

REGISTRATION SERVICES

Customer Information Bulletin

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1. STOPPED DOCUMENT PROCEDURES TO DEAL WITH STATUTORY DECLARATIONS MADE IN 2006 UNDER THE EVIDENCE ACT 1906

- 1.1. Any statutory declarations made under the previous Section 106 of the Evidence Act 1906 which are dated in 2006 will until further notice receive a no fee requisition.
- 1.2. If the lodging party does not reply or attempt to comply with the requisition within 14 days then the dealing will be rejected.
- 1.3. If lodging party is able to provide an Oaths, Affidavits and Statutory Declarations Act (OASD) Act statutory declaration then the dealing may proceed.
- 1.4. If the lodging party has replied, but is however unable to provide an Oaths, Affidavits and Statutory Declarations Act (OASD) Act statutory declaration, then the customer will be sent the following requisition.

Requisition

Please provide a detailed submission as to why the dealing should be allowed to proceed on the basis of an invalid statutory declaration.

- 1.5. If the lodging party does not comply with the requisition within 14 days then the dealing will be rejected.
- 1.6. If the lodging party provides a submission then the dealing will be referred to a legal officer in the legal services branch to determine how to proceed with the dealing.

2. BOUNDARIES ON MULTITIER STRATA PLANS - NOTICE TO SURVEYORS T1/2006

The following is an extract from item 8.50 of the Strata Titles Manual 2001 (Edition 2):

“If it is intended to keep the structure as common property or if it is a high rise building the following wording must be used:

“The boundaries of the lots or parts of the lots which are buildings shown on the strata plan are the inner surfaces of the walls, the upper surface of the floor and the under surface of the ceiling as provided by section 3 (2) (a) of the *Strata Titles Act 1985*”,

and for part lots that are external to the building a wording similar to the following should be used:

“the stratum of the part lots external to the buildings extends between 5 metres below and 10 metres above the upper surface level of the lowest ground floor of the building located on each respective lot”.

Because of the many variations in strata schemes a surveyor may find it necessary to vary the stratum wordings to accommodate the client’s requirements. The above descriptions may not be appropriate so section 3(2)(b) of the STA may need to be used. Surveyors should use their professional judgment and where appropriate obtain legal advice to select the appropriate wording so there is no confusion as to the boundaries.”

In recent years there has been a trend for some surveyors to place the boundaries in multi-tier strata schemes on the outside of the building walls using section 3(2)(b) of the *Strata Titles Act 1985*. Concerns have been expressed by the former Strata Titles Referee, members of the public and the strata management industry about this practice. This practice creates several unacceptable maintenance problems for future owners. The exterior wall will have multiple owners, including common property between floors. Each owner is responsible for the maintenance of that section of the wall that is part of their lot instead of being part of the collective maintenance obligations of the strata company. Many purchasers will not be aware of this additional responsibility and it is likely to lead to conflict. There is a possibility that varying maintenance regimes will lead to the structural soundness of the building being compromised. Also there can be conflicts about where one boundary ends and another (or common property) starts. This could complicate insurance requirements.

Following consultations between the Community Titles Advisory Committee (CTAC), the Department for Planning and Infrastructure (DPI) and the Department of Land Information (DLI) it was resolved to address the situation by:

1. The Western Australian Planning Commission (WAPC) introducing a standard planning condition on the approvals of multi-tiered strata schemes that requires the boundaries to conform with section 3(2)(a) of the STA.

2. DLI amending the STA.

DPI has now advised DLI that the WAPC have approved the introduction the above standard planning condition. Note also that DLI is in the process of introducing a new regulation that requires the boundaries of any cubic space within a building in a strata scheme that is not a single tier strata scheme to be consistent with section 3(2)(a) of the STA. This new regulation will apply to all multi-tier strata schemes, including schemes of 5 lots or less that would not necessarily require WAPC approval. It is expected that this regulation will be gazetted in the near future.

The Strata Plan Auditors at DLI will now check that every multi-tiered strata scheme conforms to the above requirements. Where surveyors already have plans prepared that do not conform, surveyors need to advise DLI by providing an explanation of the situation within the Surveyors Report and where appropriate attaching a copy of the planning conditions for the subdivision or development approval.

3. REPRESENTATION OF LAND INTERESTS IN THE LAND REGISTER

Due to customer feedback since Customer Information Bulletin 150 (CIB 150) was issued on 1 June 2005, there appears to be a need to provide customers with more explanation about the move by DLI towards requiring (with some exceptions) spatial interests in land to be depicted in Deposited Plans and not as sketches in documents.

Spatial interests are defined here as interests that affect only part of a lot. When all of the land in a certificate of title, or when all of a lot, is being affected by a registrable interest the description of the land will be in words. When part of the land in a title, being part of a lot, is being affected by a registrable interest the spatial extent of that interest is to be defined in a deposited plan.

CIB 150 gave some background to the issue and described the new process of depicting spatial interests in land in a deposited plan. These changes were to remove sketches that were contained in documents and place the depiction of the spatial interests in the land into a deposited plan certified by a licensed surveyor.

The State government is committed to a register of interests within a Shared Land Information Platform (SLIP). For this initiative to be effective the spatial extent of such interests can't reside as sketches within paper documents. Since all deposited plans are accompanied by a digital record of the spatial definitions shown on the plan, this process enables automatic updates to the spatial database known as SmartPlan and hence available to SLIP.

In 1997 the Registration Services Branch of the Department of Land Information (DLI) commenced on a strategic direction of converting the paper land title register into a digital title database now known as SmartRegister. The reasons for this approach were to:

1. position DLI to take advantage of digital technology;
2. increase DLI's capacity to deal with higher levels of business;

3. ensure that spatial interests are accurately and reliably identified in Deposited Plans; and
4. position DLI for electronic lodgement of documents and plans and ultimately electronic conveyancing.

Additionally, the move to a digital title and a text based database has also required the removal of the sketch of the land from the title, making the deposited plan the primary source of information about those spatial interests in land.

These initiatives have meant that the previous process of depicting spatial interests in land as sketches in instruments or documents is not supported in the new digital environment.

Another important reason for moving to the digital approach for both titles and plans is that many sketches contained in documents have proved to be of "variable" quality to the point where it is very difficult for the Registrar of Titles to accurately reflect the spatial interests registered against the title. This in turn, in some cases, leads to uncertainty about the extent of the spatial interest. Deposited plans undergo a validation process that ensures the spatial definition of land parcels and spatial interests is reliable.

The requirement for a licensed surveyor to certify the deposited plans is considered essential to a process that produces an error free representation of the interests in the Register without conflict between interpretations.

In most cases, current practices as decided by the client for the capture of the spatial extent of these interests can continue, recognising that the cost of that work should relate to the value of the asset being protected and any risk associated with possible minor ground variations.

Techniques currently used include:

- Scaling and/or digitising from topographic maps, ortho photos, aerial photography or satellite imagery, eg tree plantations;
- GPS surveys with hand held or vehicle mounted equipment, eg CALM estate.
- Limited/fully marked surveys by a licensed surveyor, eg major infrastructure corridors for gas pipelines, transmission lines.

The role of the licensed surveyor will be to ensure that the data captured can be represented accurately on the plan and confirm all relevant land titling aspects. It will include advice to the client on the likely ground accuracies to be expected from the different capture methods.

It is recognised that the new requirements may increase the costs of registering spatial interests. Due to the new certification requirements, it is possible that surveyors may charge more for preparing a DP than a “sketch”, and there is a lodgement fee of \$124 for an “interest only” DP. For agencies that previously prepared their own sketches, engaging a licensed surveyor will be an additional cost. DLI is working with surveyors to ensure that the new process is cost effective while satisfying the requirements of spatial and legal integrity.

Deposited plans to support the registration of spatial interests have been used by Western Power and Water Corporation for more than four years, since the concept of “easement only” plans was introduced in 2001. The Forest Products Commission has been using DPs to support the registration of interests under the Forest Products Act 2000 since March 2005. CALM officers have been involved in both the data capture of the spatial extents and the drafting of the plans. DPs have also been used for the registration of interests under the Tree Plantation Agreements Act 2003, and will be used for the registration of interests under the Carbon Rights Act 2003.

A major outcome of the move towards the digital title and the representation of spatial interests in land on deposited plans and in DLI databases is to enable the faster and more accurate distribution of land title information to customers by electronic means, including online enquiry and delivery systems.

In conclusion, it is considered that the considerable benefits as outlined in this paper more than compensate for the extra costs that may be associated in some cases concerning the registration of spatial interests in land. This is part of a whole of government approach to improving the quality and accessibility of land information and contributes significantly to each of DLI’s strategic goals.

4. BRINGING FORWARD ANOMALOUS INTERESTS ON PLANS - NOTICE TO SURVEYORS T2/2006

This notice supersedes Notice to Surveyors T2/2002 and is to be contained within Section 14.20 of the forthcoming Survey and Plan Practice Manual Version 4.0 dated January 2006.

Where surveyors encounter anomalies when bringing forward interests of a spatial nature (primarily easements and covenants) onto new deposited plans and survey-strata plans, the following practices need to be followed.

The anomalous situations that can occur include those where there are discrepancies/omissions in dimensions in the;

- original document creating the interest,
- graphic(s) on the certificate(s) of title,
- original document with the same dimensional discrepancies/omissions in the title graphic(s),
- original document with different dimensional discrepancies /omissions in the title graphic(s).



A further situation that can occur is where a modern survey has determined more accurate dimensions for boundaries of parcels and these dimensions conflict with the dimensions for interests intersecting with or related to parcel boundaries depicted in sketches shown in original documents and/or paper title graphics.

For a more detailed look at examples of errors detected and proposed processes that DLI will use to resolve them see Notice to Surveyors T2/2006.

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