

SUBMISSION ON CERTIFICATES OF TITLE: THE NEXT EVOLUTION

Jon Denovan and Elise Ivory. 31 January 2019

Introduction

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

Dentons act for a large number financial institutions (including many ADIs) and property developers and as such is a heavy user of the conveyancing system. We have been actively involved in the development of e-conveyancing since the commencement of its development over a decade ago.

pCTs, eCTs, or no eCTs

It seems to us that the distinction in the consultation paper between the terms eCT and no eCT relates to whether CoRD or similar controls over lodging dealings is retained. We think it is useful to retain the term eCT irrespective of whether Model 2 or 3 is adopted because we presume that the register will continue to display an eCT similar to current practice.

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. We send with this submission a report on the different outputs from the various title offices.

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. Mortgagees that we act for either:

- accept a statement from their settlements agents/panel lawyers/settlements team specifying the mortgage number, title reference, and that there is no pCT;
- require a copy of the output from the titles office; or
- require a title search, if mortgagees do not consider the other output options as sufficient evidence of registration (which incurs additional search fees, which may be passed on to mortgagors if permitted under the loan agreement).

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 CoRD holder.

The solution that dealings can be set aside on application of the CoRD holder if the CoRD holder did not give consent to the lodging party for the disputed dealing holder creates too much risk. Dealings may remain on the register for many years before coming to the notice of the CoRD holder (and where the CoRD holder is a mortgagee, the mortgagor as well). To this extent the register will have been misleading during the intervening period.

Owner sales and the exercise of mortgagee's powers may be delayed for significant period while an application to remove the unauthorised dealing is processed. Even if an express solution is mandated

(eg 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.

An unauthorised subdivision or consolidation of titles could have material adverse effects and may be impossible to reverse in particular circumstances (eg improvements erected or demolished, zoning changes).

We understand that under the Victorian nomination regime, once a nomination form is lodged all documents lodged with Land Victoria will be registered regardless of whether they appeared on the Nomination Form. It is important that any consent can be specific or general to reflect the commercial intention of the consenting party. The Victorian regime should be amended.

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

Again, although not directly related to the discussion paper, we take this opportunity to mention concerns that have been raised about section 56C(1) of the *Real Property Act* and whether VOI must be undertaken before or after execution of the mortgage because the words '*ensure that the person who **executed** the mortgage*' implies that the VOI must be undertaken **after** the execution of the mortgage.

When we raised this with the Registrar previously, we were told that any action would await the decision in the relevant court case. Has this been resolved?

As you know, common practice (almost invariably) is for mortgage brokers or lenders to conduct VOI prior to loan approval and then take reasonable steps to ensure that the person who was VOI signs the mortgage.

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

Irrespective of the outcome of the consultation, the introduction of a system like Title Watch to alert owners and CoRD holders is desirable. This would be essential if CoRD holder consents is removed.

We think lodging a caveat or settlement notice is a cumbersome and expensive way to try to guard against unauthorised dealings.

Contacts

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What does a lodging party receive from the title offices after registration of a mortgage?

Jon Denovan and Rachel Walker

24 October 2017

The move to paperless titles means that mortgagees will not receive a paper certificate of title (**pCT**) evidencing the registration of their mortgage. This report specifies the outputs which are available when there is no pCT.

In the past, mortgagees have expected to hold a pCT as part of their loan/security packet. In future, mortgagees may either:

- accept a statement from their settlements agents/panel lawyers/settlements team specifying the mortgage number, title reference, and that there is no pCT;
- require a copy of the output from the titles office (see table below); or
- require a title search, if mortgagees do not consider the other output options as sufficient evidence of registration (which will incur additional search fees, which may be passed on to mortgagors if permitted under the loan agreement).

Mortgagees need to amend their settlement and documents storage procedures. Some funding arrangements (eg securitisation) may need amendment to reflect that there is no pCT.

Terms used in this report

- **CT Inquiry** is a free search available from the registry for NSW only – see Annexure 5 (for NSW).
- **eCT** means an electronic certificate of title (ie no paper title). In these circumstances, there is no title deed other than the version displayed on the titles office website.
- **pCT** means a paper certificate of title.
- **PEXA confirmation** is displayed under the Document Summary in the PEXA workspace after settlement through PEXA – see Annexure 6. It is not as useful as an RCS or CT Inquiry because it is not saveable as a PDF and is not a document confirming registration from the registry.
- **Registration Confirmation Statement (RCS)** is a report issued by the registry after a dealing is registered – see an example at Annexure 1 (for Qld), Annexure 2 (for Vic), Annexure 3 (for SA).
- **Registration Notice** is a report issued by the NSW LPI after a dealing is registered – see Annexure 7 for NSW. It is not as useful as a RCS because it does not contain the mortgagee's name, and so mortgagee's may be concerned that the registration was in some way defective (eg wrong mortgagee recorded). We have asked for the mortgagee's name to be added to this notice, but that may not occur for some time or at all.
- **Report re Completed Dealings that did not cause a Duplicate Title to issue** is a report issued by Landgate - see Annexure 4 for WA. The problem with this report is that there is a notification on the bottom which says it can't be relied on, which means many mortgagees will not consider this sufficient evidence of registration. We have asked for this qualification to be removed or modified, but that may not occur for some time or at all.

Jurisdiction	Lodge in paper	Lodge in PEXA
	Receive from titles office	Receive from titles office
Qld	RCS (pCTs have not usually been obtained for many years)	RCS
NSW	<p>eCT for ADIs, pCT for other mortgagees (until approximately October 2018).</p> <p>In both cases, a Registration Notice issues (which does not contain mortgagee's name –see above).</p>	<p>As for paper lodgements.</p> <p>Where an eCT issues, the mortgagee becomes owner of the CoRD being the Control of the Right to Deal in respect of the relevant eCT.</p> <p>CT inquiry available.</p>
Vic	<p>pCT; or</p> <p>eCT – always an eCT for the big four banks and their brands eg SGB, BankSA, Bank of Melbourne, as well as Auswide Bank, Bendigo and Adelaide Bank, Rural Bank Limited and Teachers Mutual Bank.</p> <p>For eCTs, RCS</p>	<p>pCT if pCT is requested. ADIs with converted titles can still request pCT.</p> <p>For eCTs, RCS</p>
SA	RCS. All pCTs have been cancelled.	RCS
WA	<p>pCT if pCT is requested. Mortgagees rarely request pCTs</p> <p>Report re Completed Dealings that did not cause a Duplicate Title to issue re eCT - see above why some mortgagees do not find this acceptable evidence of registration. We are lobbying Langate to change this.</p>	<p>pCT if pCT already exists and pCT is requested.</p> <p>PEXA confirmation. We are lobbying Langate to issue an RCS or an amended Report re Completed Dealings.</p>

REGISTRATION CONFIRMATION STATEMENT

DEPT OF NATURAL RESOURCES AND MINES, QUEENSLAND

Title Reference : [REDACTED]

This is the current status of the title as at 11:39 on 21/01/2017

REGISTERED OWNER

Dealing No: [REDACTED]

[REDACTED]
[REDACTED]

JOINT TENANTS

ESTATE AND LAND

Estate in Fee Simple

LOT [REDACTED]
Local Government: [REDACTED]

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
Deed of Grant No. [REDACTED]
Deed of Grant No. [REDACTED]
2. MORTGAGE No [REDACTED]
[REDACTED]

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

DEALINGS REGISTERED

[REDACTED] RELEASE [REDACTED]
[REDACTED] MORTGAGE [REDACTED]

Caution - Charges do not necessarily appear in order of priority

** End of Confirmation Statement **

EV Dann

Registrar of Titles and Registrar of Water Allocations

Lodgement No: [REDACTED]
Office: [REDACTED]
Email: [REDACTED]
GADENS LAWYERS
GPO BOX 129
BRISBANE QLD
CONTACT: [REDACTED]

Department of Environment, Land, Water and Planning

Lodgement Summary

Produced: 17/03/2017 04:01:42 PM

Agent :
Customer :
Address :

Lodgement No: 3436873
Total Lodging Fees: 104.30
Lodgement Date: 17/03/2017

REGISTERED DEALINGS

Dealing Lodging Fee	Dealing Type Nom Fee	First Folio Corr Fee	Reference Total Fee
104.30	MORTGAGE 0.00	0.00	104.30

104.30 0.00 0.00 104.30

Total Fees:

Number of Dealings
Registered : 1
Unregistered : 0
Refused : 0
Presented : 1

LAND VICTORIA, 570 Bourke Street Melbourne Victoria 3000
GPO Box 527 Melbourne VIC 3001, DX 250639
Telephone: (03) 8636 2010 Facsimile: 8636 2999
ABN 90 719 052 204

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REGISTRATION CONFIRMATION STATEMENT

Produced: 17/03/2017 09:57:27 AM

VOLUME [REDACTED] FOLIO [REDACTED]

LAND DESCRIPTION

Lot [REDACTED] on Plan of Subdivision [REDACTED]
PARENT TITLE Volume [REDACTED] Folio [REDACTED]
Created by instrument [REDACTED]

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE

MORTGAGE

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan or imaged folio set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE LP014694 FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER

CONV PCT & NOM ECT TO LC
MORTGAGE

STATUS

Completed
Registered

DATE

21/02/2017
17/03/2017

Additional information:

Street Address: [REDACTED]

ADMINISTRATIVE NOTICES

NIL

ECT Control [REDACTED] GADENS LAWYERS
Effective from 17/03/2017

27 March 2017

CONFIRMATION OF REGISTRATION NOTICE

The following dealings have been registered -

Dealing(s): DISCHARGE OF MORTGAGE [REDACTED]

MORTGAGE [REDACTED]

Title(s): CT [REDACTED]

Registration Date: 27/03/2017

Customer Reference:

Confirmations of registration are attached on the following page(s).



Brenton Pike

Registrar-General

Lands Titles Office



CONFIRMATION OF REGISTRATION

Certificate of Title - Volume [REDACTED] Folio [REDACTED]

Estate Type

FEE SIMPLE

Registered Proprietor(s)

[REDACTED]

[REDACTED]

OF [REDACTED]
AS JOINT TENANTS

Description of Land

ALLOTMENT [REDACTED] DEPOSITED PLAN [REDACTED]
IN THE AREA NAMED [REDACTED]
[REDACTED]

Easements

NIL

Schedule of Dealings

Dealing Number	Description
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[REDACTED]	[REDACTED]
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Registrar-General

Lands Titles Office





Western Australian Land Information Authority ABN 86 574 793 858

Completed dealings that did not cause a Duplicate Title to issue

Agent : 132 : DENTONS

MORTGAGEE

Volume / Folio	Registered Proprietors
	Name
	Name

Dealing	Lodged	Case	Reg'd	Description
	27/02/2017		28/02/2017	Discharge of Mortgage
	27/02/2017		28/02/2017	Mortgage

Volume / Folio	Registered Proprietors
	Name
	Name
	Name

Dealing	Lodged	Case	Reg'd	Description
	27/02/2017		28/02/2017	Discharge of Mortgage
	27/02/2017		28/02/2017	Mortgage

Report Generated : Wednesday 01 March 2017 05:31:14

- This is not a certificate of title or a search of a certificate of title and should not be relied on. Landgate is not liable for any loss whatsoever arising out of any error or omission in the information contained in this statement.
 - If you have any questions in regard to this report please contact your Landgate Account Manager or email servicemanagers@landgate.wa.gov.au

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - CT INQUIRY

FOLIO: [REDACTED]

Status: CoRD ISSUED

Edition No: 6 Date Issued: 3/4/2017 Status Date: 3/4/2017

Last Delivered To: CoRD [REDACTED]

Date Delivered: 3/4/2017 Issued By: [REDACTED]

*** END OF SEARCH ***

PRINTED ON 4/4/2017

Workspace ID

Workspace Status Completed

Last Updated 02/03/2017 11:35 AWST

Documents

No documents available to create

Document Type	Document Status	Document Verification Results	Signatures	Actions
Lodgement Instructions	Lodged		1 of 1	
Mortgage	Registered		1 of 1	

Summary

Document

Signatory

Date Signed

Land Title References

Dealing No

Status Registered

Status Last Modified 02/03/2017 11:32 AWST

Property Addresses

Mortgagors

0 Error(s)

0 Warning(s)

0 Information(s)



Land & Property
Information

A division of the Department of Finance & Services

ABN: 23 519 493 925

GPO Box 15

Sydney NSW 2000

DX 17 SYDNEY

P: 1300 052 637

Date:

REGISTRATION NOTICE

THE UNDERMENTIONED DEALING(S) WERE REGISTERED/RECORDED ON

DEALING NUMBERS:

LODGMET INVOICE NUMBER:

YOUR REFERENCE:

TITLE REFERENCE(S) :

REGISTRAR GENERAL