

# CONVEYANCING SERIES 2021

Mastering the essentials



LEGAL  
PRACTITIONERS'  
LIABILITY  
COMMITTEE



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# Conveyancing title issues

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## Thought

Have you checked the certificate of title?

## Quote

The Torrens system was designed to remedy defects in the general law system of conveyancing.      P. Moerlin Fox

## CPD information

1 CPD substantive law

0.5 CPD practice management

For all queries relating to CPD rules please refer to the *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015*. Information can also be found [here](#). LPLC does not keep records of practitioner CPD.

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## Key points

- Check the title for crucial information.
- Cross check the title against other information.
- Include a register search statement in the section 32 statement.
- Not sure about a title issue? Ask for help.
- Use a checklist to help you be aware of title issues.

## Introduction

Sir Robert Torrens, without a doubt, would have believed that the certificate of title is the most crucial document in land transactions given it took him many years to develop and implement the Torrens system of title.

It also takes years of experience and attention to detail to fully appreciate the number of issues which need to be considered in relation to every title. Of course, there are a number of similarities in titles but also some distinguishing features.

Sometimes it is the failure to pick up the obvious that leads to claims. Other claims have arisen where there is a failure to detect that a title has an uncommon feature. To further complicate matters there are different processes for dealing with paper and electronic titles and there is still some general law land left in Victoria for which there is no Torrens title. Dealing with general law land is outside the scope of this material. The risk management tip is to refer general law land matters to an expert in the area.

This material is aimed at practitioners of all levels of experience as consideration is given to the basics and also more complicated issues such as dealing with a restricted unit on a strata plan.

### Zoom poll

When supervising a conveyancing clerk do you check the details in the certificate(s) of title?

- (a) Yes – always.
- (b) Yes – sometimes.
- (c) Yes – if the clerk raises an issue.
- (d) No.

## Acronyms explained

eCT – Electronic Title

ELNO – Electronic Network Operator

LUV – Land Use Victoria

SLA – *Sale of Land Act 1962 (Vic)*

TLA – *Transfer of Land Act 1962 (Vic)*

## Claims

LPLC regularly sees claims where a title issue was not identified or not properly dealt with. These claims can be costly and time consuming.

Claims sometimes arise due to an oversight or a lack of understanding of the information contained in a title. For example, the title contains a reference in the encumbrances to a 'covenant'. When preparing a section 32 statement the practitioner overlooks this reference, so no details of the covenant are included in the section 32 statement.

Claims may also arise if the title is not considered earlier enough in the conveyance. It is important to make sure the paper title is held well in advance of settlement rather than leaving it to just before settlement to try and find it. Holding the paper title is also necessary when converting it to an eCT.

The issues mentioned in these materials have mostly arisen in claims. But some have been raised by practitioners contacting LPLC for assistance and some title issues are included because they have been identified by Land Use Victoria as being commonly misunderstood.

**Your comments:**

## Check the title for crucial information

Below is a list of matters that you need to check for every title.

- **Check name of registered proprietor.**

### Tip

Compare the name to the VOI documents.

Issues to consider:

- Title does / does not include middle name so different to VOI documents.
- Surname first.
- Incorrect spelling. For example, Matthew spelt as Mathew.
- Use of nickname / alias. For example, Tom instead of Gaetano.

### Solution

Consider the need to amend the title to the correct name. This should be done well prior to settlement.

### Tip

Ensure that the contract of sale explains any name difference if you are unable to correct the title prior to the contract being signed.

Any name issue should be referred to in the particulars of sale but also consider including a special condition and specifying that the name will be corrected on the title prior to settlement.

Problem avoided.

Having the correct name on title should mean that the CGT clearance certificate is in the same name as the registered proprietor.

### Where a company is the registered proprietor

- **Obtain a company search.**
- **Check that the company is registered.**

### Tips

Where there is more than one director / secretary, remember to get two directors or director / secretary to sign the client authorisation form and use the corporate execution in accordance with s127 of the *Corporations Act 2001* (Cwlth).

The VOI should be done for anyone signing the client authorisation form. For example, the two directors.

- **Check for 'estate fee simple'.**

Titles may also be issued for other estates including:

- Leasehold
- Life
- Remainder

So don't assume the estate is an estate fee simple. It pays to check.

☐ **Check the interest listed on the title**

The register search statement (also known as a title search) will state whether the title is one of a number of titles.

LPLC has had claims where only one interest title was transferred when there was more than one interest title.

Refer below to page 14 for more information about separate interest titles.

☐ **Check mortgage details**

**Tips – acting for vendor**

Seek instructions to request section 27 (early release of deposit) information from any mortgagee as soon as possible. It is common for the selling agent to ask that the section 27 statement be provided at the same time as the sales documents.

Advise the client to contact their mortgagee to sign the necessary discharge authority.

Ask the client to send you a copy of any discharge authority as this usually contains details needed for settlement. For example, account details for payment of surplus funds.

☐ **Check for any registered easements, covenants or similar restrictions**

[Section 32C](#) of the SLA requires a description of the easement, covenant or similar restriction be included in the section 32 statement. LPLC has seen claims where this is not done and where only a register search statement was attached but it did not contain a description.

**Zoom poll**

Is a lease a similar restriction?

- (a) Yes.
- (b) No.
- (c) Don't know.

**Your comments**

**Relevant case**

*Hoa Tha v Cinta Pty Ltd* 1997 VConvR 54-574

**LPLC article**

<https://lplc.com.au/resources/lplc-article/should-you-include-leases-in-section-32-statements>



## □ **Check the diagram location plan is obtained**

The words 'diagram location' typically appear on the register search statement followed by a plan of subdivision (PS) or title plan (TP) number.

Section 32I of the SLA states that the '... a copy of the register search statement and the document, or part of the document, referred to as the diagram location in the register search statement that identifies the land and its location ...' must be included in the section 32 statement.

### **Zoom Q & A**

#### Background

Note the reference in section 32I(a) of the SLA to provide the document or 'part of' the document referred to as the diagram location.

#### Question

For the sale of an apartment in a 20-storey building, for 'part of' the document referred to as the diagram location what do you need to attach to the section 32 statement?

#### Your comments

### **LPLC article**

<https://lplc.com.au/resources/lplc-article/determining-the-right-diagram-location-document>

## □ **Check whether the title is electronic**

This will be shown at the foot of the register search statement.

#### Warning

Immediately check who has control of the eCT if not held by the firm.

LPLC is aware of a matter where an incoming mortgagee did not receive at settlement control of the eCT and the mortgagee was not aware of this.

The error was discovered when the registered proprietor was in the process of selling the land.

The practitioner acting for the vendor contacted the previous vendor's mortgagee to give control of the eCT to the current mortgagee so that settlement could proceed to a buyer of the security property.

## Compare the title details to assessments / certificates / searches

### □ Check council rates assessment details match title details

The first council rates assessment should include details that can be matched up with the title.

Doing this is one way to ensure all of the land is included in the sale as the council information may contain a description of land different to or in addition to the title details provided by the vendor.

This may occur where title to some adjoining land has been obtained by adverse possession or acquired from the local council, such as a laneway.

It may be that the vendor is not aware of this additional title. For example, where the vendor is an executor or acting under power of attorney. Or perhaps the vendor has forgotten.

It is also possible that the vendor has provided the wrong title details so having the council rates assessment will assist to identify the correct land because it will also contain the street address, and this can be matched up to the title. It is common for a register search statement to have a street address shown.

The street address in the council rates assessment would usually match up to the address on the title(s).

### □ Check the land tax assessment / certificate

These will also usually contain details of the property to compare to the register search statement and also alert practitioners to whether the vendor is acting in a trustee capacity where the assessment / certificate refers to land tax at the trust rate.

Knowing whether the vendor is acting in a trustee capacity may mean practitioners need to make further enquiries about authority. For example, to check that the trust deed is dated, properly signed, any duty paid and that the trustee is registered on title.

### Further information

LPLC article – [Taxing times in conveyancing](#)

### Point to note

Details of trusts will not be shown on the title. See section 37 of the TLA:

*The Registrar shall not record in the Register notice of any trust whether express, implied or constructive.*

## Include a register search statement in the section 32 statement

Register search statement is not defined in the TLA.

You must include a register search statement in the section 32 statement.

Prior to October 2014 it was possible to attach a copy of the duplicate title rather than a title search.

### Zoom poll

When will a register search statement be out of date for the purposes of complying with section 32I of the SLA?

- (a) Never.
- (b) 3 months after it is issued.
- (c) 6 months after it is issued.
- (d) Any time after it is issued.

### Your comments

## Other title issues

### ☐ Warnings on titles

*The following information is based on the Land Registry lodging book.*

Some titles contain a warning including:

- Folio is subject to the qualification(s)
- Warning as to dimensions
- Warning as to subsisting Interests

Some warnings arise where general law land has been converted to Torrens title.

Where a warning appears on the title further enquiries should be made to determine the exact nature.

Warnings usually cease to affect the folio after 15 years.

### Folio is subject to the qualification(s)

This warning would appear where a solicitor's certificate as to title contains a qualification that the Registrar considers should be carried forward to a Torrens title.

### Warning as to dimensions

Usually referred to as a 'survey warning', this is by far the most common form of warning appearing on a title created from a conversion. It will appear on any title issued that is not based on survey, unless the land is a whole Crown parcel.

### Warning as to subsisting interests

This warning appears when a conversion is not based on a solicitor's certificate as the General Law title has not been examined by either the Registrar or by a certifying legal practitioner.

#### **Paper titles**

Believe it or not, they still exist. At least until the Land Registry does another bulk conversion of all remaining paper titles to electronic titles.

#### **Zoom poll**

At what point in a conveyancing matter do you request that the vendor client provide you with any paper title(s)?

- (a) In the first letter to the client.
- (b) More than one month prior to settlement.
- (c) 14 days prior to settlement.
- (d) The day before settlement.

#### **Your comments**

### Risk management lesson

Diarise a follow up to the client if any paper titles are not received at least 14 days prior to settlement.

#### **Destroy / make invalid a paper title**

When doing a settlement via an ELNO, such as PEXA, practitioners need to certify that they hold any relevant paper titles and have either destroyed any paper titles or made them invalid.

See clause 6 of schedule 3 to the [ARNECC Model Participation Rules](#).

There are a number of ways a paper title may be made invalid. Land Use Victoria has for many years perforated redundant paper titles with the words 'destroyed cannot be used for any legal purpose'. The duplicate, once perforated, was handed back to the lodging party with the new title and a letter stating that:

*This paper duplicate certificate of title has been superseded by a computer folio. This historical document has been returned to you to keep for your family or personal reasons. It cannot be used for a legal purpose.*

The method some banks would use to make a paper title invalid is by rubber stamping it with the words 'Destroyed – cannot be used for any legal purpose'.

Redundant paper titles may also be destroyed by tearing them into numerous pieces or burning them.

### Warning

Before physically destroying a paper title it is advisable to seek the clients' consent as they may want to retain the hard copy even though it has no legal purpose.

Best practice to avoid a dispute would be to include a special condition in the contract of sale specifying what is to happen to the paper title if the conveyance is being conducted electronically.

#### □ Issue search

An issue search will identify who a paper title is issued to. You may need to know this where a client has lost a title and you are making application for a replacement.

#### □ Handing over titles

Consider the following matters before handing over a paper title.

Most would also apply to handing over control in an eCT or nominating an eCT in addition to any ELNO requirements.

Importantly, the Land Registry should only be notified of the change in control of the eCT after the firm handing over control has established the identity and authority of the person who made the request and holds a signed client authorisation form.

## VOI

Verify the identity of every registered proprietor or their attorney when they want to collect the title.

### Zoom poll

Can you insist on a VOI of your former clients before handing over titles to another law firm?

- (a) Yes.
- (b) No.
- (c) Don't know.

### Your comments

## Further information

See LIV ethics ruling no. R4924 October 2017.

### Authority

- Original signed authority by every registered proprietor to be received where any lawyer / conveyancer requests the title.
- Compare the signature(s) on the signed authority to those on the VOI identity documents.
- Where a company is the registered proprietor, the written authority is to be signed in accordance with section 127 of the Corporations Act 2001.
- Where a request is made by the attorney ask to see the original power or a certified copy.
- Whoever is receiving the title(s) should also provide an acknowledgment of receipt.

### Records

Always keep a copy of the paper title(s), ID, acknowledgment of receipt and any POA preferably in the deed packet and electronically.

### Risk management

Any request must be made by everyone registered on the title. Claims have arisen where titles have been handed over to one co-owner without the consent of the other co-owners.

Where the request is made by another law firm, ensure it is in writing on the letterhead of the law firm and that it states the name of the client(s) the firm is acting for.

Tell the party wanting to collect the titles that they need to collect them personally or arrange a courier at their own expense.

Avoid sending titles in the post.

We have seen claims where titles are lost with arguments about who will obtain replacements and who will pay for them.

A copy of the ID should be kept with the signed acknowledgment in your deed packet for the client.

#### **Missed encumbrances**

Section 32A of the SLA provides that the vendor must give particulars of certain financial information including any charges over the land.

Section 32C of the SLA relevantly provides that a vendor must provide a description of any covenant, easement or other similar restrictions.

LPLC has seen claims where the register search statement contains a single word, such as 'charge', 'covenant', 'easement', 'agreement' and the practitioner failed to comply with sections 32A and 32C because no particulars or no description is provided resulting in a defective section 32 statement.

These claims seem to arise due to a failure to check the register search statement for such encumbrances.

The most common restrictions are drainage easements or a single dwelling covenant or no quarry covenant.

The other mistake practitioners make is they attach a copy of a title plan or plan of subdivision that only contains the word 'covenant' or 'easement' but no 'description' as required by section 32C.

The description or diagram showing the easement or detailing the terms of the covenant is often in another document or plan that is not attached.

Providing a document that contains the word easement or covenant, but nothing else, does not satisfy the requirement for a description.

A description of a covenant might be:

*A single dwelling covenant registered number xxxxxxx.*

A description of an easement might be:

*One-metre-wide drainage easement at rear of property.*

There is no requirement to provide a copy of the covenant.

Also note section 32J, which provides that a vendor 'may' provide certain certificates, notices, and other documents to satisfy this obligation to give a description. For example, attaching a copy of the registered covenant which commonly is contained in an earlier transfer of land.

## Risk management

Attention to detail and using a checklist to check title issues are the key to avoiding these claims.

## Tips

Sometimes clients are not aware of all the easements which may affect the property, some of which may be unregistered easements and may be disclosed in a water encumbrance certificate. It is therefore important to always obtain a water encumbrance certificate.

Best practice is to give a description of the easement or covenant and attach the document creating the easement or covenant.

### □ **Separate interest titles**

A title may be issued for each interest of any tenant in common.

See section 30(2) of the TLA:

*Two or more persons who are registered as joint proprietors of land shall be deemed to be entitled thereto as joint tenants and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, the Registrar may make any necessary recordings in the Register and may create a single folio for the entirety or separate folios for each of the individual shares, and may produce a certificate of title or certificates of title accordingly.*

These are known as interest titles.

We have seen claims where the practitioner thought that the title contained all of the land but in fact was an interest title which meant the sales documents only related to one interest of a number of interests.

Most likely the practitioner did not detect the reference on the register search statement to the title being an interest title.

This is why it is important to check the title to determine whether a title is an interest title.

There is usually a notation on the register search statement saying that this is one title of a number of titles and reference will be made to the volume and folio of the other interest titles.

It will also have been apparent from the description of the manner of holding of the registered proprietor which would refer to a specified share.

For example:

*Jo Citizen as to one of two equal undivided shares*

### **Zoom poll**

Can you do a transaction on an ELNO, such as PEXA for one of a number of interest titles?

- (a) Yes.
- (b) No.
- (c) Don't know.

### **Your comments**

#### **□ Selling a title subject to a restriction**

There are many ways in which restrictions may be created and which affect the rights to deal with a title.

Examples include:

- Units in a strata plan that are restricted or accessory units, usually a car space.
- A planning permit which applies to a subdivision which contains restrictions.
- The plan of subdivision contains restrictions.
- A memorandum of common provisions (MCP) referred to in a plan of subdivision contains restrictions.



LPLC has seen claims where there was a breach of the restriction by a vendor.

One example is selling a car space in a strata plan to someone who did not own a residential unit in the same strata plan.

Another example is a restriction in a planning permit that the apartment can only be used for student accommodation. I have seen these for apartments on Elizabeth and Swanston Streets Melbourne.

The claims would usually be for the costs thrown away in relation to the sale, which would include agent's commission.

### Further information

See attached guide issued by Land Use Victoria.

Note the following comments about this guide from Land Use Victoria:

*'.....some of this material is now a bit dated – for example, folios have now been updated to change reference from 'unit' to 'Lot' and separate folios have now been created for the common property on all Strata plans, with the consequent removal of references to 'share in the common property' from all Lot folios. Incidentally, the same changes have been made in respect to Cluster Plans.....'.*

### Did you know

LUV is currently undertaking a program to upgrade the quality of Strata Plans to something close to the quality of contemporary plans under the Subdivision Act.

This will make strata plans much easier to read and interpret, particularly as regards location of boundaries between lots and between lots and common property.

#### □ Caveats

Much has been written about caveats particularly since the case of *Classic Heights Pty Ltd v Black Hole Enterprises Pty Ltd* (1994) V ConvR 54-506.

In this case Batt J held that the basis on which a caveatable interest arises is from a registrable instrument or where the caveator has a right to compel the registered proprietor to deliver an instrument which can be registered.

This case has been questioned in subsequent cases and is not consistently followed.

More recent seminars and publications have focussed on the abuse of caveats and dealing with hostile caveats.

### References

Removing hostile caveats – William Rimmer Barrister Leo Cussen presentation on 10 April 2019

Lodging a caveat – Russell Cocks LIJ Sept 2017

The Use and Abuse of caveats – Robert Hay SC and Brett Harding Barrister Monash University Law Chambers 22 March 2017

## Claims

LPLC has seen a number of claims where third party caveats had been lodged after the contract is entered into and where the purchaser's practitioner failed to check the title prior to settlement.

In many instances these third party caveats relate to charges granted over the land pursuant to lease agreements or guarantees in financing arrangements related to the vendor's businesses.

LPLC has received a number of enquiries from practitioners seeking clarification of whether a caveat will lapse on the transfer by a mortgagee.

Pursuant to the TLA, caveats lodged after a registered mortgage which secure an amount owing pursuant to an unregistered mortgage or charge, will lapse on registration of a transfer by the mortgagee.

It follows that a withdrawal of any other caveat will need to be obtained for settlement purposes. Examples include a Queens caveat, caveat claiming an implied trust, or a resulting trust.

See [section 91\(2B\) of the Transfer of Land Act 1958 \(Vic\)](#).

### Risk management

Always check the title(s) prior to settlement to determine whether any caveats have been lodged.

Obtain a copy of any caveats and determine the basis on which they were lodged.

When acting for a vendor you will need to contact the lodging party well prior to settlement to arrange for any caveats which do not lapse upon registration of the transfer of land to be withdrawn.

### Further information

LPLC article – Caveat, charges and their traps.

<https://lplc.com.au/resources/lii-article/caveats-charges-and-their-traps#caveats>

#### □ **Water rights**

The transfer of a title in Victoria does not affect the ownership of water rights.

This has been the position since July 2004 with the unbundling of water rights.

LPLC has seen claims where the water rights were not properly dealt with as part of a sale of land and as part of the sale of a business.

In one claim, farmland was given as a specific bequest to the son of the deceased but there was no specific bequest for the water rights, so they formed part of the residuary. Given that the land was a farm one can probably assume that the water rights should have been bequeathed to the same son rather than as part of the residuary.

### Tips

Consider the need to review any wills held by your firm which predate the

unbundling of water rights.

When dealing with the sale of land and water rights remember to deal with the transfer of water rights in addition to the transfer of land.

#### □ **GST withholding and meaning of crown allotment**

GST withholding applies to contracts for new residential premises and potential residential land that is included in a property subdivision plan.

The property subdivision plan does not need to be a new subdivision, it can be an old one. Most property was part of a subdivision at some point, other than property being sold on crown allotments.

LPLC has received a number of enquiries about whether a Crown Allotment is land in a 'property subdivision plan'.

A Crown Allotment is the parcellation of a piece of land when first granted by the Crown. Although there are Crown plans, which show the relationship between various parcels, they are not land in a property subdivision plan.

#### [More information](#)

LPLC bulletin: [GST withholding key date looming – what you need to know](#)

## Taxes in conveyancing

GST is just one of many taxes that may apply to the transfer of land.

Practitioners should consider which taxes to raise with conveyancing clients including GST, CGT, duty and land tax because a client who has tax information is in a better position to make informed choices and avoid potential pitfalls.

Note Rule 7 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* provides that a practitioner must ensure clients make informed choices.

Sometimes you need to refer the client to an expert to obtain any necessary tax advice. This recommendation is probably best made at the start of a matter.

Based on recent LPLC claims data the four biggest areas of tax claims are:

- Nomination after land development has occurred.
- Failure to advise a foreign purchaser client of additional duty.
- Failure to give the SRO notice of the acquisition by a trust for land tax purposes.
- Failure to deal with GST issues prior to exchange of the contract.

#### [Further information](#)

LPLC Alert: [Spike in duty claims from conveyancing transactions](#)

LPLC Article: [Foreign purchaser additional duty for discretionary trusts – what you need to know](#)

LPLC flowchart: [Timing is everything to avoid double duty](#)

LPLC LIJ article: [Handy hints for GST](#)

LPLC LIJ article: [Taxing times in conveyancing](#)

□ **Are your suspicions aroused?**

LPLC has received a number of enquiries from practitioners concerned that the client may not be the registered proprietor.

In one example, a practitioner was suspicious that the client was too young to be the registered proprietor. The client was asked to 'please explain' and it turned out the client was the son of the registered proprietor and had the same name as their father. The client eventually produced a valid POA for the father appointing the son as his attorney. In some cultures, the same name may be repeated over many generations, so it is always a good idea to check the details.

In another enquiry, the practitioner was notified by Australia Post that they could not verify the identity of the vendor client. The vendor client then contacted the practitioner and said they would attend their office later that day and collect the duplicate certificate of title which they had handed to the lawyer earlier in the week.

**Zoom poll**

What would you do in this situation?

- (a) Refuse to hand back the title.
- (b) Hand back the title.
- (c) Contact LIV ethics.
- (d) Notify LUV.
- (e) Notify the Police.

[Further information](#)

**LIV ethics ruling – R4701**

**Background**

A practitioner has a general duty to comply with a client's lawful instructions, in the absence of overriding policy considerations to the contrary. A firm had received trust funds from a client. The practitioner believed the funds originated from a third party, in satisfaction of a debt to the client. The third party alleged the client had obtained the funds by deception, but police investigations were inconclusive. The client instructed the firm to pay out the funds.

**Ruling**

In the circumstances described, the Ethics Committee considered that the firm must follow their client's instructions in dealing with the funds. The firm should first put the third party on reasonable notice of their intention to pay the funds in accordance with its client's instructions.

## LIV ethics ruling R4054

### Background

A solicitor considered he might have information about a possible murder of a woman by her husband several years ago. He sought a ruling on whether he could tell the police of his suspicions. The solicitor had never acted for either the husband or wife although he employed the wife at one time and acted as mediator in a commercial dispute involving the husband.

### Ruling

In the opinion of the Ethics Committee and on the information presented: If any information was not obtained in the course of a retainer, the solicitor was not governed by fiduciary duties of confidentiality or by Rule 3 of the Professional Conduct and Practice Rules 2003. The practitioner must make a decision based on the same ethical principles governing all members of society, keeping in mind his additional obligation not to bring the profession into disrepute.

In all the disclosed circumstances, the Ethics Committee recommends that the practitioner should disclose any relevant information to the police.

## LIV ethics ruling – R3500

If ordered by a Court the practitioner must disclose the identity of the client to the police.

### Your comments

## LUV contact details

Not sure about a title issue? **Ask for help.**

E: [advice.enquiry@victorian.lrs.com.au](mailto:advice.enquiry@victorian.lrs.com.au)

T: (03) 9102 0401

## Checklist – titles

Below is a list of matters that you need to consider for every title.

- Checked name of registered proprietor.

If a company:

- Obtained company search.
- Checked company is registered.

If a trust:

- Checked trust deed.
- Checked trustee is the registered proprietor.
- Checked for 'estate fee simple'.
- Checked for interest title.
- Checked mortgage details.
- Checked any registered easements, covenants or similar restrictions.
- Checked the diagram location.
- Checked whether title is eCT or paper.
- Included register search statement(s) in section 32 statement.

Before handing over titles:

- Checked identity.
- Obtained authority.
- Delivered by courier.
- Kept records.

## Spot the title issue

Title	Issue
Volume 3780 folio 1	
Volume 10618 folio 2	
Volume 11202 folio 3	
Volume 11755 folio 4	
Volume 8648 folio 5	

Copy titles referred to in 'Spot the title issue' are contained in the powerpoint slides.

## Appendix

Interpreting strata plans

# Interpreting Strata Plans

## Introduction

This document provides guidance on the interpretation of Strata Act plans, which is additional to the explanations detailed in Schedule 2 of the *Subdivision Act 1988* – strata and cluster subdivisions.

## Key elements for interpreting strata plans under the *Strata Titles Act 1967*


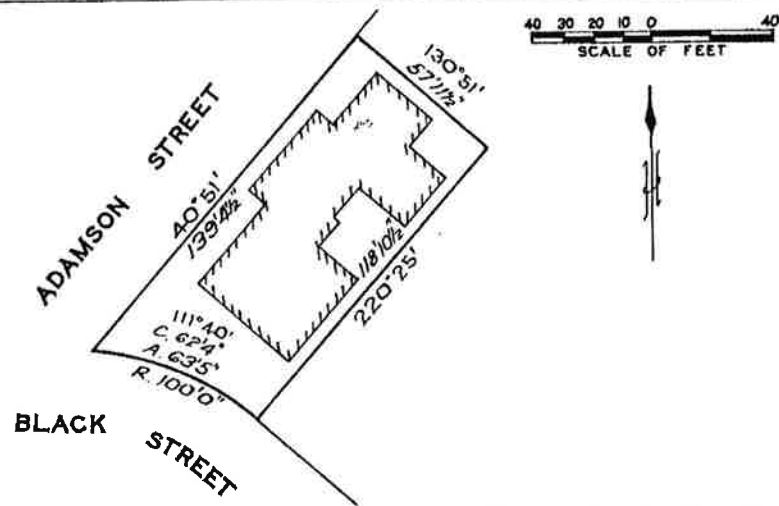
- Strata plans commence with the prefix RP (registered plan) or SP (strata plan).
- Boundaries that are defined by structures are shown by thick continuous lines.
- Where boundaries are defined by structures, the boundary lies along the median of the structure unless otherwise specified in the legend.
- Structures, as defined in the Strata Titles Act, include fences, walls, floors or ceilings.
- Boundaries not defined by structures are shown by thick broken lines and are dimensioned or fixed.
- Any thin lines or thin hatched lines shown on a strata plan do **not** represent a parcel boundary.
  - Strata plans show the outline of the buildings on the unit diagram.
  - Because the unit number is often shown inside these outlines, there can be some confusion about where the parcel boundary lies.
- At the time of registration, plans under the Strata Titles Act always contained common property. The common property may be in airspace – above or below the ground surface.
- Units may be defined as being restricted or accessory (car parks) units. Restricted units cannot be transferred unless transferred with an accessory unit.
- The legend in a strata plan may contain one or more of the following:
  - information relating to the building in the parcel;
  - any notice of restriction;
  - common property statement;
  - the location of the upper and lower boundaries;
  - the storey table if there are multiple stories; and
  - if appropriate, information if the boundary lies other than along the median of the structure.
- Any reference to unit (whether restricted, accessory, car park or otherwise) on a strata plan is treated the same as a lot on a Subdivision Act plan.



### Subdivision Act affecting strata plans

The Subdivision Act allows for redevelopment of strata plans. Boundary definitions within strata plans may be derived from both the Strata Act and Subdivision Act. The only way to amend boundaries on a strata plan is with Section 32 of the *Subdivision Act 1988*.

### Example of a typical strata plan

<p><b>PLAN OF STRATA SUBDIVISION RP2033</b></p>	
<p><b>THE PARCEL</b> The whole of the land described in Certificate of Title Volume 6241 Folio 015 being Part of Dandy's Crown Special Survey Parish of Moorabbin, County of Bourke.</p> <p><b>POSTAL ADDRESS OF THE BUILDING:</b> No. 47 &amp; 47A Black Street, Brighton. 3186</p> <p>FOR CURRENT ADDRESS FOR SERVICE OF NOTICE SEE BODY CORPORATE SEARCH REPORT</p>	<p><b>REGISTERED</b></p> <p><b>TIME</b> 9.25 A.M.</p> <p><b>DATE</b> 22 JUL 1970</p> <div style="text-align: right;">  </div>
 <p style="text-align: center;">40 30 20 10 0 40 SCALE OF FEET</p>	
<p>Diagram showing the external boundaries of the site and the location in relation thereto at ground level of all buildings in the parcel.</p>	
<p><b>SURVEYOR'S CERTIFICATE</b></p> <p>I, <b>EDWARD LINNEY SIM</b>, of 414 Bourke Street, Melbourne a Surveyor licensed under the Land Surveyors Act 1958, certify that this plan and any measurements on which it is based have been made by me or under my personal direction and supervision; that the standard of accuracy of any measurements made to determine the external boundaries of the site complies with that required by the Land Surveyors Regulations Part 2; that the plan accurately represents as at the 18<sup>th</sup> day of May 1970, in the manner required by the Strata Titles Act 1967, and the Land Surveyors (Strata Titles) Regulations 1967 and within the limitations of the scale used and the standard of accuracy required, the boundaries of the units and the location at ground level of all buildings in the parcel in relation to the external boundaries of the site and that all units are within the parcel.</p> <p>21/5/70</p> <p style="text-align: right;"><i>E. L. Sim</i></p>	<p><b>SEAL OF MUNICIPALITY AND ENDORSEMENT</b></p> <p style="text-align: center;">CITY OF BRISBANE</p> <p>I do hereby certify that this plan of subdivision is in accordance with the provisions of the Strata Titles Act 1967 and the Land Surveyors (Strata Titles) Regulations 1967 and that the Council of the Municipality of Brisbane on this day the 22<sup>nd</sup> of JUNE 1970 has approved the plan in accordance with Section 6 Paragraph 1 of the Strata Titles Act 1967.</p> <p style="text-align: right;"><i>E. B. Jewell</i></p> <p style="text-align: right;"><i>C. DeLaur</i></p>
<p><b>SCHEDULE OF UNIT ENTITLEMENT AND UNIT LIABILITY</b></p>	
<p>FOR CURRENT BODY CORPORATE DETAILS SEE BODY CORPORATE SEARCH REPORT</p> <p style="text-align: right;"><i>E. L. Sim</i> SHEET 1 OF 2 SHEETS</p>	

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LEGEND

The building in the parcel, a part of which is contained in each of units 1 and 2, is a single - storey building.

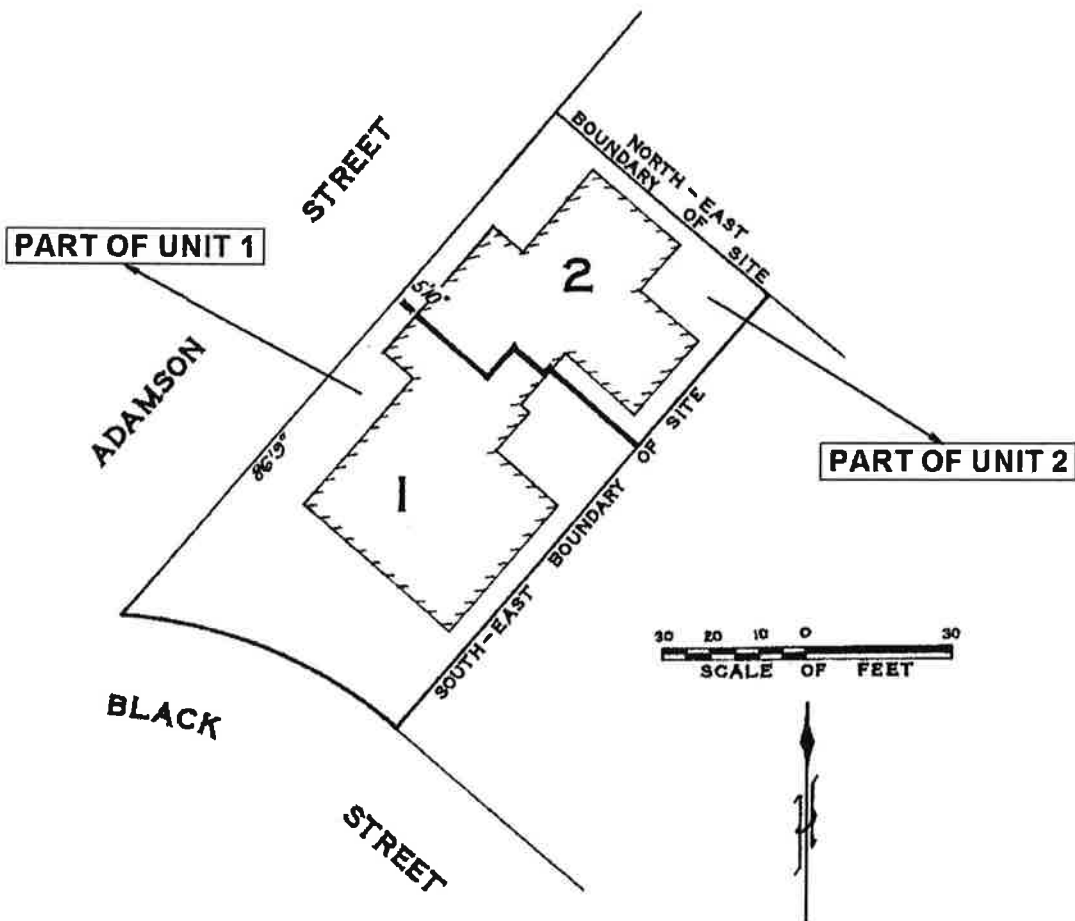
The upper boundary of each of Units 1 and 2 is twenty-five feet above that part of the site which is within the vertical or near vertical boundaries of the relevant unit as shown on the diagram below; the lower boundary of each of these Units is four feet below that part of the site.

No unit is an accessory unit.

The common property is all the land in the parcel except the land in Units 1 and 2.

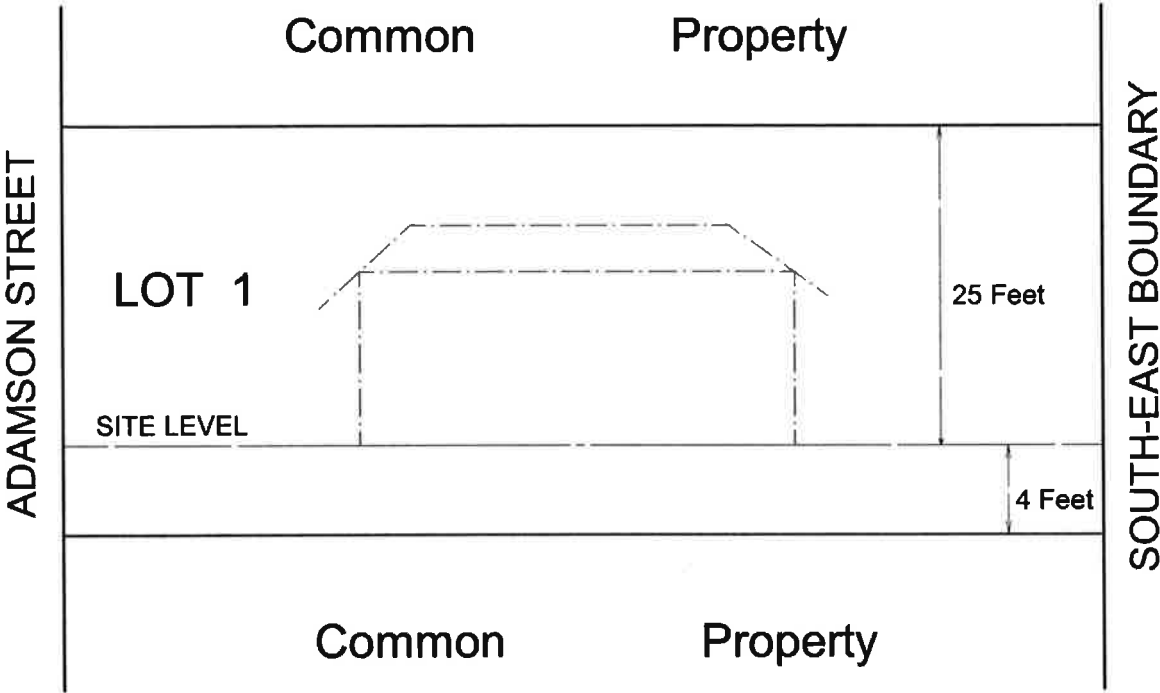
UPPER & LOWER BOUNDARIES

NOTE: NO COMMON PROPERTY AT GROUND LEVEL



Interpretation of where common property lies

**RP2033**



**CROSS SECTION**