

No. 2014/03

www.lpi.nsw.gov.au

Date: March 2014

Land and Property Information, a division of the Department of Finance and Services is officially registered in the Australian Business Register and also registered for GST. Its ABN is 84 104 377 806.

‘Optional no Certificate of Title’: practice changes for settlement and lodgment of dealings and plans

On 8 October 2013 electronic conveyancing commenced in NSW. It currently allows electronic preparation and lodgment of mortgages and discharges of mortgage by a small but growing number of subscribers to Property Exchange Australia (PEXA). From September 2014, it is expected that the functionality for caveats, transfers and financial settlement of transactions will be added.

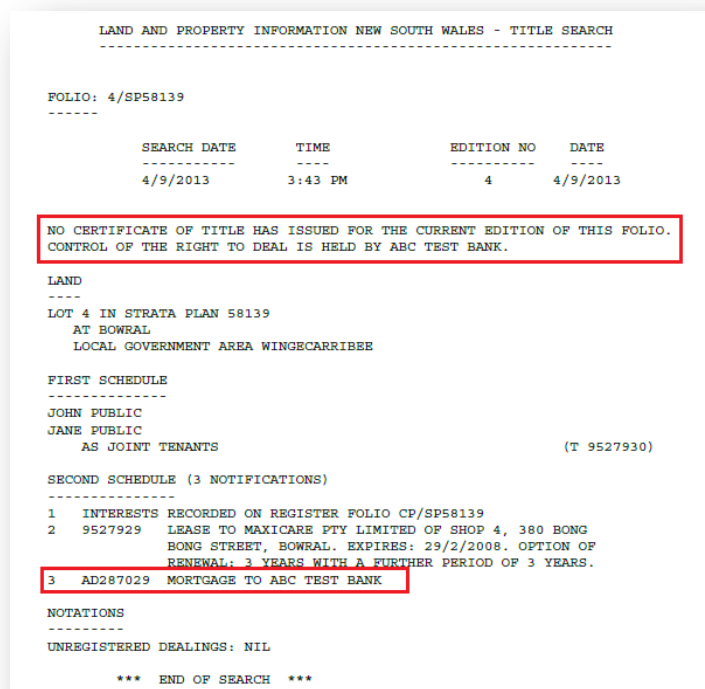
With electronic conveyancing, LPI has introduced an option where certain parties can elect not to have a paper Certificate of Title (CT) issued. At present, eligibility for ‘optional no CT’ is limited to regulated financial institutions (RFIs) who:

- hold a registered first mortgage; and
- are subscribers to Property Exchange Australia (PEXA), or are represented by a subscriber to PEXA.

As electronic conveyancing grows, it will be increasingly likely that practitioners engaged in conveyancing transactions, leasing or plan registration will encounter titles where a CT has not issued. This Circular will assist you to deal with changes to settlement and lodgment of dealings and plans resulting from the introduction of ‘optional no CT’.

How to identify where a CT has not issued

When an RFI has requested that a CT not be issued, the folio of the Register will indicate who holds Control of the Right to Deal (CoRD) for that title, as below:



How to proceed at settlement where a CT has not issued

The most common land transaction involves a discharge of a mortgage, a transfer of ownership, and a new mortgage. Where a CT has issued, the discharging mortgagee hands over the CT at settlement with a discharge of mortgage form.

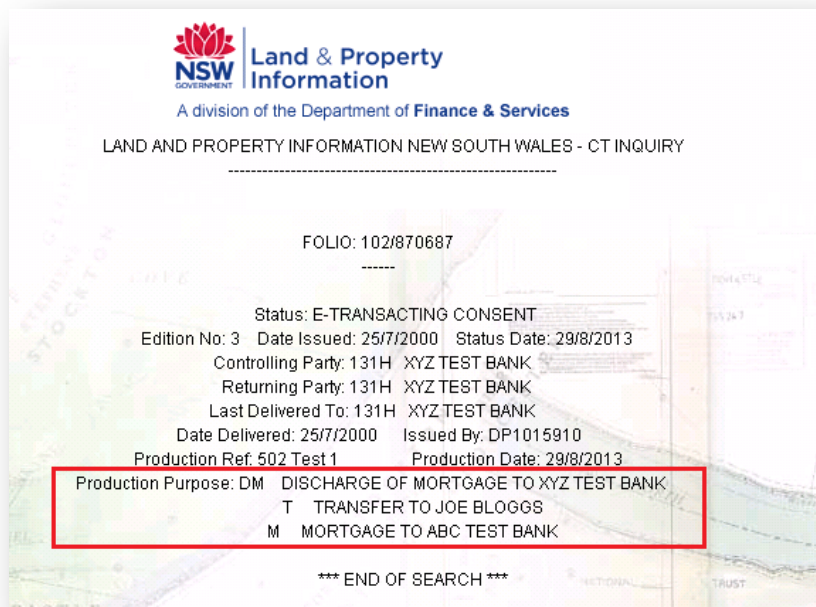
Where a CT has not issued, a different approach must be taken for the settlement and lodgment of paper dealings. The discharging mortgagee must lodge a CoRD Holder Consent via PEXA **before** settlement. A CoRD Holder Consent cannot be lodged in paper with LPI.

The Consent provides assurance and protection to the incoming transferee and mortgagee that control of the right to deal will pass at settlement. As the discharging mortgagee will pass CoRD, the type of consent will be a Transacting Party Consent.

It is not necessary for the parties involved to ask that a CT be issued for settlement purposes.

To ensure that consent has been provided before settlement, all parties involved should perform an LPI CT Inquiry through an information broker or LPI's Online Shop. As a fraud prevention measure, **the CoRD Holder Consent must specify all dealings in the settlement case**, not just the mortgage being discharged.

The parties receiving under each of the dealings (such as the transferee in a transfer and the mortgagee in a new mortgage) must also be stated - see sample search result below. **This requires the discharging mortgagee to obtain details about the dealings and incoming parties prior to lodging the CoRD Holder Consent.**



When the paper dealings are registered, a CT will issue to the lodging party of the dealings. However, if an incoming RFI will hold a registered first mortgage, the RFI may request no CT issue, if they are a subscriber to PEXA or are represented by a subscriber to PEXA.

How to lodge a plan, second mortgage, lease, or other dealing where a CT has not issued

Where a CT has issued, the lodging party of a plan, second mortgage, lease, or other dealing asks the mortgagee to produce the CT to enable registration.

However, where a CT has not issued, the mortgagee must now lodge a CoRD Holder Consent via PEXA. The Consent must specify all plans and/or dealings consented to and the parties involved. As the

mortgagee will be retaining CoRD after registration, the type of consent will be a Third Party Consent. The mortgagee can again request that no CT be issued.

To ensure that consent has been provided, the lodging party should perform an LPI CT Inquiry through an information broker or LPI's Online Shop - see sample search result below.



Can a CoRD Holder Consent be withdrawn?

A CoRD Holder Consent can only be legitimately withdrawn if settlement has not and is not intended to take place. A consent lodged with LPI can only be withdrawn by the consenting party or the subscriber representing the consenting party.

A CoRD Holder Consent cannot be withdrawn electronically via PEXA - it can only be manually withdrawn upon production to LPI of all of the following:

- Written evidence to establish the identity of the consenting party or subscriber
- The Land Registry Document Identification (LR Document ID) number, the transaction(s) consented to, and the parties involved, as specified in the CoRD Holder Consent
- A statutory declaration stating that:
 - settlement for which the CoRD Holder Consent was provided has not and is not intended to take place
 - all parties involved in the transaction consented to have been notified of the withdrawal of consent.

Further Information

For more information regarding CoRD, refer to the e-Dealings section of the Registrar General's Directions: http://rgdirections.lpi.nsw.gov.au/e-dealings/control_right_deal.

A training video is also available in the National E-Conveyancing in NSW section on the LPI website: http://necnsw.lpi.nsw.gov.au/about_us/announcements/control_of_the_right_to_deal_training_video.

Email your inquiries to econveyancingnsw@lpi.nsw.gov.au.