

Information Bulletin No 57

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Prior Encumbrances

To comply with Section 42 of the Real Property Act 1900 and to prevent the unnecessary rejection of dealings, Land and Property Information New South Wales (LPINSW) will no longer require the noting of registered interests in the memorandum of prior encumbrances. To implement this change the following procedures have been introduced:

1. Unregistered Interests

- Where two or more unregistered dealings (e.g. mortgages, sub-mortgages, leases, sub-leases, charges, covenant charges) are lodged together or are connected after lodgment, the priority of registration of the dealings must be established. This can be achieved either by appropriate notation in the prior encumbrances or with an accompanying letter by the party ceding priority setting out the order of registration.
- Where a dealing is lodged and an unregistered interest (e.g. easement, mortgage, lease) that has not been lodged at LPINSW is noted in the prior encumbrances of that dealing, it will be accepted for lodgment and a requisition issued. The lodging parties attention will be drawn to the disclosure of the unregistered interest noted as a prior encumbrance and 28 days will be given for any action (if any) to be taken. The dealing will proceed to registration after the expiry of the 28 days if no rectifying dealing(s) are lodged or representations made.

2. Consents

- Dealings (e.g. Leases, Transfers and Grant) which formerly required the consent of a registered mortgagee, lessee etc. or alternatively the registered mortgage, lease etc. to be noted as a prior encumbrance, will now, if no consent is furnished, proceed to registration without the mortgage, lease etc. being noted as a prior encumbrance.

3. Leases

- In the instance where a lease is lodged and there is a current registered lease affecting the same land or premises and the terms of the leases overlap, the incoming lease must be made subject to the existing lease by notation in the prior encumbrances or be accompanied by a letter stating it is a concurrent lease. The concurrent lease sub-lease notification will be shown on the Register.

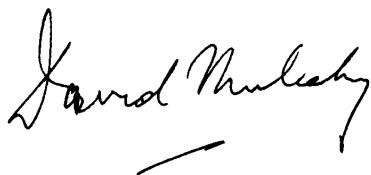
4. Transfers for Value

- As a service for clients who have overlooked an encumbrance on title, when lodging transfers for value, this fact will be conveyed to them for their further consideration.

Continuation of Existing Practice

- Because of the statutory requirements contained in the Real Property Act 1900, the current procedures applying to writs will continue. Sections 105 A(2), 105 A(5)(a), 105 A(7)(b) (c) (d) (f) (g), 105 A(8)(g) and 105 C(1) (2) provide instances where a writ or a dealing must be noted as if it were a prior encumbrance.

Inquiries relating to dealings may be made in person at the Client Service Counter, ground floor, by telephone on 9228 6713 or fax 9223 9464. Inquiries relating to plans should be made at the Plan Support Counter, level 2, North wing, Land and Property Information, 1 Prince Albert Road, Queens Square, Sydney by telephone on 9228 6798 or by fax on 9221 4405.



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