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Recent Landgate changes to counter property fraud

Following on from the recent property fraud that you will no doubt be aware of, Consumer Protection, Landgate, REIWA and AICWA have been working together to define additional practices in the industry that need to be introduced to minimise the likelihood of property fraud in the future.

While broader measures are still being finalised two initial measures aimed at reducing the risk of this type of property fraud reoccurring have been recently introduced by Landgate. These two measures have been outlined in recent Landgate Customer Information Bulletins (CIB) and are described below for your information. CIB's may be updated or superceded by Landgate, and updated CIB's are published on Landgate's website at www.landgate.wa.gov.au

In order to reduce the risk to WA landowners from being the subject of improper dealings on their property, a new caveat service is being offered by Landgate. A Caveat (Improper Dealings) can now be lodged with Landgate. The caveat, once lodged, will stop the registration of any instruments or documents that would ordinarily need to be signed by the owner, for example:

- Transfers,
- Mortgages, and
- Leases

A Caveat (Improper Dealings) Form C4 must be made in the name of all the owners. If one of the owners does not want to be part of the caveat then it cannot be lodged. The caveat can be signed and lodged with Landgate by the owners themselves, or a Solicitor acting on behalf of all the owners. The Solicitor must be instructed by all owners to act for them in the preparation and lodgement of the caveat. A Licensed Settlement Agent does not currently have authority under the *Settlements Agents Regulations 1982* to sign and lodge a caveat to prevent improper dealings on behalf of land owners.

Please note that owners who have mortgaged properties should review their mortgage terms and consult with their lending institution before lodging a Caveat (Improper Dealings) as the terms and conditions of the mortgage may prevent the lodgement of any caveat without the mortgagee's consent.

In order to remove the Caveat, all the owners must present themselves in person at the same time at Landgate's Midland office and satisfy, as a minimum, the requirements of a 100 point identity check using original documents, not copies. Only the owners of the property can remove the Caveat in person. For example, if the property was owned by three persons as tenants in common, and one of the owners did not wish the caveat to be lodged, then the other owners would not be able to lodge a Caveat (Improper Dealings). In the same way, once a Caveat (Improper Dealings) is in place, if one of the (say) three owners did not want it to be withdrawn, then the other two owners could not successfully lodge a Withdrawal of Caveat form.

The Withdrawal of Caveat (Improper Dealings) can only be lodged at the time of witnessing.

A Power of Attorney cannot be used to withdraw the caveat.

The strength of a Caveat (Improper Dealings) is that the only way to remove it is for all the owners to attend in person at Landgate's Midland office to identify themselves to the satisfaction of the Registrar of Titles.

Due to the operation of law, the Caveat (Improper Dealings) will not prevent the following, including but not limited to:

- Mortgagee exercising a power of sale would be able to use section 138B of the Transfer of Land Act 1893 as the application is not being signed by the owners;
- Sale of the property by a Local Government for non-payment of rates;
- Sale by the Sheriff under a Property (Seizure and Sale) Order;
- In the case of deceased owner(s) Survivorship and Transmission; and
- Sale under the Criminal Confiscation Act 2000.

The current regulated fee of \$160 applies for the lodgement and withdrawal of each caveat.

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As a further means to reduce property fraud, effective immediately, the Registrar of Titles will only be satisfied with witnesses who are Australian consular officers where documents are executed outside of Australia.

An Australian consular officer is defined by section 145(4) of the *Transfer of Land Act 1893* as a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside the Commonwealth, such as:

- ambassador
- minister
- high commissioner
- head of mission
- commissioner
- chargé d'affaires
- consul or secretary at an embassy
- high commissioner's office
- legation or other post
- consular-general
- consul
- vice-consul,
- trade commissioner, and
- consular agent

Recognising the short lead time for the introduction of this requirement, the Registrar of Titles may be satisfied with an alternate witness. If an alternate witness is required to be used in the next month, then prior approval must be sought from the Registrar of Titles or the document will be stopped and a requisition issued.

New requirements for evidence of verification of client identity and authority to deal

Further to the above requirements, the Registrar of Titles will also require all transfers that have been executed by the parties to the transaction outside of Australia to contain evidence that those parties have been identified to the 100 point standard.

Evidence of the identity check is to consist of a statutory declaration from the conveyancer acting for the parties describing the circumstances of the identity check and copies of the identity documentation used to establish identity.

If a statutory declaration is not provided, the documents will be stopped and requisitioned. Registration will not occur until evidence to the satisfaction of the Registrar of Titles has been provided.

When checking identity documentation be mindful that forged documents have been used in past fraud attempts. It is recommended that copies of the identification evidence be kept and stored in a secure place.

Landgate is also conducting a review of all registered transfers executed outside of Australia. This review is being taken in accordance with the commitment given in public by the A/General Manager Operations and Registrar of Titles, Bruce Roberts, that Landgate would review all "400 international property title transactions over the last nine months".

The primary purposes of the review is to identify all the transfers that have not passed through the increased scrutiny procedures introduced in September 2010 and to determine any potential high risk transactions that were not identified at the time of registration.

Landgate will be checking all the transfers registered since September 2010 that have been executed outside of Australia. Conveyancers can expect to be contacted by Landgate to request the details of the identity verification actions taken for such transfers. Your assistance in providing the requested information is appreciated.

Registration has already occurred for these transactions. The key purpose of the review is to identify any high risk transactions that have the potential for fraud to exist.

Any instances of suspected fraud in relation to property transactions should be reported directly to the Registrar of Titles office on 9273 7054. For further information contact Landgate's Advice Line on (08) 9273 7044.