

28 February 2019

Certificates of title: the next evolution
Office of the Registrar General
McKell Building
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SYDNEY NSW 2000

By email to: ORG-admin@finance.nsw.gov.au

To whom it may concern

Submission on Certificates of Title: The Next Evolution

Introduction

Thank you for the opportunity to comment on the proposals for certificates of title in NSW.

About the MFAA

With over 13,500 members, the MFAA is Australia's leading professional association for the mortgage broking industry with membership covering mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. The stated purpose of the MFAA is to advance the interests of our members through leadership in advocacy, education and promotion. To achieve this aim, the MFAA promotes and advances the broker proposition to a range of external stakeholders including governments, regulators and consumers, and continues to demonstrate the commitment of MFAA professionals to the maintenance of the highest standards of education and development.

We are of course not practising lawyers and so our comments are limited to high level observations only.

pCTs, eCTs, or no eCts

We support the abolition of pCTs. A pCT is only of value to some mum and dad owners as a record of their ownership, but the vast majority of home owners never see or touch their pCT. These people will not miss pCTs and commercial operations will be facilitated by the removal of pCTs.

Record of registration

It would be greatly helpful if the output from all title offices in Australia upon registration of dealings was consistent.

The current arrangement is unsatisfactory because the outputs do not often provide the evidence mortgagees, or the trustee of securitisation programs, require of registration. This causes inefficiencies and, in some cases, additional costs.

The output from NSW does not show the mortgagee's name, and so is often considered insufficient by mortgagees. The output from Queensland, Victoria and South Australia is usually considered sufficient.

Consent to dealings

We have significant concern about dealings being permitted without the consent of the Control of the Right to Deal (CoRD) holder.

The exercise of mortgagee's powers may be delayed for a significant period while an application to remove any unauthorised dealing is processed. Even if an express solution is mandated (e.g. produce evidence of consent within seven days), a process of appeal or dispute as to facts may cause significant delays.

If it is decided to abandon consents, it is important that the law is amended to put it beyond argument that the CoRD holder is not on constructive or any other kind of notice of the unauthorised dealing unless the CoRD holder has consented to the dealing. This is particularly important to protect the priority of mortgagees for further advances, and to preserve the right to remove easements, covenants, and other dealings which may adversely affect the value of the land.

National uniformity

National uniformity of documents and procedures is highly desirable. Without national uniformity all the benefits of e-conveyancing will not be realised.

Retention of mortgage signed by mortgagor

Although not directly related to the discussion paper, we take this opportunity to mention our concern about section 74(3) of the *Transfer of Land Act 1958* (Vic) which provides that '*if a mortgage ceases to be retained by the mortgagee, the mortgage is no longer taken to be a mortgage or charge on the land and is void, and the mortgagee must discharge the mortgage as soon as practicable*'. Section 147(2) of the *Transfer of Land Act 1886* (SA) is less harsh but still of concern providing that '*The Registrar-General may cancel the registration of a mortgage that is executed solely by the mortgagee if the mortgagee is unable to produce, at the request of the Registrar General, the corresponding mortgage required to be retained by the mortgagee under section 128.*'

The loss of the mortgagor signed copy of the mortgage should not be automatically fatal to the mortgagee's interest. The issue of whether the mortgagee's interest should be set aside or maintained should be a matter of fact. We understand this is not an issue in NSW, but again seek national uniformity.

Verification of identity of mortgagor

The current practice of VOI being conducted by licensed brokers appears to be working well. We support the continuation of that regime.

Incidence of fraud

The consultation paper noted that the incidence of fraud may be higher in NSW but it is still low. We are concerned that past performance is no indication of the future. Changing times, increasing sophistication of criminals, and the immediacy of electronic transactions could bring increased fraud. This view influences our concerns regarding the need to retain CoRD consents.

Title Watch

The introduction of a system like Title Watch to alert owners and mortgagees is desirable.

The MFAA extends its thanks to the Registrar for the opportunity to respond to the Discussion Paper. Should the Registrar require further information to supplement this submission, please do not hesitate to contact me on (02) 8905 1301 or by emailing Mike.Felton@mfaa.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Felton', with a stylized flourish at the end.

Mike Felton
Chief Executive Officer
Mortgage & Finance Association of Australia