

Western Australia

## **Registration of Deeds Act 1856**

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## Registration of Deeds Act 1856

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## Registration of Deeds Act 1856

**An Act to consolidate and amend the laws relating to the registration of deeds, wills, judgments and conveyances affecting real property.**

*[Long title amended by No. 17 of 1974 s. 9.]*

### **Preamble**

Whereas it is expedient to consolidate and amend the laws relating to the registration of wills, deeds and other instruments affecting real property in the State of Western Australia, and for that purpose to repeal the existing Ordinances on that subject.

Be it enacted —

### **1. Application of Act**

No memorial may be registered pursuant to this Act in respect of any land, whether Crown, freehold or leasehold, that is under the operation of the *Transfer of Land Act 1893*.

*[Section 1 inserted by No. 59 of 2004 s. 135.]*

### **2. Office**

That there shall be maintained as heretofore at Perth in this State a Public Office for the Registration of Deeds, Conveyances and other Instruments, Wills and Judgments in manner hereinafter appointed, in which shall be kept for safe custody and reference all books, records, documents and papers relating to any such instruments, wills and judgments registered before the passing of this Act; and that the person holding the appointment of Registrar of Deeds and Transfers at the time of the passing of

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this Act shall continue to be Registrar of the aforesaid office under this Act, and that every person appointed to the office of Registrar of Titles under the *Transfer of Land Act 1893*, shall, by virtue of his office, be the Registrar of Deeds and Transfers; and that all conveyances, deeds, wills, devises and other instruments in writing, now or hereafter to be made or executed, and all judgments now or hereafter to be obtained (by which conveyances, deeds, wills or other instruments in writing, and judgments, any lands, tenements or hereditaments in Western Australia or its Dependencies now are or shall or may be affected) may, if not registered under any previous Ordinance, be entered and registered in the said office in the manner hereinafter directed.

*[Section 2 amended by No. 17 of 1974 s. 3 and 9.]*

**2A. Assistant Registrar of Deeds and Transfers**

That all such persons as are or have been appointed to be an assistant registrar under the *Transfer of Land Act 1893*, shall be, by virtue of that office, an assistant registrar of deeds and transfers for the purpose of this Act, and anything which is by this Act appointed or authorised or required to be done or signed by the person holding the appointment of Registrar of Deeds and Transfers may be lawfully done or signed by an assistant registrar of deeds and transfers.

*[Section 2A inserted by No. 17 of 1974 s. 4.]*

**3. Priority according to date of registration**

That all such judgments, deeds, conveyances or instruments in writing, registered in pursuance of this Act, shall have priority one over the other according to the priority of their respective dates of registration; and that all such judgments, deeds, conveyances, devises or instruments in writing not registered in pursuance of this or some former Act, shall (as against any subsequent *bona fide* purchaser or mortgagee of the same lands, tenements or hereditaments for valuable consideration) be

absolutely null and void to all intents and purposes: Provided that nothing herein contained shall extend to *bona fide* leases at rack rent for any term not exceeding 14 years.

*[Section 3 amended by No. 17 of 1974 s. 9.]*

**4. Times for registration**

That all judgments, deeds, wills, conveyances or instruments in writing which shall be duly registered within the respective times next mentioned, that is to say, all deeds, conveyances, and other instruments in writing, except wills, which, if executed in Western Australia or its Dependencies, shall be registered within 2 months, or which, if executed in any other place, shall be registered within 8 months after the time of execution thereof respectively, and all wills which, if the deviser die in Western Australia or its Dependencies, shall be registered within 2 months, or which, if the deviser die in any other place, shall be registered within 12 months after the decease of every deviser respectively, and all future judgments, which shall be registered within 2 months after the entry or recording thereof, shall severally be in like manner entitled to priority, and shall take effect respectively by relation to the date thereof only in the same manner as if this Act had never been made.

*[Section 4 amended by No. 14 of 1974 s. 9.]*

**5. Purchaser not disturbed by suppressed will if unregistered**

That in case of any concealment or suppression of any will no purchaser or incumbrancer for valuable consideration shall be defeated or disturbed in his purchase or of his debt by any title made or devised by such will, unless such will be actually registered within 3 years after the death of the deviser.

**6. Memorial for registration**

That the registration intended by this Act shall be made by delivering into the Registrar's office a memorial containing the particulars hereinafter specified, and signed either by a legal

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practitioner (as defined in the *Legal Practice Act 2003*) or by any other person requiring the registration thereof:

Provided that if such memorial is signed by some person other than a practitioner as aforesaid, his signature must be attested by a witness qualified to attest the execution of instruments under the *Transfer of Land Act 1893*.

*[Section 6 inserted by No. 23 of 1923 s. 2; amended by No. 17 of 1974 s. 9; No. 65 of 2003 s. 60.]*

**7. Claimant's signature to affidavit authorises registration**

That any person claiming by affidavit to be sworn before any Justice of the Peace any estate or interest under any deed or other instrument, will or judgment affecting real property in the said State, may lawfully require the same to be registered, and his or her signature to the memorial thereof annexing such affidavit to such memorial shall be sufficient to authorise such registration.

**8. Memorial to contain the names, etc., of all the parties, and the pecuniary consideration**

That every memorial of any judgment shall contain the following particulars, that is to say, the names (and when known the additions) of the plaintiffs and defendants respectively, the sums thereby recovered or secured, the time of entry or recording of the same and the sum of money *bona fide* due thereon, and every memorial of any deed or conveyance, will or other instrument, shall contain and set forth the date of such deed, conveyance, will or other instrument and the particular nature and object thereof, the names (and when known the additions) of all the parties to such deed, conveyance and instrument and of the devisor and devisee or devisees of such will, and the names (and when known the additions) of all the witnesses thereto, and shall especially particularise and express the lands, tenements and hereditaments affected or intended to be affected by such deed, conveyance, will or instrument, and the proper and ordinary and accustomed names of the districts,



towns or places where the same shall be situated and (except in case of wills) the pecuniary or other consideration for the same: Provided always that when there shall be more writings than one for perfecting the same conveyance, devise or security affecting the same lands, tenements or hereditaments, all such writings shall be stated in one and the same memorial, in which it shall be sufficient to particularise such lands, tenements and hereditaments only once.

**9. Order of time**

That on delivery of any such memorial as aforesaid, the said Registrar shall number the same according to the order of time in which it shall have been so delivered, and shall give a receipt for the same, in which receipt shall be specified the certain day and time of day when such memorial shall have been so delivered, and the proper number thereof in the said Registry Office; and he shall also in like manner immediately endorse on the back of such memorial a certificate containing the day and time of day when the same was so delivered, and the name and place of abode of the person delivering the same; and shall sign the said certificate when so indorsed; and such certificate shall be taken and allowed as evidence of the registration, and the time of registration of every such judgment, deed, will, devise, conveyance or other instrument whereof such memorial shall be so made.

**10. Memorials to be registered in succession, as numbered in a book kept by Registrar, who shall also keep an index of places and of names of parties to deed, and of plaintiff and defendant in judgments**

That every such memorial shall as soon after the receipt thereof as practicable be carefully registered by the Registrar in regular succession as received, according to its proper number, in a particular book to be kept by him for that purpose, and shall afterwards be by him deposited in some secure place in his office, and there kept for future reference when required; and he

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shall also keep an alphabetical index of the districts, towns and places mentioned in every such memorial, and also a like index or indexes of the names of the several parties to conveyances and other deeds or instruments, and of devisors and devisees in wills, and of the plaintiff and defendant in case of judgments, with accurate references in all such indexes respectively to the number and page of registry of the memorial to which any entry in such index or indexes shall relate, which said Book of Registry and index or indexes shall, as well as all other books of registry and indexes relating to registrations made before the passing of this Act, be open at convenient times in the said office to the inspection of persons desirous of searching the same.

*[Section 10 amended by No. 17 of 1974 s. 9.]*

**11. Mortgages and judgments**

That in case of mortgages and judgments registered in pursuance of this Act, if at any time afterwards such verified certificate as is hereinafter next mentioned, shall be brought to the said Registrar, signed respectively by the mortgagee or any of the mortgagees, or by the plaintiff or any of the plaintiffs, or in case of the death or absence from the State of all such parties respectively, then by any personal representative or specially authorised agent of all or any of the said parties, and attested by at least 2 credible witnesses, whereby it shall appear that the whole of the moneys due on any such mortgage or judgment have been fully paid, or that such mortgage or judgment is otherwise satisfied, then the said Registrar shall make a short entry or memorandum thereof on the memorial, and on the margin of the registry of such mortgage or judgment, and shall afterwards carefully register the same certificate in one of the Register Books of his office; and the said Registrar shall also make an entry thereof in his alphabetical index or indexes, referring accurately to the page of registry of such certificate.

*[Section 11 amended by No. 17 of 1974 s. 9.]*

**12. Contents of certificate**

That every such certificate shall contain the following particulars, that is to say — in case of judgments, the names (and when known the additions) of the plaintiffs and defendants, the time of entering up and recording the same, the sum or sums thereby recovered, the date or dates of payment or other satisfaction of the amount *bona fide* due thereon; and in case of mortgages, the names (and when known the additions) of the original parties, the date of the instrument, the sum thereby secured, and the time or times of payment or other satisfaction thereof; and every such certificate shall be verified by the oath of some competent person that the same contains a just and true account of the several particulars therein set forth, which oath may be taken before any Justice of the Peace in this State or in the British dominions, or before any Judge of any Court of law in any foreign dominion, who are hereby authorised to administer the same; and on the back of such verified certificate the Registrar shall immediately endorse the date when the same was received by him, and the name and place of abode of the person verifying the same; and the said certificate shall, after being so endorsed and entered as aforesaid, be safely kept in his office for future reference when required.

**13. Anyone may deposit for safe custody, any deed or will**

That any person or persons may deposit in the said Registrar's office for safe custody any conveyance, deed, power of attorney or instrument in writing whatsoever, or his or her last will and testament; of which deed, will, conveyance or other instrument the said Registrar shall (first giving a receipt for the same) immediately make an entry or entries in a book to be kept for that purpose, to which book he shall keep an accurate alphabetical index, having reference therein as well to the name of the testator or parties to each deed or instrument as to the person or persons depositing the same; and the said Registrar shall carefully and securely keep all such deeds, wills or other instruments in his said office until required by the party or

parties depositing the same to deliver them back again: Provided that every such will or testament shall be enclosed within a cover or envelope, sealed with the seal of the testator or testatrix, whose name shall be endorsed by the Registrar on such envelope or cover; and every such will shall remain in the said office until the decease of the testator or testatrix, unless he or she shall previously require the same to be delivered back; and upon the death of the testator or testatrix the said Registrar shall, after examining such will, deliver the same to the executor first named therein, or such other person as the Supreme Court shall, upon petition, order.

*[Section 13 amended by No. 59 of 2004 s. 136.]*

**14. Enrolment**

That the Registrar shall also carefully enrol in a particular book, to be kept by him for that purpose, any instrument affecting lands, tenements or hereditaments in this State, which shall be delivered to him for the purpose of enrolment; and he shall also keep an alphabetical index of the names of the parties to such instruments, and of the district, letter and number by which such lands are therein particularised, with accurate references in such index to the number and page of enrolment to which any entry in such index shall relate.

**15. Lost instrument**

That on production of an affidavit, to be sworn before any Justice of the Peace, setting forth that the original of any such enrolled instrument has been lost, or cannot be found after due and diligent search and inquiry, or has been wholly or partially effaced or destroyed, and that the party by whom or on whose behalf such affidavit is tendered claims interest under such instrument, the Registrar shall issue to the party delivering such affidavit a full copy, certified by him to be correct, of the instrument referred to by such affidavit; and every copy so certified shall be received in any Court of Justice within the said State as conclusive evidence of the contents of the instrument so

lost, effaced or destroyed, proof having been first made to the satisfaction of such Court that such instrument is lost and cannot be found, and of the signature of the Registrar to such certificate.

**16. Prior registrations even if informal evidence of facts and circumstances**

That registration of any instrument or judgment under the provisions of this or any former Act, relative to the registration of instruments affecting real property, whether such registration shall have been made before or after the passing of this Act, and, whether strictly in accordance with such provisions or not, shall be deemed to be notice of all facts, circumstances and particulars referred to in the memorial of such registration of any instrument or judgment as aforesaid, with reference to all contracts entered into after the passing of this Act.

*[Section 16 amended by No. 17 of 1974 s. 9.]*

*[17, 18. Repealed by 1 and 2 Edw. VII No. 14 s. 3.]*

**19. Court may cancel a false or fraudulent registration**

That it shall be lawful for the Supreme Court to receive a petition from any person praying relief against any registration affecting any interest of such petitioner in any lands or hereditaments, and alleged by him to be false or fraudulent; and if the said Court shall by any means be fully satisfied of the truth of such allegation, it shall be lawful for the said Court to order summarily that such registration be cancelled; and the said Registrar, on being personally served with such order, shall make such cancellation accordingly, and shall safely keep such order, making due reference thereto in his books of registry and indexes.

*[Section 19 amended by No. 59 of 2004 s. 136.]*

**20. Mistake or omission, if not wilful, may be rectified by Court**

That in case it shall be made to appear to the satisfaction of the Supreme Court that any registration purporting or intended to be made in conformity with the provisions of this Act is imperfect by reason of any mistake or omission on the part of the said Registrar or any person in his employ, or of any person concerned in effecting such registration, and that such mistake or omission was not wilful or fraudulent, and that the same may be rectified without wrong or injury to any person lawfully claiming an interest in the subject matter of such registration, then and in such case it shall be lawful for the said Court, on such terms and conditions (if any) as to it shall seem meet, to order that such mistake or omission be duly rectified; and if any person whose act or signature would, in strict conformity with law, have been requisite to the original sufficiency of registration, shall be dead or absent from this State, or under any incapacity, the said Court may further order that any other person named in such order shall sign or act in lieu of the person so deceased, absent or incapacitated; and the said Registrar, on being served with any such order, shall forthwith obey the same, and make all necessary or convenient references to such order in his books of registry and indexes; and every registration when so amended shall, from the date of such amendment, be as valid and effectual to all intents and purposes as if the same had been originally complete and regular.

*[Section 20 amended by No. 17 of 1974 s. 9; No. 59 of 2004 s. 136.]*

*[21. Repealed by No. 17 of 1974 s. 5.]*

**22. Regulations**

That it shall be lawful for the Commissioner of Titles, appointed under the *Transfer of Land Act 1893*, with the approval of the Governor, to make regulations for or with respect to —

- (a) the medium in which judgments, deeds, wills, conveyances or instruments presented for registration

shall be written and executed and the size and quality of the paper to be used;

- (b) the fees which may be charged by the Registrar of Deeds and Transfers; and
- (c) all matters and things authorised to be prescribed or necessary or expedient to be prescribed to give effect to this Act.

*[Section 22 inserted by No. 17 of 1974 s. 6.]*

**22A. Validation**

That any act, matter or thing under this Act done by a person who has held or holds the office of Registrar of Titles under the *Transfer of Land Act 1893*, before the coming into operation of the *Registration of Deeds Ordinance Amendment Act 1974*<sup>1</sup>, shall be deemed to have been done by the Registrar of Deeds and Transfers.

*[Section 22A inserted by No. 17 of 1974 s. 7.]*

*[23. Repealed by No. 17 of 1974 s. 8.]*

*[24. Repealed by 1 and 2 Edw. VII No. 14 s. 3.]*

**25. Short title**

This Act may be cited as the *Registration of Deeds Act 1856*<sup>1</sup>.

*[Section 25 inserted by No. 81 of 1966 s. 2; amended by No. 17 of 1974 s. 1 and s. 9.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Registration of Deeds Act 1856* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
Untitled <sup>2</sup>	19 Vict. No. 14	14 Jun 1856	14 Jun 1856
<i>Criminal Code Act 1902</i> s. 3	1 and 2 Edw VII No. 14	19 Feb 1902	1 May 1902 (see s. 2)
Untitled Act	36 of 1909	21 Dec 1909	21 Dec 1909
<i>Registration of Deeds Amendment Act 1923</i>	23 of 1923	8 Oct 1923	8 Oct 1923
<i>Statute Law Revision (Short Titles) Act 1966 s. 2</i>	81 of 1966	12 Dec 1966	12 Dec 1966
<i>Registration of Deeds Ordinance Amendment Act 1974</i>	17 of 1974	16 Oct 1974	Act other than s. 6: 16 Oct 1974 (see s. 2(2)); s. 6: 10 Jan 1975 (see s. 2(1) and <i>Gazette</i> 10 Jan 1975 p. 41)
<b>Reprint of the <i>Registration of Deeds Act 1856</i> approved 16 Mar 1976</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 60</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<b>Reprint 2: The <i>Registration of Deeds Act 1856</i> as at 9 Apr 2004</b> (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004 Pt. 20 Div. 1</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

<sup>2</sup> Now known as the *Registration of Deeds Act 1856*; short title inserted and amended (see note under s. 25).