

South Australia

## **Real Property (Land Division) Regulations 1995**

under the *Real Property Act 1886*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Real Property (Land Division) Regulations 1995*.

#### 4—Interpretation

In these regulations, unless the contrary intention appears—

*the Act* means the *Real Property Act 1886*;

*the 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";

*outer boundary survey plan* means a plan prepared for the purpose of defining the outside boundaries of the land proposed to be divided;

*road* includes a street.

### Part 2—Application for division

#### 5—Fees

The fee prescribed by clause 1 of Schedule 1 must accompany an application for the division of land.

#### 7—Submission of outer boundary survey plan

- (1) Subject to subregulation (2), a person who intends making an application for the division of land must, before making the application, submit to the Registrar-General—
  - (a) an outer boundary survey plan of the land to be divided; and
  - (b) the appropriate fees prescribed by the *Real Property (Fees) Regulations 2002*.
- (2) Subregulation (1) does not apply in relation to an application for:
  - (a) the division of land into five allotments or less; or
  - (b) any other division of land in respect of which the Registrar-General has determined that subregulation (1) should not apply.
- (3) The Registrar-General must examine the outer boundary survey plan and must, if satisfied that the requirements of these regulations have been met and the information on the plan appears to be adequate and accurate, send a copy of the plan to:
  - (a) the applicant or the applicant's agent; and
  - (b) the council for the area in which the land is situated.

#### 8—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 22 of the *Survey Regulations 1992* 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 two 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).

### **9—Removal of requirement for section 51 certificate**

A certificate from the Development Assessment Commission under section 51 of the *Development Act 1993* is not required in respect of a division of land that is excluded from the definition of development by Schedule 3 of the *Development Regulations 1993*.

### **10—Consent to plans of division**

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

### **11—Examination of plan**

- (1) 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.
- (2) The Registrar-General may require an applicant for the division of land to provide such further information as the Registrar-General requires in relation to the application.

### **12—Issue of certificates of title on deposit of plan**

On depositing a plan of division in the Lands Titles Registration Office the Registrar-General must issue a separate certificate of title for each allotment created by the plan except a street, road or thoroughfare that vests under section 223L of the Act.

### **13—Notification on deposit of plan**

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.

## **Part 3—Application for amalgamation**

### **14—Fees**

The fee prescribed by clause 2 of Schedule 1 must accompany an application for the amalgamation of land.

### **16—Requirement for plan of survey**

The Registrar-General may require the plan accompanying the application to be a plan of survey and to include the certificate of a licensed surveyor that complies with regulation 22 of the *Survey Regulations 1992* made under the *Survey Act 1992*.

### **17—Examination of plan**

- (1) 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.
- (2) The Registrar-General may require an applicant for amalgamation to provide such further information as the Registrar-General requires in relation to the application.

### **18—Restriction on amalgamations**

Allotments cannot be amalgamated if, as a result of the amalgamation, a mortgage or encumbrance would subsist over part only of the amalgamated allotment.

### **19—Notification of amalgamation**

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.

## **Part 4—Requirements as to plans**

### **20—Application of Part**

This Part applies to and in relation to plans of division, plans of amalgamation and outer boundary survey plans.

### **22—Easements**

- (1) A plan must include the following information in relation to existing easements affecting the land and, in the case of a plan of division, easements to be created or varied by deposit of the plan:
  - (a) the position of the easement and the identity of the servient land; and
  - (b) the identity of the dominant land or, if there is no dominant land, the identity of the person or body who has the benefit of the easement and the purpose of the easement.

- (2) The information required by subregulation (1) must be provided in a form approved by the Registrar-General.

## **Part 5—Miscellaneous**

### **27—Transactions involving part of an allotment**

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 license 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 one 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 license 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.

### **29—Persons on whom notice must be served under the Schedule 1 of the Act**

The Registrar-General must serve notice under clause 1(1)(b) of the 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.

### **30—Persons whose consents are required under the Schedule 1 of the 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 the Schedule 1 of the Act.

## Schedule 1—Fees

- |   |   |       |
|---|---|-------|
| 1 | 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 road reserve) in any person | \$112 |
|   | (b) in all other cases  | \$297 |
| 2 | Application for the amalgamation of allotments  | \$112 |
- However, there is no fee for an application for the amalgamation of allotments that are wholly within the Mount Lofty Catchment Area.

**Note—**

Fees for the examination of the plan of division or amalgamation, deposit or acceptance for filing of the plan and for the issue of new certificates of title are payable under the *Real Property (Fees) Regulations 2002*.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- 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](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Real Property (Land Division) Regulations 1995* revoked the following:

*Real Property Act (Land Division) Regulations 1982*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
1995	178	<i>Gazette 31.8.1995 p616</i>	1.9.1995: r 2
1996	135	<i>Gazette 30.5.1996 p2806</i>	8.7.1996: r 2
1997	117	<i>Gazette 13.5.1997 p1940</i> revoked by 148/1997	revoked by 148/1997 without coming into operation
1997	148	<i>Gazette 5.6.1997 p2937</i>	1.7.1997: r 2
1998	64	<i>Gazette 28.5.1998 p2314</i>	1.7.1998: r 2
1999	75	<i>Gazette 27.5.1999 p2846</i>	1.7.1999: r 2
1999	198	<i>Gazette 30.9.1999 p1392</i>	30.9.1999: r 2
2000	67	<i>Gazette 25.5.2000 p2729</i>	1.7.2000: r 2
2001	97	<i>Gazette 31.5.2001 p2057</i>	1.7.2001: r 2
2002	91	<i>Gazette 20.6.2002 p2598</i>	1.7.2002: r 2
2003	72	<i>Gazette 29.5.2003 p2196</i>	1.7.2003: r 2
2003	147	<i>Gazette 12.6.2003 p2500</i>	12.6.2003: r 2
2004	43	<i>Gazette 27.5.2004 p1425</i>	1.7.2004: r 2
2005	13	<i>Gazette 10.3.2005 p618</i>	10.7.2005: r 2
2005	120	<i>Gazette 26.5.2005 p1594</i>	1.7.2005: r 2
2006	117	<i>Gazette 15.6.2006 p1797</i>	1.7.2006: r 2
2007	85	<i>Gazette 7.6.2007 p2374</i>	1.7.2007: r 2
<b>2008</b>	<b>75</b>	<b><i>Gazette 5.6.2008 p1983</i></b>	<b>1.7.2008: r 2</b>

## Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>rr 2 and 3</i>	<i>omitted under Legislation Revision and Publication Regulations 2002</i>	<i>1.7.2004</i>
r 4		
the Mount Lofty Catchment Area	inserted by 198/1999 r 3	30.9.1999
outer boundary survey plan	varied by 13/2005 r 4	10.7.2005
<i>r 6</i>	<i>deleted by 13/2005 r 5</i>	<i>10.7.2005</i>
r 7		
r 7(1)	varied by 120/2005 r 4	1.7.2005
r 14	varied by 120/2005 r 5	1.7.2005
<i>r 15</i>	<i>deleted by 13/2005 r 6</i>	<i>10.7.2005</i>
<i>r 21</i>	<i>deleted by 13/2005 r 7</i>	<i>10.7.2005</i>
<i>rr 23—26</i>	<i>deleted by 13/2005 r 8</i>	<i>10.7.2005</i>
<i>r 28</i>	<i>deleted by 13/2005 r 9</i>	<i>10.7.2005</i>
<i>Sch 1 before substitution by 43/2004</i>	<i>substituted by 135/1996 r 3</i>	<i>8.7.1996</i>
	<i>varied by 148/1997 r 4</i>	<i>1.7.1997</i>
	<i>substituted by 64/1998 r 3</i>	<i>1.7.1998</i>
	<i>varied by 75/1999 r 3</i>	<i>1.7.1999</i>
	<i>varied by 198/1999 r 4</i>	<i>30.9.1999</i>
	<i>varied by 67/2000 r 3</i>	<i>1.7.2000</i>
	<i>varied by 97/2001 r 3</i>	<i>1.7.2001</i>
	<i>varied by 91/2002 r 3</i>	<i>1.7.2002</i>
	<i>varied by 72/2003 r 4</i>	<i>1.7.2003</i>
Sch 1	substituted by 43/2004 r 4	1.7.2004
	substituted by 120/2005 r 6	1.7.2005
	substituted by 117/2006 r 4	1.7.2006
	substituted by 85/2007 r 4	1.7.2007
	<b>substituted by 75/2008 r 4</b>	<b>1.7.2008</b>
<i>Sch 2</i>	<i>heading substituted by 147/2003 Sch 1</i>	<i>12.6.2003</i>
	<i>deleted by 13/2005 r 10</i>	<i>10.7.2005</i>

## Historical versions

Reprint No 1—8.7.1996

Reprint No 2—1.7.1997

Reprint No 3—1.7.1998

Reprint No 4—1.7.1999

Reprint No 5—30.9.1999

Reprint No 6—1.7.2000

Reprint No 7—1.7.2001

Reprint No 8—1.7.2002

Reprint No 9—1.7.2003

1.7.2004

1.7.2005 (electronic only)

10.7.2005

1.7.2006

1.7.2007