registry Instrument should not be used. The office has supplied NDI (Notice of Death on a Registry Instrument) Registry Instrument for use in those cases.

61.5 APPOINTMENT OF ADMINISTRATOR/TRIX PENDENTE LITE

In cases where a person has died and leaves a will, and the validity of the will is challenged, the Supreme Court may appoint an *administrator/trix pendente lite*. An administrator/trix pendente lite is an interim administrator with limited powers to do such things as are necessary to preserve the assets of the deceased until a hearing can be convened on the validity of the will.

Registration is made in the same way as an administrator using a Transmission Application and attaching a sealed copy of the Supreme Court Order.

On registration of the administrator as the proprietor, the term 'administrator/trix pendente lite' will be included instead of the term 'administrator'.

61.6 DECLARATION BY EXECUTOR

A Declaration by Executor provides that on completion of executorial duties in respect to a property an executor who is registered as proprietor may declare by registered Registry Instrument that he has ceased to hold the land as executor and that he holds the land as beneficiary. This can only occur when the Executor/s on the title are the same as the Beneficiary/ies named in the will.

Section 138B of the *Land Titles Act 1925* and Section 11 of the *Trustee Act 1925* provides for the registration of such a Registry Instrument by the Registrar-General.

Where an executor/s has become registered as the proprietor of land pursuant to a Probate/Will and wishes to declare that all executorial duties have been duly perRegistry Instrumented and that they have ceased to hold the land as executor/s, they may apply to the Registrar-General to hold the property as beneficiary.

This may only happen when the executor/s is named as beneficiary in the Will and is registered as proprietor of the subject land. Where there is more than one executor, the Registry Instrument of tenancy for the beneficiaries should be consistent with that shown in the Will, if specified.

A DEX cannot be used if there is more than one Executor/Beneficiary and only one of the Executors is seeking to become the registered proprietor. In this case the change must be dealt with by using a Transfer Registry Instrument.

The appropriate document to use for this purpose is a Declaration by Executor (DEX) Registry Instrument 065 - DEX, which can be obtained by visiting www.accesscanberra.act.gov.au

The standard lodgment fee will apply to the (DEX).

61.7 APPOINTMENT/RETIREMENT OR VACATION OF OFFICE OF EXECUTOR

Death of a sole or last surviving executor.

On the death of a sole/last surviving executor, his/her estate or interest in land passes in accordance with the "Chain of Representation". In summary however, an executor of a sole executor, or last surviving executor represents the original testator also. Where a sole or last surviving executor who is registered as a proprietor of land dies, the executor of his/her estate may be transmitted by using a Transmission Application.

Death of one of many executors.

Section 138A of the *Land Titles Act 1925* deals with the appointment of new and additional trustees. It also deals with the vacation of the office of trustee. The death of a trustee results in the vacation of the office of trustee. Section 138A(3) of the LTA provides that, for the purposes of S138A, the term "trustee" includes an executor.

CHAPTER 62 UNIT TITLES

62.1 OVERVIEW

The *Unit Titles Act 2001* creates a scheme of unit or strata title subdivision in the Australian Capital Territory. Any proposal must be approved by the Minister/Delegate of EPSDD. Any person contemplating a sub-division to create a units plan should first discuss all aspects of the proposal with the Environment Planning and Sustainable Development Directorate (EPSDD).

The *Unit Titles (Management) Act 2011* was introduced to make the rules relating to managing a unit plan more accessible to frequent users of the Legislation. It was aimed to assist owners, managers and others involved in managing the units plan to better understand their respective roles in the day to day activities of managing a Units Plan.

The *Land Titles (Unit Titles) Act 1970* provides for the registration of the Units Plan, the establishment of the owner's corporation and the issue of unit titles. This Act should be read in conjunction with the *Land Titles Act 1925* and the *Unit Titles (Management) Act 2011*. Expressions used in the *Land Titles (Unit Titles) Act 1970* have the same meaning as that defined in the *Land Titles Act 1925*.

While the Minister has the responsibility for approving the sub-division pursuant to Section 17 *Unit Titles Act 2001* the Registrar-General is responsible for the registration process and may refuse to register a plan if it fails to comply with the provisions of the *Land Titles (Unit Titles) Act 1970* and the *Land Titles Act 1925*.

As to the requirements and procedures for approval of the Units Plan by the Minister, customers are referred to EPSDD.

62.2 LEGISLATION

Unit Titles Act 2001 - UTA

Land Titles Act 1925 - LTA

Land Titles (Unit Titles) Act 1970 – LTUTA

Unit Titles (Management) Act 2011 – (UTMA)

Planning and Development Act 2007 (PDA)

62.3 DEFINITIONS

'Unit Title' - The Registrar-General issues a specific Title in respect to each unit and in respect to the common property in a Units Plan.

'Common Property' – all the parts of a parcel identified as common property. Those parts of a parcel within the parcel boundary that are not within a unit.

'Unit' - a unit is a part of a parcel shown in a units plan as a unit and, upon registration of the units plan, includes any unit subsidiary shown on the plan and annexed to the unit.

Class A unit. These units are bounded by reference to floors, walls and ceilings, Section 10 *Unit Titles Act 2001*. These are generally "high rise" apartments.

Class B unit. These units are unlimited in his/her vertical dimensions except to the extent of any projection above, or encroachment below, ground level by another part of the parcel, Section 11 *Unit Titles Act 2001*. These are generally "town-house" style units. His/her boundaries are determined by the survey represented on the plan as the boundaries at ground level of his/her 'parcel'.

A units plan must provide for at least two units.

Subsidiaries. A unit subsidiary is defined in Section 12 *Unit Titles Act 2001* and, upon registration, is part of a unit. A unit subsidiary can be a building or part of a building for example a utility room, laundry, storeroom, balcony, veranda, porch, stairway, shed, garage or carport. Also it may be a part of a parcel suitable for a parking area for vehicles, a garden, a lawn or yard. A unit holder may enter into a private/informal arrangement with another as to the use of a subsidiary or a sublease of the same. A subsidiary cannot be drawn in part over multiple pages.

Address Schedule. Means a schedule that shows the relationship between the numbering of the units on the site plan or floor plan of the parcel and the door numbering and street address of the units in the parcel.

Stage Development – a unit development can now be built in a staged manner, providing it complies with the *Unit Titles Act 2001* and the *Unit Titles Regulation*. The planning and land authority may approve a unit title application if satisfied on reasonable grounds that the application is in accordance with this Act; and each unit is (or will be) suitable for separate occupation, and for a use that is not inconsistent with the lease of the parcel; and the proposed schedule of unit entitlement is reasonable, having regard to the prospective relative improved values of the units.

62.4 LODGMENT - REQUIREMENTS

Following approval by the Minister, the Units Plan should be lodged in person with the Registrar-General (**lodgments are not accepted through the post**). The Units Plan must, pursuant to Section 7(1)(a) of the *Land Titles (Unit Titles) Act 1970*, be accompanied by an Application to Register Units Pla Registry Instrument 019 - UP (UP) Registry Instrument. One original and one copy of the Units Plan must be lodged with the Registrar-General in accordance with Section 7(1)(b).

The UP Registry Instrument is available from the Registrar-General, through the Access Canberra website at the **Access Canberra Website**. This Registry Instrument must be signed by **ALL** registered proprietors of the Crown Lease under certification see Chapter 4.

Section 7 of the *Land Titles (Unit Titles) Act 1970* requires that the Units Plan shall be in accordance with a Registry Instrument approved by the Registrar-General and must comply with the provisions of the First Schedule of the *Land Titles (Unit Titles) Act 1970*. Registry Instruments 4 and 5 relate to the provisions, covenants and conditions under which leases of units and common property are held. EPSDD prepares these Registry Instruments, which will become part of the Units Plan when submitted for the approval of the Minister.

Section 7 of the *Land Titles (Unit Titles) Act 1970* and Section 28 of the *Unit Titles Act 2001* combined require the Units Plan to be lodged and registered within 3 months of the endorsement of approval

by the delegate of EPSDD. **Otherwise the Plan must be re-signed and re-dated by the delegate before the plan will be accepted for lodgment with the Registrar-General.**

Before lodging the Units Plan please check that all property details are correct. Registry Instrument 1 must be signed and all other Registry Instruments must be initialled by each registered proprietor, and by the delegate of EPSDD. Signatures by the registered proprietor and the delegate must be original on both the original and the client copy of the plan. The surveyor's signature needs to be the original on the original plan only. Photocopied signatures will suffice on the client copy.

Units Plan Application Registry Instrument Executed by Legal Practitioner requires -

- Application to Register a Units Pla Registry Instrument to be completed in full under certification.
- Lodge all required documents attached to Application Registry Instrument. See this section.
- Supply Certificate issued by the Commissioner for Revenue for Rates, Land Tax and Other Charges (see below)
- If executed by a Legal Practitioner and there is a registered mortgage is on title, and this mortgage is carrying over to the new title once the units plan is registered then we required mortgagees consent Registry Instrument 042-C available from the Access Canberra Website.

Units Plan Application executed by Registered Proprietor (Self-Represented party) -

If completed and executed by the registered proprietor(s), then they must complete their verification of identity by using the Self-Represented Party pack available (see chapter 8). The Self-Represented Party pack must be completed by a Legal Practitioner, Justice of the Peace or a Notary Public.

- Application to Register a Units Pla Registry Instrument to be completed in full under certification.
- Certify copies of identification required see category chart in Self-Represented Party pack.
- Must provide verification of authority document, evidence that they can deal with the land. (see Self-Represented Party pack for examples)
- Authorised person certification to be completed by the Justice of the peace, Legal Practitioner or Notary Public completing the VOI. This is provided in Self-Represented Party pack
- ALL registered proprietor must sign the Application to register a Units Pla Registry Instrument under the certification section they are required to get the Identification verifier who completed the Verification of Identity to witness them signing the Registry Instrument (see self-represented execution chapter 9.2)
- When the land has a registered mortgage and this mortgage is carrying over to the new title after the unit plan is registered. Consent is required from the mortgagee. Consent Registry Instrument 042-C is available from Access Canberra Website
- Must attach signed approved Unit Plans in duplicate

- Must supply Certificate issued by the Commissioner for Revenue for Rates, Land Tax and Other Charges (see below)
- Once Application to register a Units Plan Registry Instrument is completed, all documents required are attached and Verification of identity is completed then **all** documents including consent (if required) must be lodged in person at the Land Titles office.
- Lodgment fee applies

Section 10 *Land Titles (Unit Titles) Act 1970* has the effect of carrying forward to the Title for each unit, any mortgages/ encumbrances or easements subsisting against the Crown Lease at the time of registration of the Units Plan. Easements may also be carried forward to the Common Property Title but not mortgages/encumbrances. Section 10 of the UTA does not allow caveats to carry forward to a Units Plan. **It should be noted that this section does not extend to sub-leases. The consent of sub-lessees is required before a Units Plan is registered. Any sub-leases registered on the Crown Lease will cease to be operative on the cancellation of the Crown Lease as provided for in Section 90 of the *Land Titles Act 1925*.**

A Consent to register Registry Instrument 042-C Registry Instrument is available from the Registrar-General and must be executed by each registered mortgagee/sublessee in the Crown Lease and lodged with the Units Plan.

Section 7 (1) (e) of the Land Titles (Unit Titles) Act 1970 requires that when a Units Plan is presented for registration that it be accompanied by a certificate issued by the Commissioner for Revenue certifying that –

- (i) no rates or other amounts assessed as payable under the *Rates Act 2004* are outstanding for the financial year in which the units plan is to be registered; and
- (ii) no land tax or other amounts assessed as payable under the *Land Tax Act 2004* are outstanding for the quarter in which the units plan is to be registered.

The Application for Rates, Land Tax and Other Charges Registry Instrument is available from the – **ACT Revenue website** or by calling (02) 6207 0028

62.5 REGISTRATION REQUIREMENTS

ACT Land Titles requirements, in relation to the approved Registry Instrument for Units Plans are as follows:

- Each sheet must be provided in duplicate.
- the contents of the sheet must be placed on only one side of the sheet within a border that is at least 15mm from each edge of the sheet
- an alteration shall be made by striking through the matter to be altered and not by rubbing, scraping or cutting the surface of the film or paper
- all writing should be legible and in black ink
- all sheets should be numbered consecutively commencing from the figure 1 and on each sheet there should be stated the total number of sheets comprising the Units Plan (i.e.. Sheet 1 of 20)
- each diagram should be drawn to a stated scale, sufficient to enable all details and notations to be clearly shown
- both ratio and graphic bar scales to be included

- each diagram should indicate the direction of North
- all linear measurements should be shown in metres and decimal fractions of a metre
- if necessary, a diagram may be commenced on one sheet and continued on a subsequent sheet and, in such a case, the diagrams should be so drawn that the complementary parts or lines on the several sheets show, when placed side by side, the complete diagram;
- units shall be numbered consecutively commencing with the number 1
- if the door numbers for units within a Units Plan are not consistent with the units on the proposed Units Plan, a “Door Schedule or Address Schedule” should be supplied in both copies of the Units Plan presented for lodgment and
- each unit subsidiary shall be distinguished by the addition of a consecutive number in brackets commencing with the number (1), thus unit/sub S1(1), S1(2) and so on.

Section 17(3)(b) UTA provides that a units plan may subdivide the parcel into class A units or class B units, but not both.

Under the previous Act (the *Unit Titles Act 1970*) Units Plans were registered with the mix of Both A Class and B Class Units. These Units Plans were correct at the time of being registered and will continue to appear in the register as a mix of A Class and B Class units.

62.6 REGISTRAR-GENERAL'S/LAND TITLES PROCEDURES

Upon registration, a Units Plan will be allocated a Units Plan number. Following registration of a Units Plan, the Crown Lease/ Title will be cancelled (Section 10(1)(a)) of the *Land Titles (Unit Titles) Act 1970*. A Title will be issued in the name of the registered proprietor of the Crown Lease/ Title for each unit contained in the plan (Section 10(1)(b)). A further Title will be issued, for the common property, in the name of the owners corporation (Section 10(1)(c)).

Current Mortgages/encumbrances and easements will be carried forward by Section 10(1)(d)&(e) of the *Land Titles (Unit Titles) Act 1970* so as to preserve their registered priority previously existing.

Any amendments to a Units Plan after approval must be re-submitted to EPSDD for re-approval by the delegate of EPSDD. All amendments to Units Plans must be lodged using an Application to Alter a Units Pla Registry Instrument 055 - ALUP (ALUP).

62.7 BUILDING COVENANTS

If the “Registry Instrument 4” of the Units Plan contains a building covenant, the Certificates of Title for each of the units shall be endorsed to the effect that Section 298 of the *Planning and Development Act 2007* applies. Any transfer of the unit will not be accepted without the lodgment of a Compliance or the Minister's/Delegate from EPSDD’s consent.

The Registrar-General will accept, at the same time as the lodgment of the Units Plan, Registry Instruments in respect to a unit or a number of units. These Registry Instruments will be registered following registration of the Units Plan, provided they are in registrable Registry Instrument.

62.8 ENCROACHMENTS IN UNITS PLANS

A requirement of Unit Titles Legislation is that units and unit subsidiaries be wholly within the parcel of land.

It is a fundamental principle of land law in Australia that a person cannot transfer or subdivide land that the person does not own.

In the ACT, a lessee's rights over land comprised in a Crown Lease begin and end at the boundaries of the land. The lessee does not have rights outside of those boundaries, nor can strangers exercise these rights over the lessee's land (except where an easement has been granted).

A Units Plan represents a subdivision of land. The *Unit Titles Act 2001* is an Act relating to the subdivision of land into units, unit subsidiaries and common property. There is nothing in the UTA to suggest that a lessee may apply for, or be granted, approval for a units plan which relates to land outside the lease boundaries.

Section 7 of the UTA identifies the documents and nature of diagrams to be included in a Units Plan. Sections 14 and 15 deal with the boundaries of units and unit subsidiaries and common property. Section 8 of the *Land Titles (Unit Titles) Act 1970* also specifies Registry Instrumental requirements of a units plan.

Section 17 of the UTA deals with approvals for subdivision. Section 20(1) of the UTA provides that the Minister shall not approve the proposals unless the proposals conform to the proceeding provisions of the *Unit Titles Act 2001*.

The diagrams Registry Instrumenting part of the units plan, in particular Registry Instrument 1 (Surveyor's Declaration) must indicate the boundaries of units and subsidiaries. These diagrams must be drawn in such a style so as to ensure that the boundaries of each unit and subsidiary are clearly discernible as being within the parcel boundary.

It is not possible for the boundary of a unit or subsidiary to encroach beyond the parcel boundary –

- into adjoining unleased Territory land; and
- into a neighbouring leasehold.

Section 37A of the *Unit Titles Act 2001* (the Act) provides for registration of a Units Plan with an encroachment on a public place. The encroachment needs to be clearly defined as an attachment to the Units Plan as defined by the Act.

An attachment, in relation to a building, means—

- an eave, gutter or downpipe; or
- an awning; or
- anything attached to the building prescribed by regulation.

In the case of an encroachment onto adjoining leasehold land, this encroachment must be accommodated by an appropriately negotiated easement in registrable Registry Instrument.

62.9 FENCES REQUIRED BY AUTHORITY

A boundary between leased and unleased land, where there is an encroachment by a fence onto that unleased land

A fence should be placed upon the boundary, which assumes the fence resides equally on each side of the boundary. This may appear as an encroachment on the plan, where the boundary is between leased and unleased land.

The Registrar-General, can however, accept a plan for registration where it is evident that the fence was erected as a result of Section 23 of the *Common Boundaries Act 1981* (CBA). Section 23 states that if there is a common boundary between a parcel of leased Territory land and an area of unleased Territory land, the planning and land authority may, by written notice to the lessee of the parcel of leased land, require the lessee to erect a fence on that boundary or any part of it.

62.10 OTHER EASEMENTS

Statutory 'unit title easement rights' are created by Section 34 of the *Unit Titles Act 2001*. These rights include rights of support, shelter and protection by encroaching eaves, awnings or similar structures; rights to utility services, including the collection, passage and drainage of rainwater by encroaching eaves, gutters, downpipes or similar structures; ancillary rights including rights of entry at reasonable times for inspection and maintenance purposes.

Section 36 *Unit Titles Act 2001* provides for easements to be declared by owners corporations. Easements may be given by unit holders in the same manner as under the *Land Titles Act 1925*. Care is needed to ensure whether the consent of the owners corporation and other unit holders is needed.

Section 22 UTMA allows the corporation, by unopposed resolution, to grant to a unit holder, special privileges (not being a sublease) in respect of parts of the common property.

62.11 THE OWNERS CORPORATION

"Owners Corporation" means a corporation pursuant to Section 8 *Unit Titles (Management) Act 2011*. An owners corporation is established on the registration of a Units Plan under the name 'The Owners – Units Plan No....'.

The owners corporation is the holder of the lease of the common property and it is initially the developer who has prepared the Units Plan. The lessee in the Crown Lease is the lessee in each Unit Title upon registration of the Plan.

The schedule of unit entitlement specifies the entitlement in respect to each unit in the plan. The entitlement determines the obligations, voting rights etc and participation in the administration of the corporation. (Refer Section 8 of the UTA) The schedule of unit entitlement indicates, by numbers assigned to each unit the improved value of each unit relative to each other unit. The total unit entitlement (aggregate) under a schedule of unit entitlement must be either 10, 100, 1000, 10,000 or 100,000.

The duties, functions and powers of the owners' corporation are set out in Part 3 of the *Unit Titles (Management) Act 2011*.

The articles of an owners corporation consist of – the default articles prescribed under Schedule 4 of the *Unit Titles (Management) Act 2011* as amended by special resolution of the owners corporation authorising the amendment. Special resolution must result in a certificate under Section 108 of the *Unit Titles (Management) Act 2011* and be registered under Section 27 of the *Land Titles (Unit Titles) Act 1970*.

62.12 COMMON PROPERTY

The owners' corporation holds the common property as agent for the owner if all the units are owned by the same person or in any other case for the unit owners as tenants in common in shares proportional to their unit entitlement. Refer to Section 19(1) of the UTMA.

However, it can grant special privileges in respect of any unit holder for enjoyment of part of the common property (not being a sub-lease). Refer to Section 22(1) *Unit Titles (Management) Act 2011*. That privilege may be terminated in accordance with a special resolution and by written notice given by the owners' corporation. Refer to Section 22(2) of the UTMA.

Common property is more commonly determined as any land within the parcel boundary not being part of a unit or subsidiary.

Common property is not always “land”. It may consist of a roof over a Class A unit block, pipes etc.

62.13 CANCELLATION OF UNITS PLANS

If the units in a registered Units Plan are to undergo major redevelopment, it will be necessary to cancel the units plan, (and reissue a substantially altered plan, if the parcel is still to be subdivided into units). Cancellation of the units plan is authorised by the Minister for EPSDD on application by the owners’ corporation provided that a unanimous resolution has been passed. All enquiries relating to cancelling a registered units plan should be directed to EPSDD.

A cancellation authority remains in force for three months after it is given. During that time it may be registered. If registration is sought after expiry of the three months a fresh cancellation authority will be required.

On registration of a cancellation authority cancelling a Units Plan (Refer to Section 162 *Unit Titles Act 2001*):

- the units plan is cancelled;
- the owners corporation is dissolved (refer to Section 164 *Unit Titles Act 2001*);
- the lease of each unit and the lease of the common property end;
- the land comprised in those leases Registry Instruments one parcel of land;
- a new lease arises over that parcel in the terms provided by Section 163 *Unit Titles Act 2001*.

The land within the former parcel immediately before the units plan is cancelled will vest;

- where there is a sole proprietor; in that proprietor; or
- where there are several proprietors, in those proprietors as tenants in common in shares proportional to the unit entitlement.

Under the *Unit Titles Act 2001* cancellation of a units plan is now undertaken through a Minister’s Cancellation Authority. Section 165 of the *Unit Titles Act 2001* allows an owners’ corporation or a person with an interest in a unit to seek an order from the Supreme Court varying the effect of the dissolution of the owners’ corporation.

Section 161(2) *Land Titles Act 1925* also permits the Supreme Court to direct the Registrar-General to do any acts and make any entries that are necessary to give effect to any judgement or order of the court given or made in proceedings before it in relation to land under the Act. This is an important device to use where units plans are to be cancelled and the apportionment of units to persons who were the owners of units in a prior units plan is required in a specific manner.

Immediately after the registration of an authority or order for the cancellation or amendment of a units plan, the Registrar-General must give written notice of registration to the chief executive of the administrative unit responsible for the administration of the *Unit Titles Act 2001*. Refer to Section 21 *Land Titles (Unit Titles) Act 1970*.

NB: Where

- a units plan is to be cancelled and the units in the plan revert to ordinary Crown Leasehold; or
- a units plan is to be cancelled and replaced with another units plan, it will be necessary to construct the wording of the Supreme Court Order for cancellation to facilitate the desired apportionment of the appropriate unit or Crown Leasehold.

A new Title will be created for the parcel that existed prior to the cancellation. Under Section 162(e) UTA a new lease arises over that parcel. The terms of that lease are subject to Section 163 UTA.

Any estate or interest (eg mortgage or easement) registered in respect of any of the unit leases or common property will be carried forward to the new Title. A mortgage registered against less than the total number of units will be recorded on the new Title as affecting only the share of the proprietor of the former units. **It should be noted that this does not extend to sub-leases. Any live lease will need to be surrendered before the cancellation is registered (unless the cancellation is by Court Order).**

The copy of the cancellation authority should be lodged, together with Consent.

NB: Upon the cancellation of a Units Plan registered lease variations made prior to registration of the Units Plan will continue in force pursuant to Section 163(1)(c) *Unit Titles Act 2001* as variations to the new lease.

Any variations made during the currency of the Units Plan will only carry forward subject to any declaration of the Minister under Section 160(6) *Unit Titles Act 2001*.

The standard Registry Instrument lodgment fee applies.

62.14 ALTERATION OF UNITS PLANS

Alteration of Schedule of Unit Entitlement

A schedule of unit entitlement requires amendment if it does not accurately reflect the improved value of the units. This may occur in the following circumstances:

- if it is incorrect as originally registered;
- change of development statement in the course of a staged development;
- if the boundaries of the units are altered, changing the size of the units relative to each other significantly enough to effect the relative value;
- building damage order; or
- change of improved values for any other reason.

A certificate from a qualified independent valuer as evidence of the change to improved unit values should be submitted to EPSDD when seeking approval. If no change to the unit boundaries is involved the schedule of unit entitlement may be amended upon authorisation of the Minister for EPSDD. The owners' corporation passes an unopposed resolution endorsing an application to the Minister. Application must be made within three months of the resolution being passed. If approved the Minister may grant a 'Unit Entitlement Authority' authorising the alteration of entitlements.

The ALUP must be registered within three months of EPSDD's consent/authorisation. If the application is not lodged at Land Titles within that period, then EPSDD will need to re-execute the UP Registry Instruments.

Application may be made using an Alteration of Units Plan (ALUP) Registry Instrument (includes minor boundary variations, building damage order and schedule of entitlement changes). The application should be signed by the owners' corporation and need not be supported by the valuer's report as that is required prior to Ministerial approval. The Registrar-General will require a replacement schedule of unit entitlements in support of the application. The Minister's authority/direction is evidenced by the delegate signing the replacement Schedule of Entitlement sheet (Registry Instrument 2) as well as the ALUP Registry Instrument. The section of the UTA under which the change is made should be set out in the 'Nature of Application'. Each unit affected by the replacement Schedule of Entitlement should be clearly outlined on the application Registry Instrument.

The Consent of each unit affected by change/alteration of Unit Entitlements needs to be lodged with the ALUP application.

The standard Registry Instrument lodgment fee applies.

Minor Boundary Changes

A minor boundary change is a change to the boundaries between units or between units and the common property. The following criteria apply:

- the change must not alter the outside boundaries of the units plan parcel;
- the change must be of a minor nature only (upon application EPSDD make this decision);
- the change must not be inconsistent with any unit lease or the common property lease;
- the Minister must be satisfied that if at the time of approval of the units plan the plan had indicated the boundaries as they are proposed to be changed, he would still have approved the units plan (planning design and siting considerations).

The owners' corporation must endorse an application to the Minister following a unanimous resolution. Application must be made within three months after the resolution has been passed.

Upon application to the Minister, the Minister may grant a 'Boundary Authority' authorising the alteration.

Application may be made using an Application to Alter a Units Pla Registry Instrument (ALUP) (includes minor boundary variations, building damage order and schedule of entitlement changes). The application should be signed by the owners' corporation and should be supported by replacement site plan and floor plan sheets as appropriate. Land Titles will require the signed Ministerial Boundary Authority to be attached to the ALUP Registry Instrument.

The Consent of any unit affected by the boundary change will need to be lodged with the application.

EPSDD are required to execute/consent on the ALUP Registry Instrument.

The standard Registry Instrument lodgment fee applies.

Building Damage Schemes

A building damage scheme is a scheme for:

- the reinstatement of any building on the parcel that is damaged or destroyed;
- the elimination of any class A unit that is damaged or destroyed (unless it is to be reinstated).

If a building in a unit development is badly damaged or destroyed, (but not deliberately by anyone associated with the units) an application may be made by the owners' corporation to the Magistrates Court for approval of a building damage scheme. Application is made by ordinary resolution. The Court will grant a final order approving the building damage scheme following compliance with a provisional building damage order.

The units plan is changed as indicated in the final building damage order upon registration by the Registrar-General within three months after the final order is made.

Upon registration of such an order the Registrar-General must notify EPSDD.

Application may be made using an Alteration of Units Plan (ALUP) Registry Instrument (includes minor boundary variations, building damage order and schedule of entitlement changes). The application should be signed by the owners' corporation and should be supported by copies of the final building damage order issued by the Magistrates Court. We will require a replacement schedule of unit entitlements, site plan and floor plan as the case may be in support of the application.

62.15 EXTENSION OF LEASES FOR UNITS AND COMMON PROPERTY

The process of extending the term of leases for units and for the common property in units plans is prescribed by –

Planning and Development Act 2007 (PDA) – Section 254;

Land Titles (Unit Titles) Act 1970 (LTUTA) – Section 25; and

Land Titles Act 1925 (LTA) – Section 91A, Section 91B and Section 91C.

Planning and Development Act 2007

The PDA provides, at Section 254 and 255 for the grant of a further term of leases for residential, rural and other categories of Crown Lease. These sections require the surrender of such Crown Leases in order for EPSDD to grant further leases.

The Application may only be made in respect of all of the units and the common property simultaneously and for the same term.

Upon determination of an Application to EPSDD, a further Crown Lease will be granted.

The grant of a further lease for units and common property under Section 254 and 255 of the PDA may only be made following a surrender of all the leases. Whilst the application for further lease may be signed by the owners' corporation the surrender is required to be signed by each of the lessees and the owners corporation respectively.

Land Titles (Unit Titles) Act 1970

The LTUTA provides, at Section 29, for the Registrar-General to register the Surrender and the Registry Instrument Granting a Further Lease. One Registry Instrument has been prepared for these purposes –

- FLUP – Surrender of Units and Common Property Leases and Registry Instrument Granting further Lease, Registry Instrument to be completed in full. All units and registered proprietor to be listed on Registry Instrument. Certification to be signed by Owners corporation (see section ... for execution of owners corporation Chapter 9.7) and EPSDD authorised person to

sign the Registry Instrument. Also attached to this Registry Instrument should be the signed copy of the motion.

On registration of these documents, the FLUP appears as an encumbrance on the Common Property Title, and on all unit Titles. Once the title increases edition number this encumbrance will fall off.

Land Titles Act 1925

Section 91A, Section 91B and Section 91C of the LTA, provides for the preservation of mortgages and leases upon registration of the surrender and re-grant of a Crown Lease. Easements created by deed, writs, caveats, rates determinations, charges etc noted on the title will carry forward automatically.

Land Titles requirements on the grant of a further term in respect of a Units Plan will be as follows –

- EPSDD/Executive to prepare an FLUP for execution by the Owners Corporation, and EPSDD;
- FLUP to be lodged for registration;
- Registration is effected by maintaining the same Volume and Folios as the surrendered leases and endorsing the FLUP as a transaction on the same titles in the Register. All registered interests on title will be automatically carried forward.

The Register will be changed to reflect the new commencement and termination dates and title searches will reflect the revised Units Lease term dates.

The Unit Titles Act 2001

In December 2010, this Act was updated to allow the owners corporation to act for a proprietor to assist with the FLUP process.

If an owner of a unit in the units plan has not surrendered the lease of the owner's unit. The owners corporation may surrender the lease of the owner's unit on behalf of the owner if —

- (a) the owners' corporation gives the owner 3 months written notice of the surrender; and
- (b) the owner does not give the owners corporation a written objection to the surrender; and
- (c) after the end of the 3-month notice period, the surrender is authorised by an unopposed resolution.

The owners' corporation may also do anything on behalf of the owner that is necessary to make the surrender effective.

62.16 VARIATION OF PURPOSES CLAUSE OF UNIT LEASES/PLAN

Section 166 UTA provides for application to be made under Division 7 – Development Approvals of the PDA for a lease variation of a unit or common property lease. Application may only be made if:

- all members of the owners corporation have been notified of the proposed application;
- the application is authorised by unopposed resolution; and
- a certificate under the owners corporations seal confirms these requirements;

The Minister for EPSDD may approve the variation of a unit lease or common property lease under Division 7 of the PDA.

The Minister may also direct that the schedule of unit entitlement be amended.

Section 166(1) permits the purpose clause for an individual unit or for many units or all units in a Plan to be varied.

Application may be made using an Application to Alter a Units Plan (ALUP) Registry Instrument. The application should be executed by the owners' corporation. In the event that the entitlements are to be changed, Land Titles will require a replacement schedule of unit entitlements in support of the application together with the signed Ministerial Authority in respect to both the variation and the unit entitlement change.

The titles of all units affected are required to be lodged a consent with the application.

Practitioners should note that previously under Section 72A(3) LTA Variations of Purpose Clauses were effective upon registration of a Registry Instrument. An Application to Vary a Crown Lease Registry Instrument (AVCL) cannot be used to vary the Covenants and Conditions within Registry Instruments 4 and Registry Instruments 5 on a Units Plan. To vary the clauses in Registry Instruments 4 and Registry Instruments 5 the applicant is required to lodge an Application to Alter a Units Plan (ALUP) Registry Instrument.

62.17 ALTERATION OF ARTICLES

Section 27 of the LTUTA deals with the registration of an amendment of the articles of an owners' corporation. Section 27 requires the lodgment of a certificate under schedule 3, section 3.19 of the UTMA about the special resolution authorising the amendment.

Schedule 3, section 3.19 of the UTMA requires the following facts about a resolution of an owners' corporation to be given by a certificate sealed with the corporation's seal -

- The fact that at a general meeting held on a stated date, a resolution in the terms set out in the certificate was passed.
- The fact that the resolution was a special resolution.
- Schedule 3, section 3.14 of the UTMA Registry Instrument with Amendment of Articles requires that an amendment be made by special resolution.

The Registrar-General requires application to be made using a Special Resolution (SR) Registry Instrument incorporating a certificate as required by schedule 3, section 3.19 UTMA that at a general meeting of the owners' corporation held on a stated date, a resolution in the terms set out in the certificate was passed, and that the resolution was a special resolution.

The certificate should be signed under the seal of the owners' corporation. On registration, the application will continue to appear on successive editions of the Title for the Common Property to indicate to persons searching that the amendment was made. An alteration to the articles is of no effect until registered in accordance with the Legislation. The certificate should be an original and also all copies of special resolutions should be the original signed version of the document.

62.18 OWNERS CORPORATION CHARGE

Declaration of Charge

Section 96 UTMA provides for a charge to be declared by an owners' corporation to secure the repayment of unpaid amounts payable by the proprietors of a unit to the owners' corporation.

The declaration by an owners' corporation must –

- give details of the lease of the unit to be charged; and

- state the unpaid amount owing to the owners corporation.

Registration of Charge

Section 13 LTUTA provides for the lodgment of the following documents for registration under Section 92 LTA of a charge declared by an owners corporation:

- a memorandum of charge in registrable Registry Instrument; and
- a copy of the declaration certified under the corporations seal to be a true copy.

Application may be made using an Application to Register a Statutory Charge. The application should be signed by the owners corporation and supported by a certified true copy of the declaration by the owners corporation.

The standard Registry Instrument lodgment fee applies.

Section 94 LTA relating to power of sale does not apply to a registered charge. Upon registration under the LTA a charge has effect as a mortgage and the following sections of the LTA have effect:

Section 92(1)(3) – land – how mortgaged or encumbered.

Section 92(A) – postponement of priority.

Section 93(1) – mortgage or encumbrance – effect.

Section 101 – discharge of mortgage.

Section 101(A) – variation of mortgage.

Discharge of Charge

Section 97 UTMA provides for discharge of a charge declared by an owners corporation and requires that:

- the entire amount declared in the charge be paid together with interest; or
- that the owners corporation considers that the charge is no longer required.

Discharge may be made by the owners' corporation revoking the declaration of the charge and lodging a copy certified as a true copy under the seal of the corporation with the Registrar-General.

Section 14 LT(UT)A provides that the following documents be lodged to discharge a charge:

- a application to discharge/remove a court order of charge Registry Instrument 001 - DCC in registrable Registry Instrument;
- a copy of the revocation certified under the corporations seal to be a true copy.

The standard Registry Instrument lodgment fee applies.

62.19 STAGED DEVELOPMENT OF UNITS PLANS

A staged development of a units plan subdivision is one that provides for the development of some of the units and subsidiaries in different stages after the approval of the application. In a staged development the completed units in a stage maybe sold and occupied prior to incomplete units in another stage.

An application for a staged development must include a development statement and a certificate from a registered surveyor describing the degree to which any building erected, or to be erected, is situated.

In respect to a staged development for Class A units EPSDD must be satisfied that the boundary floors, walls and ceilings of each unit have already been built in accordance with the development statement.

62.20 AMENDMENT OF DEVELOPMENT STATEMENT BY EPSDD PRIOR TO APPROVAL

Section 22 UTA permits EPSDD to amend the development statement before approving the application for a staged development.

62.21 AMENDMENT OF DEVELOPMENT STATEMENTS AFTER APPROVAL AND BEFORE REGISTRATION

Section 29 UTA provides for the EPSDD to approve an amendment to a development statement after approval of the initial application and prior to registration.

If an amendment requires the change of boundaries EPSDD may amend the schedule of unit entitlement to reflect the change of boundaries.

62.22 AMENDMENT OF DEVELOPMENT STATEMENTS AFTER REGISTRATION

Section 30 UTA provides for EPSDD to authorise an amendment of a development statement for a staged development units plan after the units plan has been registered. Such an authorisation may involve a change of internal boundaries and unit entitlements.

The amendment of a development statement after registration of the Units Plan needs to be noted by the lodgment of the revised/approved Development Statement using the ALUP Registry Instrument.

The standard Registry Instrument lodgment fee applies.

62.23 REGISTRATION OF ALTERATION OF DEVELOPMENT STATEMENT AFTER UNITS PLAN REGISTRATION

Upon approval of an application by EPSDD, the client must lodge with the Registrar-General written notice of the amendment of the development statement. On registration of a notice of amendment of a development statement –

- the units plan is amended accordingly; and
- if unit or common indicated by the boundaries as changed.

Application may be made using an Application to Alter a Units Plan (ALUP) Registry Instrument (includes minor boundary variations, building damage order and schedule of entitlement changes).

The application should be signed by the delegate of EPSDD supported by the Registry Instrument under which EPSDD authorised the amendment.

The copy of the amended Development Statement will be annexed to the registered Units Plan for which it applies.

62.24 PRACTICAL CONSIDERATIONS FOR STAGED DEVELOPMENTS

Upon registration of the first stage of the units plan all units that form part of the units plan as a whole will be created. Titles will be created for all the units. However, for those titles where the units have not yet been approved, there will be a restriction on the title that states 'Section 20 *Unit Titles Act 2001* – Subject of Staged Development Approval'. This will demonstrate to any person searching the register that the units are subject to a staged development program.

62.25 PLAN PREPARATION FOR A STAGED CLASS A UNITS PLAN

Pursuant to Section 20 of the *Unit Titles Act 2001* and Section 8 of the *Unit Titles Regulation 2001*, it is now permissible to stage Class A unit plans.

To facilitate these amendments for Staged Class A Units Plans, the following plan preparation procedures apply:

The initial application will involve the preparation of a Units Plan that depicts the complete development and respective unit entitlements of all stages, even though only the first stage(s) of the development has been constructed and is able to be leased.

Where units have not been constructed at the date of survey, appropriate notation to that effect must be shown on the site plan and on each relevant floor plan. As well, the building footprint and the unit boundaries are to be shown in dashed line work, signifying it is part of a subsequent stage.

On completion of successive stages, replacement sheets for each new stage of the development are to be lodged with Unit Titles Section (EPSDD) for approval. These replacement sheets will depict the boundaries and identifiers of the new stage in solid line work.

Accompanying these replacement sheets, the registered surveyor must provide a new declaration sheet for units in the new stage. Each declaration sheet should clearly identify the units within the new stage.

Upon completion of each stage an Application to Alter a Units Plan (ALUP) Registry Instrument is required to be lodged at Land Titles with the Replacement Sheets depicting EPSDD's approval. The application should clearly state the Stage number and list each of the units affected within that stage.

62.26 REISSUE OF A UNITS PLAN

Section 22 of the *Land Titles (Unit Titles) Act 1970* provides the Registrar-General with discretion to reissue a registered units plan in substantively identical terms. A reissued plan is taken for all purposes to be the registered units plan for the parcel and does not have the effect of a cancellation of the registration of the plan. It is contemplated that this device would be used where a complex amendment to a plan had made the plan difficult to interpret.

62.27 CHANGE OF ADDRESS FOR SERVICE – OWNERS CORPORATION

Section 122 *Unit Titles (Management) Act 2011* requires an owners' corporation to continuously display in a conspicuous place the name of the corporation and the address shown on the units plan for the service of documents unless –

- the address shown on the units plan for service is the postal address for the building; and
- the corporation provides a letter box on the parcel.

Section 122(3) *Unit Titles (Management) Act 2001* provides that an owners corporation must lodge a notice of change of address for service of notices with the Registrar-General.

Section 26 of the *Land Titles (Unit Titles) Act 1970* requires the Registrar-General to register a change of address on lodgment of a notice of the change by the owners' corporation.

Application should be made using an application to Note a Change of Address (CA) Registry Instrument. The application should be signed by the owners' corporation or the owners' corporation manager (see Chapter 9.7 Execution of a owners corporation).

The standard Registry Instrument lodgment fee applies.

62.28 APPOINTMENT OF ADMINISTRATOR OF OWNERS CORPORATION

Section 136 UTMA provides for an application to the ACT Civil and Administrative Tribunal (ACAT) for the appointment of an administrator of an owners corporation.

On further application the court may by order remove or replace an administrator.

An administrator of an owners' corporation has all of the functions of the corporation except those functions required to be authorised by an unopposed or unanimous resolution. In such cases an order of the court would be required.

Section 28 LTUTA requires the Registrar-General to register an administration order of the Magistrates' Court/ACAT upon the lodgment of an office copy of the order.

Application to appoint, remove or replace an administrator may be made using a Miscellaneous Application (MA) Registry Instrument. The application should be supported by an office copy of the order.

Standard Registry Instrument lodgment fee applies.

CHAPTER 63 VESTING APPLICATIONS

63.1 OVERVIEW

Vesting Applications fall into two categories;

- by a Court Order; and
- under a Statute.

Pursuant to Section 68 of the *Land Titles Act 1925*, any land under the provisions of the Act may be vested in a person, other than the registered proprietor, solely, jointly or as tenants in common with the registered proprietor.

The Registrar-General may, upon such evidence he/she thinks sufficient, and upon application by a person who has become or becomes entitled to have any such land so vested, register the person as proprietor of such an estate.

Generally, until a vesting order has been registered, the order has no effect or operation in transferring or vesting the land. Once an appropriate entry has been made in the Register the person named in the order becomes the registered proprietor of the land.

However a number of Statutes having the effect of vesting property specifically provide that the vesting shall have legal effect upon such other event as is prescribed (eg gazettal of a notice) irrespective as to whether the vesting is noted in the Register.

A Registry Instrumental request for vesting may be made on a Vesting 086 – V (V) Registry Instrument. An office copy (sealed) of the order, together with such evidence as is required by Statute to be lodged with the Registrar-General. Consent may be required.

The standard Registry Instrument lodgment fee applies.

63.2 VESTING BY STATUTE

The person or corporation in whom the land becomes vested, either directly or indirectly, by the operation of law or Act; must make a written request to the Registrar-General who, if satisfied with the evidence, makes appropriate entries in the Register.

Where the nature of the vesting is such that a significant number of assets (i.e. all mortgages belonging to a financial institution) are to be vested in a receiving organisation, there are two ways of referencing this vesting:

- pre Jan 2005 -the Register will not be noted and a Practice advice will be inserted in this Manual (refer 55.5). In such cases the title being vested need not be produced and a fee is not payable
- post Jan 2005 – the Register will be updated to reflect the new position. The vesting document will be noted on title.

Consent may or may not be required; this will depend on the nature of the Vesting application.

63.3 VESTING OF TRUST ESTATE

Section 128(1) of the *Land Titles Act 1925* provides for any person interested in land under the provisions of this Act, appears to the court or the Judge to be a trustee within the intent and meaning of the trustee Legislation relevant to the ACT and a vesting order is made by the court

or a Judge. The Registrar-General upon receiving a copy of the order, shall make an entry in the Register, and that person shall be deemed to be the registered proprietor of the land.

63.4 EVIDENCE TO BE LODGED

Section 68 LTA provides that the Registrar-General may register a vesting application upon such evidence he/she thinks sufficient.

The evidence necessary to support a vesting application will vary according to the terms of the vesting order or Statute. Generally, most Statutes that provide for a vesting require certain documents to be lodged with the Registrar-General.

Some Statutes provide that a vesting is legally effective upon the making of the Statute without the need for any documents to be lodged with the Registrar-General. It is however considered good practice to register the vesting with the Registrar-General, as the proper medium for determining property ownership under a Torrens system of land registration is the Land Titles Register.

63.5 WHEN DUTY MUST BE PAID

For more information regarding payments of duty, please refer the *Duties Act 1999*.

63.6 BANK INTEGRATION ACT 1991

The effect of this Act is to facilitate the integration of Savings Banks into his/her parent Trading Banks by vesting the assets (which include mortgages) pursuant to Section 12 of the Act.

This practice should be considered as generic in its application to the Banks referred to in the Schedule to the *Bank Integration Act 1991* and sets out requirements to enable such a vesting in the Australian Capital Territory.

Where a Bank seeks to vest the assets of its Savings Bank into its Trading Bank, the following prerequisites must be met -

- 1) complementary Legislation must be passed in the relevant state of incorporation of both the "Transferring Bank" and the "Receiving Bank"; and
- 2) a succession day must be fixed by the Treasurer by notice in the Gazette; and
- there must be lodged with the Registrar-General a certificate that -
 - is signed by an authorised person as defined at S.5 of the Act; and
 - identifies the land or interest; and
 - states that a specified asset or liability has become a transferred asset or transferred liability of the "Receiving Bank" or "Transferring Bank".

Where a Bank applies to the Registrar-General in the manner above, the following practice will apply in respect of the "Receiving Bank" in relation to that vesting.

Briefly, the following practice will apply to a "Receiving Bank" **after it complies with steps 1 - 3 above.**

The Registrar-General **will not register** a "Receiving Bank" as mortgagee in respect of "Transferring Bank" assets. It will only be necessary for a "Receiving Bank" to Registry Instrumentally apply to note vesting of a specific asset (i.e. mortgage, title, and lease) under Section 68 LTA where it seeks to exercise its powers as mortgagee to sell or foreclose under the mortgage. In such cases, an endorsement of the vesting will be made on the title concerned.

Land Titles practice will be to accept discharges executed by the "Receiving Bank" in lieu of the "Transferring Bank". A discharge of such a mortgage should describe the "Receiving Bank" as mortgagee and the execution clause may be as follows :

.....("Receiving Bank") as statutory successor to by its Attorney(s)
 under Power of Attorney No.....of which he/she has no notice of revocation.
 (Signature and Designation of the Attorney for the "Receiving Bank")

LIST OF ORGANISATIONS WHO HAVE LODGED VESTING APPLICATIONS – PRIOR TO JANUARY 2005

ACTTAB Limited

- Vesting of assets of ACTTAB Board and the A.C.T. Totalizator Administration Board into ACTTAB Limited under the -
- *Betting (Corporatisation) (Consequential Provisions) Act 1996* - Effective 1 July 1996 (refer also statement by Wayne Berry attached to Document No 870365).

Execution of such Registry Instruments Registry Instrument with interests in land vested under the aforementioned Act should describe ACTTAB Limited as follows (in the 'lessor' or 'lessee' panel where applicable):

- ACTTAB Limited ACN 071 257 504 as statutory successor to the ACT Totalizator Administration Board

Advance Bank Australia Limited

- Vesting of assets of Canberra Advance Bank Ltd into Advance Bank Australia Limited under the *Canberra Advance Bank Limited (Merger) Act 1992* - Effective 1 June 1992

A discharge of a vested mortgage should describe Advance Bank Australia Limited as mortgagee and the execution clause should be as follows:

- Advance Bank Australia Limited ACN 002 953 335, in which the above mortgage vested pursuant to the *Canberra Advance Bank Limited (Merger) Act 1992*, by its Attorney(s)..... under Power of Attorney No..... of which he/she has no notice of revocation.
- (Signature of attorney/s of `Advance Bank Australia Limited A.C.N. 002 953 335)

Advance Bank Australia Limited

- Vesting of assets of Bank of South Australia Limited into Advance Bank Australia Limited under the – *Bank Merger (Bank SA and Advance Bank) Act 1996* and Regulations - Effective 1 December 1996

A discharge of a vested mortgage should describe Advance Bank Australia Limited as mortgagee and the execution clause should be as follows:

- Advance Bank Australia Limited A.C.N., in which the above mortgage vested pursuant to the *Bank Merger (BankSA and Advance Bank) Act 1996* and Regulations, by its Attorney(s)..... under Power of Attorney No..... of which he/she has no notice of revocation.
- (signature of attorney/s of Advance Bank Australia Limited A.C.N.....)

Advantage Credit Union Limited

- Following merger, Piccol Credit Co-Operative Ltd has changed its name to Advantage Credit Union Limited under the-
- *Financial Institutions (Victoria) Code* - Effective 1 October 1997

A discharge of a vested mortgage should describe Advantage Credit Union Limited as mortgagee and the execution clause should be as follows:

- Advantage Credit Union Limited (Registry Instrumenterly Piccol Credit Co-Operative Ltd) in which the above mortgage vested pursuant to the Financial Institutions (Victoria) Code.
- The standard sealing or attorney clause should follow.

Australia and New Zealand Banking Group Limited

- Merger of Australia and New Zealand Savings Bank and National Mutual Royal Bank and National Mutual Royal Savings Bank into Australia and New Zealand Banking Group Ltd under the - *Australia and New Zealand Banking Group (NMRB) Act 1991* - Effective 16 November 1991

A discharge of a vested mortgage should be drawn as follows:

- ANZ will be described as "statutory successor to (i.e.. the registered proprietor of the mortgage prior to the vesting eg ANZSB/NMRB/NMRSB etc)"
- The standard ANZ sealing clause will be used.

Bank of Melbourne

- (refer Westpac/Challenge/Bank of Melbourne)

Bank of Singapore (Australia) Limited

- Vesting of assets of Bank of Singapore (Australia) Limited into Overseas - Chinese Banking Corporation Limited under the - *Financial Corporations (Transfer of Assets and Liabilities) Act 1993 (Cwlth)* - Effective 1 July 1996

A discharge a vested mortgage should describe Overseas-Chinese Banking Corporation Limited as mortgagee and the execution clause should be as follows:

- Overseas-Chinese Banking Corporation Limited, as statutory successor to Bank of Singapore (Australia) Limited by its attorney under Power of Attorney No of which he/she has not notice of revocation.
- (Signature and Designation of the Attorney)
- or
- The common seal of Overseas-Chinese Banking Corporation Limited, was hereto affixed, as statutory successor to Bank of Singapore (Australia) Limited in the presence of

Bank of South Australia Limited

- Vesting of assets of State Bank of South Australia into Bank of South Australia Limited under the - *State Bank of South Australia (Transfer of Undertaking) Bill 1994* - Effective 1 July 1994

A Registry Instrument with a vested asset should be drawn as follows:

- "BANK OF SOUTH AUSTRALIA LIMITED ACN 063 369 488, of (Address) the mortgagee or being entitled to be registered as the Mortgagee of the above mortgage, a transferred asset pursuant to the State Bank of South Australia (Transfer of Undertaking) Act 1994".
- (THE APPLICANT) hereby applies to be registered as the proprietor of the estate in the land above described being a transferred asset in the Applicant by an order made pursuant to Section 5 of the South Australia (Transfer of Undertaking) Act 1994
- or
- SOUTH AUSTRALIAN ASSET MANAGEMENT CORPORATION (Formerly known as the State Bank of South Australia) of (address), the Mortgagee or being entitled to be registered as the Mortgagee of the above mortgage.
- "THE APPLICANT hereby applies to change its name on the land above described from State Bank of South Australia to SOUTH AUSTRALIAN ASSET MANAGEMENT CORPORATION pursuant to Section 6A of the State Bank of South Australia Act 1983".

Bendigo Sandhurst Mutual Permanent Land and Building Society (BSM)

- Vesting of assets of Capital Building Society into Bendigo Sandhurst Mutual Permanent Land and Building Society under the - *Building Societies Act 1986* (Victoria) S.107 - Effective 30 April 1992

A discharge of a vested mortgage should describe BSM as mortgagee and the attorney's execution clause should be as follows:

- Bendigo Sandhurst Mutual Permanent Land and Building Society, in which the above mortgage vested pursuant to Section 107 of the Building Societies Act 1986 (Victoria) by its Attorney(s)..... under Power of Attorney No..... of which he/she has no notice of revocation.
- (signature of attorney/s)

Challenge Bank

(Refer Westpac/Challenge/Bank of Melbourne)

Citibank Limited

- Vesting of assets of Citibank Savings Ltd into Citibank Limited under the - *Bank Integration Act 1992* (Victoria) -
- Effective 31 December 1994

A discharge of a vested asset should be drawn as follows:

- Citibank Ltd will be described as "statutory successor to Citibank Savings Limited".
- The standard Citibank Ltd sealing or attorney clause will be used.

The Commercial Banking Company of Sydney Limited

- Merger of assets of The Commercial Banking Company of Sydney into the National Bank of Australasia under the -
- *The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982*

A discharge of a merged asset should be drawn as follows:

- NAB will be described as "statutory successor to National Bank of Australasia Limited whose estate was merged with The Commercial Banking Company of Sydney Limited and Registry Instrumentally vested in the National Australia Bank Limited".
- The standard NAB sealing or attorney clause will be used.

Commonwealth Bank of Australia (CBA)

- Vesting of assets of Commonwealth Savings Bank of Australia into Commonwealth Bank of Australia under the -
- *Bank Integration Act 1991* (Commonwealth) Effective 1 January 1993

A discharge of a vested asset should be drawn as follows:

- CBA will be described as "statutory successor to Commonwealth Savings Bank of Australia".
- The standard CBA sealing or attorney clause will be used (with no reference to the Act under which the vesting took place or the capacity in which CBA signs).

Commonwealth Bank of Australia (CBA)

- Vesting of assets of State Bank of New South Wales Limited (previously known as Rural Bank of New South Wales) and State Bank of New South Wales and Trust Bank of Tasmania into Commonwealth Bank of Australia under the –
- *Financial Sector (Transfers of Business) Act 1999* (Cwlth); and *Financial Sector Reform (ACT) Act 1999* -
- Effective 4 June 2001.

A Registry Instrument with a vested asset should be drawn as follows:

- CBA will be described as statutory successor to either of "State Bank of New South Wales Limited", "State Bank of New South Wales", "Rural Bank of New South Wales" or "Trust Bank of Tasmania".
- The standard CBA sealing or attorney clause will be used.

Commonwealth Development Bank of Australia Ltd (CDBA)

- Vesting of assets of Commonwealth Development Bank into Commonwealth Development Bank of Australia Ltd under the - *Commonwealth Bank Sale Act 1995* and registration as a Public Company - Effective 19 July 1996

A discharge of a vested asset should be drawn as follows:

- CDBA (as Statutory successor to CDB) to be inserted; and, the standard CDBA sealing or attorney clause to be used.

East Australian Pipeline Limited

- Vesting of assets of The Pipeline Authority into East Australian Pipeline Limited pursuant to the Moomba-Sydney Pipeline System Sale Act 1994

Execution of such Registry Instruments Registry Instrument with interests in land vested under the aforementioned Act should describe the East Australian Pipeline Limited as follows:

- East Australian Pipeline Limited ACN 064 629 009 as statutory successor to The Pipeline Authority.

GIO Finance Limited (GIO FIN)

- Vesting of assets of GIO Australia Holdings Ltd (Formerly Government Insurance Office of New South Wales, having changed its name on conversion) in GIO Investment Services Limited, in turn in GIO FIN under the - *Government Insurance Office (Privatisation) Act 1991 No 38 (NSW)* – Effective 30 June 1992

A discharge of a vested asset should be drawn as follows:

- GIO Finance Limited ACN..... in which the above mortgage vested pursuant to the Government Insurance Office (Privatisation) Act 1991 No. 38 (NSW), by its Attorney(s).....under Power of Attorney No.....of which he/she has no notice of revocation.
- (signature of attorney/s)

HSBC Bank Australia Limited; formally - HSBC Building Society (Australia) Limited; - formally NRMA Building Society Limited; formally MLC Building Society Limited.

- Application No: 1293490

National Australia Bank Limited (NAB)

- Vesting of assets of National Australia Savings Bank Ltd into National Australia Bank Limited under the -
- *Bank Integration Act 1992 No 42 of 1992 (Victoria)* - Effective 1992

A discharge of a vested asset should be drawn as follows:

- NAB will be described as "statutory successor to National Australia Savings Bank Limited".
- The standard NAB sealing or attorney clause will be used.

Rural Bank of New South Wales (see Commonwealth Bank of Australia)

State Bank of New South Wales (see Commonwealth Bank of Australia)

State Bank of New South Wales Limited (see Commonwealth Bank of Australia)

St George Bank Ltd

- Vesting of assets of St George Permanent Co-operative Building Society (A.C.T.) Limited into St George Building Society Ltd which in turn obtained a banking licence under the name of St George Bank Ltd - Effective 1 July 1992

A discharge of a vested asset should be drawn as follows:

- St. George Bank Limited ACN 055 513 070 in which the above mortgage vested pursuant to S.38AA of the Co-operative Societies Act 1939, by its Attorney/s.....under Power of Attorney No.....of which he/she has no notice of revocation.
- (signature of attorney/s of `St. George Bank Limited)
- OR
- ("Receiving Bank") in which the above mortgage vested under S.13 of the Bank Integration Act 1991 (Commonwealth), by its attorney(s).....under Power of Attorney No.....of which he/she has no notice of revocation.
- (Signature and Designation of the Attorney(s))
- OR
- ("Receiving Bank") by virtue of S.13 of the Bank Integration Act 1992 (Commonwealth), by its attorney(s).....under Power of Attorney No.....of which he/she has no notice of revocation.
- (Signature and Designation of the Attorney(s))

St George Bank Ltd (Advance Bank Australia Limited)

- Vesting of assets of Advance Bank Australia Ltd into St George Bank Ltd pursuant to the *Bank Mergers Act 1966* under the *Bank Merger (St George and Advance Bank) Regulation 1998 (NSW)* - Effective 1 April 1998

A Registry Instrument by the mortgagee with a vested asset should be drawn as follows:

- St George Bank Ltd ACN..... as statutory successor to Advance Bank Australia Ltd
- ACN.....
- The standard St George Bank Ltd sealing or attorney clause should be used in the execution panel.

St George Bank Ltd (RSL Permanent Building Society Limited)

- Vesting of assets of RSL Permanent Building Society Limited through a series of transfers of engagements and pursuant to Section 69B(3) *Co-operation Act 1923* and Section 41(3) *Permanent Building Societies Act 1967*.

A discharge of a vested asset should be drawn as follows:

- St George Bank Limited, in which the above mortgage vested pursuant to Sections 40 and 41 of the *Permanent Building Societies Act 1967* by its Attorney/s under Power of Attorney No of which he/she has no notice of revocation.
- (Signature of attorney/s of St George Bank Ltd)

Trust Bank of Tasmania (see Commonwealth Bank of Australia)

Westpac Banking Corporation

- Vesting of assets of Defence Service Homes Corporation into Westpac Banking Corporation under the -
- *Defence Service Homes Amendment Act 1988* - Effective 15 April 1989

A discharge of a vested asset should be drawn as follows:

- Westpac Banking Corporation in which the above mortgage vested under Section 6B of the Defence Service Homes Act 1918, by its Attorney (s)..... under Power of Attorney No..... (or some similar wording)
- (Signature and Designation of the Attorney(s))"

Westpac Banking Corporation

- Vesting of assets of Westpac Savings Bank Limited into Westpac Banking Corporation under the - *Bank Integration Act 1991* - Effective 1 October 1993

A discharge of a vested asset should be drawn as follows:

- Westpac will be described as "statutory successor to Westpac Savings Bank Limited".
- The standard Westpac sealing or attorney clause will be used.

Westpac Banking Corporation/Challenge Bank Ltd/Bank of Melbourne Ltd

- Consequent upon the following mergers, the assets of Challenge Bank Ltd and Bank of Melbourne Ltd are now vested in Westpac Banking Corporation.
- Under the *Westpac Banking Corporation (Challenge Bank) Act 1966 (WA)* all assets (except Victorian assets) of Challenge Bank became vested in Westpac.
- Under the *Westpac and Bank of Melbourne (Challenge Bank) Act 1966 (Vic)* the Victorian assets of Challenge Bank became vested in the Bank of Melbourne Ltd.
- Under the Bank Mergers (Bank of Melbourne) Regulation 1998 (NSW) the assets of the Bank of Melbourne Ltd became vested in Westpac Banking Corporation - Effective 3 May 1998.

A discharge or Registry Instrument with a vested asset should be drawn as follows:

- "Westpac Banking Corporation (ARBN 007 457 141) Statutory successor to Challenge Bank Limited (ACN 009 230 433) pursuant to the Westpac Banking Corporation (Challenge Bank) Act 1966 (WA) and in relation to its Victorian assets pursuant to the Bank Mergers (Bank of Melbourne) Regulations 1998 (NSW)."
- The standard Westpac sealing or attorney clause will be used.

CHAPTER 64 CONFISCATION OF CRIMINAL ASSETS ACT 2003

The *Confiscation of Criminal Assets 2003* (the Act) provides for any real and personal property to be restrained by order of the Supreme Court arising from a conviction and sentencing for a serious offence.

Restraining orders

A court may make an order (a restraining order) preventing the disposal or other Registry Instrument with property. A restraining order may also be made to secure a property for the payment of a penalty order.

Property may be restrained even though it is not the offender's property.

Confiscation of property on conviction

A court that convicts a person of an indictable offence may make an order (a conviction forfeiture order) for the forfeiture to the Territory of tainted property in relation to the offence (whether or not the tainted property is restrained).

If a person is convicted of a serious offence (generally an offence punishable by imprisonment for 5 years or more), all restrained property is, by the operation of this Act, forfeited to the Territory (an automatic forfeiture).

Property may be forfeited even though it is not the offender's property.

Confiscation of property without conviction

If a court is satisfied on the balance of probabilities that a person has committed a serious offence, it may make an order (a civil forfeiture order) for the forfeiture to the Territory of all restrained property even though the person has not been convicted, or the person has been cleared, of the relevant offence.

Penalty orders

A court may order the payment to the Territory (a penalty order) of the value of the tainted property and the advantages and other benefits derived in any way from the commission of an indictable offence and for restrained property be sold to satisfy the penalty order.

Exclusion of property from forfeiture and return or compensation for forfeited property

Provision is made for an order that property be excluded from forfeiture (an exclusion order) and forfeited property can be returned or compensation paid for it in certain circumstances. Provision is also made for the buyback of interests in forfeited property.

In the first instance, if required upon order of the Supreme Court, in proceedings before it under the *Confiscation of Criminal Assets 2003* (Section 39), the Registrar-General will enter a Registrar-General's Caveat, preventing the registration of any Registry Instruments with the subject property without permission of the court.

Section 31 of the Act provides for an order to be made for the forfeiture of all restrained property to the Australian Capital Territory in relation to offences, whether committed, or alleged to have been committed, before or after the commencement of this Act.

Additionally under Section 109 of the Act where real property (land) is forfeited to the Australian Capital Territory, the Public Trustee is empowered to take control and custody and sell or dispose of the land, and after paying expenses, pay the balance to the Trust Fund.

It should be noted that property vests in the Australian Capital Territory as owner absolutely and only the Australian Capital Territory (not the Public Trustee), is authorised to be registered on title as the owner.

Under Section 68 LTA a person in whom land becomes vested by operation of law or Act may apply to the Registrar-General for vesting of the property under the LTA.

Such application shall be accompanied by satisfactory evidence.

The application should be made using a Vesting (V) Registry Instrument to Note Vesting pursuant to Section 68 of the *Land Titles Act 1925*.

A brief description should be included at item 3 of the Registry Instrument as follows:

By Supreme Court Order SC.....dated in the matter ofunder Section 31 of the *Confiscation of Criminal Assets 2003* land situated at (address) in the Australian Capital Territory forfeited to the Territory. By this application, pursuant to Section 109, the Public Trustee for the Australian Capital Territory applies to have the Territory registered as the proprietor of the said estate for the purpose of submitting the property for sale pursuant to Section S.101 of the *Confiscation of Criminal Assets 2003*.

The application should be accompanied by -

- sealed copy of any court orders;
- copy of any ministerial direction;
- copy of any written direction by the DPP.

64.1 MANAGED INVESTMENTS ACT 1998 (C'WLTH)

Where assets are vested pursuant to the *Managed Investments Act 1998*, Land Titles require certain evidence to accompany the vesting application in each case.

In accordance with the requirements of the ACT Revenue Office, Land Titles require documentary evidence that:

- the organisation is a responsible entity pursuant to the *Managed Investments Act 1998* ;
- the subject property in the Application Registry Instruments part of the scheme property.

CHAPTER 65 WRITS

65.1 DEFINITION

A writ is an Order of the Supreme Court arising from proceedings in relation to the recovery of a debt. It is in effect, a command to the Sheriff to seize and sell the land of the debtor.

The writ orders payment of monies by the judgement debtor to the judgement creditor.

Generally two types of writs of execution may be entered under which sale may be effected -

- writ of *fi. fa.* (fi. fa.)
- writ of *venditioni exponas* (Refer 65.10)

Upon issue by the Court, a writ is current for twelve months.

For the writ to be effective in order for the Sheriff to sell the land of the judgement debtor, certain prerequisites must exist -

- the writ must be entered on title within six months of the date of issue of the writ; and
- the judgement debtor or at least one of the debtors must be a registered proprietor.

65.2 ENTRY OF A WRIT

A writ may be entered on title by lodgment of -

An application to enter a Writ (W) Registry Instrument. The application may be signed by the judgement creditor or Legal Practitioner for.

A copy of the writ marked 'Office Copy' by the Supreme Court. The application must be made within six months of the date of issue of the writ; otherwise a fresh writ must be obtained.

NB. A WRIT ISSUED BY A COURT IN ANY OTHER JURISDICTION WILL ONLY BE ENTERED IN THE REGISTER IF IT BEARS THE SEAL OR MARK OF THE A.C.T. SUPREME COURT.

UPON ENTRY, SUCH WRIT IS THEN EFFECTIVE IN LIKE MANNER TO A WRIT ISSUED BY THE SUPREME COURT OF THE A.C.T.

The application should be supported by a statutory declaration by the judgement creditor stating the following -

- no prior writ has been issued in respect of the same judgement; or if a prior writ had been obtained in the same matter, the circumstances as to why the second writ was issued, i.e. the first writ was returned 'nulla bona' etc.
- that the judgement debt is not in relation to mortgage monies.
- if the description of the judgement debtor differs from the description of the registered proprietor affected, the declaration should state that they are one and the same person and explain the difference in detail.

A writ will be entered on the Title (whether in respect of an undivided interest or otherwise) but not on a mortgage or encumbrance.

65.3 EFFECT OF WRIT

A judgement creditor obtains no proprietary or secured interest in the land at any point.

A writ does not bind or affect the land and operates only against the judgement debtor.

Priority Point

Upon entry in the Register the writ achieves priority in relation to Registry Instruments by the debtor and the time of entry is the priority point.

During the period of three months immediately following entry of the writ (i.e. the 'priority' period) the Sheriff has priority over a Registry Instrument by the debtor.

Priority Execution Period

Section 170(7) of the *Land Titles Act 1925* provides that a writ lapses after the expiration of three months following the date of registration. The three-month period is also known as the 'priority execution period'. This does not mean that the writ lapses in its effectiveness but only in so far as priorities are concerned.

During the priority period, no Registry Instrument may be registered by the debtor, even if the Registry Instrument is made subject to the writ.

The entry of a writ suspends for the limited period of three months, not the debtor's power to deal with the land, but the priority to be given to Registry Instruments made with the debtor.

After Lapse and before Expiry

'Lapse' refers to the effect of the writ as regards priorities under the *Land Titles Act 1925*.

'Expire' means when the writ ceases to be in force.

A writ lapses following the expiration of three months from its date of entry in the Register.

A writ expires upon the expiration of twelve months from its issue date (teste date of writ).

Effect of Entry

The effects of entry of a writ are:

- to enable the Sheriff to transfer to a purchaser; and
- to ensure that the interest of a judgement debtor cannot be disposed of by him so as to prevent it being taken in execution.

A writ cannot be entered on the following:

- a mortgage;
- a title or other Registry Instrument where the registered proprietor holds the title as trustee, unless it is shown that the judgement was obtained against him in his capacity as trustee
- a title or other Registry Instrument in which the judgement debtor is not the registered proprietor, unless the judgement debtor is deceased, and judgement was obtained against his personal representative.
- a title subject to a mortgage where the writ is issued on a judgement for a debt secured by the mortgage.

65.4 RENEWAL OF WRITS

There is no provision for the entry in the Register of a statement that a writ has been renewed.

It is not possible then, to obtain successive priority periods by continually renewing a writ.

A renewal or second or subsequent writ cannot be recorded until the first writ has been cancelled.

If it is necessary to extend the validity of a writ, the Court may do so under a fresh writ. If the original writ had not been entered on title, the Court may, on application, renew or extend that writ and the renewed writ may then be entered on title within six months of the renewal date. The priority execution period in this case will commence on the date of entry.

Where a writ has been entered and lapses after three months and the judgement creditor wishes to obtain a further three months priority, it is necessary to obtain a fresh writ that in effect, is a renewal of the first writ.

As the Registrar-General cannot register a renewal the first writ should be cancelled prior to entry of the second or 'renewed' writ.

The reason for the loss of priority previously enjoyed by the first writ is to enable competing interests an opportunity of entry on title in priority to a renewal.

65.5 TRANSFERS IN PURSUANCE OF WRITS

Where land has been sold in pursuance of a writ, in order to pass title to the purchaser, a transfer must be executed by the Sheriff or by the Registrar of the Court out of which the writ is issued. The only interest which can be sold is the beneficial interest that was in the judgement debtor at the date of the sale or at the time of the entry of the writ.

In order to effect the sale it is customary to use the ordinary Transfer Registry Instrument, modified to fit the circumstances.

The transferee takes title freed from all estates and interests except as recorded on the relevant title in priority to the writ.

65.6 REGISTRY INSTRUMENTS BY DEBTOR

A debtor has the legal capacity to deal with the land affected by the writ, whether or not a writ has been entered on the title.

The effect of these Registry Instruments depends upon the effect of any writ at the time.

- 1) Before priority point (Prior to entry of the writ):

The debtor lodges a transfer.

Before registration of the transfer, a writ is lodged.

The transfer has priority as it was lodged before the writ's priority point commenced.

If the transfer was lodged after the priority point of the writ, the transfer will not be registered during the priority execution period, however, the buyer could enter a caveat.

- 2) During priority execution period

A person taking an interest from the debtor during the priority execution period is subject to any sale by the Sheriff during that period.

- 3) After lapse and before expiry (between three months after entry and the date on which the writ expires)

Persons taking an interest from the debtor during this time should satisfy themselves firstly that nothing has been done under the writ (i.e. that the Sheriff did not sell the land) during the priority execution period. Otherwise, if the Sheriff had sold the land during that period, it would have priority over a later sale by the debtor.

A purchaser from the judgement debtor, or Legal Practitioner for, may only apply to note lapsing of a writ after three months have elapsed from the date of entry of the writ in the Register. A declaration that a search of the Supreme Court reveals that nothing had been done under the writ, should accompany the application.

If a Transmission Application by executors or administrators is lodged, no action is required to be taken with regard to the writ. However, the applicants should declare whether or not an interest has been created in some other person by a sale under the writ. If a Transmission Application by a beneficiary or devisee or any other application accompanied by a transfer is lodged, the writ is required to be removed prior to registration.

A similar attitude is taken towards a Transmission Application by a trustee in bankruptcy.

65.7 TRANSFER BY MORTGAGEE EXERCISING POWER OF SALE

65.7.1. WHERE MORTGAGE IS REGISTERED BEFORE THE PRIORITY POINT

A mortgagee in priority to a writ may exercise its power of sale, regardless as to whether the writ has lapsed.

The buyer from such mortgagee will acquire title free from the writ.

Similarly if the Sheriff sells under the writ, the buyer must deal with any prior mortgage.

65.7.2. WHERE MORTGAGE IS REGISTERED AFTER THE WRIT HAS LAPSED

A mortgagee presenting a mortgage for registration after the writ has lapsed will be required to provide evidence that a search at the Supreme Court revealed that the Sheriff had not put the writ into force by sale.

65.8 LAPSING OF WRITS

A writ is deemed to have lapsed if it is not put in force by sale within three months from the date of entry in the Register.

Within three months the Sheriff has the sole power to sell but he can still sell within twelve months if no Registry Instrument by the registered proprietors has intervened.

When a writ has lapsed then the registered proprietor, or a person claiming through him, may request the Registrar-General to enter a notification of the lapsing. Unless such request is made, no action with regard to the lapsing is taken by the Registrar-General.

65.9 REMOVAL OF WRITS

The registered proprietor, or a person claiming through him/her, may remove the entry of a writ of execution by:

- showing it has lapsed;
- showing it has been satisfied;
- showing that action has been discontinued;
- lodging a withdrawal; or

- showing that, for any other reason, the entry has become ineffective.

Application for removal of a writ should be made using an Application to Remove/Withdraw a Writ (RW) Registry Instrument.

The standard Registry Instrument lodgment fee applies.

Lapsing

Request may be made by the judgement debtor or by any person claiming through him/her or his/her Legal Practitioner.

A judgment debtor, or Legal Practitioner for, may apply to note lapsing of a writ only after 12 months have elapsed from the date of issue of the writ.

A purchaser from the judgement debtor, or Legal Practitioner for, may only apply to note lapsing of a writ after three months have elapsed from the date of entry of the writ in the Register.

A declaration that a search of the Supreme Court reveals that nothing had been done under the writ, should accompany the application.

Satisfaction

Any party may apply to note satisfaction of a writ, providing the application is supported by a declaration to the effect that a search of the Supreme Court reveals that the judgement has been satisfied and that the satisfaction has been entered in the Courts.

Discontinuance

Where action on a writ has been discontinued prior to the date on which it would lapse, it will be written off upon request, as in the case of a lapsing, if it can be shown (by declaration) that it has been brought back to the issuing office and that nothing has been done under it, or that the Sheriff has made a return to it, or that a notice of discontinuance has been recorded in the Supreme Court.

Withdrawal

A writ may be withdrawn at any time and for any reason prior to the expiration of the date of the writ (i.e. within 12 months of its issue date).

A writ may be withdrawn by the judgement creditor, or Legal Practitioner for, or where the judgement debtor purchases from the Sheriff.

A judgement creditor may apply together with a supporting declaration to the effect that the writ has not been put in force by sale.

A Legal Practitioner for, may apply together with a supporting declaration to the effect that -

- he/she is the Legal Practitioner on record for the judgement creditor;
- he/she knows that the judgement debt and all costs have been fully paid and satisfied.

Where the registered proprietor purchases his own property from the Sheriff under a writ, the judgment debtor, or Legal Practitioner for, may withdraw the writ upon evidence that the registered proprietor is the purchaser.

Following Transfer by Mortgagee

A writ entered subsequently to the Mortgage will be cancelled upon request of the registered proprietor after registration of a Transfer by a Mortgagee. No supporting evidence is required. A fee is payable by the registered proprietor for the cancellation of the writ.

A writ entered prior to mortgage should be firstly removed or taken subject to. The manner of removal will depend upon the length of time elapsed since entry of the writ or whether the writ is still current.

Following Transfer by Sheriff

Where a person purchases land pursuant to a sale under a writ, they hold the land free from all estates and interests except the following those encumbrances recorded on the relevant folio of the register.

Following registration of a Transfer pursuant to a writ, the Registrar-General will remove the writ by Registrar-General's Registry Instrument for Removal (RDR) Registry Instrument under Section 43(3) of the *Land Titles Act 1925*. No fee applies for the RDR.

65.10 WRIT OF VENDITIONI EXPONAS

A writ of *venditioni exponas* is a writ of execution in aid of a writ of fi. fa. A judgment creditor is entitled to file this writ where the Sheriff has made a return on a writ of fi fa to the effect that he/she has been unable to sell 'for want of buyers', or where the Sheriff delays or refuses to sell. If issued, the writ obliges the Sheriff to sell the property for the best price obtainable even if that price is less than the Sheriff believes that the property is worth.

As with a writ of fi fa, the writ must be lodged within six months of its issue date and upon registration is deemed to have lapsed unless executed within three months from the date of entry in the Register.

A sale under a writ of *venditioni exponas* is affected in the same manner as under a fi. fa.

65.11 SURRENDER AND REGRANT OF LEASE OF LAND AFFECTED BY WRIT

Section 170A LTA provides that if –

- a writ has been entered in the register in relation to land; and
- the lease of the land is surrendered and regranted,
- the writ continues in force in respect to the regranted Crown Lease and the Registrar-General will make an entry in relation to the writ on the replacement Crown Lease.

The entry will be followed by "continued by S.91C *Land Titles Act 1925*".

CHAPTER 66 FREEHOLD

The ACT Government, by agreement with the Commonwealth, provides a facility for the registration of land within the Jervis Bay Territory.

Land in the Jervis Bay Territory is held under both leasehold and freehold title.

ACTLIS is incapable of producing a freehold title. The Land Index in ACTLIS will include a reference to the Volume and Folio for a freehold title. It will be necessary to refer to the freehold grant Crown Lease.

Reference is particularly made to a freehold grant to the Volume and Folio. Wreck Bay Aboriginal Council which is the proprietor of a grant of freehold in respect to Blocks 6, 114, 121 and 122 and being the land in Volume 1675 Folio 23.

This land vested in the Council by Vesting Application Registered No. 1112407.

CHAPTER 67 PARTITIONS

A partition application may be made pursuant to Section 66G of the Conveyancing Act 1919 (NSW) (formerly made under Section 4 of the *Partition Act 1900* (NSW) since repealed) which applies in the ACT.

A partition application results from an order of the Supreme Court arising out of an action between several co-owners (joint or in-common) of land under the *Land Titles Act 1925*.

In simple terms, where a dispute arises between co-owners to the effect that one wishes to sell and the other refuses, the Court may order that a Trustee be appointed for sale or that, where practicable, the property be physically divided in order that each proprietor becomes an owner in his/her own right of the resultant portions.

The Application should be made using a Miscellaneous Application (MA) Registry Instrument and supported by the sealed order of the Supreme Court. Where the order is made in a Court outside of the ACT it will be required to be re-sealed.

The standard Registry Instrument lodgment fee applies.

CHAPTER 68 OVERRIDING STATUTORY CHARGES

68.1 GENERAL

The ACT is a party to the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*. This agreement requires the ACT to administer the First Home Owners' Scheme on the Commonwealth's behalf, which includes compliance activities. The *First Home Owner Grant Act 2000* (FHOG) provides the legislative powers for the Commissioner for ACT Revenue to administer the First Home Owners Scheme.

Section 49(3) of the FHOG provides that if an applicant who is liable to repay an amount paid by the Commissioner in error, has an interest in the property for which the grant was sought, the liability is a first charge on the applicant's interest in the property.

Section 49(4) of the FHOG empowers the Commissioner to recover such an amount as a debt to the Territory.

Section 14(3) of the *Land Titles Act 1925* provides that, if notice is given to the Registrar-General that land, or an interest in land, is affected by a Territory law or anything done under a Territory law, the Registrar-General must make a record in the register that the land or interest has been so affected.

Section 58 of the Land Titles Act 1925 (LTA) sets out the exceptions to indefeasibility and provides that, notwithstanding the existence in any other person of any interest, a registered proprietor of land or interest in land under this Act shall hold the land or interest, subject to such interests as are notified on the folium of the register constituted by the grant or Title of the land, but absolutely free from all other interests whatsoever except as to any unpaid rates, taxes or other moneys which are expressly declared by any Act or law to be a charge upon land.

This provision read in conjunction with Section 49(3) of the FHOG establishes that any existing mortgage is subject those exceptions at Section 58 of the *Land Titles Act 1925*.

68.2 REGISTRATION OF AN OVERRIDING STATUTORY CHARGE

The following practice will apply in relation to registration of overriding statutory charges under the FHOG –

Application must be made using an application to register an Overriding Statutory Charge.

The Application must be signed by a person having appropriate delegation in the Commissioner's Office or may be signed by the ACT Government Legal Practitioner on the Commissioner's behalf. (See Chapter 9 on execution)

Upon registration, an Application to Register an Overriding Statutory (OC) Charge has similar status to a mortgage with one notable difference. The charge is, by force of Section 49(3) of the FHOG, a first charge **on the interest of the applicant in the property**.

68.3 DISCHARGE OF AN OVERRIDING STATUTORY CHARGE

The following practice will apply in relation to the discharge of an overriding statutory charge under the FHOG:

- Application must be made using an application to Discharge/Remove a Statutory Charge (DCH)
- Payment including any penalty tax and interest must be received in full
- The Application must be signed by a person having the appropriate delegation in the Commissioner for ACT Revenue's Office or may be signed by the ACT Government Legal Practitioner on the Commissioner's behalf.

CHAPTER 69 HISTORICAL INFORMATION RELATING TO CONCESSIONAL LEASES

Information relating to Concessional Crown Leases issued by EPSDD under the *Planning and Development Act 2007* is contained in Chapter 34 of this manual.

This Chapter was preserved as an informational tool for easy reference to restrictions on current Crown Leases in the ACT Land Title register that were issued by EPSDD under repealed Legislation (*Land (Planning and Environment) Act 1991*).

69.1 HISTORICALLY

EPSDD may grant leases to various organisations on a concessional basis.

The enabling provisions in the *Land (Planning and Environment) Act 1991* are -

- Section 163 - Leases to community organisations
- Section 164 - Leases for business and economic development
- Section 167 - Certain specified classes

69.2 LEASES TO COMMUNITY ORGANISATIONS

‘Community organisation’ at Section 163(1) *Land (Planning and Environment) Act 1991* means an owners corporation that -

- has as its principal purpose the provision of a Registry Instrument of assistance to persons living or working in the Territory;
- is not carried on for the pecuniary profit or gain of its members; and
- is not the holder of a Club licence under the *Liquor Act 2010*

A lease granted to a community organisation may be granted without charge or for a charge that is less than the market value of the lease.

Section 163(6) *Land (Planning and Environment) Act 1991* provides that a lease granted under this section shall not be transferred and that such a transfer shall be of no effect.

If a lease is subject to Section 163 EPSDD should flag the lease to that effect and the restriction will be noted on the title under “Restrictions, Conditions and Easements”.

69.3 LEASES FOR BUSINESS AND ECONOMIC DEVELOPMENT

A lease may be granted under this section for -

- the economic development of the Territory; or
- the development of business in the Territory.

Such leases may be granted for a charge that is less than the market value.

Section 164(5) *Land (Planning and Environment) Act 1991* provides that a lessee under a lease granted under this section shall not, for a period of five years from the grant date –

- assign or transfer the lease;
- sublet the whole or any part of the land; or
- part with possession of the lease,

unless the written consent of EPSDD is obtained. Any of the above transactions made without such consent are of no effect.

If a lease is subject to Section 164(5) *Land (Planning and Environment) Act 1991* EPSDD should flag the lease to that effect and the restriction will be noted in ACTLIS on the title under “Restrictions, Conditions and Easements”.

69.4 CERTAIN SPECIFIED CLASSES OF LEASES

EPSDD may grant leases of a specified class subject to specific lease conditions.

Section 167(5) *Land (Planning and Environment) Act 1991* provides that a lessee under a lease granted under this section shall not -

- assign or transfer the lease;
- sublet the whole or any part of the land; or
- part with possession of the lease,

unless the written consent of EPSDD is obtained or endorsed on the relevant document. Any of the above transactions made without such consent are of no effect.

If a lease is subject to Section 167(5) *Land (Planning and Environment) Act 1991* EPSDD should flag the lease to that effect and the restriction will be noted in ACTLIS on the title under “Restrictions, Conditions and Easements”.

CHAPTER 70 ADMINISTRATIVE INTERESTS

Part 8A of the Land Titles Act 1925 (the Act) provides that the Registrar-General may keep a record of administrative interests on the Land Titles Register.

Title searches and historic searches performed by staff and clients of the Land Titles Unit will contain additional information about administrative interests.

70.1 WHAT IS AN ADMINISTRATIVE INTEREST?

An administrative interest is a decision made by an authorised entity in relation to the use of land that may affect a decision of a person proposing to deal with that land. It does not include an interest in land that may be registered under another part of the Act.

Where an authorised entity may or must give notice to the Registrar-General of an administrative interest, the Registrar-General may include the information on the land titles register.

70.2 AUTHORISED ENTITIES FOR ADMINISTRATIVE INTERESTS

Authorised entities include:

- the Registrar-General
- the Territory
- a territory authority
- an entity prescribed by regulation, and
- an employee of one of the above.

The information is automatically uploaded each morning to the land titles system ACTLIS, from data supplied by EPSDD the previous evening.

70.3 ADMINISTRATIVE INTERESTS IN REGISTRY INSTRUMENTATION FROM EPSDD

The information supplied by EPSDD will in the first instance relate to granted development applications and the data includes:

- reference number (DA number)
- type of interest
- lodgment date
- assessment track
- status
- status date, and
- description.

An example of the information for an administrative interest is:

Reference Number	Type	Lodgment Date	Assessment Track	Status	Status Date
201012345	Development application	1/2/2010	Merit track – minor notification	Approved	1/2/2010

Description

Single residential – new residence. Construction of a new residential dwelling with separate garage shed.

Title searches and historic searches will include contact details for EPSDD so that any concerns about the information can be resolved with EPSDD. The Land Titles Unit is not responsible for administrative interest's data and is not able to change the data or give advice on the data.

70.4 ADMINISTRATIVE INTERESTS DATA

The administrative interest data will only appear on a title search where a crown lease is registered over the parcel. Any administrative interest information supplied where the parcel does not have a registered lease over it will appear once a lease is registered.

The administrative interest's data will relate to decisions made by EPSDD on or after 1 February 2010.

Where the administrative interest relates to a unit, it will appear on a title search of that unit, and a title search of the common property for that unit plan. It will not appear on any other unit title searches over other units within the same unit plan.

Where an administrative interest exists on a parcel that is surrendered, the administrative interest data will only be carried forward to further leases where the parcel does not change. If the parcel identifier changes in any way as a result of a surrender, such as the consolidation of one or more blocks or the subdivision of a block into many blocks, any administrative interest information relating to the original parcel will not be carried forward to any new crown leases. Administrative interest information relating to surrendered parcels may be searched via an historic search.

70.5 PROTECTION FROM LIABILITY

Section 69D of the Act provides that neither the Registrar-General nor an authorised entity incurs liability for an omission, misstatement or inaccuracy in the administrative interest's information. This is provided the Registrar-General takes reasonable steps to bring this to the attention of people given access to the record of administrative interests.

Reasonable steps have been taken by including information on this protection from liability on each search undertaken in the footer and underneath the header for administrative interests and by including this information in the Practice Manual and on the website.