



New South Wales

# Real Property Regulation 2019

under the

Real Property Act 1900

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Real Property Act 1900*.

VICTOR DOMINELLO, MP  
Minister for Customer Service

## Explanatory note

The object of this Regulation is to remake, with minor changes, the provisions of the *Real Property Regulation 2014*, which is repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following—

- (a) the form and lodgment of dealings, caveats and priority notices,
- (b) the manner in which a request for an official search of the Register kept under the *Real Property Act 1900* (*the Act*) is to be made,
- (c) the times at which information in the Register is to be made available to the public for searches and the manner in which the information is to be provided to an applicant,
- (d) the payment of fees and a mechanism for the adjustment for inflation of fees prescribed under the Act,
- (e) the particulars to be included in certain notices given to the NSW Trustee and Guardian relating to applications for foreclosures,
- (f) the service of certain documents,
- (g) the maximum amount that the Registrar-General may pay in settlement of claims against the Torrens Assurance Fund without further authorisation from the Minister,
- (h) administrative review of decisions of the Registrar-General.

This Regulation is made under the *Real Property Act 1900*, including sections 12AA (2) (b) and (c), 61 (2A), 74N (1) (d), 91 (2) and (5), 96B, 96J, 115, 115A, 116, 121 (8), 135 (3) (b), 135D and 144 (the general regulation-making power).

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## Real Property Regulation 2019

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Real Property Regulation 2019*.

#### 2 Commencement

This Regulation commences on 1 September 2019 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Real Property Regulation 2014*, which is repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation—

*fee unit*—see Part 2 of Schedule 1.

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

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Dealings and caveats

### 4 Application of other instruments

The provisions of this Regulation apply in addition to the provisions of the lodgment rules and the conveyancing rules made under the Act. However, to the extent of any inconsistency, the provisions of this Regulation prevail.

### 5 Lodgment of dealings, caveats and priority notices

- (1) Schedule 1 sets out the prescribed fees for the lodgment of dealings, caveats and priority notices.

**Note.** See section 3B (2) of the Act.

- (2) Despite subclause (1), if a dealing, caveat or priority notice is to be lodged electronically, the prescribed fee set out in Schedule 1 must be paid in accordance with the participation agreement (within the meaning of the *Electronic Conveyancing National Law (NSW)*) under which the lodgment is authorised.

### 6 Joint tenancy or tenancy in common to be stated

- (1) The following applications and dealings must state whether the persons concerned take as joint tenants or as tenants in common and, if they take as tenants in common, the shares in which they take—
  - (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.
- (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 and each numerator or denominator of the fraction must be an integer (for example, “A takes as to five-tenths, B takes as to three-tenths and C takes as to two-tenths”).

### 7 Caveats—particulars of estate or interest claimed

The following caveats must specify the particulars set out in Schedule 2 in relation to the estate or interest to which a caveator claims to be entitled—

- (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, or against an application for cancellation of an easement or extinguishment of a restrictive covenant.

### 8 Caveats applying to part of land only—description of part

- (1) This clause applies to a caveat lodged under section 74F of the Act against a dealing, possessory application or delimitation plan, or against an application for cancellation of an easement or extinguishment of a restrictive covenant.
- (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.

### 9 Annexure of plans to dealings, caveats and priority notices

- (1) A plan must not be annexed to a dealing, caveat or priority notice lodged with the Registrar-General unless the Registrar-General approves the annexure of the plan.
- (2) Unless the Registrar-General otherwise approves, a lease of premises for a term of more than 25 years must show the leased premises in a plan annexed to the lease that complies with the requirements of the lodgment rules (if any).

## Part 3 Searches

### 10 Official searches

- (1) A request for an official search of the Register must be made in the form approved by the Registrar-General.
- (2) The prescribed fee for an official search is the fee set out in Schedule 1.

### 11 Public searches: section 96B

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—
  - (i) in the case of information in the Register provided in printed form—8.30 am to 4.30 pm each day (other than a Saturday, Sunday or public holiday) or, where the function of responding to a search request is exercised by the authorised operator, the ordinary business hours of the authorised operator, or
  - (ii) in the case of information in the Register provided in electronic form—between the hours of 1 am and midnight each day (subject to scheduled maintenance or unavoidable system interruptions), and
- (b) the prescribed manner in which information in the Register is to be made available to an applicant is—
  - (i) by providing a digital image of the document to the applicant in a form approved by the Registrar-General, or
  - (ii) by furnishing a certificate to the applicant in accordance with section 96C, 96D or 96G of the Act, and
- (c) the prescribed fee is the fee set out in Schedule 1.

## Part 4 Miscellaneous

### 12 Fees payable to the Registrar-General

- (1) The fees set out in Schedule 1 are payable to the Registrar-General.
- (2) A fee is payable—
  - (a) before the service to which the fee relates is provided, or
  - (b) at the time and in accordance with the conditions as the Registrar-General may agree with the person paying the fee.

**Note.** See section 3B (2) of the Act.

### 13 Period for retention of documents: section 12AA (2) (b) and (c)

For the purposes of section 12AA (2) (b) and (c) of the Act, the period prescribed is—

- (a) for a plan or other document that has been lodged otherwise than for the purpose of its being registered or recorded, the period of 7 years, or
- (b) for a plan or other document that has been registered or recorded, the period of 7 years.

### 14 Statement to accompany notice to NSW Trustee and Guardian of intention to apply for foreclosure order: section 61 (2A)

For the purposes of section 61 (2A) of the Act, a statement accompanying a notice to the NSW Trustee and Guardian of intention to make an application for a foreclosure order must contain the following particulars—

- (a) a statement that the notice is given under 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 the date specified in the notice.

### 15 Service of notices on caveator—prescribed person: section 74N (1) (d)

For the purposes of section 74N (1) (d) of the Act, Toll Transport Pty Limited (ACN 006 604 191) is a prescribed person.

### 16 Service of notices relating to lease where proprietor of lease is bankrupt: section 91 (2) and (5)

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*.

### 17 Administrative review of decisions of Registrar-General: section 121

#### (1) Applications not to be made before request for internal review: section 121 (8) (d)

A person is not entitled to make an application under section 121 of the Act in relation to a decision of the authorised operator unless—

- (a) the person has requested an internal review of the decision by the authorised operator, and
- (b) the authorised operator has notified the person of the outcome of that internal review or the person has not, within 21 days of the lodgment of that request (or within the period as the authorised operator and person agree on), been notified of the outcome of that internal review.

(2) **Application to include supporting information and evidence: section 121 (8) (c)**

An application for a review by the Registrar-General under section 121 of the Act must include all the supporting information and evidence that the applicant seeks to rely on in the review.

(3) **Notice and reasons for decisions to be given in writing: section 121 (8)**

The notice of a decision on a review under section 121 of the Act, and the reasons for the decision, must be given by the Registrar-General to the persons referred to in section 121 (6) of the Act in writing.

**18 Settlement of claims: section 135 (3) (b)**

For the purposes of section 135 (3) (b) of the Act, the maximum amount that may be paid by the Registrar-General (without the approval of the Minister) in settlement of a claim is \$500,000.

**19 Savings**

Any act, matter or thing that, immediately before the repeal of the *Real Property Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Fees

(Clauses 5, 10, 11 and 12)

**Note.** Section 3B (2) of the Act provides that a fee prescribed under this or any other Act for or in respect of the exercise of a titling and registry function is, when the function is exercised by the authorised operator, the maximum fee that is payable and the authorised operator can accept a lesser fee for or in respect of the exercise of the function.

### Part 1 Fees payable

The fees specified by this Part are exclusive of GST. GST may be added to a fee to the extent that the fee is consideration for a taxable supply (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth).

Item	Matter for which fee payable	Fee (in fee units)
<b>Advertisements</b>		
1	On advertisement, under section 12 (1) (h1) of the Act, of the intended exercise or performance of any power, authority, duty or function conferred or imposed on the Registrar-General by the Act	The cost incurred in publishing the advertisement
<b>Production of documents</b>		
2	For each Crown grant, certificate of title or other document produced once for the purpose of the subsequent lodgment of any application, request, dealing or plan	0.3888
3	For each Crown grant, certificate of title or other document produced once for the purpose of multiple subsequent lodgments (not exceeding 8) of any application, request, dealing or plan during a period not exceeding 3 months	0.7777
<b>Applications, requests and dealings</b>		
4	On lodgment of an application, request or dealing for which no fee is otherwise specifically provided	1.2655
5	On lodgment of a primary application to bring land under the Act under section 14 of the Act	18.9786
6	On lodgment of a resumption application to bring land under the Act under section 31A of the Act	3.4254
7	In addition to any other item, on lodgment of an application (other than an application to dispose of Crown land arising from the closing of a public road under the <i>Roads Act 1993</i> ), request, dealing or caveat that will result in making, altering or removing more than 1 recording—for each additional recording	1.2618
8	On lodgment of an application to dispose of Crown land arising from the closing of a public road under the <i>Roads Act 1993</i> , regardless of how many recordings will ensue	2.5237
9	On lodgment of an application or request for amendment of a folio of the Register, Crown grant or certificate of title	1.2655
10	On lodgment of an application for the determination under Part 14A of the Act of the position of the common boundary of adjoining lands	1.2655
11	For every sketch or diagram accompanying an application, request or dealing	1.2618



<b>Item</b>	<b>Matter for which fee payable</b>	<b>Fee (in fee units)</b>
12	In addition to any other item, for the creation of a certificate of title on any application, request or dealing (other than under section 111 of the Act)—for each certificate	1.2618
<b>Caveats</b>		
13	On lodgment or recording of a caveat	1.2655
14	On withdrawal or partial withdrawal of a caveat under section 74M (1) of the Act	1.2655
15	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)	1.2655
16	On lodgment of a request for the Registrar-General to direct the manner of service of a notice on a caveator under section 74N (1) (e) of the Act	1.2655
17	On lodgment of an application for preparation of a notice for service on a caveator under section 74C (3), 74I (1) or (2), 74J (1) or 74JA (2) of the Act	1.2655
18	On lodgment of a notice of a change of name of a caveator or of the address for service of a notice on a caveator	1.2655
<b>Priority notices</b>		
19	On lodgment of a priority notice under section 74T of the Act	0.3442
20	On lodgment of an application for an extension of a priority notice under section 74V of the Act	0.1426
21	On withdrawal of a priority notice under section 74X of the Act	0.1426
<b>Certificates of title</b>		
22	On lodgment of an application for a new certificate of title under section 111 of the Act	1.2655
<b>Authentication of forms</b>		
23	In addition to any other item, for examination and authentication of any dealing, application, request or caveat that is required by any Act to be in an approved form which contains departures from the approved form and which is not a form licensed by the Registrar-General	1.2618
<b>Searches and digital images</b>		
24	For providing a certificate under Part 11A of the Act—	
	(a) to a person attending at an office	0.1296
	(b) by electronic means	0.0867
25	For supplying a digital image of a document under Part 11A of the Act—	
	(a) to a person attending at an office	0.1296
	(b) by electronic means	0.0867

<b>Item</b>	<b>Matter for which fee payable</b>	<b>Fee (in fee units)</b>
26	On lodgment of an application for a certified copy of a folio, dealing, record or instrument comprising part of the Register—for each copy	1.2618
27	For a request for a search of the Register by the Registrar-General—for the initial search of the Register, including investigation as to title reference, a copy of the relevant folio and delivery fee	3.4254
28	In addition to item 27, for inclusion in the search of any additional document forming part of the Register—for each document	0.1296
29	In the case of a request for aggregated data or other information from the Register that, in the opinion of the Registrar-General, is a search for which the above schedule of fees is not appropriate	2.3144 per hour or part hour spent in carrying out the search
<b>Reports</b>		
30	For supplying a Lease Folio Data Extract Report or a Lease Folio Caveats, Writs and Other Dealings Report—	
	(a) to a person attending at an office	0.3129
	(b) by electronic means	0.3129
<b>Lodgment support services (LSS) for electronic conveyancing</b>		
31	For supplying to an Electronic Lodgment Network ( <i>Electronic Conveyancing National Law (NSW)</i> )—section 13) the following electronic services—	
	(a) the suite of lodgment support services (known as “LSS 1”) comprising initial supply of title data, verifications that documents are in an appropriate form for electronic lodgment and automated checks for changes in title data initially supplied	0.1300
	(b) the suite of lodgment support services (known as “LSS 2”) comprising initial supply of title data and verifications that documents are in an appropriate form for electronic lodgment	0.0867
	(c) the lodgment support service (known as “LSS 3”) comprising supply of updated title data following changes in title data initially supplied	0.0434
32	For a requisition sent by the Registrar-General requiring correction, re-execution or the supply of additional information in support of a dealing, application, request or caveat lodged for registration or recording	0.4629
<b>Miscellaneous</b>		
33	On depositing an instrument declaratory of trusts	1.2618
34	On depositing any other instrument not specified	1.2618
35	For recording of any memorial or notification not otherwise provided for	1.2618
36	On lodgment of a request for delivery of a document or documents under section 23A (3) (c) of the Act (no fee is payable if the request is made during the currency of the primary application)	0.3129

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Item	Matter for which fee payable	Fee (in fee units)
37	For furnishing a certificate of ownership ( <i>Local Government Act 1993</i> —section 700 (2) or <i>Environmental Planning and Assessment Act 1979</i> —section 10.9 (2)) and incorporating in it any information as to subsisting encumbrances or interests	1.2618
38	In addition to item 37, for supplying each additional document forming part of the Register	0.1296
39	In addition to any other item, for any dealing, application, request or caveat that refers to more than 20 folios of the Register	1.2618
40	On an application for a review by the Registrar-General of a decision under section 121 of the Act	2.7700

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## Part 2 Adjustment of fees for inflation

### Calculation of fee unit for purposes of Regulation

- (1) For the purposes of this Regulation, a *fee unit* is—
- in the financial year 2019–20, \$103.41, and
  - in each subsequent financial year, the amount calculated as follows—

$$\$100 \times \frac{A}{111.3}$$

where—

*A* is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

**Note.** 111.3 is the CPI number for the March quarter of 2017.

- The amount of a fee unit and the amount of a fee calculated by reference to a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.
- As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Registrar-General is required to publish on the NSW legislation website a notice of the amount of the fee unit for the next financial year. That notice may be published by the addition of an editorial note relating to the amount of the fee unit in the in force version of this Regulation published on the NSW legislation website.
- The Registrar-General is also required to give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of fee unit calculated under this clause.
- This clause operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the publication of a notice by the Registrar-General under this clause.
- In this clause—

**CPI number** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

**financial year** means a period of 12 months commencing on 1 July.

**Editorial note.** Fee unit amount calculated under this clause—

<b>Financial year</b>	<b>Fee unit amount</b>
2019–20	\$103.41

## **Schedule 2 Particulars of estate or interest to be specified in caveats**

(Clause 7)

- 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 that has or is 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 items 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

(Clause 8)

- 1 Except where item 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 within the meaning of the *Conveyancing 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 Schemes Development Act 2015*,  
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 item 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 unregistered 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 so 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 with the Registrar-General.
- 4 It is not necessary for a plan referred to in item 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.