

1993—No. 435

REAL PROPERTY ACT 1900—REGULATION

(Real Property Regulation 1993)

NEW SOUTH WALES



[Published in Gazette No. 94 of 27 August 1993]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Real Property Act 1900, has been pleased to make the Regulation set forth hereunder.

GEORGE SOURIS, M.P.,
Minister for Land and Water Conservation.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Real Property Regulation 1993.

Commencement

2. This Regulation commences on 1 September 1993.

Definitions

3. In this Regulation:

“**approved**” means approved for the time being by the Registrar-General ;

“**the Act**” means the Real Property Act 1900.

PART 2—LODGMENT OF DEALINGS AND CAVEATS**Division 1—Dealings and caveats****Lodgment of dealings and caveats**

4 (1) A dealing or caveat that is intended to be lodged at the office of the Registrar-General must be produced by hand to the proper officer at that office.

(2) The dealing or caveat must be accompanied by the relevant fee set out in Schedule 5.

Copies of certain dealings to be lodged

5. (1) This clause applies to the following dealings:

- (a) a mortgage, charge or lease;
- (b) a memorandum indorsed on, or annexed to, a mortgage in accordance with section 91 of the Conveyancing Act 1919;
- (c) a memorandum postponing a mortgage to one or more other mortgages in accordance with section 56A of the Real Property Act 1900.

(2) A dealing to which this clause applies that is intended to be lodged at the office of the Registrar-General must be accompanied by:

- (a) one complete copy of the dealing; or
- (b) in the case of a memorandum referred to in subclause (1) (c), as many complete copies of the memorandum as there are mortgages affected by the memorandum,

each bearing the original signature or seal of the person by whom the original dealing was executed.

Certain instruments to comply with Schedule 1 requirements

6. (1) This clause applies to the following instruments:

- (a) an application or dealing that is required by the Act or any other Act to be in an approved form;
- (b) a caveat referred to in section 74B or 74F of the Act;
- (c) a declaration of trust (or a duplicate or an attested copy) lodged in accordance with section 82 of the Act.

(2) An instrument to which this clause applies (being an instrument that is intended to be lodged at the office of the Registrar-General) must comply with the requirements set out in Schedule 1.

Joint tenancy or tenancy in common to be stated

7. (1) The following dealings must state whether the persons concerned take as joint tenants or as tenants in common:

- (a) an application by 2 or more persons to be registered as proprietors of land;
- (b) a transfer, mortgage, charge or lease in favour of 2 or more persons,

and, if they take as tenants in common, the shares in which they take.

(2) If the persons take as tenants in common, and if the shares in which they take are expressed as fractions, the shares must be stated by means of fractions having a common denominator (for example: “A takes as to five-tenths, B takes as to three-tenths and C takes as to two-tenths”).

Caveats: particulars of estate or interest claimed

8. (1) This clause applies to the following caveats:

- (a) a caveat lodged under section 74B of the Act against a primary application;
- (b) a caveat lodged under section 74F of the Act against a dealing, possessory application or delimitation plan.

(2) A caveat to which this clause applies must specify the particulars set out in Schedule 2 in relation to the estate or interest to which a caveator claims to be entitled.

Caveats applying to part of land only: description of part

9. (1) This clause applies to a caveat lodged under section 74F of the Act against a dealing, possessory application or delimitation plan.

(2) A caveat to which this clause applies that relates to part only of the land described in a folio of the Register or a current lease must describe the part in accordance with the requirements of Schedule 3.

Relodgment of dealings

10. For the purposes of section 36 (6) (a) of the Act, a dealing must be relodged by its being produced by hand to the proper officer at the office of the Registrar-General.

Division 2—Annexure of plans to dealings or caveats**Annexure of plans to dealings or caveats**

11. (1) A plan must not be annexed to or endorsed on a dealing or caveat lodged in the office of the Registrar-General unless the Registrar-General so approves.

(2) A plan that is annexed to or endorsed on a dealing or caveat in accordance with such an approval must comply with the requirements of Schedule 4.

PART 3—SEARCHES**Official searches**

12. (1) A requisition for an official search of the Register must be made on an approved form.

(2) A requisition is to be limited to parcels of land held by the one proprietor or jointly held by 2 or more proprietors.

(3) A requisition may be lodged personally, by post, by facsimile or by other approved means.

(4) The relevant fee set out in Schedule 5 must, if required by the Registrar-General, be paid before delivery of the office copy of a certificate of the result of a search.

(5) If a requisition is withdrawn after the commencement but before completion of a search, such fees as the Registrar-General determines having regard to the work done up to the time of withdrawal must be paid.

(6) The Registrar-General may require an interim payment of fees before completion of a search.

Public searches

13. For the purposes of section 96B of the Act:

- (a) the prescribed times at which information in the Register is to be made available are 8.30 a.m. to 4.00 p.m. each day (other than a Saturday, Sunday or public holiday); and
- (b) the prescribed manner in which information in the
be made available to an applicant is:
 - (i) by furnishing a copy of the information to the applicant; or

- (ii) in the case of information contained in a computer folio of the Register, by furnishing a certificate to the applicant in accordance with section 96D, 96F or 96G of the Act; or
 - (iii) in the case of information contained in a bound volume to which the public has access, by permitting the applicant to inspect the bound volume; and
- (c) the prescribed fee is the relevant fee set out in Schedule 5.

PART 4—MISCELLANEOUS

Fees payable to the Registrar-General

14. (1) The fees specified opposite the matters listed in Schedule 5 are payable to the Registrar-General in respect of those matters.

(2) A fee is payable before the service to which the fee relates is provided or at such time and in accordance with such conditions as the Registrar-General may agree with the person paying the fee.

Statement to accompany notice to Public Trustee of intention to apply for foreclosure order

15. A statement accompanying a notice given to the Public Trustee under section 61 (2A) of the Act must contain the following particulars:

- (a) a statement that the notice is given pursuant to section 61 (2A) of the Act;
- (b) the full name and last known address of the mortgagor concerned and the date and place of his or her death;
- (c) the amount due and owing under the mortgage at the date the notice is given, or at such other date as may be specified in the notice.

Service of notices on caveator: prescribed person

16. For the purposes of section 74N (1) (d) of the Act, Australian Document Exchange Pty Ltd is a prescribed person.

Service of notices relating to lease where proprietor of lease is bankrupt

17. For the purposes of section 91 (2) and (5) of the Act, the prescribed manner of serving a notice is by serving it in the manner provided in section 170 of the Conveyancing Act 1919.

Repeal

18. (1) The Real Property Act Regulations 1970 are repealed.

(2) Any act, matter or thing that, immediately before the commencement of this Regulation, had effect under the Real Property Act Regulations 1970 is taken to have effect under this Regulation.

SCHEDULE 1—REQUIREMENTS FOR DEALINGS

(Cl. 6)

- (1) The text must be clearly printed or written across the width of each sheet of paper used.
- (2) The sheets used must have clear margins:
 - (a) on the face of the first sheet—of not less than 25mm at the top and 10mm on each side and at the bottom; and
 - (b) on the reverse side of the first sheet and on both sides of each subsequent sheet—of not less than 10mm on each side and at the top and bottom.
- (3) The paper used must be:
 - (a) white and free from discolouration and blemishes; and
 - (b) of not less substance than 105 grams per square metre or, in the case of an annexure where only one side of the paper is used, of not less substance than 80 grams per square metre; and
 - (c) of not less bursting strength than 240 kilopascals; and
 - (d) 297mm in length by 210mm in width (standard A4),or such other paper as is approved.
- (4) Typewriting or printing may be used if it is at least 10 point (1.8mm) in size and is clear and legible and in dense black ink or dense dark blue ink. The lines must not overlap. A carbon copy, or a copy in which the typewritten characters blur or spread or are liable to mark or damage an adjacent sheet, will not be accepted.
- (5) Handwriting and any imprint of a seal must be clear and legible and in dense black ink or dense dark blue ink.
- (6) Typewriting, printing, writing or seals must not extend into a margin.
- (7) Typewriting, printing, writing or signatures must not extend into any seal.
- (8) Alterations must be made by striking through the matter intended to be altered or by the use of typewriter automatic correcting devices and not by rubbing, scraping or cutting the surface of the paper or by using correction fluid. An alteration must be initialled or verified by the parties to the dealing.
- (9) Signatures or initials noticing alterations by interlineation or the striking through of matter must be placed in the left-hand margin as near as practicable to the alteration.

- (10) The pages of an annexure to a dealing must be numbered sequentially (starting at “1”) and the annexure:
- (a) must be identified (on the annexure itself) as an annexure to the dealing; and
 - (b) must be signed, on the first and last pages, by the parties to the dealing (or, if a party is a body corporate, by a person who has attested the affixing of the seal of the body corporate) and attested; and
 - (c) must be referred to in the body of the dealing.
- (11) An additional or inserted sheet intended to form part of a dealing:
- (a) must be attached to the dealing in a manner acceptable to the Registrar-General; and
 - (b) if it contains matter that would normally be inserted in an approved form, must be signed by the parties to the dealing (or, if a party is a body corporate, signed by a person who has attested the affixing of the seal of the body corporate) and attested.
- (12) If, apart from any matter contained in an additional or inserted sheet, it is not readily apparent from the body of a dealing that the additional or inserted matter is intended to form part of the dealing:
- (a) a note referring to the additional or inserted matter (or covenants by number where appropriate) must be added to the body of the dealing; and
 - (b) a note identifying the additional or inserted matter must be added to the additional or inserted sheet containing that matter.
- (13) Annexures, additional sheets or inserted sheets may be prepared by means of a photographic or similar approved process and, if so prepared:
- (a) must comply with paragraphs (1)–(9); and
 - (b) must contain only printing which is permanent and legible with a dense black image free from excessive background; and
 - (c) must be so prepared that the process does not affect the quality of the paper.
- (14) Dimensions referred to in a dealing:
- (a) in the case of dimensions of length, must be expressed in metres and not in any other unit of measurement of length (whether or not related to the metre); and
 - (b) in the case of dimensions of area, must be expressed in square metres, hectares or square kilometres and not in any other unit of measurement of area (whether or not related to the square metre, hectare or square kilometre).

SCHEDULE 2—PARTICULARS OF ESTATE OR INTEREST TO BE SPECIFIED IN CAVEATS

(Cl. 8)

- (1) Particulars of the nature of the estate or interest in land claimed by the caveator.
- (2) The facts on which the claim is founded, including (if appropriate) a statement as to the manner in which the estate or interest claimed is derived from the registered proprietor of the estate or interest or the primary or possessory applicant against which the caveat is to operate.
- (3) If the caveator's claim is based (wholly or in part) on the terms of a written agreement or other instrument, particulars of the nature and date of that agreement or instrument and the parties to it.
- (4) If the caveator claims as mortgagee, chargee or covenant chargee, a statement of the amount (if readily ascertainable) of the debt or other sum of money charged on the land (or, if the amount is not readily ascertainable, the nature of the debt, annuity, rent-charge or other charge secured on the land).
- (5) If the caveator claims as lessee for a term or for a renewal or extension of a term, particulars of the duration of the term or renewed or extended term and its commencing date (and, if the agreement for the term, renewal or extension includes an option for the renewal or extension of the term or to purchase the reversion, a statement to the appropriate effect).
- (6) If the caveator claims an easement, particulars of the land or authority intended to have the benefit of the easement.
- (7) If the caveator claims a profit à prendre, particulars of the land or authority intended to have the benefit of the profit à prendre.
- (8) If the caveator claims a right to the benefit of a restriction on the use of land, particulars of the land or authority intended to have the benefit of the restriction.
- (9) If the caveator claims a right to the benefit of a positive covenant, particulars of the land or authority intended to have the benefit of the covenant.
- (10) It is not necessary to specify:
 - (a) whether the estate or interest claimed is legal or equitable; or
 - (b) the quantum of the estate or interest claimed (except as provided in paragraphs (4) and (5)); or
 - (c) how the estate or interest claimed ranks in priority with other estates and interests in the land.

SCHEDULE 3—DESCRIPTION IN CAVEATS OF PART OF LAND

(Cl. 9)

- (1) Except where paragraph (2), (3) or (5) applies, the description of the part must refer to the part:
 - (a) as a lot or portion in a current plan as defined in section 327AA of the Local Government Act 1919; or
 - (b) as a proposed lot in a plan lodged for registration or recording:
 - (i) under Division 3 of Part 23 of the Conveyancing Act 1919; or

- (ii) under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986; or
 - (iii) under the Community Land Development Act 1989, but only if the plan has not been so registered or recorded at the time of lodgment of the caveat; or
 - (c) if the Registrar-General so approves, as the land shown in a plan annexed to or endorsed on the caveat, which plan must contain sufficient information to establish, to the satisfaction of the Registrar-General, the relationship of the plan to the boundaries of the land comprised in the folio of the Register or the current lease to which the caveat relates.
- (2) If the claim of the caveator is in respect of:
- (a) premises within an existing building; or
 - (b) a proposed lot in a proposed strata plan or other proposed plan of subdivision which, at the time of lodgment of the caveat, has not been lodged with the Registrar-General for registration or recording; or
 - (c) a parcel for which description in accordance with paragraph (1) is inappropriate,
- the description of the part must be in such other form or manner as will enable the Registrar-General to identify the part to which the claim relates.
- (3) If the claim of the caveator is in respect of an easement over part of the land comprised in a folio of the Register or a current lease, the description must identify the site of the easement:
- (a) if the Registrar-General approves, as the land shown in a plan annexed to or endorsed on the caveat; or
 - (b) as the land shown in a plan which defines the site of the easement and which is registered or recorded in the office of the Registrar-General.
- (4) It is not necessary for a plan referred to in paragraph (3) to define precisely the site of an easement intended to be created in respect of an existing tunnel, pipe, conduit, wire or other similar object which is underground, or is within or beneath an existing building, so long as the plan shows the approximate position of the easement.
- (5) If mines or minerals constitute the part of the land comprised in the folio of the Register or current lease to which the claim of the caveator relates, it is sufficient to specify or describe the mines or minerals concerned.

SCHEDULE 4— REQUIREMENTS FOR PLANS ANNEXED TO OR ENDORSED ON DEALING OR CAVEATS

(Cl. 11)

- (1) A plan must identify the land to which it relates.
- (2) A plan must be drawn at a reduction ratio which allows all details and notation to be clearly shown.
- (3) A plan must contain the following particulars:
 - (a) a statement of the reduction ratio at which the plan is drawn;
 - (b) the north point (which must be directed upwards) and the meridian to which it relates;

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- (c) complete dimensions (including area) of every parcel comprised in the plan;
 - (d) sufficient information to define any proposed easement and its relationship to the boundaries of any affected parcel;
 - (e) if prepared by a surveyor who is registered under the Surveyors Act 1929, the signature of the surveyor;
 - (f) the date of preparation of the plan.
- (4) The lengths shown on a plan must be expressed in metres and not in any other unit of measurement of length (whether or not related to the metre), without the use of any symbol or abbreviation to represent the metre as the unit of measurement employed.
- (5) The areas shown on a plan:
- (a) if less than one hectare—must be expressed in square metres; or
 - (b) if not less than one hectare but less than 10 000 hectares—must be expressed in hectares; or
 - (c) if 10 000 hectares or more—must be expressed in square kilometres, and not in any other unit of measurement of area (whether or not related to the square metre, hectare or square kilometre).
- (6) The expression of an area on a plan must be accompanied by the following symbols:
- m² (for square metres);
 - ha (for hectares);
 - km² (for square kilometres).
- (7) The reduction ratio to which a plan is drawn must be one of the following ratios (or multiples of powers of 10 of those ratios):
- | | | |
|-------|-------|-------|
| 1:50 | 1:200 | 1:600 |
| 1:100 | 1:250 | 1:800 |
| 1:125 | 1:300 | 1:900 |
| 1:150 | 1:400 | |
- (8) Unless the Registrar-General otherwise approves, all words, letters, figures and symbols appearing on a plan:
- (a) must be shown in capital letters (except as provided by paragraph (6)); and
 - (b) must be open in formation and construction; and
 - (c) must be drawn in an upright style.
- (9) If lodged as an annexure, a plan must be neatly and clearly drawn without colour or edging:
- (a) on the dull side of tracing linen of good quality in a dense black waterproof ink; or
 - (b) on a matt surface of polyester film having a thickness of 0.05–0.15mm in a dense black plastic ink; or
 - (c) on paper of not less substance than 105 grams per square metre and of not less bursting strength than 240 kilopascals in a dense black waterproof ink.

- (10) The tracing linen, polyester film or paper must be at least 297mm in length by 210mm in width (standard A4) and have clear margins of at least 10mm on each side and at the top and bottom.
- (11) Where the original plan is not available, an annexed plan may be a reproduction of the original plan if the reproduced matter consists of a permanent dense black image with sharp contrast and is free from background discolouration.
- (12) If a plan is endorsed on a dealing or caveat, it must be drawn in such a manner that the lines and notation of the plan do not obscure or interfere with any writing or printing on the dealing or caveat.

SCHEDULE 5—FEES

(Cl. 14)

Copies

	\$
1. On lodgment of an application for a certified copy of a registered instrument or part of it affecting land under the provisions of the Act—for each copy	50.00
In addition, if an application is received by post and:	
(a) no more than 20 instruments are to be copied	8.50
(b) more than 20 instruments are to be copied—for the first 100 instruments or any part of that number	17.00
(c) more than 100 instruments are to be copied—for each 100 instruments or any part of that number after the first 100 instruments	17.00
2. For supplying a copy of a document or part of a document available from the Document Copy Service	3.80
In addition, in the case of a document containing 20 or more pages, or if an application is made for multiple copies of a document containing 10 or more pages, such reasonable fee (determined by the Registrar-General) as is warranted by the cost incurred in preparing the copy or copies.	

Advertisements

3. On advertisement of an application to bring land under the Act, a possessory application or an application for an order for foreclosure, such fee as the Registrar-General determines having regard to the cost of the advertisement.

Production of Documents

4. For each grant, certificate of title, duplicate registered dealing or other document produced for the purpose of any application, request, dealing or plan to be subsequently lodged 12.50

		\$
Applications, Requests and Dealings		
5.	On lodgment of an application to bring land under the Act	85.00
6.	On lodgment of an application, request or dealing for which no fee is otherwise provided	50.00
7.	On lodgment of an application or request for amendment of a folio of the Register, Crown grant or certificate of title	50.00
8.	On lodgment of an application for the determination under Part 14A of the Act of the position of the common boundary of adjoining lands	50.00
9.	On lodgment of a request under section 135J of the Act for referring a matter to the Land and Environment Court for determination of the position of a boundary of land	500.00
10.	For every plan, sketch or diagram accompanying a dealing, application, request or instrument	50.00
Caveats		
11.	On lodgment or recording of a caveat	50.00
12.	On lodgment or withdrawal or partial withdrawal of a caveat pursuant to section 74M (1) of the Act	50.00
13.	On lodgment of a request for withdrawal or partial withdrawal of a Registrar-General's caveat (no fee is payable for withdrawal or partial withdrawal of a Registrar-General's caveat consequent on lodgment and registration of a dealing).....	50.00
14.	On lodgment of a request for the Registrar-General to direct service of a notice on a caveator pursuant to section 74N (1) (e) of the Act	50.00
15.	On lodgment of an application for preparation of a notice for service on a caveator pursuant to section 74C (3), 74I (1) or (2) or 74J (1) of the Act	50.00
16.	On lodgment of notice of change of name of a caveator or of address for service of notice on a caveator	50.00
Sealing of Forms		
17.	For examination and sealing of any dealing which is required by any Act to be in the approved form and is not sealed with the seal of the Registrar-General	50.00
18.	For licensing any person to print approved forms sealed with the seal of the Registrar-General	60.00

		\$
Official Searches		
19.	On requisition for an official search of a manual folio of the Register (whether or not requiring the continuation of a search from the date of a previous search of that folio or the date of a prior certificate of result of search)	50.00
	In addition, for each half-hour or part of a half-hour occupied in the search after the first hour	25.00
Computer Folios		
20.	On the lodgment of a requisition for a computer folio certificate, final search of computer folio or search of historical record	3.80
Public Searches		
21.	On the lodgment of a requisition requiring dispatch of information by post, facsimile or other approved means:	
	(a) for an initial search of a folio of the Register, including investigation as to title reference, a copy of the relevant folio and transmission fee	26.00
	In addition, for inclusion in the initial search of any additional document forming part of the Register (per document)	3.80
	(b) for a final search of a folio of the Register, including a copy of the search and the transmission fee	17.00
	(c) for providing copies of a folio or dealing if no investigation as to title reference is required, including a copy of the folio or dealing and the transmission fee	17.00
	In addition, for inclusion of each additional document required	3.80
	(d) for an historical search of a folio of the Register, including a copy of the search and the transmission fee.....	17.00
	(e) for providing copies of an instrument or a plan only, including a copy of the document and the transmission fee...	17.00
	In addition, for inclusion of each additional document required	3.80
	(f) for supplying documents by facsimile transmission if no transmission cost is included in the initial fee and for supplying additional documents or copies, for each sheet:	
	(i) within the Sydney telephone area covered by the 02 code	1.00
	(ii) outside the Sydney telephone area but within New South Wales	1.20
	(iii) outside New South Wales	2.00

\$

Searches Generally

22. In the case of a requisition for an official search of a manual folio, a computer folio certificate, final search of computer folio or search of historical record which, in the opinion of the Registrar-General, is a search for which the scale of fees is not appropriate, such reasonable fee (determined by the Registrar-General in negotiation with the requesting party) as is warranted by the cost incurred in carrying out the search.

Certificates of Title

23. For the issue of a certificate of title on any request or application where an existing grant or certificate of title is capable of containing further endorsements and would otherwise have remained fully current 50.00

Miscellaneous

24. On depositing an instrument declaratory of trusts or other instrument not specified 50.00
25. On lodgment of a requisition for statement of grounds under section 121 of the Act 50.00
26. On lodgment of a request for the issue of a summons under section 12 of the Act 50.00
27. On lodgment of a request for the issue of a notice under section 136 of the Act 50.00
28. For recording any memorial or notification not otherwise provided for 50.00
29. On lodgment of a request for delivery of a document or documents pursuant to section 23A (3) (c) of the Act (no fee is payable if the request is made during currency of the primary application) 12.50
30. For furnishing a certificate of ownership (Local Government Act 1993—section 700 (2)) and incorporating in it any information as to subsisting encumbrances or interests..... 26.00
- In addition, for supplying each additional document forming part of the Register 3.80
31. For supplying information in response to a written inquiry as to the manner in which a proposed dealing or plan should be drawn, or as to whether a proposed dealing or plan is entitled to registration, or in response to a written inquiry that necessitates any searching or investigation—a reasonable fee determined by the Registrar-General.
32. For production of documents at the Office of State Revenue..... 16.00

		\$
33.	For supplying a computer listing of plans registered, on or after 23 January 1961, in respect of specified local government areas, for each such area	77.00
34.	For supplying a computer listing of plans registered, prior to 23 January 1961, in respect of specified parishes, for the first 10 parishes.....	325.00
	In addition, for each additional parish after the first 10 parishes.....	3.00

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SCHEDULE 5—FEES

EXPLANATORY NOTE

The object of this Regulation is to repeal the Real Property Act Regulations 1970 and to remake such of the provisions of those Regulations as are still needed. The new Regulation contains provisions with respect to the following matters:

- (a) the lodgment of dealings and caveats (Part 2);
- (b) the conduct of searches of the register kept under the Real Property Act 1900 (Part 3);
- (c) the payment of fees under that Act (clause 14 and Schedule 5);
- (d) other matters of a minor, consequential or ancillary nature (Part 1 and clauses 15–18).

This Regulation is made under the Real Property Act 1900, including section 144 (the general regulation making power).

The Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
