

South Australia

Real Property Regulations 2009

under the *Real Property Act 1886*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Real Property Regulations 2009*.

2—Commencement

These regulations will come into operation on the day on which Part 4 of the *Statutes Amendment (Real Property) Act 2008* comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Real Property Act 1886*;

check search of a certificate of title, is an inspection of the certificate of title to ascertain—

- (a) whether there are any documents lodged in respect of, but not registered on, the certificate of title; or
- (b) whether any documents have been registered on the certificate of title within the period of 90 days prior to the inspection;

Mount Lofty Catchment Area means the part of the State delineated in G.R.O. Plan No. 180 of 1992 and described in that plan as "Water Supply Protection Zone";

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 of part of an allotment;
- (b) the granting of, and all dealings with, a licence in respect of part of an allotment;
- (c) 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 for the purposes of an authorised undertaking referred to in 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;
- (d) 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

- (1) 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 regulation 20 of the *Survey Regulations 2007* made under the *Survey Act 1992*.
- (2) Subject to subregulation (4), a certificate of a licensed surveyor is not required under section 223LD(3)(b) of the Act if—
 - (a) the application is for the division of the land into no more than 2 allotments; and
 - (b) the land is not within, or partly within, an area declared to be a designated survey area under the *Survey Act 1992*; and
 - (c) party wall rights are not created by the division; and
 - (d) there is no new boundary created by the division that defines an existing line of occupation or is located by reference to a physical structure or feature located on or below the surface of the land; and
 - (e) the division does not involve the creation of a new road or the substantial widening of an existing road; and
 - (f) the land is not designated primarily for shopping, commercial, office or business use in the relevant Development Plan under the *Development Act 1993*, and is not used or intended to be used primarily for such purposes.
- (3) For the purposes of subregulation (2)(a), any widening of an existing road that is considered by the Registrar-General to be minor, will not be counted as a separate allotment in relation to a plan of division of land.
- (4) In a particular case the Registrar-General may require the certificate of a licensed surveyor to be provided in relation to a plan of division even though the requirement for the certificate is excluded by subregulation (2).

6—Applications for which section 51 certificate not required

An application for the division of land where that division is excluded from the definition of development by Schedule 3 of the *Development Regulations 2008* 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 he or she is satisfied with it.

9—Notification on deposit of plan

- (1) After the Registrar-General deposits a plan of division in the Lands Titles Registration Office he or she must—
 - (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.
- (2) A notification or other document required to be given under this regulation may be sent by electronic means.

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 he or she is satisfied with it.

11—Notification of amalgamation

- (1) After amalgamation of allotments under Part 19AB Division 3 of the Act the Registrar-General must notify the Minister for Infrastructure 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.
- (2) A notification or other document required to be given under this regulation may be sent by electronic means.

Part 4—Certification of instruments

12—Classes of instruments

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) applications to the Registrar-General by the Minister for the time being administering the *Crown Lands Act 1929*, under that Act or any other Act;
- (i) applications to register agreements under section 57 of the *Development Act 1993*;
- (j) applications to rectify certificates of title by consent pursuant to section 223J of the Act;
- (k) certificates of alteration issued pursuant to section 66A of the *Crown Lands Act 1929*;
- (l) certificates issued pursuant to section 66B of the *Crown Lands Act 1929*;
- (m) closed road title certificate issued pursuant to section 26 of the *Roads (Opening and Closing) Act 1991*;
- (n) informal documents issued pursuant to section 247 of the Act;
- (o) notices of acquisition under the *Land Acquisition Act 1969*;
- (p) notices of intention to acquire land under the *Land Acquisition Act 1969*;
- (q) notifications of declaration by councils of public roads under the *Local Government Act 1999*;
- (r) Registrar-General's caveats.

Part 5—Miscellaneous

13—Plans and maps to comply with guidelines

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

14—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 he or she knows or could reasonably be expected to know.

15—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.

16—Fees payable to Registrar-General

- (1) The fees set out in Schedule 1 are payable to the Registrar-General.
- (2) If the amount of the registration fee payable in respect of a transfer is to be based on the value of the transfer assessed under the *Stamp Duties Act 1923*, the amount of the registration fee must be based on that value despite—
 - (a) a pending reassessment under section 10 of the *Taxation Administration Act 1996*; or
 - (b) a pending objection or appeal against the assessment under section 82 or 92 of the *Taxation Administration Act 1996*.
- (3) If the assessed value is reduced as a result of a reassessment by the Commissioner under section 10 of the *Taxation Administration Act 1996*, the Registrar-General must refund the difference between the registration fee paid and the registration fee that would have been payable in accordance with the reassessed value.
- (4) If the assessed value is reduced as a result of an objection under section 82 of the *Taxation Administration Act 1996* or an appeal under section 92 of that Act, the Registrar-General must refund the difference between the registration fee paid and the registration fee that would have been payable in accordance with the reassessed value, together with interest calculated on a daily basis from the date of lodgment 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.

Schedule 1—Fees payable to Registrar-General

1	For the registration or entry of each instrument (irrespective of the number of folios to be endorsed)—other than any registration or entry specifically provided for	\$112.00
2	For registering a transfer— <ol style="list-style-type: none">(a) where the consideration, or the value as assessed under the <i>Stamp Duties Act 1923</i>—<ol style="list-style-type: none">(i) does not exceed \$5 000(ii) does not exceed \$20 000(iii) does not exceed \$40 000(iv) exceeds \$40 000	\$112.00 \$125.00 \$140.00 \$201.00
	plus \$62.00 for every \$10 000 (or part of \$10 000) above \$50 000	

	(b) where the Commissioner of State Taxation has adjudged the transfer to be exempt from stamp duty or where no <i>ad valorem</i> stamp duty is payable (except for those transfers assessed pursuant to section 71C of the <i>Stamp Duties Act 1923</i>)	\$112.00
	(c) that has been assessed pursuant to sections 71CA, 71CB, 71CBA or 71CC of the <i>Stamp Duties Act 1923</i>	\$112.00
3	On lodgment of a caveat under sections 39, 80F or 223D of the Act	\$112.00
4	For the deposit, or noting the revocation, of a duplicate or attested copy of a power of attorney	\$112.00
5	For an application for the issue of a substituted lessee's copy of a Crown lease or duplicate certificate of title (exclusive of the cost of advertising in the Gazette)	\$112.00
6	For the registration of an application to note a change of address	no fee
7	For entry of a foreclosure order (exclusive of the cost of advertising in the Gazette)	\$194.00
8	For a certified copy of—	
	(a) an original certificate of title under section 51A of the Act	\$20.00
	(b) a statement under section 51D of the Act	\$20.00
9	Unless otherwise specified—	
	(a) (except where paragraph (b) applies) for the issue of a new certificate of title or a substituted lessee's copy of a Crown lease or duplicate certificate of title	\$65.75
	(b) for the issue of a new certificate of title on the amalgamation of allotments wholly within the Mount Lofty Catchment Area	no fee
10	For the issue of a certificate of title—	
	(a) (limited or ordinary) on the land first being brought under the Act	no fee
	(b) to a corporation or district council for a road, street or reserve	no fee
	(c) to effect correction or amendment of title or for the convenience of the Lands Titles Registration Office in effecting registration or redesignation	no fee
	(d) under Part 5 Division 2 of the Act (but only if the volume and folio numbers remain the same and the title is not issued to replace 1 that has been lost or destroyed)	no fee
11	For a new certificate of title issued as a result of the existing title being full of endorsements	no fee
12	For an application for the division of land—	
	(a) where deposit of the plan of division will not vest an estate or interest in land (except a street, road, thoroughfare, reserve or other similar open space that vests in a council or other authority or reverts to the Crown or an easement that will vest in an authority or entity in accordance with section 223LG of the <i>Real Property Act 1886</i>) in any person	\$112.00
	(b) in all other cases	\$297.00

Note—

Fees for the examination of the plan of division, deposit or acceptance for filing of the plan and for the issue of new certificates of title are payable under this Schedule in addition to this amount.

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| 13 | For an application for the amalgamation of allotments— | |
| | (a) for the amalgamation of allotments that are wholly within the Mount Lofty Catchment Area | no fee |
| | (b) for any other amalgamation of allotments | \$112.00 |

Note—

Fees for the examination of the plan of amalgamation, deposit or acceptance for filing of the plan and for the issue of new certificates of title are payable under this Schedule in addition to this amount.

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| 14 | For the deposit or acceptance for filing by the Registrar-General— | |
| | (a) of a plan of amalgamation of allotments wholly within the Mount Lofty Catchment Area | no fee |
| | (b) of any other plan | \$112.00 |
| 15 | Unless otherwise specified, for the examination— | |
| | (a) of a plan of survey certified correct by a licensed surveyor and lodged with or submitted to the Registrar-General (for freehold or Crown land)—
plus a further \$365, payable by the surveyor, if the plan is relodged or resubmitted following rejection by the Registrar-General (However, the Registrar-General may waive or reduce the further fee if he or she considers that appropriate in a particular case having regard to the work involved in examining the relodged or resubmitted plan.) | \$730.00 |
| | (b) of an uncertified data plan (except a plan of a kind referred to in paragraph (c)) lodged with or submitted to the Registrar-General (for freehold or Crown land) | \$365.00 |
| | (c) of an uncertified data plan lodged with or submitted to the Registrar-General for the amalgamation of allotments wholly within the Mount Lofty Catchment Area | no fee |
| | (d) of a plan lodged with or submitted to the Registrar-General for the purposes of a lease of part of an allotment | \$148.00 |
| 16 | For the examination— | |
| | (a) of a plan of survey certified correct by a licensed surveyor and lodged with the Registrar-General for information purposes only | no fee |
| | (b) of an uncertified data plan lodged with the Registrar-General for information purposes only | no fee |
| | (c) of a plan of survey certified by a licensed surveyor and lodged with the Registrar-General by the Surveyor-General | no fee |
| | (d) of plans submitted under the <i>Roads (Opening and Closing) Act 1991</i> | no fee |
| 17 | Unless otherwise specified, for the deposit or acceptance for filing of any plan (for freehold or Crown land) | \$112.00 |

uncommenced—28.5.2009 to 31.5.2009—Real Property Regulations 2009

Fees payable to Registrar-General—Schedule 1

18	For the deposit or acceptance for filing of a plan prepared by the Registrar-General or under the Registrar-General's authorisation	no fee
19	For the withdrawal of any instrument, application or plan submitted for registration, deposit or acceptance for filing	\$48.00
20	For the withdrawal of any plan of survey certified correct by a licensed surveyor and lodged with or submitted to the Registrar-General for examination	\$98.00
21	For an application under section 146 of the Act (exclusive of the cost of registration of the instrument of discharge)	\$161.00
22	For an application to the Registrar-General to issue a summons under section 220(c) of the Act	\$161.00
23	For searching the Register Book—	
	(a) comprising a search statement from the Registrar-General's unregistered document system, a copy of the original certificate of title and a check search	\$17.40
	(b) comprising a search of the electronic records of the original certificate of title, the Registrar-General's unregistered document system and a check search (including the transmission fee)	\$17.40
24	For a copy—	
	(a) of a registered instrument	\$7.50
	(b) of a plan deposited or accepted for filing by the Registrar-General	\$7.50
	(c) of a cancelled original certificate of title	\$7.50
	(d) of any instrument, entry, document or record not otherwise specifically provided for	\$7.50
25	For requesting any of the following under the Automated Registration Indexing and Enquiry System (<i>ARIES</i>):	
	(a) a check search of a specified certificate of title	no fee
	(b) the details of a specified document	\$6.20
	(c) a search of the numbers assigned to documents associated with a specified instrument	\$6.20
	(d) the location of a specified document or plan	no fee
	(e) the details of a specified plan	\$6.20
	(f) a list of the numbers assigned to plans lodged in respect of a specified Section of land in a Hundred	\$6.20
	(g) the details of the delivery of a specified item	no fee
	(h) the details of the delivery of documents relating to—	
	(i) a specified agent code	no fee
	(ii) a specified delivery slip	no fee
	(i) the details of a specified agent code	no fee
	(j) in respect of a specified document—a search of—	
	(i) the series in which the document was lodged; and	no fee
	(ii) any other series into which the document may, subsequently, have been moved, prior to registration of the document	no fee

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Schedule 1—Fees payable to Registrar-General

	(k)	a search of the location of, and the numbers assigned to, documents lodged in a specified series	no fee
	(l)	a search to ascertain the name of the registered proprietor of specified land prior to ordering a search of the Register Book	no fee
	(m)	a record of all documents lodged or registered under a specified name	\$6.20
26		For requesting a search under the Torrens Automated Title System (<i>TATS</i>)	no fee
27		For the return of a cancelled duplicate certificate of title	\$26.00
28		For advertising in the Gazette—	
	(a)	an application for a foreclosure	no fee
	(b)	an application under Part 4 of the Act	no fee
	(c)	an application under Part 7A of the Act	no fee
29		For reporting to a local government authority—	
	(a)	a change of ownership of land (for each change of ownership reported)	\$1.65
	(b)	a converted certificate of title (for each converted certificate of title reported)	\$1.65
	(c)	on the subdivision of land—details of—	\$1.65
	(i)	cancelled certificates of title; and	
	(ii)	newly created parcels of land and new certificates of title issued in respect of those parcels; and	
	(iii)	the valuation assessment for each new certificate of title issued,	
		(for each valuation assessment reported)	
30		For reporting to the South Australian Water Corporation—	
	(a)	a change of ownership of land (for each change of ownership reported)	\$1.65
	(b)	on the subdivision of land—details of—	\$1.65
	(i)	cancelled certificates of title; and	
	(ii)	newly created parcels and new certificates of title issued in respect of those parcels,	
		(for each new certificate of title reported)	
31		For providing miscellaneous reports of changes of ownership of land to government agencies (other than the South Australian Water Corporation)	no fee
32		For providing reports of Heritage Agreements to the Department for Environment and Heritage	no fee
33		For reporting to ETSA Utilities a change of ownership of land (plus an additional fee of \$3.60 for each change of ownership reported)	\$26.00
34		For a copy of any of the following documents under the <i>Bills of Sale Act 1886</i> :	
	(a)	a document filed under section 11A of the <i>Bills of Sale Act 1886</i>	\$7.50
	(b)	a registered bill of sale or a discharge, extension or renewal of a bill of sale	\$7.50

	(c) any other document	\$7.50
35	For a copy of a plan under the <i>Strata Titles Act 1988</i> (including provision of the unit entitlement sheet)	\$7.50
36	For a copy of a plan under the <i>Community Titles Act 1996</i> (including provision of the lot entitlement sheet)	\$7.50

Schedule 2—Revocation

1—Revocation of *Real Property (Certification of Instruments) Regulations 1995*

The *Real Property (Certification of Instruments) Regulations 1995* are revoked.

2—Revocation of *Real Property (Fees) Regulations 2002*

The *Real Property (Fees) Regulations 2002* are revoked.

3—Revocation of *Real Property (Land Division) Regulations 1995*

The *Real Property (Land Division) Regulations 1995* are revoked.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2009	68	<i>Gazette 28.5.2009 p1861</i>	1.6.2009: r 2