



Issue 42

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LIT Alert

Amendments to Land Title Related Legislation

The *Natural Resources and Other Legislation Act 2005* (NROLA) was passed by the Queensland Parliament on 30 November 2005. Provisions not already in force under the Act, which make a range of amendments to the *Land Title Act 1994* and the *Land Act 1994*, are expected to commence in early February 2006.

NROLA, as passed, may be viewed online through the Office of Queensland Parliamentary Counsel's internet site: http://www.legislation.qld.gov.au/Bill_Docs/Bll51_05.htm.

An overview of changes that may affect land registry customers follows.

◆ Specific due diligence obligations for mortgagees

Insertion of new ss11A and 11B *Land Title Act 1994* and new ss288A and 288B *Land Act 1994* to place a statutory obligation on mortgagees, prior to lodging a mortgage instrument for registration, to take reasonable steps to confirm the identity of the mortgagor and their entitlement to deal with the lot; and to retain for seven years records relating to the proof of identity, etc. This applies to mortgages executed after commencement of the Act. The registrar's practice guidelines regarding "reasonable steps" align generally with the "100 points" provisions under federal legislation for certain financial transactions. These guidelines will be published in a LIT Alert prior to the commencement date.

Related amendments to the *Land Title Act 1994* provide that a mortgagee of freehold land who fails to comply with ss11A and 11B risks the indefeasibility of their registered interest.

◆ Searches for limited information

Amendment of s35 *Land Title Act 1994* and s284 *Land Act 1994* to allow for new types of searches of the registers for information more limited than a current title or dealing search. Details will be published in a LIT Alert when these new information searches are able to be conducted.

◆ Plans of subdivision - access to public use land

Insertion of new s51A *Land Title Act 1994* to require land dedicated to public use (other than road) in a plan of subdivision lodged for registration, to have access, unless approved otherwise by the Minister for Natural Resources and Mines.

◆ Building management statements (BMS)

Amendments to ss54A, 54C, 54H and 54I and insertion of new s54AA *Land Title Act 1994* and amendments to ss294B, 294D and 294I and insertion of new s294BA *Land Act 1994* to:

- clarify and expand the matters that may be dealt with in BMS
- clarify the extent of land to which BMS may apply
- provide for partial extinguishment of BMS



- clarify certain issues about BMS that apply to community titles schemes, including the appropriate execution in the case of a layered scheme.

- ◆ **A mortgage may not itself be mortgaged**

Amendment of s72 *Land Title Act 1994* to provide a mortgage is not an interest that can be mortgaged.

- ◆ **New type of easement in gross may be registered**

Amendments to ss81A, 85B and 89 *Land Title Act 1994* and ss361, 366 and 369 *Land Act 1994* to provide for a new type of easement in gross, the public thoroughfare easement. These easements may only be registered in favour of the State or a local government and are intended solely for the purpose of pedestrian access.

- ◆ **Mortgagee in possession may sign surrender of easement**

Amendment of s90 *Land Title Act 1994* and s 371 *Land Act 1994* to allow a mortgagee in possession to sign a surrender of easement for the relevant lot.

- ◆ **Statutory covenants**

Amendment of s97A and insertion of new s97AA *Land Title Act 1994* and amendment of s373A and insertion of new s373AA *Land Act 1994* to clarify matters relating to statutory covenants.

- ◆ **Applications for title by adverse possession**

Amendments to Part 6 Division 5 *Land Title Act 1994* to:

- clarify that an application for adverse possession may not be made in respect of a lot owned by a local government or in respect of part of a lot
- clarify the affect on other registered interests in the lot where an application for adverse possession is successful.

- ◆ **Registering personal representatives and beneficiaries**

Amendment of s111 *Land Title Act 1994* and s377 *Land Act 1994* to:

- increase to \$300,000 the value of an intestate estate that may be dealt with under the Act without letters of administration
- clarify the range of persons who may be recorded as personal representatives

- ◆ **Acts for minors and persons lacking capacity**

Insertion of new ss136 and 137 *Land Title Act 1994* to clarify who may execute instruments on behalf of minors and persons lacking capacity for such acts.



◆ **Lodging certificate of title**

Amendment of s154 *Land Title Act 1994* and s296 *Land Act 1994* to provide an exception to the requirement to lodge a certificate of title for instruments that -

- amend or extinguish a building management statement where the required evidence is provided (this will be relevant to community titles schemes)
- record a vesting in the State

◆ **Requisitions**

Amendment of s156 *Land Title Act 1994* and s305 *Land Act 1994* to allow a requisition to be directed to a relevant person other than the lodger of a document.

◆ **Standard Terms Documents**

Insertion of new s168A and amendment of s172 *Land Title Act 1994* and insertion of new section 317A and amendment of s321 *Land Act 1994* to allow for the one standard terms document to be used for the purposes of both *Land Title Act 1994* and *Land Act 1994*.

◆ **Stay on registration of certain plans affecting tidal boundaries**

Insertion of new Part 10A *Land Title Act 1994* and new Part 3B *Land Act 1994* to provide for a 3 year Stay on the registration of plans of subdivision (including plans of resurvey) where a section of tidal boundary is shown in a different location from the previously registered plan of survey. The Stay came into effect on 8 November 2005. However, there are exceptions to this Stay where the Minister for Natural Resources and Mines may, if satisfied about certain matters relating to the public interest, allow registration of such a plan. For example - for plans approved under section 3.7.6 of the *Integrated Planning Act 1997* before 8 November 2005 and for plans where the change in boundary location is due to natural and imperceptible accretion.

The purpose of the Stay is to allow time for extensive consultation and development of a solution to the issues associated with tidal boundaries.

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