

TRANSFER INTEREST IN LAW

General Rule

- No conveyance of land under old system title is valid to pass an interest at law unless made by deed: s 23(B)(1), CA.

Exceptions

- A lease or tenancy or other assurance not required by law to be made in writing: s 23B(2)(d), CA.
 - Thus, short-term lease **no more than three years**, **market payment rent** and **immediate possession**: s 23D(2), CA
- Not apply to Torrens title land: s 23B(3), CA.

* Elements of Deed:

- * Must be made in writing on paper (or vellum or parchment).
- * Must be delivered.
- * Must be signed, sealed and attested by one witness not a party: s 38(1), CA.
- * Sealed if signed and attested: s 38(3), CA.
- * Indenting is not necessary: s 38(2), CA.
- * Where the deed has a date, it is presumed to operate from that date: *Styles v Wardle*.
- * When the deed has no date, it takes effect when it is delivered: *Styles v Wardle*.
- * Delivery can be actual, where the deed is physically handed over, or constructive, where the deed does not leave the executing party's possession: *Xenos v Wickham*.

THE EFFECT OF REGISTRATION - s 184G, CA

s 184G Instruments affecting land to take effect according to priority of registration

- (1) All instruments (wills excepted) affecting, or intended to affect, any lands in New South Wales which are executed or made **bona fide**, and for valuable consideration, and are duly registered, shall have and take priority not according to their respective dates but according to the priority of the registration.

- * Under s 184G of the CA, an interest that would have taken priority over another interest under the general law will generally lost that priority if that other interest is registered first.
- * Wills may be registered under the CA, however registration confers no priority on a will.
- * Registration system under the CA:
 - * A General Register of Deeds is maintained by the Registrar-General, as required by s 184C, CA.
 - * This General Register of Deeds is open to public inspection, as provided by s 199, CA.
 - * To register a deed in the General Register of Deeds, the original and a copy of the instrument must be delivered, as outlined in Part 2 of the *Conveyancing (General) Regulation 2008 (NSW)*.
 - * These instruments are then given a "distinctive reference" by the Registrar-General, as provided by s 184E, CA.

Elements of s 184G

Competing Instrument

- s 184G(1) predicates the existence of "instrument". **It applies only to interests embodied in, or evidenced by, instruments** – i.e., both must be in writing: *Goodwin*.
 - An interest created without an instrument being brought into existence is **NOT defeated** by later registration of an instrument affecting the same land: the conflict must then be resolved using the general principle of priority. Examples of those interests:
 - The right of a mortgagee under a mortgage by deposit of title deeds without writing;
 - Oral contracts to sell or mortgage land with part performance;
 - An unpaid vendor's lien;
 - The 'short term' legal lease under s 23D(2) of the CA;
 - The purchase price resulting trust.
 - On the other hand, if an instrument, although not strictly required, is in fact brought into existence and left unregistered, the interest it embodies will be defeated by a competing interest embodied in an instrument that is registered. – argument: more advantageous to not to use instrument.
- The instruments **must be competing** in the sense that there is a conflict over the same interest- s 184G of the CA does not operate where the instruments can stand together. – for example, the later instrument may be expressly subject to the earlier: *Fraser*.

Bona fide and notice

- Onus of proof lies on the person asserting priority based on registration: *Jones v Collins*.
- The instrument under which priority is claimed must have been made bona fide- so the party claiming priority **must not have engaged in fraud or deceit**, and there **must be an absence of notice** (actual, **constructive** or imputed).
 - Notice received before an instrument is executed precludes the instrument from gaining priority by registration: *Jones v Collins*.
 - However, notice received after the instrument is executed but before it is registered, does not preclude priority by registration: *Blackwood*.

Valuable consideration

- The consideration must not be so inadequate, i.e, must be 'sufficient' and not merely nominal: [Bullen](#).
- A promise to pay money constitutes value for the purpose of the provision: [Moonking Gee](#).

* Constructive notice need to consider the rule in [Hunt v Luck](#).

Effect of Registration

Change the General Rule

- * In conferring priority, registration may give an instrument an operation that it would not have apart from registration.
- Once a legal interest is registered, it takes priority over any later registrable instruments or any could but not registered instrument.
- * Registration thus confers on the later instrument a **retroactive operation against the earlier**, giving the later an efficacy that it would not otherwise have (due to "nemo dat" rule).

Registration does not cure defects

- it is only for the purposes of priority that registration gives a registered instrument greater efficacy than it would otherwise have. Registration **does not otherwise cure inherent defects of a void or voidable instrument**: s 184G CA – including:
 - Fraud: [Kerley](#);
 - Mistake: [Sutherland](#);
 - Fogery: [Re Cooper](#).

Apply to equitable interest also

- Priority conferred by registration applies to both legal and equitable interests- so a registered equitable interest can defeat an unregistered legal interest or even a subsequently registered legal interest: [Moonking Gee](#).

Registration as notice

- Registration of an instrument under Div 1 of Pt 23 does not give "notice" of that instrument to all the world": [Mills](#).
- On the other hand, registration itself can amount to constructive notice – a person who acquires an interest in land without **first searching** the General Register of Deeds will take subject to interests discoverable in that Register by prudent search: [Mills](#).
- But, if a person has registered their interest, that person is not required to search the Register for later registered instruments that may affect the exercise of rights under the registered instrument): [Mills](#).

Whether a volunteer should register?

- A volunteer cannot get priority over an earlier interest by registration because any interest taken was not for value, therefore the priority between the interest of a volunteer and any earlier interest is still decided by the general law.
- But the registration of a volunteer will give constructive notice to later interest, and accordingly they would not be able to be given priority. – So a volunteer is still suggested to register his interest under s 184G.

* Explanation of the effect, for example:

- * Owner of land conveys legal fee simple to A and then purports to convey legal fee simple to B
- * "Nemo dat" rule prescribes that B acquires nothing.
- * However, once B registers under s 184G before owner's conveyance to A, conveyance to B takes priority.
- * So, although formerly ineffective, conveyance to B is now effective to pass the legal estate.

* Meaning given to inconsistent grants: [Boyce v Beckham](#).

- * O holds respective fees simple in Parcels 1, 2 and 3.
- * O conveys Parcel 1 to X. O then conveys "lands to which I am entitled" to Y.
- * Y registers her conveyance, but X doesn't register his.
- * Who is entitled to Parcel 1? -- Y (here "lands to which I am entitled to" includes Parcel 1 because X's interest was not registered, so the grant was inconsistent – You are to construe these words without reference to those unregistered rights).

* Why we still need Torrens Title system?

- * Registration in Old System land does not cure defect.
- * Registration will not apply if one of the competing interest is not registrable.
- * Torrens system gives a RP protection against instrument of which he has notice.

NATURE OF TORRENS TITLE SYSTEM

Title by registration

- The Torrens title system is a system of 'title by registration', not registration of title: [Breskvar](#); s 41, [RPA](#).
 - Under the Torrens system, one acquires title by registration. Registration is not evidence of title, **it is the source of title**.
- The effect of this is that 'a registration which results from a void instrument is effective according to the terms of the registration. It matters not what the cause or reason for which the instrument is void': [Breskvar](#).

Evidence of title

- * The folio held by the R-G is **conclusive evidence of title**: s 40(1), [RPA](#).
- This means searches and investigations beyond the Register should be unnecessary: [Westfield Management](#).

* Torrens title comes from the following principles:

- * "Mirror" principle – Register should perfectly mirror the state of the title;
- * "Curtain" principle – There is a curtain drawn across those unregistered interest;
- * "Insurance" principle – Where a registered proprietor loses title without fault on his own, there would be compensation for his loss.

THE REGISTER AND ITS CONTENTS

Folios: s 32

- A "folio" of the Register may be either: s 3, [RPA](#).
 - a "manual folio" (wholly in written form) or
 - a "computer folio" (a folio that is not a manual folio).
- Under s 32(1), [RPA](#), the Registrar-General creates a folio of the Register by making a record of:
 - (a) a **description of the land** and of the estate or interest in the land for which the folio is created;
 - (b) a **description of the "proprietor"** of the estate or interest; and
 - (c) **particulars of any other estates or interests affecting the land**.
- The folio is allocated a **"distinctive reference"**(s 32(1)), which is quoted in all transactions affecting the land.
- Each separate folio has provision for a first schedule and for a second schedule.
 - In the first schedule is entered the name of the current RP.
 - All other registered interests with respect to a particular property will be recorded in the second schedule, include mortgage, leases, restrictive covenants and easement.

Certificate of Title: s 33

- The Registrar-General **may** issue a CT for the land: s 33(1), [RPA](#).
- But the Registrar-General **must** issue a CT for the land at written request of registered proprietor or registered mortgagee or chargee: s 33(5), [RPA](#). – usually CT is held by RP of the fee simple or the first registered mortgagee.
- The CT shall be in an "approved form": s 33(2), [RPA](#).
- When a CT is issued, the Registrar-General must endorse with **distinctive reference** allocated to relevant folio of register: s 33(3), [RPA](#).
- When a "certificated of title" is issued, the Registrar-General must cancel superseded "certificate of title": s 33(4), [RPA](#).
- * Under s 38 of the [RPA](#), the Registrar-General **may refuse to register a transaction (dealing) unless the CT is produced**.

Dealings

- * Dealings may be registered if in the **approved** and **registrable form** and the Registrar-General **has the authority to use the CT**: s 36(6).
 - A dealing shall be deemed not to be in **registrable form**: s 36(6)(b):
 - (i) if ... the dealing requires a material correction, alteration or addition,
 - (ii) unless the R-G has authority to use, for the purpose of registering the dealing, the relevant certificate of title, or
 - (iii) unless the dealing is in the approved form, and
 - Dealing must be in forms **approved** by the R-G: s 104(1), [RPA](#).
 - Departure from approved forms are permissible, but not in "matters of substance": s 104(2).
- Each dealing accepted by the R-G is allotted a **"distinctive reference"**: s 36(1A), (1B), and is registered when the R-G makes "such recording in the Register with respect to the dealing as the R-G thinks fit: s 36(6A), [RPA](#).
- Dealings not effectual until recorded in Register: s 41, [RPA](#).
- * Upon registration, a dealing shall have the effect of a deed duly executed by the parties who signed it: s 36(11), [RPA](#).
- * The priority of the registered dealing, is **according to date of registration**, rather than date of dealings: s 36(9), [RPA](#).
- * The unregistered interests are extinguished by later registered interests, unless preserved as an exception to indefeasibility: [Leros](#).
- * But the priority between unregistered interests is determined by applying the general principle.

* s 31B(1) of the [RPA](#) requires the Registrar-General to maintain a Register for the purpose of the Act.

- * The R-G is obliged to create a separate folio or a CT for each parcel of land that is governed by RPA: ss 32-33, [RPA](#).

* The Register comprises: s 32B(2), [RPA](#)

- * folios,
- * dealings,
- * prescribed instruments, and
- * records which the regulations require to be kept as part of the Register– ([Real Property Regulation 2008 \(NSW\)](#)).