



THOMSON REUTERS

Update Summary

PLEASE CIRCULATE IMMEDIATELY!

UPDATE 115

DECEMBER 2024

LAND TITLES LAW AND PRACTICE

**Sharon Christensen, Bill Dixon
and Anne Wallace**

Material Code 42608901

Print Post Approved PP255003/00333

© Thomson Reuters (Professional) Australia Limited 2024

Looseleaf Support Service

You can now access the current list of page numbers at:

<http://www.thomsonreuters.com.au/support/product-support.aspx?id=/mediaTree/58599>. If you have any questions or comments, or to order missing pages, please contact Customer Care LTA ANZ on 1300 304 195 Fax: 1300 304 196 Email: Care.ANZ@thomsonreuters.com

UPDATED COMMENTARY

Professor Sharon Christensen, Dr William Dixon and Professor Anne Wallace have updated the existing annotations to the *Land Title Act 1994* (Qld).

The following annotation has been updated by Professor Sharon Christensen:

Execution of instruments by bodies corporate

Following the abolition of body corporate seals, the *Land Title Practice Manual* has been updated to provide new methods of execution for bodies corporate. There are now three types of execution, depending on the instrument being executed:

- Regulation Execution
- Formal Execution
- Minor Execution.

The application of these provisions to bodies corporate are set out at [45-2060] – [45-2067-3] of the *Land Title Practice Manual* according to the applicable Regulation Module, see [9.837].

The following paragraphs have been updated by Professor Anne Wallace:

- The commentary to s 59 relating to severance of a joint tenancy has been revised to include reference to the position where an order is made under s 38 of the *Property Law Act 1974* appointing a trustee for sale of the jointly owned property. Where this applies a sale under the trust does not of itself effect a severance of a joint tenancy existing between the co-owners: s 38(7) *Property Law Act 1974*. The joint tenancy may, however, be severed by conduct of the parties demonstrating a mutual recognition that the joint tenancy is severed: see for example *Purser v Purser (No 2)* [2024] NSWSC 700 at [20]-[23]. In that case the Court held that the joint tenancy in the proceeds of sale was severed after the order appointing a trustee was made because the conduct of the parties demonstrated a mutual recognition that the joint tenancy was severed and they would hold as tenants in common, see [5.430].
- *Clinch v Brown* [2024] NSWSC 1239 has been noted in the commentary to s 176 – unregistered interest, see [10.1290].
- The following cases have been added to the commentary on fraud as an exception to indefeasibility: *Cassar v Cassar (Preliminary questions)* [2024] VSC 502; *Shun Sheng Pty Ltd v Lei (No 5)* [2024] NSWSC 1109 at [145], see [10.3070].
- *Shun Sheng Pty Ltd v Lei (No 5)* [2024] NSWSC 1109 at [145] is also noted in the commentary to s 185 – personal equity exception, see [10.3365].

The following annotations have been updated by Dr William Dixon:

- Adding *The Croation Club Ltd v Westwood Capital Pty Ltd* [2024] NSWSC 895 to support the view that it may be possible for a charge which only secures a non-monetary obligation to create a caveatable interest, see [7.1070].
- *Maradiegue v Moneytech Finance Pty Ltd* [2024] QSC 160 is also noted in the commentary, see [7.1070].
- *Edmonds v Barrington Winstanley Group Pty Ltd* [2024] FCA 821 has been added to support the view that an applicant needn't wait until after a caveat is removed before making an application for compensation, see [7.5130].

