



Commissioner of Titles Office

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Hon Nick Goiran MLC
Chair Select Committee into Elder Abuse
Legislative Council
Parliament House
PERTH WA 6000

Care of: Lauren Mesiti
Committee Clerk

Dear Mr Goiran

INQUIRY INTO ELDER ABUSE ESTABLISHED BY THE LEGISLATIVE COUNCIL

Thank you for your letter dated 18 September 2017 inviting submissions as Chairman of the Select Committee into Elder Abuse. I appreciate the opportunity to contribute to this enquiry.

The Registrar and Commissioner of Titles, holding statutory positions within the Western Australian Land Information Authority (Landgate), are responsible for maintaining the integrity of the WA Land Titles Register.

While elder abuse can take many forms, of concern to Landgate is the potential for elderly proprietors of land to suffer financial abuse due to the lodgement and registration of improper dealings or fraudulent land transaction documents. Therefore, my comments will be mainly restricted to this particular aspect of elder abuse.

Registered proprietors of real property who are elderly may be suffering from a legal disability (e.g. have dementia or Alzheimer's) or they may not be living at the property due to being in a nursing home. In these circumstances their property could become the target of title fraud. Attempts could be made to sell or mortgage their property by the use of identity fraud and forged land registration documents. They may also be subject to undue influence from family and friends to sign land transaction documents that may not be in their best financial interest.

Another way to perpetrate a fraud in the WA Land Register is through the misuse of powers of attorney. Section 143 of the *Transfer of Land Act 1893* allows for the execution of land transaction documents by an attorney appointed under a power of attorney document that is deposited at Landgate. By the creation of a power of attorney, a registered proprietor is able to give someone (the attorney) the power to sell or mortgage their land.

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Pursuant to the provisions of the *Guardianship and Administration Act 1990* another type of power of attorney, called an enduring power of attorney, can also be used to execute land transaction documents. A lot of elderly people are putting an enduring power of attorney in place because, unlike ordinary powers of attorney, an enduring power of attorney does not terminate if they suffer from a mental disability.

The donor of an enduring power of attorney usually appoints other family members (e.g. their spouse and / or children) to be their attorney. The attorney(s) appointed under an enduring power of attorney are given a general power to do anything that the donor can legally do. This includes executing land transaction documents on behalf of the donor if the enduring power of attorney document has been deposited at Landgate.

If a person becomes mentally incapable and they do not have an enduring power of attorney in place, it is not possible for the family to deal with any of that person's assets or make financial decisions on behalf of that person. In this circumstance it is necessary to make application to the State Administrative Tribunal (SAT) to have the person declared incapable and have an administrator appointed to look after the person's financial affairs. Having an enduring power of attorney in place avoids the need to go to SAT, saving time and money.

While enduring powers of attorney serve a very beneficial purpose, there is a possibility that the attorney could misuse the powers they have especially if the donor is suffering from a mental disability. The attorney has the power to deal with all their financial assets including any land they own. Not being aware for what is going on, they could easily be take advantage of.

Attorneys are duty bound to act in the best interests of the donor and in the case of an enduring power of attorney, they can have their actions investigated by SAT if allegations of misconduct are made by someone (usually a relative or close friend of the incapable person). This provision however does not necessarily guarantee that an elderly person will not be subject to financial abuse due to the misuse of an enduring power of attorney.

An enduring power of attorney is often a private arrangement between family members that is designed to keep oversight by government agencies to a minimum. Therefore, Landgate is somewhat limited in what it can do to protect registered proprietors from fraud due to the misuse of an enduring power of attorney.

As a general rule the Registrar of Titles does not allow an attorney to execute a transfer of land document whereby the attorney transfers land owned by donor of the power of attorney to himself. This is a breach of the fiduciary duties of the attorney. However, there are times when this becomes necessary. For example, sometimes the donor of an enduring power of attorney, who may now be incapable, needs to have their house sold to raise the funds to get them into a nursing home. The attorney, who is often a family member may be trying to urgently sell the home but is not able to find a suitable buyer at the moment. To overcome this problem, the attorney or another family member may borrow the money (take out a mortgage) to buy the house themselves to raise the necessary funds.

The Registrar of Titles currently allows the attorney to transfer the property under these circumstances if a statutory declaration is lodged with the transfer advising the following:

- The reason for the transfer, e.g. request or wishes of Donor;
- Demonstrates that the transfer is in the best interests of the Donor;
- Evidence of payment of the consideration to the account of the Donor;
- There is evidence that the Attorney or the family member has paid full market value for the property; and
- Annexes a sworn valuation of the property made by an independent valuer.


The Major Fraud Squad, Western Australian Police, is currently investigating allegations of fraudulent dealings on the WA land register. These allegations involve fraudulent powers of attorney and abuse of family arrangements, including elder abuse. The Registrar and Commissioner of Titles are assisting with these investigations, predominately by providing land information, and the investigations are not public information at this point in time.

As a way mitigate the lodgement of a fraudulent enduring powers of attorney, the Registrar of Titles is in the process of introducing Verification of Identity (VOI) for the enduring powers of attorney that are lodged at Landgate. The identity of the donor will need to be verified at the time the document is executed.

Frauds (or attempted frauds) involving real property are on the increase and the elderly are in a category of persons that are likely to be the target of such frauds. Therefore, the Registrar and Commissioner of Titles are constantly looking for ways to mitigate title fraud and mortgage fraud to protect the interests of all registered proprietors and their mortgagees.

If you would like to seek further clarification on any of the matters raises in my letter, please contact Mark Crane, Principal Consultant (Title Dealings) on 9273 7362.

Yours sincerely



Shane Nelson
ACTING COMMISSIONER OF TITLES

17 November 2017