

South Australia

Real Property Regulations 2024

under the *Real Property Act 1886*

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Schedule 1—Repeal of *Real Property Regulations 2009*

Part 1—Preliminary**1—Short title**

These regulations may be cited as the *Real Property Regulations 2024*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations—

Act means the *Real Property Act 1886*;

capital value of land has the same meaning as in the *Valuation of Land Act 1971*;

road includes a street.

Part 2—Land division**4—Transactions excluded from unlawful division provisions**

The following classes of transactions are excluded from the provisions of section 223LB of the Act:

- (a) the granting of, and all dealings with, a lease in respect of part of an allotment;
- (b) the granting, selling, transferring, conveying, mortgaging or encumbering of an estate or interest in part of an allotment if the transaction—
 - (i) is necessary to enable the deposit of a plan of division under Part 19AB of the Act to proceed; or
 - (ii) is 1 to which the Crown, whether in right of the State or the Commonwealth, is a party; or
 - (iii) involves or is incidental to the acquisition of land pursuant to the *Land Acquisition Act 1969*; or
 - (iv) involves a lawfully existing lease or licence and where any subsequent transaction or dealing, including any transaction or dealing which has occurred at any time prior to the commencement of this regulation is in respect of the whole of the land comprised in that lawfully existing lease;

- (c) the granting, selling, transferring, conveying, mortgaging or encumbering of an estate or interest in land comprising part of an allotment if—
 - (i) the land is to be used for widening or adding to an existing road, road reserve or drainage reserve; and
 - (ii) after becoming part of the road, road reserve or drainage reserve, the land will be vested in the Crown, a Minister of the Crown, an instrumentality or agency of the Crown or a council.

5—Certificate of licensed surveyor

The certificate of a licensed surveyor that must accompany an application for the division of land must be included on the plan of division that accompanies the application and must comply with the requirements prescribed by the regulations made under the *Survey Act 1992*.

6—Applications for which section 138 certificate not required

An application for the division of land where that division is excluded from the definition of development by Schedule 4 of the *Planning, Development and Infrastructure (General) Regulations 2017* is prescribed for the purposes of section 223LD(5a) of the Act.

7—Consent to plans of division

A certificate of consent is not required under section 223LH of the Act in relation to a division of land that is required to give effect to an acquisition of land under the *Land Acquisition Act 1969*, unless the Registrar-General specifically requires such a certificate.

8—Examination of plan

As part of the Registrar-General's obligation to administer the Act and the regulations, the Registrar-General must examine the plan of division accompanying an application for division and must not accept the plan for deposit unless the Registrar-General is satisfied with it.

9—Notification on deposit of plan

The Registrar-General must, after depositing a plan of division in the Lands Titles Registration Office—

- (a) notify the applicant or the applicant's agent in writing of the deposit; and
- (b) notify the council for the area in which the land is situated in writing of the deposit and send a copy of the deposited plan to the council.

Part 3—Land amalgamation

10—Examination of plan

As part of the Registrar-General's obligation to administer the Act and the regulations, the Registrar-General must examine a plan of amalgamation accompanying an application for amalgamation and must not accept the plan unless the Registrar-General is satisfied with it.

11—Notification of amalgamation

After amalgamation of allotments under Part 19AB Division 3 of the Act, the Registrar-General must notify the Minister responsible for the administration of *Planning, Development and Infrastructure Act 2016* and the council for the area in which the land is situated in writing of the amalgamation and must send a copy of the plan (if any) that accompanied the application to the Minister and the council.

Part 4—Client authorisations

12—Prescribed circumstances

For the purposes of section 240F(2)(c) of the Act, the following circumstances are prescribed:

- (a) a legal practitioner or registered conveyancer executing any of the following:
 - (i) an application for title by possession to land under section 80A of the Act;
 - (ii) a notice of withdrawal of a priority notice under section 154E of the Act otherwise than under a client authorisation;
 - (iii) an application to extend the duration of a priority notice under section 154G(6) of the Act otherwise than under a client authorisation;
 - (iv) a disclaimer under section 169 of the Act;
 - (v) an instrument under the *Community Titles Act 1996*;
 - (vi) an instrument under the *Strata Titles Act 1988*;
- (b) a legal practitioner or registered conveyancer executing an instrument under an Act other than the *Electronic Conveyancing National Law (South Australia)* on behalf of the Crown under a delegation;
- (c) a registrar or a deputy registrar of a court executing an instrument pursuant to an order of court;
- (d) a legal practitioner or registered conveyancer acting in the course of their employment if their employer is a subscriber (within the meaning of the *Electronic Conveyancing National Law (South Australia)*);
- (e) the Australian Securities and Investments Commission executing an instrument for a deregistered company.

13—Prescribed period for retaining client authorisation

For the purposes of section 240G of the Act, the prescribed period is 7 years from the date of the last action undertaken under the relevant client authorisation.

Part 5—Certification of instruments

14—Certification requirements

- (1) For the purposes of section 273(1)(d) of the Act, a prescribed person must, in relation to an application made under section 173(1)(a) of the Act, provide certification in the appropriate form that the lessor is in possession of a statement signed by the Official Receiver or trustee certifying the refusal of the Official Receiver or trustee to accept the lease.
- (2) The following classes of instruments are prescribed under section 273(2) of the Act:
 - (a) applications for amalgamation of land (except where the benefit of an easement is extended to other land upon the amalgamation);
 - (b) applications for division of land where deposit of the plan of division in the Lands Titles Registration Office will not—
 - (i) vest an estate or interest in land in any person, except for the following:
 - (A) a street, road, thoroughfare, reserve or other similar open space that vests in a council or other authority or reverts to the Crown; or
 - (B) an easement that vests in an authority or entity under section 223LG of the Act; or
 - (ii) discharge or extinguish an estate or interest;
 - (c) applications for the issue of a summons by the Registrar-General;
 - (d) applications for new certificates of title;
 - (e) applications to withdraw an instrument from registration;
 - (f) applications to withdraw plans of survey;
 - (g) applications to withdraw a Registrar-General's caveat;
 - (h) requests to the Registrar-General by the Minister responsible for the administration of the *Crown Land Management Act 2009*, under that Act or any other Act;
 - (i) applications to rectify certificates of title by consent pursuant to section 223J of the Act;
 - (j) closed road title certificate issued pursuant to section 26 of the *Roads (Opening and Closing) Act 1991*;
 - (k) informal documents issued pursuant to section 247 of the Act;
 - (l) notices of acquisition under the *Land Acquisition Act 1969*;
 - (m) notices of intention to acquire land under the *Land Acquisition Act 1969*;
 - (n) notifications of declaration by councils of public roads under the *Local Government Act 1999*;
 - (o) Registrar-General's caveats;

- (p) documents registered or recorded by the Registrar-General under section 55 of the Act.

Part 6—Verification of identity requirements

15—Verification of identity requirements

For the purposes of section 273A(1) of the Act—

- (a) the participation rules are prescribed in respect of the electronic lodgement of instruments or documents; and
- (b) the *Verification of Identity Requirements* issued by the Registrar-General, as in force from time to time, are adopted as prescribed requirements in respect of the lodgement of instrument or documents other than by electronic means.

Part 7—Miscellaneous

16—Plans and maps to comply with requirements

A plan or map lodged with the Registrar-General for the purposes of the Act must comply with any requirements issued, from time to time, by the Registrar-General.

17—Prescribed period for retaining documents relating to mortgage

- (1) For the purposes of section 128A(2) of the Act, a mortgagee must retain any document used for the purpose of fulfilling the mortgagee's obligations under section 128A(1) of the Act until they cease to be a mortgagee in respect of the mortgage.
- (2) For the purposes of section 152A(2) of the Act, a transferee must retain any document used for the purpose of fulfilling the transferee's obligations under section 152A(1) of the Act until they cease to be a mortgagee in respect of the transferred mortgage.
- (3) For the purposes of section 153B(2) of the Act, a mortgagee must retain any document used for the purpose of fulfilling the mortgagee's obligations under section 153B(1) of the Act until they cease to be a mortgagee in respect of the mortgage.

18—Prescribed period for retaining certain documents under section 173 of Act

For the purposes of section 173(2) of the Act, a statement signed by the Official Receiver or by the trustee under a bankruptcy or assignment certifying their refusal to accept a lease under section 173(1)(a) of the Act must be retained by the lessor for a period of 7 years from the date of lodgement of the application under section 173(1)(a) of the Act.

19—Form of caveat—prescribed information

For the purposes of section 191(ac)(iv) of the Act, the following information is prescribed:

- (a) particulars of the estate or interest claimed;
- (b) the quantum of the estate or interest claimed;
- (c) a statement of the grounds on which the estate or interest claimed is said to have arisen.

20—Prescribed instruments

For the purposes of section 191(2)(b) of the Act, the following kinds of instruments are prescribed:

- (a) an application for the removal, extension or withdrawal of a caveat;
- (b) a statutory order or an instrument cancelling a statutory order;
- (c) a statutory authorisation or an instrument cancelling a statutory authorisation;
- (d) an order of a court or an instrument of discharge of an order of a court;
- (e) an instrument of withdrawal or satisfaction of a warrant of sale;
- (f) a transfer consequential on a statutory charge, order or authorisation, a warrant of sale or the exercise of a statutory power of sale by a statutory body or officer;
- (g) an instrument lodged by the Crown;
- (h) an instrument relating to an interest in land that, in the opinion of the Registrar-General, would not affect the interest to which the caveat, or instrument that has the effect of a caveat, relates;
- (i) a statutory charge or an instrument discharging, removing or cancelling a statutory charge;
- (j) a heritage agreement, or an agreement varying or terminating a heritage agreement, under the *Heritage Places Act 1993* or the *Native Vegetation Act 1991*;
- (k) an agreement, or an instrument relating to the rescission or amendment of an agreement, under Part 14 of the *Planning, Development and Infrastructure Act 2016*;
- (l) an instrument relating to an alteration to the South Australian Heritage Register under the *Heritage Places Act 1993*;
- (m) an instrument relating to the cessation or withdrawal of a worker's lien under the *Worker's Liens Act 1893*;
- (n) a notice or acquisition under the *Land Acquisition Act 1969*;
- (o) an environment performance agreement, or certification of the termination of an environment performance agreement, under the *Environment Protection Act 1993*;
- (p) an Aboriginal heritage agreement, or an agreement varying or terminating an Aboriginal heritage agreement, entered into under the *Aboriginal Heritage Act 1988*;
- (q) an access agreement, or an agreement for the variation of an access agreement, entered into under the *Recreational Greenways Act 2000*;
- (r) a management agreement, or an application relating to the rescission or amendment of a management agreement, entered into under the *River Murray Act 2003*;

- (s) an instrument amending or rescinding, or otherwise dealing with, a statutory encumbrance (within the meaning of Part 19AB of the Act) not otherwise mentioned in this regulation;
- (t) an application under the Act by a person to whom land has been transmitted for registration as proprietor of the land.

21—Prescribed period for retaining documents under section 273AA of Act

For the purposes of section 273AA(2) of the Act, the prescribed period is 7 years from the date the instrument to be registered or recorded in the Register Book or the Register of Crown Leases is lodged in the Lands Titles Registration Office.

22—Persons on whom notice must be served under Schedule 1 of Act

The Registrar-General must serve notice under clause 1(1)(b) of Schedule 1 of the Act on all persons who have, or claim, an estate or interest in the land of whom the Registrar-General knows or could reasonably be expected to know.

23—Persons whose consents are required under Schedule 1 of Act

The consents of all persons who have, or claim, an estate or interest in the land of whom the Registrar-General knows or could reasonably be expected to know are required under clause 1(2)(c) of Schedule 1 of the Act.

24—Fees payable to Registrar-General

- (1) The fees prescribed for the purposes of the Act are payable to the Registrar-General.
- (2) If the Registrar-General determines, not more than 5 years after payment of a registration fee in respect of a transfer, that the capital value of the transferred land at the time of the transfer was higher than the purported capital value used as the basis for calculating the fee, the following amounts are recoverable as a debt by the Registrar-General:
 - (a) an amount equal to the difference between the registration fee paid and the registration fee that would have been payable if the fee had been determined on the basis of the capital value determined by the Registrar-General;
 - (b) interest on the amount underpaid calculated on a daily basis from the date of lodgement of the transfer until the date on which the payment is made at the market rate applying from time to time under Part 5 Division 1 of the *Taxation Administration Act 1996*.
- (3) If the Registrar-General determines, not more than 5 years after payment of a registration fee in respect of a transfer, that the capital value of the transferred land at the time of the transfer was lower than the purported capital value used as the basis for calculating the fee, the Registrar-General must—
 - (a) refund the difference between the registration fee paid and the registration fee that would have been payable if the fee had been determined on the basis of the capital value determined by the Registrar-General; and

- (b) if the Registrar-General's determination is made as a result of an objection under section 82 of the *Taxation Administration Act 1996* or an appeal under section 92 of that Act—pay interest calculated on a daily basis from the date of lodgement of the transfer for registration until the date on which the difference is refunded at the market rate applying from time to time under Part 5 Division 1 of that Act.
- (4) The Registrar-General may, for the purposes of making a determination under this regulation, have regard to the capital value of land as determined by the Valuer-General or any other relevant information.

Part 8—Transitional provisions—*Real Property (Electronic Conveyancing) Amendment Act 2016*

25—Interpretation

In this Part—

amendment Act means the *Real Property (Electronic Conveyancing) Amendment Act 2016*.

26—Transfers

A transfer executed and certified as being correct before 4 November 2016 in accordance with the requirements of the Act as in force immediately before the commencement of Part 2 of the amendment Act will be taken to have satisfied the requirements of sections 96 and 273 of the Act as in force after that commencement.

27—Mortgage taken to be on the same terms

For the purposes of section 128(5)(a) of the Act, a mortgage executed before 31 December 2017 that complies with the requirements of Part 12 of the Act as in force immediately before the commencement of Part 2 of the amendment Act will, if it has the same effect as a mortgage lodged for registration in the Lands Titles Registration Office, be taken by the Registrar-General to be on the same terms as the lodged mortgage.

28—Instrument taken to be on the same terms

For the purposes of section 153A(3) of the Act, an instrument executed before 31 December 2017 that complies with the requirements of Part 13 of the Act as in force immediately before the commencement of Part 2 of the amendment Act will, if it has the same effect as an instrument lodged for registration in the Lands Titles Registration Office, be taken by the Registrar-General to be on the same terms as the lodged instrument.

Schedule 1—Repeal of *Real Property Regulations 2009*

The *Real Property Regulations 2009* are repealed.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Real Property Regulations 2024

Schedule 1—Repeal of *Real Property Regulations 2009*

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2024