



Western Australia

Transfer of Land Amendment Act 1999

No. 3 of 1999

An Act to amend the *Transfer of Land Act 1893*.

[Assented to 25 March 1999]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Transfer of Land Amendment Act 1999*.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation.

3. The Act amended

The amendments in this Act are to the *Transfer of Land Act 1893**.

[* *Reprinted as at 13 May 1997.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 237 and Act No. 10 of 1998.]

4. Section 129C amended

- (1) Section 129C(1) is amended by deleting “Where” and inserting instead —

“ Subject to subsection (1a), where ”.

- (2) After section 129C(1) the following subsections are inserted —

“

- (1a) An application under subsection (1)(a) or (c) to extinguish, discharge or modify a single dwelling covenant that benefits more than 10 lots shall be accompanied by —
- (a) the applicant’s affidavit to the effect that the registered proprietor of each lot that is —
 - (i) wholly or partially within the prescribed area; and

- (ii) benefited by the covenant the subject of the application or any other single dwelling covenant,
has been given written notice, the form and content of which has been approved by the Registrar, of the proposed application; and
 - (b) the written consent of the registered proprietors (at the time the application is made) of the majority of the lots referred to in paragraph (a) to the extinguishment, discharge or the modification of the covenant as proposed.
- (1b) For the purposes of subsection (1a)(b), the written consent of the registered proprietor of a lot that has 2 or more registered proprietors is taken to have been given if consent has been given by —
 - (a) in the case of proprietors who are joint tenants, the majority of those proprietors; or
 - (b) in the case of proprietors who are tenants in common, a proprietor who is, or 2 or more proprietors who between them are, entitled to the majority of undivided shares in the lot.
- (1c) If a lot is subject to a mortgage or charge, the written consent of the registered proprietor of that lot is not to be taken into account for the purposes of subsection (1a)(b) unless it is accompanied by the written consent of the mortgagee or chargee of the mortgage or charge that is first in order of priority.
- (1d) In subsection (1a), (1b) and (1c) —
“**lot**” means a parcel of land that is shown on a plan (as defined in section 136A) as a lot, other than a common property lot on a survey-strata plan;

“single dwelling covenant” means a restrictive covenant that prohibits the construction of more than one dwelling on the lot burdened by the covenant.

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(3) After subsection 129C(6) the following subsection is inserted —

“

(6a) If an order is made on an application to which subsection (1a) applies, the applicant for the order shall apply to the Registrar, in an approved form and with payment of the prescribed fee, for the Registrar to make the amendments and entries in the Register necessary to give effect to the order.

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5. Section 136J amended

Section 136J(1)(a) is amended by inserting after “this Part” —

“

, other than a single dwelling covenant (as defined in section 129C)

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