

Void Grants and Located Land

Void Grants

Prior to sailing from England all early settlers applied to the Secretary of State for permission to proceed as a settler to Van Diemens Land and where appropriate to receive a grant of land. The area of land to be granted was proportionate to the means of the settler.

Approved settlers received a letter of introduction addressed to the Governor, which requested that a grant of land be made. Until July of 1820 the letter was addressed to the Governor at Sydney and grants of land in Van Diemens Land were made from Sydney; after that date the letters were addressed to the Lieutenant Governor at Hobart Town and grants were made from Hobart Town.

Some early Governors including Macquarie, Brisbane and King, brought about the problem of void grants by granting land in their own names. They did not affix the Great Seal and the land was not granted in the name of the Crown. It was thought even at the time of Brisbane, and confirmed shortly afterwards, that grants of this nature were in fact void because there had not been a grant from the Crown to the subject or grantee.

The problem with these void grants gave rise to the Caveat Board which was a body set up to consider the circumstances under which a grant was made and to confirm to the settler that he had a valid and binding grant of land. The Caveat Board was a means of confirming grants which otherwise would have had to be re-granted by the Crown.

Located Land

Located land came about as a result of the letters from the British Government recommending that land be granted to particular settlers as an enticement to them to settle in the Colony. On arrival the settler would apply to the Governor for a location order and if the Governor was satisfied that the settler could develop the land he would write a letter to the Commissioner of Crown Lands. The letter would take the form of an order that the settler named in the order should have a certain area of land located to him. The settler and the Commissioner would then go out and select a site, with the intention that an official grant would issue at a later date. Because no grant was made at that time the location order became evidence upon which title was eventually recognised.

The grant would sometimes take as long as four years to come from Sydney and people dealt with the land during that time by using the original location order or letter from the Governor, which was transferred on sale of the land. The letter was used as the title to the land and people who had settled on located land could apply and receive a grant of their land under the *Claims to Grants of Land Act 1835*. In many cases no grant of land was ever applied for and such land is known as located land.

Title based on a void grant or on a location order could be obtained under section 16(3) of the *Real Property Act 1862* (now covered by sections 11 & 12 of the *Land Titles Act 1980*) on the basis of 'equity and good conscience'.

Sources

The origin of this information is the *Property Law Lectures 1980* produced by the Registrar General's Department, Tasmania. The material has been rewritten, presumably within the Land Titles Office, at some stage since that time.

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